THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

JUDGEMENT
ON BEHALF OF THE REPUBLIC OF LATVIA
Riga, 18 January, 2010

in Case No. 2009-11-01

The Constitutional Court of the Republic of Latvia, composed of the Chairman of the Court session Gunārs Kūtris, Justices Kaspars Balodis, Aija Branta, Juris Jelāgins, Kristīne Krūma and Viktors Skudra,

having regard to the constitutional applications of Kristīne Kalvāne-Radziņa, Valdis Vazdiķis, Lolita Andersone, Baiba Jakobsone, Dagnija Bērziņa, Marika Bebriša, Sanita Rūtenberga, Ieva Reikmane, Inese Strelča, Skaidrīte Hrebtova, Vivita Voronova, Dace Ķeire, Marita Šalta, Signe Vilne, Jolanta Zaškina, Gunta Gultniece, Dina Suipe, Līga Hāzenfuse, Ilona Petrovska, Linda Piusa, Indra Meldere, Visvaldis Sprudzāns, Vilis Donāns, Inese Skudra, Svetlana Maršāne, Elmārs Lenšs, Daina Treija, Ingūna Amoliņa, Iveta Brimerberga, Tamāra Broda, Brigita Būmeistere, Sandra Amola, Diāna Dumbre, Boriss Geimans, Smaida Gļazere, Rihards Hlevickis, Daiga Kalniņa, Signe Kalniņa, Irīna Jansone, Ligita Kuzmane, Guntars Kveska, Zinaida Lagzdiņa, Iveta Vīgante, Aina Nicmane, Aivars Uminskis, Guntars Stūris, Ināra Šteinerte, Irēna Logina, Žaneta Vēvere, Inese Laura Zemīte, Ārija Ždanova, Juris Stukāns, Sandra Strence, Aivars Zāģers, Skaidrīte Buivide, Daiga Vilsone, Juris Freimanis, Ligita Gavare, Dzintra Zvaigznekalna-Žagare, Inta Jēkabsone, Sarmīte Vamža, Valērijs Maksimovs, Silvija Sēbriņa, Jānis Bazēvičs, Līga Blūmiņa, Gunta Ozoliņa, Ineta Ozola, Marianna Terjuhana, Inese Grauda, Milda Zelmene, Lidija Pliča,

Lelde Grauda, Iveta Bērziņa, Mārtiņš Sviķis, Dace Jansone, Iveta Meldere, Zane Pētersone, Mairita Šķendere, Sandra Krūmiņa, Svetlana Beļajeva, Dzintra Danberga, Tatjana Bormane, Baiba Ozoliņa, Normunds Riņķis, Gatis Štauers, Gvido Ungurs, Uldis Danga, Ilze Apse, Sanita Strakše, Viesturs Gaidukēvičs, Viktors Prudņikovs, Aija Āva, Dace Kantsone, Anna Mihailova, Kristīne Vanaga, Ilze Freimane, Ojārs Priedītis, Mārtiņš Birkmanis, Dzintars Melbārdis, Aija Reitupe, Dace Ābele, Iveta Kromāne, Kaspars Rinčs, Juris Kokins, Arvīds Ozerskis, Silva Reinholde, Rita Vīva, Astra Klaiše, Vineta Ramba, Zaiga Zaiceva, Biruta Ķeire, Laima Kraule, Roberts Lazdāns, Ingrīda Junghāne, Ināra Rozīte, Sandra Mertena, Vineta Vaiteika, Linda Vēbere, Dzintra Zemitāne, Aiga Freimane, Santa Sondare, Ineta Škutāne, Ilze Vanaga, Inta Zaļā, Ziedonis Strazds, Elita Stelte-Auziņa, Inese Siliņeviča, Lauma Šteinerte, Santa Bernharde, Žanete Žimante, Inta Rubene, Maruta Bite, Jolanta Uminska, Ināra Strautiņa, Inguna Preisa, Velta Silamiķele, Regīna Knabe, Dace Skrauple, Juris Siliņš, Daina Baltā, Anita Misiuna, Intars Bisters, Alberts Kokins, Līga Ašmane, Irina Freimane, Inita Dzerkale, Daiga Danšina, Kristīne Konderko, Judīte Mauliņa, Gunta Čepule, Iveta Salaka, Laila Fogele, Iveta Kniploka, Dace Ruško, Nellija Paņkiva, Ervīns Kušķis, Eduards Pupovs, Jānis Tiltiņš, Andrejs Lepse, Ramona Nadežda Jansone, Inguna Radzeviča, Anita Nusberga, Anita Poļakova, Ludmila Poļakova, Ausma Keiša, Pēteris Opincāns, Iveta Krēvica, Anita Moļņika, Aelita Ignatjeva, Andrejs Mihaļčenko, Irēna Millere, Dina Bondare, Ilze Celmiņa, Inga Krigena-Jurkāne, Ina Baiko, Ilze Ošiņa, Svens Lorencs, Agita Dmitrenoka, Doloresa Bambere, Ilze Freimane, Agnese Jurevica, Dagmāra Skudra, Ilona Rūķe, Jolanta Bebriša, Inga Zālīte, Lilija Kanaviņa, Inese Belicka, Sarmīte Daukšte, Dzintra Balta, Sandra Meliņa, Imants Dzenis, Andis Celms, Rinalds Silakalns, Iveta Stuberovska, Vija Siliniece, Solvita Glaudāne, Biruta Horuna, Anda Briede, Anita Čerņavska, Arnis Dundurs, Raimonds Grāvelsiņš, Inta Lauka, Marika Senkāne, Sandra Briķe, Sanita Zakrevska, Karina Krastiņa, Linda Vīnkalna, Zita Kupce, Santa Liniņa, Ļubova Kušnire, Kaspars Berķis, Līvija Slica, Valda Zommere, Ilze Amona, Anita Šteinberga, Una Mihailova, Sandra Gintere, Edgars Puriņš, Sanita Kanenberga, Māris Birzgalis, Margarita Osmane, Vilmārs Endzelis, Iluta Kovaļova, Māra Balode, Ināra Zariņa, Sarmīte Stūrmane, Sandra Zeire, Velta Karzone-Kere, Indra Kreicberga, Antra Tiltiņa, Everita Ancāne, Ināra Zabarovska, Dainis Šaicāns, Helmuts Naglis, Skaidrīte Temļakova,

Olita Blūmfelde, Mairita Zadiņa, Žanna Zujeva, Sandra Breča, Ieva Zabarovska, Vita Vjatere, Ilze Ieviņa, Antra Zute, Ilze Ieviņa, Ilga Neimane, Liāna Liepiņa, Agnese Skulme, Inese Kazjonova, Irēna Lavrinoviča, Una Melameda, Baiba Strauta, Maija Vētra, Mārīte Vesele, Irēna Cupika, Zeltīte Kusiņa, Arnis Naglis and Dainis Plaudis (hereinafter – the Applicants),

according to Article 85 of the Satversme [Constitution] of the Republic of Latvia (hereinafter – the Satversme) and the Article 16, Paragraphs 1 and 3, Article 17, part one, Paragraph 11 and Articles 19^2 and 28^1 of the Constitutional Court Law,

on 18 December, 2008, the court session examined in written proceedings the case "On Compliance of the second sentence of Paragraph 7 and Paragraph 17 of the Transitional Provisions of the Law "On Judicial Power" (in the wording of 14 November, 2008 of the Law) to Articles1, 83 and 107 of the Satversme of the Republic of Latvia".

The Constitutional Court has established:

1. The procedure for calculating the remuneration of judges was set out in the Law of 19 June, 2003 "Amendments to the Law "On Judicial Power", which came into force on 1 July, 2003. The aforementioned Law started a reform in the remuneration of the judges, based upon the Concept Document "Remuneration of Judges and Court Employees", approved with the Order No. 706 of the Cabinet of Ministers of 19 December, 2002 (hereinafter – the Concept Document). The main aim of the Concept Document was to develop a system of remuneration for judges, which would be the basis for the existence of a professional, fair and independent court.

1.1. In accordance with Article 119^1 of the Law "On Judicial Power" a judge's monthly salary was tied to the average monthly gross remuneration of employees in the state of the previous year, to which coefficient 4.5 was applied. At the same time a gradual transition to the amount of remuneration set out in the Law was envisaged. Till 2006 the monthly salary of a judge was calculated on the basis of the average gross remuneration of the employees in 2001. Moreover, in accordance with the Transitional Provisions, in 2003, 2004 and 2005 60, 70 and 80 percent of the calculated salary were paid, respectively.

1.2. The amendments to the Law "On Judicial Power" of 23 February, 2006 provided that the salary should be tied to the monthly average gross remuneration of 2001 not till 2006, but 31 December, 2006. The second sentence of Paragraph 7 of the Transitional Provisions of the Law "On Judicial Power" also provides that the monthly salary of judges, except the monthly salary of the judges of Land Register Offices, in 2007 and 2008 shall be calculated, taking into consideration the average monthly gross remuneration of 2005, but in 2009 – the average monthly gross remuneration of the employees in 2006, and that the coefficient 4.5 shall remain unchanged.

1.3. On 14 November, 2008 the Saeima [Parliament] of the Republic of Latvia (hereinafter – the Saeima) adopted the Law "Amendments to the Law "On Judicial Power"", in which Paragraph 7 of the Transitional Provisions was worded differently. The second sentence of this Paragraph provided: "The monthly salary of a judge, except the monthly salary of a judge of a Land Register Office, in 2007, 2008 and 2009 shall be calculated, taking into consideration the average monthly gross remuneration of employees in 2005, keeping the coefficient 4.5 unchanged" (hereinafter – the contested Paragraph 7).

1.4. The system of remuneration for judges of Land Register Offices was introduced simultaneously with the system of remuneration for judges, by including in the Law "On Judicial Power" Article 120^1 ,worded as follows: "The monthly salary of a judge of a Land Register Office shall be calculated by applying the coefficient 2.5 to the average monthly gross remuneration of the employees in the state, as announced in the official statistical report of the Central Statistical Bureau, which has been approximated till lats."

1.5. With the amendments of 8 November, 2007 the coefficient 3.5 was set, simultaneously envisaging a transitional period till 2009.

With the amendments of 14 November, 2008 the coefficient 4.5 was set. However, Paragraph 17 of the Transitional Provisions, provided:

"The monthly salary of a judge of a Land Register Office shall be calculated as follows:

till 1 January, 2009 – in accordance with the average monthly gross remuneration of the employees in the state, as announced in the official statistical report of the

Central Statistical Bureau, which has been approximated till lats, applying to it the coefficient 2.5;

in 2009 – taking into consideration the average monthly gross salary of the employees in 2006, applying the coefficient 2.5;

in 2010 – in accordance with the average monthly gross remuneration of the employees in the state, as announced in the official statistical report of the Central Statistical Bureau, which has been approximated till lats, applying to it the coefficient 3.5" (hereinafter also – the contested Paragraph 17; hereinafter the contested Paragraph7 and 17 jointly also – the contested provisions).

2. The Applicants consider that the contested provisions set out a more disadvantageous regulation compared to the previous method (procedure) for calculating the judge's salary, since the contested provisions envisage that the judges' salaries remain unchanged for three subsequent years – 2007, 2008 and 2009. This, actually, is said to be a decrease in the amount of the judge's remuneration.

The Applicants indicate that it follows from Article 107 of the Satversme, which, *inter alia*, defines the rights to every employee to receive a commensurate remuneration for the work done, that a commensurate remuneration is such, which also adequately reflects the character of the work done. Thus, for a remuneration to be commensurate, when setting it the work to be done by the person must be duly taken into consideration. It is said that also from the rights to receive a commensurate remuneration for the work done follows that, when setting the remuneration for judges, the principle of the independence of courts must also be taken into consideration. Namely, the judges' remuneration could be recognised as being commensurate for the work done only if, when setting it, the principle of the independence of courts, had been taken into consideration. Moreover, both the method for setting the remuneration and the amount of remuneration should be of the kind that ensures compliance with the principle of the independence of courts.

The Applicants express the opinion that by setting the remuneration for judges the principle of legal certainty, the principle of legal stability (Article 1 of the Satversme) and the principle of the independence of courts (Article 83 of the Satversme) have been violated. The judges' social guarantees, which are granted to the

judge during the term in office, and also after the expiry of the mandate, are said to be one of the elements of the independence of judges. The judge should receive an adequate remuneration, which cannot be decreased during the judge's term in office. Any attempt to decrease the judges' remuneration or other social guarantees should be considered as a breach of the principle of the independence of courts.

The Applicants emphasize that the contested provisions also violate the principle of legal stability. By arbitrary amending the procedure for calculating the salary set out in the Law "On Judicial Power", the Applicants are said to be denied the possibility to base their future activities upon the laws and acts of legislation that are in force and effectively plan their income and expenditure.

The Applicants' legal certainty that the reform of the judges' remuneration would not be stopped had been even more strengthened by the principle of the independence of judges. Namely, they had developed a certainty that the legislator would abide by the principle of the independence of judges and would not amend the law in such a way as to decrease the amount of the judges' remuneration, which the judges had reckoned with.

After examining the case materials the Applicant K. Kalvāne-Radziņa noted that a judge in administering justice has been granted one of the state powers defined in the Satversme – the judicial power. Therefore, the judge, undoubtedly, must be a highly qualified lawyer, who is doing a responsible job and, thus, also receive remuneration commensurate to it. However, the comparison of the remuneration of the judges and the lawyers and heads of the structural units working in public administration, allows concluding that the work of the judges is valued significantly lower. This proves that the judges' remuneration already before the contested provisions were adopted was not commensurate to the status of the judge. It could not be understood, why the remuneration of judges had to be kept unchanged since 2007, but the remuneration of the officials of the institutions of public administration since 2007 increased significantly, moreover, even in 2009. Thus, the arguments provided by the Saeima about the international commitments, which had set upon the legislator the duty to decrease the remuneration of all employees working in institutions funded from the state budget, do not hold ground, likewise – the arguments about the principle of

solidarity, upon which the decrease of the employees working in all branches of state power, is founded.

After the introduction of these amendments to the law the work of a judge, as regards its material appreciation, is no longer attractive to a highly qualified lawyer.

Moreover, the judge indicates that the reference made by the Saeima to the signed Letter of Intent with the International Monetary Fund of 18 December, 2008 and Memorandum of Understanding with the European Commission signed on 28 January, 2009 is not proper, since the aforementioned documents were created after the adoption of the contested provisions.

3. The Saeima – the institution that has passed the contested provisions – in its written response indicates that the adoption of the contested provisions was linked to the fast economic recession, which is still ongoing. The official data of the Central Statistical Bureau prove that – considerable decrease of the gross domestic product, revenues and expenditure deficit of the public sector, the decrease of the industrial production, decreasing retail sales, growing unemployment level. To compensate for the lack of finances, Latvia took international loans, in order to obtain and to use them a number of conditions were set for Latvia, including ones applicable to the decrease of remuneration. The Letter of Intent with the International Monetary Fund, signed on 18 December, 2008, serves as the basis for obtaining the loan, Paragraphs 24 and 30 of which envisage measures for decreasing the remuneration both in 2009 and in subsequent years, and also the Memorandum of Understanding with the European Commission signed on 28 January, 2009.

It is said that it follows from these documents that a targeted and timely implementation of The Latvian Programme for Stabilising the Economy and Restoring Growth (approved with Order No. 123 of the Cabinet of Ministers of 19 February, 2009) is the most significant pre-condition for obtaining the international loan, and this Programme is said to apply also the judges' remuneration. Consequently, the measures for preventing the economic recession are focused upon reaching the aims referred to in Article 116 of the Satversme – protection of the rights of other people and public welfare.

The Saeima holds the opinion that the adoption of the contested provisions is only one among numerous measures implemented to reach the aforementioned aims. The contested provisions first of all are needed to safeguard the interests of the state budget, since the actions of the state are founded upon self-financing, and a situation, when the expenses exceed the revenue, could not be allowed in the long-term. Thus the goal of the restrictions, which the contested provisions contain, is said to be not only safeguarding the interests of the state budget under the conditions of economic recession, when the budget expenditure must be decreased and balanced with the revenue, but also to realise the rights of other persons to social security. Thus, the adoption of the contested provisions had been necessary and urgent, and it had a legitimate aim – ensuring the public welfare and protection of the rights of other persons. Moreover, the contested provisions have a fixed term.

The Saeima simultaneously indicates that the principle of the independence of courts cannot be linked only with the amount of judges' remuneration set in the legislation. A complex and systemic assessment of compliance with this principle is needed.

The independence of the system of courts (the institutional dimension) and the independence of judges (the individual dimension) is said to follow from numerous criteria: absence of direct interference of other powers (executive and legislative) in the administration of justice, sufficient funding to the system of courts for fulfilling its organisational and administrative functions, guaranteed social security and activities to the judges (selection of candidates for the office of judge, irrevocability and immunity of a judge), impartial allocation of cases, the reviewing of the court judgements according to the procedure set out in the legislation, etc.

The Saeima emphasizes that at present the remuneration for judges' work is commensurate with the character of the job, the skills needed for performing the job and the responsibility, conforms with the requirements and restrictions set in the law, and, moreover, is balanced with the status and the remuneration of other officials of the judicial system, as well as with the general level of salaries in the state. Therefore a breach of Article 107 of the Satversme cannot be identified. Thus the adoption of the contested provisions is said to follow logically from the legislator's discretion and the duty to strike a balance between the interests of various social groups. The judges'

remuneration is not the only factor ensuring the independence of the judiciary, and the stopping of its increase *per se* does not create a threat to the independence of the judiciary, especially so, considering the fact that the judges' remuneration is far from being incommensurably low.

The Saeima holds the opinion that the setting of the remuneration falls within the sphere of social rights, which is inseparably linked with the state's financial possibilities, therefore the legislator, in regulating the aforementioned legal relationship, has been granted a wide discretion. The legislator's decisions on the implementation of social rights have an important political dimension, which is influenced by the economic situation of the state and resources available to it, therefore concerning the implementation of social rights the legislator cannot be set as strict requirements as with regard to the ensuring of other human rights. Thus, the social rights are said to be special and different from the human rights.

The Saeima indicates that the contested provisions are an exceptional and fixed-term measure, implemented under the conditions of economic recession. Moreover, prior to the adoption of the draft law in the last reading, the possible alternatives had been meticulously assessed. The possibility to compensate for the losses incurred by the judges, if such were caused with the Paragraph 7 or 17 of the Transitional Provisions, from the resources allocated to the Ministry of Finances budget sub-programme "Resources for unforeseen events" had been considered. However, this solution gained no support, because it would not have helped to reach the legitimate aim on a sufficient scale, i.e., since the contested provisions were adopted to economize the financial resources, the resources for introducing an appropriate mechanism of compensation would also be lacking. By adopting the contested provisions the Saeima did not breach the judges' rights to adequate financial guarantees at least on the minimum level, did not act unfairly *vis-á-vis* some social groups, and did strike a balance between the rights of various social groups. Moreover, the decrease of remuneration was introduced also with regard to other bodies of state power, public and local government institutions of administration. The judges' salaries are funded by the state budget. The remuneration of other officials (employees) of state and local government institutions was decreased, but the contested provisions envisage only staying the increase of the remuneration. In view of the fact that the

remuneration of all employees funded from the state budget, including the President of the State, the Prime Minister, ministers and members of the Saeima, was decreased, the Saeima holds the opinion that the principle of solidarity was complied with. Thus, the contested provisions comply with the principle of solidarity and do not breach the principle of the independence of courts.

The Saeima also does not agree to the opinion of the Applicants that the contested provisions do not comply with the principle of legal certainty. The principle of legal certainty is one of cornerstones of a democratic state, which follows from Article 1 of the Satversme, and it has the aim to promote the predictability and certainty of legal acts, as well as the stability of legal relationship between the state and the person. However, the principle of legal certainty does not prohibit introducing amendments, conforming to certain requirements, to the existing legal regulation.

The Saeima emphasizes that neither the principle of legal stability or fairness prohibit deviating away from the previous practice. It is not only permissible, but even necessary in those cases, when the most appropriate and obviously better suited solution has to be chosen.

The Saeima holds the opinion that in the said situation retreating from the legal regulation most favourable to the person is admissible, since the individual is granted the possibility to understand the motivation behind these actions, as well as whether a regulation like this under these conditions is objectively necessary and whether the breach is not arbitrary. The principle of legal certainty is said to be a constitutional value. Likewise, the protection of the rights of other persons and ensuring social welfare, by effectively re-distributing the common good and by balancing the revenues and the expenditure of the state, is also a constitutional value.

The Saeima believes that in the case, when several constitutional values interact, the legislator has the discretion to decide upon the most appropriate solution. A mechanical protection of legal certainty in those cases, when it contradicts other constitutional values, cannot be absolute.

In addition to the aforementioned arguments about the necessity and the proportionality of the contested provisions, the Saeima also notes that the in this case the principle of legal certainty should be viewed also in the context of the principle of equality, i.e., the intangibility or increase of the “benefits” granted to one group

automatically means the worsening of the material status of a group of other persons. Thus, a situation when the decrease of remuneration affected all employees of the public sector, but not the representatives of the judiciary and a greater decrease of the remuneration were applied to other employees of the public sector would not be permissible. The Saeima, by assessing the experience of other countries – the Chez Republic, Canada and Lithuania, in dealing with the issue of judges' remuneration, has concluded that in accordance with the case law of these countries, the decrease of judges' remuneration breaches neither the principle of the independence of judges, nor the principle of legal certainty.

The Saeima requests to declare the contested norms compatible with the Satversme.

4. The Ministry of Justice indicates that the draft law "Amendments to the Law "On Judicial Power"" (in the wording of 14 November, 2008) had to be drafted within a week, since it was scheduled for examination at the Cabinet of Ministers meeting simultaneously with other 2 draft laws of the 2009 budget package. The Cabinet of Ministers, disregarding the objections of the Minister for Justice, adopted this draft law.

The Ministry of Justice holds the opinion that the breach of the principle of legal certainty could be referred to only in the case if the previous legal regulation established by the legislator had created grounds for legal certainty. In applying the principle of legal certainty it is also important whether the person's relying upon a legal norm is lawful, justified and reasonable, as well as, whether the legal regulation as to its essence is sufficiently definite and permanent to be relied upon. Due to the instability of the economic situation the provisions of the law, which set out the procedure for calculating the judges' remuneration in 2008 and 2009, have been amended several times. The requirement for the legal provision to be consistent with the system and the present assessment holds priority compared to the principle of legal stability and strict abiding by the previous practice even when it is no longer acceptable.

The Ministry of Justice notes that if abiding by the principle of proportionality would create a situation when a decrease of remuneration affects all public sector

employees, except the representatives of the judiciary, it would be inadmissible. In such a case even greater decrease of funding would have to be introduced in other sectors of national importance. Comparing the infringement of the judges' interests caused by the decrease in their remuneration to the infringement of the interests of the whole society in the same situation and assuming that, for example, even greater decrease of funding would be needed in the public administration or social sphere, it can be concludes that in adopting the decision on decreasing the judges' remuneration the principle of proportionality was complied with.

At the same time the Ministry of Justice points out the negative consequences linked to the decrease of the judges' remuneration. The negative consequences can manifest themselves both as difficulties in attracting qualified candidates for judge's office for working in the profession, as well as a negative impact upon the prestige of the judiciary. In the context of the first aspect the Ministry of Justice informs that the period from 2004 to 2009 constantly had constantly vacancies for judges' positions. Namely, it had been impossible to ensure the necessary number of judges for effective functioning of courts and Land Register Offices. The Ministry of Justice expresses the opinion that a competitive remuneration is an essential pre-condition for selecting qualified candidates for the judges' position, as well as an incentive for highly qualified professionals to stay in their jobs at the courts, instead of looking for another, better remunerated position.

The number of judges set by the Saeima had not been ensured for several years. Moreover, the workload of the courts and the number of cases submitted to the courts is constantly growing. An exceptional increase of the number of civil cases was observed in 2008 and 2009. For example, in 2009 the number of civil cases submitted to the district (city) courts compared to the previous year increased by almost 100 percent. Thus, taking into consideration the large increase of the workload, the legislator had kept unchanged the amount of the judges salary, which potentially, indeed, could lead to the aforementioned negative consequences, as well turn into the grounds for increased term for reviewing the cases.

The Ministry of Justice indicates that, on the one hand, the judges are the ones who create and maintain the prestige of the judiciary, by passing fair and justified judgements, but, on the other hand, the prestige of the judiciary is the grounds for

choosing the profession of a judge. The executive power and the legislator by adopting decisions on the budget recourses needed by the judiciary, indirectly and directly influence the funding of the judiciary and thus – an effective functioning of the judiciary. The fact that the executive power and the legislator can pass decisions related to the functioning of the courts, without taking into consideration the objections expressed by the representatives of the judiciary, may be a reason to doubt whether the principle of equality among all branches of the state power is enforced.

Moreover, the Ministry of Justice draws attention to the fact that the decrease of the judges' salaries could lead to social consequences. This could adversely affect the economy and the society in general, since the length of court proceedings would increase.

However, the Ministry of Justice concludes that the decrease of judges' remuneration *per se* does not breach the principle of the independence of judges, or the principle of legal certainty, and complies with the principles of equality and proportionality.

The Constitutional Court holds that:

5. The competence of the Constitutional Court to examine this case is not disputed, however, the special character of the issue demands assessing and justifying the rights of the Constitutional Court.

One of the fundamental principles of a democratic state enshrined in Article 1 of the Satversme is the principle of the division of power, which includes the control of the judiciary over the legislator and the executive power. Not a single legal provision or an action of the executive power can stay outside the control of the judiciary, if it infringes the interests of any person. [*see: Judgement of 9 July, 1999 by the Constitutional Court in the case No. 04-03(99) para. 1 of the Concluding Part*]. The judiciary as a whole and the Constitutional Court as part of it has to ensure as complete control of two other branches of power as possible (*see: Judgement of 22 February, 2002 by the Constitutional Court in the case No. 2001-06-03 para. 1.2. of the Concluding Part*).

Examining the competence granted to the Constitutional Court by Article 85 of the Satversme to assess the compliance of laws with the Satversme, it can be concluded that the Constitutional Court decides on specific disputes concerning the compliance of legal norms with norms of higher legal force. (*see: Judgement of 20 December, 2006 by the Constitutional Court in the case No. 2006-12-01, para. 9.2.*).

The Constitutional Court, assessing the compliance of a law with the Satversme, implements the principle of supremeness, thus ensuring constitutional fairness. Neither the Satversme nor the Constitutional Court Law grant to the Constitutional Court the right to refuse to examine the compliance of a law or another legal provision with the Satversme, likewise, do not give the rights to anybody to prohibit the Court from fulfilling its functions or to restrict the Court in the fulfilment of its functions.

Thus the Constitutional Court has the jurisdiction to examine the constitutionality of a decision adopted by another branch of power even in those cases when such decisions affect the judiciary.

6. The Applications contain a request to assess the compliance of the contested provisions with Articles 1, 83 and 107 of the Satversme. The compliance of the contested provisions with the principle of legal certainty, which follows from Article 1 of the Satversme, in the framework of this case must be examined in interconnection with the independence of the judge included in Article 83 of the Satversme.

Likewise, in assessing the compliance with the right, set out in Article 107 of the Satversme, to receive remuneration commensurate with the work done with regard to the judges, the requirement of independence, included in Article 83 of the Satversme, must be taken into consideration. Therefore, first of all the content of Article 83 of the Satversme must be demonstrated, therefore the Constitutional Court will start by assessing the compliance of the contested provisions with Article 83 of the Satversme.

I

7. Article 83 of the Satversme provides: "Judges shall be independent and subject only to the law." The independence of the judges and the court defined by this

provision is one of the fundamental principles of a state, which is democratic and governed by the rule of law.

"The authors of the Latvian Satversme and the constitutions of democratic states demand an independent judiciary and a special status of the judge not because some people just like it, but because it is an absolutely necessary constituent part of a democratic state, governed by the rule of law. (*Endziņš A. Tiesu sistēmas un politikas saskarsme un dinamika. Jurista Vārds, 2002. gada 7. maijs, Nr. 9 [Endziņš A. The Interrelation and Dynamics of the System of Courts and Politics.]*).

The task of the judiciary is to see to it that in administering justice the state constitution, laws and other legal acts are enforced, that the principle of the rule of law is abided by, and that human rights and freedoms are protected (*see: Judgement of 18 October, 2007 by the Constitutional Court in the case No. 2007-03-01, para. 26.*).

The independence of the court and the judges is not an end in itself, but only a means for ensuring and strengthening democracy and the rule of law, as well as a mandatory pre-condition for realising the rights to a fair trial; therefore the principle of independence of the court and the judges included in Article 83 of the Satversme has to be examined in interrelation with Article 1 of the Satversme, which includes the principle of the rule of law and the division of power, as well as the first sentence of Article 92 of the Satversme, which sets out the right of a person to defend his or her rights and lawful interests in a fair court.

7.1. The concept "fair court", mentioned in Article 92 of the Satversme, contains two aspects, namely, "a fair court" as an independent and impartial institution of the judiciary, which reviews a case, and "a fair court" as a proper procedure, conforming with a state ruled by the rule of law, for reviewing a case. The first aspect is linked to the principle of the judges' independence included in Article 83 of the Satversme (*see: Judgement of 4 February, 2003 by the Constitutional Court in the case No. 2002-06-0, para. 1. of the Concluding Part).*

The requirement set in the international documents for the independence of judges falls within the content of the right to a fair court. Article 6 of The European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) provides that everybody "is entitled to a fair and public

hearing within a reasonable time by an independent and impartial tribunal established by law." Article 14 of the UN International Covenant on Civil and Political Rights contains a similar wording.

Apart from the aforementioned international documents ratified by the Republic of Latvia, there is a number of documents developed by international institutions, which have been adopted so that the member states in their laws and practice would follow the principles they contain, for example, the United Nations Basic Principles on the Independence of the Judiciary (*See: Apvienoto Nāciju Tiesu varas neatkarības pamatprincipi // Latvijas Vēstnesis, 1995. gada 28. septembris, Nr. 148 [The United Nations Basic Principles on the Independence of the Judiciary]*), the Council of Europe Committee of Ministers Recommendation No. R (94) 12 to Member States On Independence, Efficiency and Role of Judges of 13 October, The Consultative Council of European Judges Opinion No 1 on standards concerning the independence of the judiciary and the irremovability of judges, European Charter on the Status of Judges, Council of Judges, 8–10 July 1998, Universal Charter of the Judge adopted by the Central Council of the International Association of Judges in 1999, Judges' Charter in Europe adopted by the European Association of Judges on March 20, 1998. Even though these documents should be perceived only as guidelines, they impose strict moral and political duties for the states and must be used as a means for clarifying the content of the criterion of judges' independence.

The European Court of Human Rights, when analysing the content of the term "fair trial" included in the first sentence of the first part of Article 6 of the Convention, has concluded that several criteria must be considered, for example, the procedure for appointing to the office the members of the said institutions, the term for which they are appointed, safeguards against external influence, the presence of external features of independence (*see: Judgements of the European Court of Human Rights in the case Campbell and Fell v. The United Kingdom 78. §, judgement in the case Langborger v. Sweden 32. §, judgment in the case Bryan v. The United Kingdom 37. § and judgement in the case Coeme and others v. Belgium 120. §*). The independence of judges is important for everybody who turns to the court and relies upon fairness in the administration of justice.

Thus, an effective realisation of human rights is impossible, if the judges are not independent.

7.2. The principle of the rule of law is one of the principles of a democratic state. Only an independent judiciary is able to ensure a fair result of the court proceedings, which is the foundation for the rule of law.

The requirement that the judges must be protected against any kind of unfounded interference into the administration of justice and the fulfilment of the judges' duties, is not only justified and reasonable, but is even essential for safeguarding the rule of law.

The United Nations Economic and Social Council in the Preamble to the Bangalore Principles of Judicial Conduct (hereinafter – the Bangalore Principles) has indicated: a competent, independent and impartial judiciary is essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law. (*See: Bangalore Principles of Judicial Conduct, 29 April, 2003, United Nations Commission on Human Rights resolution 2003/43, Preamble*). Anyone with regard to whom justice is administered is interested in ensuring the independence of judges.

Thus, the independence of judges guarantees the safeguarding of the rule of law in the interests of the society and the state.

7.3. Only in such a state, in which the principle of the division of power guarantees the balance between the branches of state power and reciprocal control, preventing the tendencies of any branch to domineer, by promoting the moderation of power and thus ensuring a truly independent judiciary, the independence of judges can be ensured.

The aim of the division of power is to maintain the guarantees of person's freedom, preclude the replacement of the model of state governed by the rule of law with an authoritarian regime or an autocracy of a single person. In a state governed by the rule of law the principle of the division of power guarantees the balance and reciprocal control between the branches of state power. This exactly gives the judges the possibility to fulfil their duties in a proper way.

Thus the requirement of the judges' independence is closely linked with the independence of the judiciary and thus, also, with the implementation of the principle of the division of power.

8. The Constitutional Court must asses, whether the setting of the judges' remuneration falls within the content of the principle of the independence of judges contained by Article 83 of the Satversme.

The Constitutional Court, when analysing the constitutional grounds, aims and significance of the independence of the judge, already indicated that it is impossible to ensure the necessary independence of the judge, unless the judiciary itself as a whole is not free from unjustified influence or the political pressure exerted by the executive power or the legislator.

8.1. The United Nations Basic Principles on the Independence of the Judiciary provide that it is the duty of every state to provide adequate resources to enable the judiciary to properly perform its functions. (*See: Apvienoto Nāciju Tiesu varas neatkarības pamatprincipi // Latvijas Vēstnesis, 1995. gada 28. septembris, Nr. 148, 7. § [The United Nations Basic Principles on the Independence of the Judiciary*). The UN ECOSOC in its Resolution No. 1989/ 60 of 24 May, 1989 has pointed out that the states must pay special attention to the resources needed to ensure the functioning of the judiciary, *inter alia*, by setting an adequate number of judges, appropriate for the number of cases to be examined, ensuring to the courts the necessary staff support and technical means, by providing to the judges appropriate personal security and remuneration. (*see: Procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary, ECOSOC resolution 1989/60 of 24 May 1989*).

Abiding by the principle of the division of power included in the Satversme and the requirement of the independence of judges, as well as other internationally recognised requirements, the legislator in Articles 10 and 117, respectively, of the Law "On Judicial Power" has provided that the system of courts shall be funded from the state budget. The state, by envisaging an appropriate funding, guarantees an effective legal protection of a person in a competent and independent court. Therefore only such

funding of the judiciary, which ensures the fulfilment of these duties, complies with the Satversme.

On the one hand, taking into consideration that the budget is a means for implementing the policy of the state and that decisions concerning the state budget can be taken only and solely by the legislator, but, on the other hand, taking into account that the institutions of the judiciary themselves can make the most unbiased estimates on the amount of resources needed to ensure the functioning of court, a reasonable compromise must be found between the guarantees of the judiciary and the budget possibilities.

The legislator, prior to taking decisions on the functioning of courts – both on issues linked to the budget, as well as other issues related to the realisation of the functions of the courts, must give a possibility to the judiciary or an independent institution, representing the judiciary, if such has been established, to express their opinion on issues affecting the functioning of courts. The Ministry of Justice likewise points out: in a situation, when decisions linked to the functioning of courts can be adopted, without taking into consideration the objections expressed by the representatives of the judiciary "may be a reason to doubt whether the principle of the equality of all branches of the state power is enforced" (*case materials, Vol.2, p.20*). In a democratic state the principle of the division of power not only divides the branches of the state power, but also contains the requirement of their reciprocal cooperation, since the shared aim of all branches of power is the strengthening of democracy in the interests of the nation.

If the legislator because of objective reasons cannot agree with the opinion of the judiciary, it has to justify its decision.

8.2. The Constitutional Court agrees to what the Saeima has pointed out in its written response, namely, "the principle of the independence of court cannot be linked only with the amount of judges' remuneration set in the legislative acts, the adherence to this principle needs a complex and systemic assessment" (*case materials, Vol.1, p.94*).

The independence of judges is connected with a number of such guarantees: guaranteed tenure of the judge (the procedure for appointing or approving judges, the

qualification necessary for the appointment, guarantees of irremovability, conditions for promotion and transfer to another position, conditions for suspending and terminating the mandate), the immunity of the judge, financial security (social and material guarantees), the institutional (administrative) independence of a judge and the actual independence of the judiciary from the political influence of the executive power or the legislator. All these guarantees are closely interlinked, and, if even one of them is disproportionally restricted, then the principle of the independence of judges is breached and thus the fulfilment of the basic court functions and ensuring human rights and freedoms come under threat.

The financial security of a judge is one of the guarantees of the independence of judges. The constitutional doctrine points out several aspects in judges' financial security, however, in all democratic states the judges' financial security is clearly recognised as one of the most essential elements in ensuring judges' independence (*See, for example, the Judgement of 14 July, 2005 by the Constitutional Court of the Czech Republic in the case Pl. US 34/04*).

The Constitutional Court of Lithuania has concluded that it is generally accepted in democratic states that a judge, who has to examine legal disputes occurring in society, including disputes between persons and the state, must have not only high professional qualification and perfect reputation, but also must be materially independent and feel secure about his or her future. (*See: Judgement of 12 July, 2001 by the Constitutional Court of the Republic of Lithuania in the case No. 13/2000-14/2000-20/2000-21/2000-22/2000-25/2000-31/2000-35/2000-39/2000-8/01-31/01, para. 4.5.*, *http://www.lrkt.lt/dokumentai/2001/r010712.htm*). The state has the obligation to set such remuneration for judges that would be commensurate with the status, functions and responsibility of a judge. The safeguarding of judges' remuneration is one of the guarantees of judges' independence.

Likewise, the documents developed by international institutions point out that the independence of judges must be linked with judges' remuneration and other material and financial guarantees.

The UN Human Rights Committee in General Comment No 32 has indicated that member states should take specific measures guaranteeing the independence of judges and protecting judges from any form of political influence in their decision-making,

inter alia, by establishing judges' remuneration. (*see: International Covenant on Civil and Political Rights, Article 14, General Comment No. 32, para. 19*).

The United Nations Basic Principles on the Independence of the Judiciary, which have been defined to help the member states to fulfil their task – to ensure and to promote the independence of the judiciary, provide, *inter alia*, that an adequate remuneration must be secured by the law. (*See: Apvienoto Nāciju Tiesu varas neatkarības pamatprincipi, 11. punkts // Latvijas Vēstnesis, 1995. gada 28. septembris, Nr. 148 [The United Nations Basic Principles on the Independence of the Judiciary*).

The Council of Europe Committee of Ministers Recommendations No. R (94)12 Principle III "Proper working conditions", specifically its paragraph 1."b" provides: "Proper conditions should be provided to enable judges to work efficiently and, in particular, by ensuring that the status and remuneration of judges is commensurate with the dignity of their profession and burden of responsibilities" [*Recommendation No. R (94) 12, Principle III, para. 1. b*].

Paragraph 6.1 of The European Charter on the Status of Judges provides: "The level of the remuneration to which judges are entitled for performing their professional judicial duties must be set so as to shield them from pressures intended to influence their decisions or judicial conduct in general, impairing their independence and impartiality" (*European Charter on the Status of Judges, para. 6.1*).

Article 13 of The Universal Charter of Judge adopted by the International Association of Judges in 1999 provides: "The judge must receive sufficient remuneration to secure true economic independence. The remuneration must not depend on the results of the judge's work and must not be reduced during his or her judicial service." (*Universal Charter of the Judge, para. 13*).

Thus a commensurate remuneration for work falls within the content of the principle of the independence of judges included in Article 83 of the Satversme.

9. The Constitutional Court already concluded that the content of the independence of a judge contains an adequate remuneration. However, as it follows from the documents developed by international institutions already referred to in this Judgement, the remuneration of a judge must be comparable to the prestige of his or her profession and the scope of responsibility. The United Nations Economic and Social Council in

the Preamble to the Bangalore Principles has pointed out: if the courts are to fulfil their role in upholding constitutionalism and the rule of law, it is essential to have not only an independent and impartial judiciary, but also a competent one. (*See: Bangalore Principles on Judicial Conduct, Preamble*).

Taking into consideration the status of the judge and the fact that he fulfils the function of the administration of justice, the legislator has not only the right, but also the duty to set with regard to him or her as the implementer of the judiciary special requirements as to the competence, qualification and experience, as well as restrictions aimed at ensuring the independence of the judge. The Law "On Judicial Power" defines the requirements set for the judge, the rights and the obligations, as well as the restrictions set for a judge. But in accordance with the third part of Article 7 of the Law "On Avoiding the Interest of Conflict in the Actions of State Officials", the judges are allowed to combine the status of a state official only with such positions that they occupy in accordance with the law or international agreements approved by the Saeima, regulations and orders of the Cabinet of Ministers, the work of a pedagogue, researcher, professional athlete or creative work.

The Supreme Court of Canada has pointed out that with regard to the setting of judges' remuneration, the independence of the judge and the court is not the only essential issue. This requirements has two more purposes: 1) to promote judicial productivity, since judges with a sense of financial security are more likely to work above and beyond the call of duty; 2) to recruit to the bench lawyers of great ability and first-class reputation (*see. Judgement of 18 September, 1997 by the Supreme Court of Canada, Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island, [1997] 3 S.C.R. 3*).

The constitutions or the constitutional laws of some countries include special requirements with regard to the judges' remuneration. For example, the second paragraph of Article 178 of the Constitution of Poland provides that the judges' salaries should be consistent with the "dignity of their office" and scope of their duties, Article 88 of the Constitution of Greece provides that the judges' remuneration should be comparable with the office of the judge.

It is only justified and reasonable to set the remuneration commensurate with the responsibility linked to the significance of the office and the workload, the

requirement of independence, as well as the rank of the specific office within the constitutional legal order. For example, the Constitutional Court, assessing the remuneration of the members of the Saeima, has found that:

"The remuneration of a member of the Saeima should be commensurate with the responsibility and the workload linked with the importance of the office, as well as the rank of this office within the constitutional legal order. [...] Moreover, the restrictions imposed upon the economic activities of the deputies by the Satversme and the Law on Prevention of Corruption should be taken into consideration. The deputy's remuneration "is first of all a guarantee of his or her independence" (*Judgement of 22 February, 2002 by the Constitutional Court in the case No. 2001-06-03, para. 5.1. and 6.1. of the Concluding Part*).

Likewise, the purpose of judges' remuneration is both to ensure the independence and to partially compensate for the restrictions set in the law. Moreover, it should be taken into account that a judge, who is independent, but lacks adequate qualification, is unable to ensure the right to a fair trial, precise interpretation of the laws and the protection of constitutional values.

Undeniably, the state is interested in ensuring not only a sufficient number of independent and competent judges, but also the functioning of other independent and competent officials. The Constitutional Court agrees to what has been pointed out by the Cabinet of Ministers that the President of the Bank of Latvia, his deputy, the members of the Council of the Bank of Latvia, the chairperson, deputy-chairperson and the council members of the Financial and Capital Market Commission have to be both independent and competent. (*see: case materials, Vol. 7, pp. 66 - 71).* However, these are not the only officials, whose competence and independence the state and the society are interested in.

Considering the judge's mandate, the qualification and competence requirements set for him or her, as well as the impact and significance of a judge's decisions, the position of a judge should be the highest stage in a lawyer's career. The legislator has provided that this office can be occupied only by persons who have reached the age of 30. For a lawyer, who has acquired certain experience, to change a job and start a career of a judge at this age, he or she needs not only the mandatory qualification, experience and confidence, but also an appropriate financial security and guarantees.

Thus, the requirement to ensure an appropriate remuneration to a judge is linked not only with the principle of the independence of a judge, but also with the qualification and competence requirements set for and the restrictions imposed upon a judge.

10. To establish, whether the contested provisions infringe the independence of a judge, it must be examined, whether Article 83 of the Satversme contains a prohibition to decrease judges' remuneration.

Article 83 of the Satversme sets out that "judges shall be independent and subject only to the law." Thus, this provision *expressis verbis* does not contain a prohibition to decrease judges' remuneration. The Constitutional Court already indicated that the scope and the content of the principle of the independence of judges included in the Satversme is assessed not only in interconnection with other constitutional provisions and principles, but also taking into consideration Latvia's international commitments in the field of human rights.

10.1. Judges' Charter in Europe indicates that one of the principles of judges' independence is that "judicial salaries must be adequate, to ensure that the Judge has true economic independence and must not be cut at any stage of a Judge's service." (*Judges' Charter in Europe, para. 8*). In some countries (for example, the United States of America, Australia) the prohibition to decrease the remuneration of judges is expressly set out in the constitution.

For example, Article 3, Section I of the United States Constitution already from the end of the 18th century contains a direct prohibition to diminish a judge's remuneration during his term in office. The Supreme Court of the United States in its Judgement of 1920 indicated that the primary purpose of this provision was not to benefit the judges, but to attract fit men to the bench and insure independence of action and judgment. Any withholding from the judge of what was promised to them must be regarded as within the prohibition set out in the Constitution. (*See: The Judgement of the US Supreme Court in the case Evans v. Hatter 532 U.S. 245 (1920) http://supreme.justia.com/us/253/245/case.html*). Thus, the prohibition directly

included in the Constitution of the state to decrease judges' remuneration is aimed also at the safeguarding the judges' independence.

10.2. The understanding of general values, including the independence of judiciary and democracy, depend upon the history and the traditions of a state. In those states, in which quite recently a single partly ruled, it might be difficult to accept the understanding that the independence of the judiciary demands its separation from the political power. (See: *The Cambridge Yearbook of European Legal Studies*, Volume 4, 2001, p. 54).

The issue of decreasing judges' remuneration, as well as other aspects linked to the financial security of judges have been examined not only by those states, where due to historical reasons there could be discussions about the scope and the contents of the independence of the judiciary (the Czech Republic, Russia, Lithuania, Poland, Slovenia), this question has been topical also in Australia, the United States of America, Canada, Germany and elsewhere.

In the aforementioned countries the constitutional courts or other institutions implementing the constitutional supervision, have established that in a situation when a state experiences financial difficulties, the judges' salaries must be especially protected against excessive and adverse fluctuations (See: *Judgement of 18 February, 2004 by the Constitutional Tribunal of the Republic of Poland in the case No. 12/03* *http://www.trybunal.gov.pl/eng/summaries/documents/K_12_03_GB.pdf*). The social and material guarantees of judges are part of the guarantees protected by the principle of the independence of judges and courts. Thus, any attempt to decrease judges' remuneration or social guarantees or decrease the budget for the courts should be interpreted as an infringement upon the independence of the judiciary. (*See: Judgement of 6 December, 1995 by the Constitutional Court of the Republic of Lithuania in the case No. 3/95* *http://www.lrkt.lt/dokumentai/1995/n5a1206a.htm*). The judge has inalienable rights to unreduced salary (*See: Judgement of 15 September, 1999 by the Constitutional Court of the Czech Republic in the case Pl. US 13/99*). Therefore it is inadmissible to decrease the judges' salaries with the aim of preventing budget deficit (*See: Judgement of 18 September, 1997 by the Supreme Court of Canada in the case Reference re Remuneration of Judges of the Provincial Court of*

Prince Edward Island, [1997] 3 S.C.R. 3). One of the essential constitutionally protected guarantees of the independence of the judiciary is the protection of judges against the decrease of salary during their term in office. Moreover, a stable economic situation of the judges ensures to them also a high degree of independence in the broadest sense. (*See: Judgement of 11 December, 2009 by the Constitutional Court of the Republic of Slovenia in the case U-I-159/08-18, para. 33*).

To allow the judges to fulfil their functions effectively, complying with the requirements of independence and competence, as well as with the set restrictions, the legislator, taking into account the requirements defined by international organisations, has envisaged to them remuneration not only in the form of concrete salaries, but also as social and security guarantees, etc. Thus, the prohibition of decrease applies not only to judges' remuneration.

The requirement to safeguard the judges' remuneration and other guarantees follows from the principle of the independence of courts and judges, which has the purpose to protect judges from any kind of influence: the impact of the legislator, the executive power, institutions and officials, various organisations, business entities, legal and natural persons.

Thus, Article 83 of the Satversme contains also prohibition to decrease the remuneration set for the judges during their term in office.

10.3. Judges do not live in a social vacuum, and the concrete situation of the state applies to them, whatever its causes – a natural disaster, economic recession, the government's actions or failure to act or irresponsible decisions. And yet, the prohibition to decrease the judges' remuneration during the term in office (mandate) does not mean that any actions of the legislator, which, could, possibly, have a negative impact upon the judges' remuneration, are absolutely prohibited. Judges are also citizens, and their special status and role does not grant them immunity in situations, when the state, in dealing with a complex situation, passes decisions with regard to its population.

Other constitutional courts have also concluded that the prohibition to decrease judges' remuneration cannot be absolute. The Czech Constitutional Court has pointed out that "a total immunity of judges' remuneration would be illusory and contrary to

the elementary conditions of the social reality" (*Judgement of 14 July, 2005 by the Constitutional Court of the Czech Republic in the case Pl. US 34/04, dissenting opinions of Justices Vojen Guttler, Jan Musil, Pavel Rychetsky)*. The Constitutional Court of Slovenia noted: "The protection of judges against a reduction of their salaries is namely not absolute; it does entail, however, that the reduction of judges' salaries is justified only in truly exceptional instances, on the basis of a review of the concrete circumstances in each individual case." (Judgement of 11 December, 2009 by the Constitutional Court of Slovenia in the case *U-I-159/08-18*). The doctrine developed by the Constitutional Court of Lithuanian indicates that "the decrease of salaries is prohibited, unless exceptional conditions are present." (*Judgement of 15 January, 2009 by the Constitutional Court of the Republic of Lithuania in the case No. 15/98, 33/03*). The Supreme Court of Canada established: "A temporary reduction in judicial salaries is permitted in case of economic emergency" (Judgement of 18 September, 1997 by the Supreme Court of Canada in the case *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island, [1997] 3 S.C.R. 3*).

The judiciary must fit organically into society and it needs to be approved (accepted) and respected by the society. The judiciary itself and also the legislator and the executive power have a significant role in achieving and ensuring that. High standards of conduct and ethics have been set for judges, they also impose certain restrictions. However, a person, who decides to become a judge, must take into account certain standards of the profession. Under the conditions of economic crisis social solidarity means that every citizen assumes a proportional responsibility for eliminating the harsh consequences of the crisis, but the state officials, including the judges, act in solidarity with the inhabitants of the state.

The legislator's decision to decrease judges' salaries may put the independence of courts at risk. The Supreme Court of Canada has indicated that taking the decision on decreasing judges' remuneration, theoretically, gives the legislator the possibility to exert political influence upon judges with the help of economic manipulations. (*See: Judgement of 18 September, 1997 by the Supreme Court of Canada in the case Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island, [1997] 3 S.C.R. 3*). Nevertheless, this theoretical possibility does not allow concluding and declaring that the decrease of judges' remuneration under all

conditions should be viewed as influencing the judiciary and an infringement upon the principle of the independence of judges. Theoretically an ungrounded increase of the judges' remuneration could likewise be considered as influencing the judiciary.

Thus, under special conditions - in a situation of economic recession, when the state is forced to introduce a general decrease of remuneration in the institutions funded by the state budget, it is possible to derogate from the principle prohibiting the decrease of judges' remuneration.

11. The Constitutional Court, in assessing what kind of legislator's activities regarding the setting of the judges' remuneration is prohibited or allowed by the principle of the independence of courts and judges included in the Constitution, examines the contested provisions in interconnection with the principle of the division of power, the principle of independence and, especially, the financial security of judges.

The system of courts is funded from the state budget. Abiding by the principle of the division of power, it is the duty of the legislator, when developing a respective legal regulation, to ensure to the judges remuneration complying with the requirements of the Satversme and the international law – remuneration, social and security guarantees. In a democratic state it would be inadmissible if the judges' themselves or the executive power would set their salary or if the salary of the officials of other independent institutions were set by the executive power or the independent institution itself. The right to set the judges' remuneration, even if this right is not absolute, is granted to the legislator.

The fact that the legislator passes the decisions on the budget and remuneration of the officials in independent institutions, including courts, does not yet mean that it infringes the independence needed to execute the said functions.

11.1. An adequate remuneration is one of the elements in judges' financial security. Judges need the financial security as a guarantee against external influence and for maintaining their qualification.

The individual level (scope) of financial security depends upon the life style of each specific person (judge). The state cannot and should not assume responsibility for excessive expenses or disproportionate financial plans of a judge. However, a situation

when the state decreases a judge's remuneration to the extent that a judge, who has taken on financial commitments commensurate to his or her remuneration, becomes insolvent and thus his or her independence is threatened, is inadmissible. The state has the obligation to ensure judges' financial security on a level needed by the judge to execute his or her official duties.

The financial security of a judge, which includes setting a commensurate remuneration, namely, remuneration, social guarantees, including pensions, for judges, serves as a guarantee of a proper administration of justice and as a ground for setting high requirements to a judge, and allows maintaining confidence in his or her competence, independence and fairness.

Thus, the financial security is an integral element of judges' independence.

11.2. The financial security of judges – it means that a judge feels secure that the remuneration, which was set at the moment when he started fulfilling the duties of his office, will not be decreased and in that case the living expenses increase, would be increased accordingly. If the law does not set out a procedure for automatically adjusting the remuneration to the changing costs of living, then the law should provide for another mechanism ensuring this correspondence. The legislator in Latvia has provided a regulation, which ensures maintaining the real value of the judges' remuneration both in the case of economic recession and economic growth.

Likewise, the Supreme Court of Canada has noted the prohibition to decrease the real value of remuneration and the need to define in the law a concrete procedure for ensuring it. The legislator's failure to act, namely, abstaining from increasing judges' remuneration corresponding to the real increase in the living costs, contradicts the financial security of judges and is to be perceived as a *de facto* decrease. (*See: Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island, [1997] 3 S.C.R. 3*). The US Supreme Court has made a similar conclusion, indicating in its judgement that the Constitution has granted the legislator the right to set the remuneration and relies upon the integrity and the common sense of the representatives elected by the people. If the law does not contain a formula, which keeps the judges' remuneration set by the legislator on a certain level compared to the average salary, then the legislator sets judges' remuneration and a clear procedure for

regular increase of such remuneration. [*See: Judgement of the US Supreme Court in the case United States v. Will 449 U.S. 200 (1980) http://supreme.justia.com/us/449/200/case.html*].

The Consultative Council of European Judges in Paragraph 62 of Opinion No. 1 has also pointed out the need to introduce a regulation that would ensure the increase of judges' remuneration corresponding to the costs of living (*See: CCJE Opinion No. 1, para. 62*). The protection of the judge against decrease in remuneration, in view of its purpose – ensuring the independence of a judge, should be understood as a protection against any interference, as the result of which the salary, with which the judge had reasonably counted with when choosing the career of a judge, could decrease. This condition applies both to the protection of the judge's basic salary, as well as to the additional guarantees, which are part of the judge's remuneration.

Thus, Article 83 of the Satversme protects the actual value of judges' remuneration, ordering to retain it.

11.3. Not only the amount of a judge's remuneration, but also its stability has an essential role in ensuring the independence of the judiciary. The UN Human Rights Committee in its General Comment No. 32 has included the requirement to the states to adopt laws that would lay down clear procedures and impartial criteria for setting the judges' remuneration (*See: International Covenant on Civil and Political Rights, Article 14, General Comment No. 32, para. 19*). Considering the purposes of the financial security, the requirement to set clear procedures and impartial criteria means not only an understandable and transparent, but also a stable and sustainable system. The Czech Constitutional Court has indicated that "the compensation of judges, in the wider sense, should be a stable, non-reducible value, not an adjustable factor which one or another government calculates, e.g. because judges' salaries seem too high to it in comparison with the salaries of state employees, or in comparison with another professional group." (*Judgement of 14 July, 2005 by the Constitutional Court of the Czech Republic in the case Pl. US 34/04*).

If the legislator were given unlimited rights to influence judges' salaries according to its political choice, then the concept of the independence of the court

would be rendered meaningless, since the stability of remuneration is one element of the independence of the court and judges.

Thus, only a stable system of remuneration creates financial security.

11.4. The financial and material conditions needed for the functioning of courts can be made worse and the judges' remuneration can be decreased by law in special exceptional cases and temporarily – while the financial and economical situation of the state is particularly difficult. However, even under exceptionally difficult economic conditions neither the funding of the courts, nor the judges' remuneration can be decreased to the extent that the courts become unable to fulfil their constitutional function – administering justice. The guarantees for the independence of judges must be always ensured - both during the period of extraordinary situation that the state undergoes and after it is over. In view of the principle of the division of power and the principle of the independence of judges, the legislator's discretion in deciding on the judges' remuneration differs from the discretion when deciding upon restrictions in other public sectors.

Thus, a temporary decrease of judges' remuneration is admissible in the presence of serious, socially justifiable reasons and if it is decreased in compliance with the principles enshrined in the Satversme.

11.5. The legislator draws up the legal regulation on the judges' remuneration. In any case this regulation is a complex solution, and its purpose is to ensure a remuneration that would comply with the requirement of judges' independence and the actual value of which cannot be decreased. The laws of some countries contain a concrete judge's salary and set out a mechanism for regular reassessment of the judges' remuneration. Other states have developed systems, which compare judges' remuneration with the average monthly remuneration of employees in the state. To a certain extent this solution allows ensuring the value of a judge's salary, because with the growth of the average salary, the judge's remuneration also increases, and with the decrease in the average salary the judges' remuneration also decreases proportionally. This kind of system exists also in Latvia. The first part of Article 119^1 of the Law "On

Judicial Power" sets out: "The monthly salary of a judge of a district (city) court shall be calculated by applying the coefficient 4.5 to the average monthly gross salary of the employees in the state of the previous year, as published in the official report of the Central Statistical Bureau, approximated till lats." The first part of Article 120^1 of this law similarly provides: "The monthly salary of a judge of a Land Register Office shall be calculated by applying the coefficient 4.5 to the average monthly gross salary of the employees in the state of the previous year, as published in the official report of the Central Statistical Bureau, approximated till lats."

Thus, the Saeima, when drafting the legal regulation with regard to the judges' regulation, in accordance with Article 83 of the Satversme has established a procedure, which precludes the decrease in the real value of judges' remuneration.

The legislator not only develops the legal regulation with regard to the judges' remuneration, but also decides upon the conditions under which the system should be changed and also upon the changes themselves. The legislator has the right to develop a new system of judges' remuneration, if it has a legitimate purpose, as well as serious reasons and, thus, reasonable grounds for developing a new system. In realising the rights of the Saeima to adopt, amend and supplement laws and other acts of legislation or to declare them invalid, the compliance with the procedures set out by the Satversme and the principles included in the Satversme must be ensured. The legislator, when using the law to regulate specific relationships, also when changing the system of judges' remuneration or developing a new system for it, must not breach the constitutional principles.

Since in a democratic state the system of judges' remuneration must function in the long-term, the development of a new system in a period of crisis or under the influence of a crises – thus, a temporary situation, when a system, which complies with the Satversme and the international requirements, is already functional, would not comply with the principle of the independence of courts and judges. Article 84 of the Satversme guarantees to the judge tenure for life, thus the right of the judge to receive remuneration "for life" is also constitutionally defined.

However, when deciding on the development of a new system in the absence of crisis and taking into consideration that the procedure for setting judges' salaries should be independent, effective and impartial, the legislator would have the duty to:

1) substantiate the need for the new system in such a scope that in case, if the court had to assess its compliance with the Satversme, this substantiation would provide all information necessary for assessment; 2) to listen to the opinion of an independent institution representing the judiciary (in the absence of such, the opinion of the judiciary itself), respecting it in accordance with the principle of the division of power; 3) if this opinion is not taken into consideration or is only partially taken into consideration, provide a substantiation for one's actions in such a scope that in case if the court had to assess its compliance with the Satversme, this substantiation would provide all information necessary for examination; 4) to set a sufficient transition period, allowing the judges, who have chosen their position for life, to re-qualify for an equal position.

Thus, the Satversme restricts the legislator's discretion in developing the legal regulation for judges' remuneration.

II

12. To verify whether the Saeima in adopting the contested provisions has complied with the principle of the independence of a judge included in Article 83 of the Satversme, the Constitutional Court must verify:

1) whether the contested provisions restrict the financial security of judges;

2) whether the restrictions have been set forth in a law;

3) whether the restrictions have a legitimate purpose;

4) whether the restrictions are proportional.

13. Considering the fact that the situation in the field of interior and judicial affairs has been emphasized as an important criterion in assessing the European Union candidate countries, Latvia prior to the accession to the European Union had to implement consistent and progressive reforms in the system of courts, which included also the issues of the remuneration of judges and court employees. On the basis of the need to implement reforms in the national judicial system, required by the program for integration into the European Union, *inter alia*, to ensure the independence of the

courts and judges in compliance with the constitutional provisions, a Concept Document was developed. (*See: http://polsis.mk.gov.lv/LoadAtt/file37887.doc, accessed on 4 December, 2009*). The solutions included in the Concept Document were implemented when the Saeima in 2003 adopted the Law "Amendments to the Law "On Judicial Power"" (*See: case materials, Vol. 2, p.17*). These amendments set out the procedure for calculating the monthly remuneration for judges and judges of Land Registry Offices, which is included in Articles 119^1, 119^2, 120 and 120^1 of the Law "On Judicial Power".

In accordance with the Concept Document and the transitional period set in accordance with Paragraph 2 of the Transitional Provisions of the Law of 19 June, 2003 a gradual approximation of judges' salaries with the remuneration set out in the Law was planned, i.e., with the remuneration recognised by the legislator as being commensurate with the office of a judge. In accordance with it in 2003 60% of a judge's monthly remuneration was paid, in 2004 – in the amount of 70%, in 2005 – in the amount of 80 %, and in 2006 – in the amount of 100%. It means that the system of judges' remuneration provided by the law, which would be able to guarantee judges' financial security to the extent that would ensure the independence of judges, had to be fully implemented in 2006.

The statement in the written response of the Saeima that actually the contested norms extend the period of transition for implementing the system of judges' remuneration defined in the Law "On Judicial Power" cannot be agreed with.

Paragraph 7 of the Transitional Provisions (in 23 February, 2006 wording of the Law) provided that the judges' remuneration in 2006 should be calculated, taking into account the increase of the monthly gross remuneration of the employees compared to the previous year, but in 2007 and 2008 it should be calculated by taking into account the monthly gross remuneration of the employees in 2005, but in 2009 – by taking into account the average monthly gross remuneration in 2006.

The contested Paragraph 7 did not extend the transitional period set in 2003. It changed the procedure for calculating the salary defined in the Law, by providing that in 2009 a judge's monthly salary should be calculated not by taking into account the average monthly gross remuneration of employees in 2006, as was previously provided by the Law, but the average remuneration of 2005. Moreover, the annotation

to the draft law points out that "starting with 2010 the payment of salaries to the judges and the judges of Land Registry Office will start in the previously planned amount" – taking into account the average monthly gross remuneration of employees in 2008, i.e., in conformity with the system provided by the Law.

Thus, the contested Paragraph 7, by providing that in 2009 the monthly salary of a judge should be calculated as in 2008, decreases the judges' remuneration previously provided by the Law.

Paragraph 17 of the Transitional Provisions applies to the remuneration of the judges of Land Register Offices. Paragraph 17, introduced with the amendments to the Law of 8 November, 2008, provided a transitional period till 2009, however, this transitional period was connected with the introduction of a new coefficient in Article 120^1 of the Law (the previous coefficient 2.5 was replaced with 3.5). The contested Paragraph 17 provides that in 2009 monthly salary should be calculated as in 2008, and extends the transitional period till 2011. This transitional period is linked to the substitution of coefficient 3.5 set out in Article 120^1 of the Law with coefficient 4.5.

Thus the contested Paragraph 17 sets a transitional period for the implementation of the new system of remuneration for the judges of Land Register Offices provided in the Law, but the rule on calculating a judge's monthly salary in 2009 like in 2008 decreases the remuneration of the judges of Land Register Offices, since the previous wording of the Law provided that in 2009 the salaries would be calculated in accordance with the average remuneration of 2006, applying the coefficient 2.5.

Thus, the contested provisions decrease the judges' salary and consequently restrict the financial security of judges.

14. The Constitutional Court already established that judges' remuneration can be defined only by a law adopted by the Saeima. The Contested provisions are included in the Law "On Judicial Power" with the Law "Amendments to the Law "On Judicial Power""adopted by the Saeima on 14 November, 2008, published in the official newspaper "*Latvijas Vēstnesis"* on 25 November, 2008 and is in force.

Thus, the restrictions to the judges' financial security have been established by a law passed by the legislator.

15. Any restriction of the independence of judges should be founded upon conditions and arguments about its necessity, i.e., the restriction is set because of important interests – with a legitimate aim. In the Constitutional Court proceedings the duty to demonstrate and substantiate the legitimate aim of any restriction first of all rests upon the institution that passed the contested act, in this specific case – upon the Saeima. The Saeima in its written response points out that the contested provisions were adopted in the framework of measures for preventing the economic recession and were targeted at reaching the aim set in Article 116 of the Satversme – to protect the rights of other people and public welfare. The contested provisions are only one among the numerous measures implemented to salvage the national economy, to balance the state budget, to protect other constitutional values and to ensure vitally important public and state interests.

The Constitutional Court agrees that the prevention of economic recession at a time when the state is in a complicated financial situation, should be regarded as an action aiming to protect the interests of other people and public welfare – therefore it must be recognised as a legitimate aim.

Thus, the contested restriction has a legitimate aim.

16. The restriction of the guarantees of the judges' independence must be regarded as proportional, if the legislator has complied with the limits of its discretion, i.e., when adopting the decision, affecting the independence of judges, has complied with all principles following from the Satversme. The Constitutional Court, in assessing, whether the legislator with its action has infringed upon the independence of judges, must assess all actual conditions in each specific situation. The actions of the legislator, which in one case lead to disproportional restriction, in another case, taking into account the specific conditions, could be recognised as proportional and complying with the constitutional requirements.

The Constitutional Court, when assessing the proportionality of a restriction, must take into consideration both the cause of the restriction, i.e., the legitimate aim, and the way in which the restriction was set, as well as the possible consequences of this restriction. The legislator must be able to prove that it has tried to set the decrease of the judges' remuneration as fairly as possible, complying with all principles

following from the Constitution. If the legislator has acted exactly like this, then the decrease could be recognised as constitutional.

17. To assess the proportionality of the restrictions laid down with the contested provisions, the Constitutional Court will assess the system of judges' remuneration, its aims, basic principles, the procedure of implementation and the amendments introduced to the system.

When setting up the system of judges' remuneration, the Saeima in the annotation to 2003 draft law "Amendments to the Law "On Judicial Power"" noted: "The situation, which has currently developed in the state, is that the remuneration of court employees is not commensurate with their job duties and the responsibility for the work done. The low remuneration for judges is the reason why there is no serious competition for the office of a judge, thus it is impossible to ensure the involvement of highly qualified lawyers in the judicial work. The low remuneration is also causing large staff turn-over, which leaves a negative impact upon the work of the courts in general; it also creates preconditions for corruption." Thus, a direct link was identified between the remuneration and the possibility to attract qualified lawyers, the possible risks, which have to be considered, if the remuneration is not adequate, were also indicated. The Constitutional Court agrees to what has been pointed out by the Ministry of Justice, that "a remuneration, which is commensurate to the office and is competitive, is an essential condition for ensuring the independence of the judiciary" (*case materials, Vol. 2, p.17*).

17.1. The system of judges' remuneration provides that the monthly salary of a judge is calculated, by applying a coefficient to the average monthly gross salary of the employees in the state, as published in the official statistical report of the Central Statistical Bureau. Thus the system is pegged to the average monthly gross salary of the employees in the state. Such a system, typical of the majority of modern democratic states, does not provide that the legislator should introduce a special mechanism for reviewing the judges' remuneration in a case, when its real value diminishes. The amount of the judges' salary reflects the remuneration trends within the state. In the period of economic growth, when the average salary in the state

increases, the judges' remuneration also increases and thus the real value of their remuneration is preserved. Under the conditions of economic recession, when the average salary in the state decreases, in the framework of this system the judges' remuneration also decreases.

Thus, the system of judges' remuneration in Latvia has been developed so as to the extent possible avoid the need to amend it.

17.2. Under the conditions of economic recessions the legislator's decision because of the lack of financial resources to decrease the judges' remuneration simultaneously with the salaries of other employees of the public sector is understandable and justifiable. However, the system of judges' remuneration already *per se* envisages automatic decrease of their remuneration in a situation like that, and it would not be fair to allow a repeated decrease of the judges' remuneration – both simultaneously with the decrease of the remuneration of employees in other state institutions, and on the basis of the decrease of the average monthly gross remuneration of the employees in the state. It can be recognised that this second decrease because of the specific character of the system happens with certain delay in time; however, the salary increase similarly takes place with a delay of two years. The procedure for calculating the remuneration of the members of the Saeima and ministers includes a provision that corrects this drawback, thus ensuring a more timely response to the changes in the average remuneration.

The Constitutional Court has no grounds to assert that within two years time the legislator, identifying the repeated decrease in the judges' remuneration will not implement measures to prevent the possible negative consequences. However, on the basis of the materials available in the case, it cannot be established that in the specific case the legislator had taken into account that the decrease in the average remuneration in the state will cause a repeated decrease in the judges' remuneration in two years time.

The Constitutional Court already established that the financial security of judges includes also social guarantees, including a judge's pension. (*See: para. 11.1. of this Judgement*). Thus, the principle of the independence of judges included in Article 83 of the Satversme protects judges' pension in the same way as other guarantees of

judges' financial security. Taking into consideration the procedure for calculating the pension set out in the law, also in the case of economic growth, a judge, whose pension depends upon this decreased remuneration, would receive a pension calculated in this way, namely, his social guarantees would be restricted.

Thus, the contested provisions not only cause immediate negative consequences, but also influence judges' financial security in the future.

17.3. The system of judges' remuneration was developed with the aim to promote the career development of a judge, since it provides a different remuneration to judges of different level courts. The Ministry of Justice has indicated that the system was developed to ensure a commensurate remuneration for work and to guarantee independence in the administration of justice. (*See: case materials, Vol.2, p. 17*).

A judge working at the court of any level must be independent. Judges have been granted the right to take final decisions concerning the life, freedom, rights, obligations and property of a person. (*See: Apvienoto Nāciju Tiesu varas neatkarības pamatprincipi // Latvijas Vēstnesis, 1995. gada 28. septembris, Nr. 148 [The United Nations Basic Principles on the Independence of the Judiciary]*). The judges at the court of all levels pronounce a judgement on the behalf of the people and the state of Latvia, the judgement has the force of a law, it is mandatory to all, and it must be treated with the same respect as the law. A judgment passed by a judge at the court of any level can influence the interests of the whole society. The significance of a judgement does not depend upon the level of the court, in which the judge has passed it, therefore ensuring the independence of all judges is in the interests of the society and the state. Therefore the legislator, when deciding upon the conformity of the judges' remuneration with the status of the judge, the scope and character of the work, the requirements set for the office and the guarantees of independence, should take the remuneration of the judge in the lowest level court as the basis.

17.4. When developing the system of judges' remuneration, the legislator at the same time set a transition period, envisaging a gradual, but complete implementation of this system (*See: para. 13 of this Judgement)*. Thus the legislator created a system of judges' remuneration, set a transition period and a procedure for calculating the

remuneration in this period, as well precisely indicated the term, when the system set out in the Law would become fully functional.

The Applications indicate that every judge, "when choosing to work in the office of a judge or to continue this work, undoubtedly, has carefully planned his or her future – both the responsibility in executing the duties of the office, and the remuneration linked to it. The long-term reform of the system of judges' remuneration, which was launched in the state, as well as the basic principles of a judge's remuneration defined in the law, was and still is a significant factor for every judge." (case materials, Vol. 1, p. 3).

Thus, the Law "On Judicial Power" defined the moment, when the judges were supposed to receive remuneration commensurate with their office, and therefore judges could reasonably rely upon it.

17.5. The Ministry of Justice indicates that "the level of remuneration laid down in the Law thus far has not been reached yet", because the set transition period has been extended several times, taking into consideration the economic situation. (*See: case materials, Vol. 2, p. 17*). The changes, which influenced the calculation of judges' salaries and consequently also their amount, were introduced in the Transitional Provisions with the amendments of 23 February, 2006, 8 November, 2007 and the contested 14 November, 2008 amendments, as well as with the amendments that were adopted later, i.e., on 12 December, 2008 and 1 December, 2009.

17.6. The amendments of 23 February, 2006 to the first part of Article 119^1 provided that the salary was calculated not on the basis of the average monthly gross salary of the previous year, but on the basis of the average monthly gross salary of the employees in the state as published in the official statistical report on the previous year. As the result of this amendment the judges' remuneration was in fact calculated not on the basis of the average remuneration of the previous year, but the average remuneration two years ago. Initially the introduced amendments caused a situation when the judges' remuneration was "frozen" for one year.

17.7. The same amendments change Paragraph 1 of the Transitional Provisions, extending the initially defined transition period for one year. The annotation to the law indicates that this transition period conforms to the Concept Document. However, the Concept Document states that in 2006 the judges' remuneration should be paid in the amount of 100%. Also during the meeting of the Saeima Legal Committee on 4 June, 2003, debating the draft law "Amendments to the law "On Judicial Power"" , Elita Stivriņa, the Ministry of Justice representative, indicated that Paragraph 1 of the Transitional Provisions "in 2006 will no longer be functioning" (*See: case materials, Vol. 6, p.8*). Thus amendments, which for one more year prohibited judges to receive the remuneration planned in the law, were introduced into the Law.

The Association of Latvian Judges formally expressed its opinion on these amendments, indicating the need to ensure the calculation of judges' remuneration in accordance with Article 119^1 of the Law "On Judicial Power" (*See: case materials, Vo.2, p. 173).*

17.8. At the same time also amendments to Paragraph 7 of the Transitional Provisions were introduced, providing that: "The monthly salary of judges, except the monthly salary of the judges of Land Register Offices, in 2007 and 2008 shall be calculated, taking into consideration the average monthly gross remuneration of the employees in 2005, without changing the coefficient 4.5, but in 2009 – taking into account the average monthly remuneration in 2006, without changing the coefficient 4.5. " This provision included in the Law created the right for the judges to reckon that in 2010 the judges' salaries would be paid in full, i.e., in accordance with Article 119^1 of the Law "On Judicial Power". The available materials of the case allow establishing that this provision was developed on the basis of the objections of the Saeima Legal Affairs of Article 119^{1}" (*case materials, Vol. 6, pp. 90. 96 and 101*).

The amendments of 8 November, 2007 introduced changes, which affected the remuneration of the judges of Land Register Offices. In Article 120^1 of the Law the coefficient 2.5 was replaced with 3.5, a transitional period till 1 January, 2009 was also envisaged, supplementing the Transitional Provisions with Paragraph 17, expressed as follows. "The monthly salary of a judge of a Land Register Office shall be calculated by applying the coefficient 2.5 to the average monthly gross remuneration of the

employees in the state, as announced in the official statistical report of the Central Statistical Bureau, which has been approximated till lats." Consequently, in 2005 the salary of a judge of a Land Register Office had to be calculated by applying coefficient 3.5 to the average remuneration of 2007. The annotation to the draft law points out that the current "remuneration of the judges of Land Register Offices is not competitive" and that it is necessary to increase the remuneration in order "to prevent moving of qualified and experienced Land register judges to district (city) courts, vacant legal professions or better remunerated work in private entities." The annotation states: "The legal regulation that is in force provides that the status of the judges of Land Register Offices shall be equalled to the status set for the district (city) court judges. Consequently the criteria for setting the remuneration of a judge of a Land Register Office must be equalled to the status of a judge of a district (city) court" (*case materials, Vol. 6, p. 127*). Thus, the legislator admitted that applying the coefficient 2.5 to the remuneration of the judges of Land Register Offices was not an adequate solution; that the calculated remuneration was not competitive and was not commensurate with the office of a judge.

17.9. The Constitutional Court already established that the amendments of 14 November, 2008 (the contested provisions) decreased the remuneration of both judges and the judges of Land Register Offices. Moreover, the transitional period for implementing the system of remuneration for the judges of Land Register Offices was extended.

Each judge of Land Register Offices had a lawful right to rely upon the salary set in the law, as it was prior the coming into force of the contested Paragraph 17. This contested provision caused a decrease of salary by 46 percent compared to the salary, which was set by the Law of 2009 in the previous wording. Thus in accordance with the contested Paragraph 17 the coefficient that should be applied when calculating the salaries of the judges of Land Register Offices is 1.89 (not 3.5, as it was previously provided by the Law).

Each judge had lawful rights to rely upon the salary set in the law, as it was prior to the coming into force of the contested Paragraph 7. This contested provision caused a decrease of salary by 19 percent compared to the salary, which was set by the Law of

2009 in the previous wording. Thus in accordance with the contested Paragraph 17 the coefficient that should be applied when calculating the salaries of the judges of Land Register Offices is 2.78 (not 4.5, as it was previously provided by the Law).

Thus, the legislator, by adopting the contested provisions, decreased the salary set in Law, which the judges had the right to rely upon.

18. The Constitutional Court already established that a temporary decrease of judges' remuneration is admissible, if it is justified by serious, socially acceptable causes and if the remuneration is decreased in compliance with the principles enshrined in the Satversme. The Saeima points out that the contested provisions are "an exceptional and fixed-term measure" (*see: case materials, Vol. 1, p. 96*). In accordance with the contested regulation the judges will receive the defined remuneration in full in 2010, but the judges of Land Register Offices – in 2011, i.e., the law provided that in 2010 judges' salary would be calculated on the basis of the average monthly gross salary of the employees in 2008, but the salary of the judges of Land Register Offices in 2011 would be calculated on the basis of the average monthly gross salary of the employees in the state in 2009.

Consequently it can be established that the contested provisions envisaged decreasing the judges' remuneration.

19. According to the statements included in the written response of the Saeima, the decrease of the judges' remuneration is one among many measures implemented to balance the state budget.

The harsh economic conditions force the state to review and to decrease the funding for all employees of the public sector, irrespective of the branch of power they belong to, the way the budget of the institution is formed and its field of function. It would be inadmissible to decrease the funding of only one branch of power – the court or only the judges' remuneration, likewise it would be inadmissible to keep unchanged the funding of only one branch of power contrary to other branches of state power and institutions. Such an approach would not comply with the principle of fairness and equality.

Also under the conditions of economic recession the funding can be decreased only and solely by complying with the constitutional principles and constitutional procedures, i.e., by respecting the fundamental rights and freedoms, especially the constitutional principle of equality.

Prime Minister Ivars Godmanis, speaking at 11 December, 2009 Saeima session, pointed out that "an absolute solidarity" must be observed in decreasing salaries. The legislator had to find a solution, which would simultaneously ensure solidarity, would not breach fundamental rights and would comply with all constitutional principles.

When deciding upon an decrease of salary, which would meet equality and solidarity criteria, not only the amount of remuneration of concrete persons, but also the scope of work, different functions, requirements and restrictions set for the office in all branches of power – judges, the representatives of the legislative and executive power, as well as independent institutions should be taken into consideration, moreover, the option of giving up certain functions or the possibility of decreasing the number of positions should be considered. Solidarity has not been observed in the decrease of salaries, if it applies to all employees of the public sector, but the amount of decrease has not been assessed and substantiated separately for each group working in the public sector.

In fact, the contested norms set the judges' remuneration in 2009 not on the level of 2008, but of 2007, thus decreased it.

The remuneration of the members of the Saeima, in its turn, was recalculated at the beginning of 2008, namely, it was increased, but at the end of 2008 one part of the Saeima members' remuneration, i.e., which consists of the salary, premium payment to the Saeima officials, remuneration for work in parliamentary committees, representation expenses, in accordance with 11 December, 2008 Law "Amendments to the Saeima Rules of Procedure" was left unchanged, namely, "frozen".

Likewise, the monthly salaries of the members of the Cabinet of Ministers were also recalculated in 2008, when the Law on the Rules of Procedure of the Cabinet of Ministers of 15 May, 2008 came into force, and in accordance with this Law the monthly salary remained unchanged from 1 July, 2008 till 31 March, 2009. With the Amendments of 31 December, 2008 to the Law on the Rules of Procedure of the Cabinet of Ministers the monthly salary was "frozen" till 1 March, 2010.

The materials of the case allow establishing that during the first six months of 2009 the average monthly salary of the heads of the ministerial legal departments was by 6.4 percent higher than the average salary of 2008, but the monthly salary of the state secretaries at the ministries were raised by 3.4 percent. In some ministries the monthly salaries of the state secretaries was increased even in April of 2009, for example, at the Ministry of Finances – by 35 percent and the Ministry of Health – by 30 percent (See: case materials, Vol. 5., pp. 140 – 156).

The Saeima, trying to prove the compliance with the solidarity principle, pointed out that not only the contested provisions decreased the remuneration for judges, but that the remuneration was decreased for all other officials and employees of state and local government institutions, as the law passed on 12 December, 2008 "On the remuneration of the officials and employees of the state and local government institutions in 2009" limited all expenses of the state and local government institutions for remunerating officials (employees) (*See: case materials Vol. 5, p. 160*). The Constitutional Court points out that this law and the restrictions included in it, *inter alia*, the decrease of the funding for the purposes of remuneration by at least 15 % of the initially approved funding of this institution for this purpose, applies also to court and judges.

The Saeima in its written response indicates that on the basis of the law passed on 16 June, 2009 "Amendments to the Law "On the State Budget for 2009", in July the expenditure for remunerating the employees of the public sector was decreased. Likewise it notes that the amendments to the laws introduced in June decreased the remuneration of the members of the Saeima (a 20% decrease was applied to a part of the remuneration, but it did not apply to compensations) and the salaries of ministers by 20 percent. The Constitutional Court cannot agree with this interpretation of solidarity and its application to the decrease of judges' remuneration at the end of 2008, because the decrease with regard to the legislator and the executive power was implemented in June, 2009 (*see: case materials, Vol. 5, pp. 160, 161)*, i.e., at the time, when the judges' remuneration was decreased repeatedly (16 June, 2009 amendments to the law "On Judicial Power").

The Constitutional Court has initiated several cases with regard to the conformity of the second sentence of Paragraph 7 and the second sentence of Paragraph 20 of the

Transitional Provisions of the Law "On Judicial Power" (in the wording of 16 June, 2009) to Articles 1, 8 and 107 of the Satversme of the Republic of Latvia. In these cases the provisions that envisage to set the judges' remuneration, "frozen" in 2009 (on the level of 2007), in the amount of 85 percent are contested. Thus the compliance of the proportional decrease of judges' salaries, introduced in 2009, with the Satversme, will be examined by the Court in future cases.

The Saeima points out that by adopting the contested provisions it did not act unfairly towards individual social groups; however, it does not provide any confirmation or proof on what way the attitude towards various social groups was in fact assessed. (*See: case materials, Vol. 1, p. 97*). Likewise the Saeima does not indicate, which were the social groups, whose interests it balanced, and the way it was done. The Saeima in its written response refers to the judgement of the Supreme Court of Canada, in which it is stated that the decrease of the judges' remuneration is to be considered as lawful, if, firstly, it has been implemented simultaneously with the decrease of the remuneration of all public sector employees, secondly, if the judges even with the decreased remuneration still enjoy sufficient economic independence, and, thirdly, if the remuneration is not decreased below such a minimum level, which would not be compatible with the office of a judge. (*See: case materials, Vol. 1, p. 98*). The Saeima does not provide any information proving that it assessed the situation and the conditions in order to arrive at any of the aforementioned conclusions. Neither can it be established from the materials of the case.

Thus, in decreasing the judges' remuneration with the contested provisions, the principle of solidarity was not complied with.

20. Even if the decrease of judges' remuneration were a part of general economic measures, in the framework of which the salaries of absolutely all employees of the public sector were decreased, such a decrease could be regarded as rational (reasonable) and therefore justifiable (fair) only in case all other requirements, which restrict the legislator's discretion, were met.

The Saeima in its written response erroneously pointed out that the issue of setting the remuneration for judges fell within the field of social rights, in which the legislator had a broad discretion. A judge's remuneration is one of the guarantees of

his independence. The legislator, in setting the judges' remuneration, enjoys certain discretion; however, as the Constitutional Court already pointed out, the legislator's discretion in this field has strict limitations.

The documents developed by international institutions also point out the necessity to set a commensurate remuneration for the judge. Recommendation No. R. (94)12 of the Council of Europe Committee of Ministers indicates that the remuneration should be set in the law and should be commensurate with the dignity, respect and load of responsibility of the office [*See: Recommendation No. R (94) 12, Principle III 1.b*]. The Opinion No. 1 of the Consultative Council of the Judges of Europe provides: an adequate level of salaries is necessary to ensure that the judges can work freely and are protected against pressure, aimed at influencing their decisions and actions (*See: CCJE Opinion No 1, para. 61*).

When setting up the system of judges' remuneration, the legislator chose to calculate the salary, taking into account the average monthly gross salary of the employees in the state and applying coefficient 4.5 to it. The legislator admitted that this system could be regarded as commensurate with the office of a judge, i.e., firstly, it is sufficiently competitive to attract to the position of a judge capable and competent lawyers. Secondly, the salary is sufficient for the judges to enjoy adequate financial independence, taking into account the significance and the impact of the decisions taken by judges, the prohibition to hold another job set in the law, as well as the workload of judges.

It is pointed out in the annotation to the draft law that "in 2009 the judges and the judges of Land Register Offices will not be ensured remuneration commensurate with the volume and the character of their work". However, the Saeima in its written response, without offering any assessment or substantiation, indicated that "at present the judges' remuneration set in the state is adequate to the character of the job to be performed, the skills that are necessary for fulfilling the position and the restrictions, and it is also balanced with the status and remuneration of other officials of the judiciary, as well as the salary in the state in general" (*case materials, Vol. 1, p. 95*).

21. In order to ascertain, whether the judges' remuneration is commensurate with the responsibility of the office and the workload, the requirements of independence,

restrictions linked to the office, as well as the rank of the office within the constitutional order, the Constitutional Court shall examine, whether the Saeima, which asserts that the judges' remuneration conforms to the office of a judge, has assessed, firstly, the restrictions on holding another job, secondly, increasing volume of work, and, thirdly, the ability of the remuneration to attract qualified lawyers.

21.1. The society's faith in the independence of the judiciary would be impaired, if the judges were paid so low salaries as to cause even the slightest doubts that the judges could be influenced, by exerting a political influence through economic means. The Supreme Court of Canada has also noted: if the remuneration is too low, then there is always risk, even theoretical, that the representatives of the judiciary could adjudicate cases in a specific way to achieve that the legislator sets a higher remuneration for them, or could receive presents or other benefits from the parties of a case (*See: Judgement of 18 September, 1997 of the Supreme Court of Canada in the case Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island, [1997] 3 S.C.R. 3 and Judgement of 14 February, 2002 in the case Mackin v. New Brunswick (Minister of Finance); Rice v. New Brunswick, [2002] 1 S.C.R. 405, 2002 SCC 13*).

The judges have a significantly restricted possibility of holding another job. Thus, a judge cannot alongside his job as judge engage in commercial activities or take another paid job, except for the ones envisaged in the law. Essentially a judge's remuneration includes also a special compensation for the prohibition to hold another job. (*See: Judgement of 11 December, 2009 by the Constitutional Court of Slovenia in the case U-I-159/08-18, para. 33*). The judges' possibilities to gain other income are limited. The prohibition to combine jobs is set because of the special legal status of the judge and also the judiciary as one of the branches of state power. The purpose of this prohibition is to ensure the independence of judges, which is a precondition for fair administration of justice. Assessing the proportionality of the amount of judges' remuneration from this aspect, it has to be noted that so strict restrictions regarding holding another job have not been set for the officials working in public administration, and they have the right to receive remuneration also in other places of employment.

Thus the restrictions on holding another job and receiving another income set for the judges place an obligation upon the state to set for them a sufficient remuneration and social guarantees, which conform to the status of a judge.

21.2. The Constitutional Court recognizes that a judge's workload also influences his possibilities of holding another job. The case materials allow establishing that during the recent years the workload of judges has been constantly growing. For example, the number of cases received by the first instance courts in 2008 compared to 2007 had increased by 17 817 cases or 40 percent. The average number of cases received and adjudicated (workload) by a judge in 2008 compared to 2007 had increased by 20 percent, but in Riga City courts – by 52 percent. The years 2008 and 2009 saw an especially fast increase in the number of civil cases. As the Ministry of Justice has pointed out, the number of civil cases received by district (city) courts in 2009 compared to the previous year has increased almost by 100 percent. The Ministry of Justice has also noted that, irrespectively of the significant increase of the workload, the legislator has left the amount of remuneration unchanged, which could potentially lead to social consequences, as well as increased term of case adjudication. The excessively long terms of case adjudication could be a ground for complaints of inhabitants to the European Court of Human Rights, and thus, unavoidably, would cause material losses to the state.

Even though the productivity of work does not directly depend upon remuneration, the workload should be taken into account in setting the number of judges and their remuneration.

The fact that the courts have limited possibilities to ensure the necessary financial and human resources needed to carry out the work of a court properly creates an additional load for judges. The Saeima also in its written response has pointed to the low remuneration of court staff (*See: case materials, Vol.5, p.161*). Qualified staff is needed for effective organisation of judges' work, moreover, the institutional or administrative adequacy of courts directly depends both upon the funding and the possibilities of the court to decide independently about issues linked with the use of resources (both financial and human).

Insignificant interest about the office of a judge, i.e., weak completion and long-term unfilled vacancies can cause problems in ensuring the function of administration of justice in the state. The current situation presents evidence that this risk is real. The Ministry of Justice has indicated that there are cases, when a competition for the vacant judge's position has to be advertised repeatedly, since no applicant has applied, or when none of the applicants can be advanced further because of not meeting the minimum level of skills and professional abilities set in the acts of legislation". For example, in 2008 out of 71 announced competitions four had no applicants, but in 13 competitions none of the applicants was advanced further (*See: case materials, Vol.2, pp. 18, 19)*

The second problem is that the judges can leave their work at the court to work in another legal profession, which would allow them to lead a respectable life, commensurate with their knowledge and qualification. It is noted in the annotation to the draft law: "The regulation included in the draft law could facilitate a situation, in which judges decide to give up the career of a judge in favour of another, better remunerated job. Thus it could lead to problems in ensuring effective fulfilment of the court function, as the result of which the terms for adjudicating cases at court would extend."

21.3. In assessing the compliance of the decrease of judges' remuneration only such comparison between a judge's salary and other salaries, which can be considered as justified, can be used.

In the countries of the European Union the averaged salary of a judge at the beginning of a judge's career is 3.3 times higher that of a same level judge in Latvia, but the highest remuneration exceeds the remuneration of a Latvian judge12.4 times [*See: European judicial systems, Edition 2008 (data 2006): Efficiency and quality of justice, Council of Europe, September 2008, p. 185, 186*]. One cannot reprove the legislator of setting inadequate salary for the judges only because it is too low compared to the judges' salaries in other states of the European Union. However, this difference in remuneration should urge the legislator to assess the reasons and the possible risks linked to it.

21.4. The principle of the division of power does not define special arithmetic proportions between the levels of remuneration in different branches of power, nor between the level of remunerations of persons in as it were comparable positions. The comparison of positions in different branches of power is always controversial, considering the diverse complicated factors characterising a position. Quite frequently these are completely different jobs with completely different scopes of responsibility. The character of the work, degree of stability in serving in the office, the authorisation linked with the functions to be fulfilled, also the time of tenure differ to the same extent. Because of these and other similar reasons it is unjustified to compare positions and to demand that officials belonging to one branch of power should earn exactly as much as the officials belonging to another branch of power. (*See: Judgement of 18 February, 2004 of the Constitutional Court of the Republic of Poland in the case No12/03 http://www.trybunal.gov.pl/eng/summaries/documents/K_12_03_GB.pdf*). Several constitutional courts (for example, in Estonia, Canada, Poland), dealing with the issues linked with judges' remuneration, have noted that the levelling of remuneration in various branches of power should not be set as an aim. The Constitutional Court of Lithuania has pointed out that "in some countries the judges' remuneration is higher than the remuneration of the Prime Minister – and that does not surprise anyone" (*See: Judgement of 6 December, 1995 of the Constitutional Court of the Republic of Lithuania in the case No. 3/95 http://www.lrkt.lt/dokumentai/1995/n5a1206a.htm).* The Constitutional Court of Slovenia, in its turn, compares the remuneration of a judge in the lowest level court with the minimum remuneration of a minister and a member of the Parliament (*See. Judgement of 11 December, 2009 of the Constitutional Court of the Republic of Slovenia in the case U-I-159/08-18, para. 33*).

The Constitutional Court already indicated that the setting of salaries falls within the competence of the legislator and that to a certain extent it is a political decision. And yet, the Satversme restricts also political decisions. If the principle of equality ensures that, for example, during economic recession, by providing a lawful justification for this need, everybody's remuneration can be decreased, and yet such an interpretation of the principle of equality, leading to setting an identical level of remuneration for all branches of power, is unacceptable. The European Charter on the

Status of Judges also chooses the condition that the level of remuneration should be such as to protect judges against pressure, it does not provide that the level of remuneration should be harmonised with the remuneration of the highest officials of the legislator and the executive power, since such a comparison is impossible. (See: *European Charter on the Status of Judges, para*. 6.1).

21.5. In order to attract to the office of judge the most competent and knowledgeable specialists, judges should receive an adequate remuneration compared to the remuneration of other highly qualified lawyers.

The Constitutional Tribunal of Poland has indicated that a judge's salary should be equal to the remuneration that practicing professional lawyers receive – attorneys, legal advisors, notaries (*See: Judgement of 4 October, 2000 of the Constitutional Tribunal of the Republic of Poland in the case No. 9/00* *http://www.trybunal.gov.pl/OTK/otk_odp.asp?sygnatura=P%208/00*). It is clear that the purpose of such possible comparison of remuneration is to attract to the office of a judge highly qualified lawyers, however, it would not be proper to compare the remuneration of judges with the income received by the representatives of free legal professions, who in their activities are financially independent. It must be noted that financial independence means not only the possibility to earn much more, but also certain risks and additional expenditure (investments in the place of practice, pension). Therefore the Constitutional Court agrees with the Saeima that comparing a judge's remuneration with, for example, remuneration of a sworn attorney-at-law, would not be justified. The judges in addition to the remuneration set in the law are provided with social guarantees and appropriate working conditions.

However, the statement made by the Saeima that "when assessing the remuneration of judges the remuneration of court staff should also be taken into consideration" is unacceptable. Undoubtedly, the remuneration of the court staff should correspond to their job duties and the necessary qualification. Moreover, the Saeima itself has noted in the letter that the court staff has "already low" salaries (*See: case materials, Vol. 5, p. 163*). However, only because the court staff have low remuneration, there are no grounds to declare that because of this the judges'

remuneration should be decreased, i.e., equated with the remuneration of the court staff (*See: case materials, Vol. 5, p. 161).*

The comparison with the prosecutors' remuneration is equally improper, since the legislator itself in the Law on the Prosecutor's Office has envisaged the principle of proportionality in the remuneration of prosecutors and judges.

21.6. It is also impossible to assess the adequacy of judges' remuneration, using a judge's individual material needs as a basis. In order to determine, whether the level of judges' remuneration is appropriate, it should be assessed in connection with the trends and proportions of the level of remuneration in the public sector.

The Saeima maintains that "a reasonable proportionality in setting the remuneration for work of equal value to judges and the employees of the public administration in legal profession has been ensured" (*case materials, Vol. 5, p. 161*). In the framework of the case information on the remuneration to employees of legal profession working in other branches of the state power, heads of independent institutions and the highest civil servants of the state – the ministerial state secretaries was requested.

The Constitutional Court established that the salary of judges already since 2007 had been significantly lower than the average salary of the heads of ministerial legal departments; the salary of the ministerial state secretaries was almost two times higher than a judge's salary. The average salary of the heads of independent institutions exceeded the salary of a judge in 2007 – 3.6 times, in 2008 – 4.3 times, but the salary of the members of the councils of independent institutions exceeded judges' salary in 2007 – 2.6 times and in 2008 – 3.6 times. Moreover, till 2009 the officials of public administration were receiving premium payments, thus the average total remuneration of the highest officials of public administration in 2007 and 2008 surpassed the judges' remuneration even three times (in some ministries the remuneration of the state secretaries in 2007 and 2008 is 5.5 times larger than the remuneration of a judge and even 10 times larger than the remuneration of a judge of a Land Register Office).

The average increase of salary in the public administration in 2007 (68 – 88 percent) and in other independent institutions (25 percent) significantly exceed the increase of the judges' salary (16 percent).

Moreover, in 2008, when the judges' salaries were already "frozen", the salaries of the highest civil servants of public administration increased by 17 – 19 percent, but the salaries of the heads of other independent institutions – by 20 percent.

With all due respect towards all professions and offices, without doubting the influence and significance of the adopted decisions, but at the same time taking into account the importance of a fair and independent court in the protection of human rights and freedoms and in ensuring the rule of law, as well as the duties, responsibilities, restrictions and competence requirements of judges, such a difference between the remuneration of judges and the representatives of other branches of power cannot be recognised as reasonable and proportional.

22. The Ministry of Justice has pointed out that the appropriate level of remuneration defined in the law still has not been reached, because the transitional period has been extended several times, due to the "economic situation in the state" (*see: case materials, Vol. 2, p. 17)*. The statement that in the previous years the judges' remuneration was "frozen" because of the economic situation in the state is not justified, since the materials obtained in the process of preparing the case prove the opposite. The Saeima in its letter of response indicated that the economic development significantly worsened in 2008 and that on 7 November, 2008 the Central Statistical Bureau for the first time publicised information about the decrease of gross domestic product (*See: case materials, Vol. 5, p. 159)*. This is also proven by the fast increase of the average remuneration of the public sector employees, including the increase of the wages of the ministers, the Saeima deputies and officials of the independent institutions, implemented in 2008. Prime Minister I. Godmanis, addressing the Saeima deputies during the session of 11 December, 2008, indicated that already in 2007 the increase in wages had reached even 30 percent, and at present we "simply cannot afford such increase in salaries, which we were able to afford during the previous years" (*See: Transcript of 11 December, 2008 session of the Saeima http://www.saeima.lv/steno/Saeima9/081211/st081211.htm, accessed on 26 December, 2009*). The judges' remuneration was decreased at the time when the monthly salary of many employees of the public sector was significantly increased.

Thus the Saeima, when deciding to decrease the judges' remuneration, did not assess its balance with the changes in remuneration of officials in other branches of power, it also did not take into considerations the restrictions on holding another job set for the judges, and all the possible consequences and risks following from it.

23. The Constitutional Court already noted that only a stable remuneration guarantees the financial security of judges (*See: Para. 11.3 of this Judgement*). Prior to initiating this case the amendments to the Transitional Provisions of the Law "On Judicial Power", which influenced the calculation of the judges' salary, were implemented with the amendments of 23 February, 2006, 8 November, 2007 and the contested amendments of 14 November, 2008. The judgement establishes that the changes, which were introduced with the 2006 and 2007 amendments to the law, were not linked with extraordinary situation or any exceptional circumstances. The amendments to the law adopted in 2006 and 2007 are not being assessed in the framework of this case, however, the Constitutional Court noted that these have influenced not only the stability of the system of judges' remuneration, but together with the contested provisions influence the present amount of the judges' remuneration and, consequently, the conformity with the status of a judge.

The statement of the Ministry of Justice that with regard to the procedure for calculating the judges' remuneration "the requirement that the legal provision must conform with the system and the present assessment, has a primary significance compared to the principle of legal stability and the previous practice, if the existing practice is no longer acceptable" cannot be agreed to (*case materials, Vol.2, p.17)*. The Constitutional Court already established that the system of judges' remuneration is flexible and adjusts to the general economic situation in the state, thus a need to deviate from this system could arise only under special exceptional conditions. In such a case a temporary stepping away, in compliance with the Satversme, from the principles for setting the salary set out in the law and consequently from the general prohibition to decrease the judges' remuneration, does not undermine the stability of the system of remuneration. However, such amendments of acts of legislation, which

without reason influence the stability of the judges' remuneration, do not meet the requirements of the judges' financial security.

Thus, the legal regulation on the setting of judges' remuneration, which is in force and which has been influenced by repeated amendments to the law, including the contested provisions, cannot be regarded as stable.

24. The principle of distribution of power prohibits the executive power to decide upon issues, which directly influence the actions of judiciary and the functioning of courts, i.e., the issues of funding, the number of judges, the necessary staff, its competence requirements, remuneration and other issues. This is exactly the reason why the legislator has to give the possibility to the judiciary or an independent institution, which represents the judiciary, to express its opinion on issues, which affect the functioning of courts, but the taking of decisions concerning them fall within the competence of the legislator. The legislator has the right to disagree with the opinion of the judiciary, however, the legislator has to listen to it and to treat it with respect and due understanding.

To ascertain, whether the legislator in adopting the contested provisions, has complied with the independence of the branches of power included in the principle of the division of power, the Constitutional Court will assess the procedure of adopting these provisions.

24.1. The contested norms are included in the draft law "Amendments to the Law "On Judicial Power"", drafted by the Ministry of Justice, "implementing the paragraph 1. § 9. of the Minutes No. 62 of the Cabinet of Ministers September 4, 2008 meeting, in which the ministries, taking into consideration the amount of supported expenditure stated in the Indent 3 of the said Paragraph, were given the task to asses and, if necessary, draft amendments to the acts of legislation". It is noted in the letter from the Ministry of Justice that "the draft law and its annotation had to be drafted within a week, since the draft law was scheduled for the Cabinet of Ministers meeting together with other draft laws of the 2009 budget package" (*case materials, Vol. 2., p.15)*

It is noted in the annotation to the draft law that "by changing the procedure for calculating the monthly salary set out in the law, the principle of the independence of

the judiciary and the judges, which is enshrined in Article 83 of the Satversme of the Republic of Latvia and in the Law "On Judicial Power" is indirectly affected, the principle of legal certainty is also infringed. Thus, negative consequences with regard to the further development of the system of courts are possible, including difficulties in filling the vacant positions of judges and judges of Land Register Offices."

Part V of the annotation, in which the commitments following from international agreements, as well as "compliance assessment" have to be indicated, contains an entry "not applicable". In accordance with Paragraph 4 of the Cabinet of Ministers Instruction No. 20 of 18 December, 2007 "The Procedure for Filling in the Annotation to a Draft Law" and entry "not applicable" has to be made regarding those issues that are not affected by the draft legal act. This Instruction provides that the compliance with the case law of the European Court of Human Rights must be assessed. Since the annotation to the draft law contained a note that the introduced amendments to the law had an impact upon the independence of the judiciary and the judges, Part V of the annotation had to contain an assessment of the case law of the European Court of Human Rights regarding the requirement included in Article 6 of the Convention to guarantee the right to an independent trial.

The Supreme Court also categorically objected against the draft law, since the "amendments will have a significant impact upon the principle of the independence of the judiciary and the judges, which is enshrined in Article 83 of the Satversme of the Republic of Latvia. The principle of the independence of the judiciary and the judges does not allow a situation when the representatives of the judiciary have to "bargain" about the financial resources, which are needed to ensure the court functions set out in the law. A situation like that not only threatens the principle of independence of courts, but also the rights of everybody enshrined in the Satversme and international documents to an independent and fair trial, inter alia, can cause doubts about the impartiality of the judgements of the court" (*case materials, Vol. 1, p. 84*).

The Minister for Justice Gaidis Bērziņš in the letter to the Prime Minister of 30 September, 2008 noted: "By changing the procedure for calculating the monthly salary established in the law, the principle of the independence of the judiciary and the judges is indirectly affected" (*case materials, Vol. 1, p. 86)*. But during 7 October, 2008 meeting of the Cabinet of Ministers the Minister for Justice submitted his dissenting

opinion on the draft law, noting the threat to the principle of the independence of judges. The Minister also drew attention to the case law of the constitutional courts of other countries and warned that internationally a measure like that could be assessed as an attempt to influence the independence of the judiciary, untypical of democratic states (*See: case materials, Vol. 1, pp. 57 and 91).*

Notwithstanding all of the above mentioned, the Cabinet of Ministers did not eliminate the drawbacks mentioned in the annotation and did not assess the expressed objections.

24.2. During the Saeima session of 16 October, 2008, when the decision to submit the draft law to the committees was taken, the member of the Saeima S. Āboltiņa called not to support the draft law and indicated: "Judges and court employees are the only ones for whom the increase in salary is defined in law [...].So then we today are aiming to support amendments, which can be easily revoked through the Constitutional Court" (Transcript of the Saeima meeting of 16 October, 2008 , *http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/314baab01ee91aeec22574e90030c1ff/$FILE/LP0902_0.htm, accessed on 26 December).*

During the Saeima session of 30 October, 2008 the draft law was recognised as urgent and was adopted without discussions in the first reading (*See: Transcript of the Saeima meeting of 30 October, 2008 http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/B249E1AF4F1AB4CFC22574F90049798A?OpenDocument, accessed on 2 December, 2009*).

To recognise that the salary decrease is justifiable, it is not enough to have an important aim. The aim must be proportional to the means used to achieve it, i.e., the legislator has to prove that the chosen means are proportional.

The Saeima in its written response points out that "prior to the adoption of the draft law in the final reading possible alternatives were carefully assessed" (*See: case materials, Vol. 1, p. 96*). Namely, the Saeima points to the proposal submitted by the Legal Office of the Saeima on the possibility that the judges and the judges of Land Register Offices could be compensated for losses, if such would be caused by the draft law (*See: case materials, Vol. 5, pp. 161 – 162).*

It can be established from the materials of the case that the Legal Office of the Saeima in its opinion on the draft law drew the committees attention to several

conditions that needed to be assessed, i.e., the need to assess the compliance of the amendments with the principle of the independence of judges, included in Article 83 of the Satversme, and the principle of legal certainty, which follows from Article 1 of the Satversme. Likewise, the Legal Office also indicated that the amendments should provide for considerate transition to the new regulation and compensation for the losses caused (*See: case materials, Vol. 6, pp. 192 –195*).

These proposals were not supported, and on 14 November, 2008 the draft law was adopted in the second reading without discussions (*See: Transcript of the Saeima session of 14 November, 2008 http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/5053320642BBC31DC22575200054D9B7?OpenDocument, accessed on 26 December, 2009).*

Even though the Saeima itself admits that "it would not help to achieve the legitimate purpose on a sufficient scale", it is impossible to find in the case materials a confirmation that not only alternative solutions, but also the compliance of the amendments with Article 83 of the Satversme and also the principle of legal certainty, which follows from Article 1 of the Satversme, were assessed (*See: case materials, Vol. 1, p. 96).*

Thus the legislator, when adopting the contested provisions, did not asses with sufficient care the alternative solutions to establish whether less restrictive measures existed.

24.3. It is noted in the written response of the Saeima that "Latvia has taken international loans, and several conditions were set for obtaining them, among them also such that refer to the decrease of remuneration" (*case materials, Vol. 1, p. 193*). To concretize this argument the Saeima pointed out that the procedure for receiving and using international loan was defined by certain rules, which "are included in the Memorandum of Understanding between the European Communities and the Republic of Latvia, Paragraph 2 of which provides decreasing the amount of remuneration and the number of employees in state and local government institutions" (*case materials, Vol. 5, p. 168).*

The contested provisions were adopted on 14 November, 2008, but the Memorandum of Understanding between the European Communities and the Republic

of Latvia was signed on 28 January, 2009. Thus, the Saeima's reference to the requirements set in this Memorandum is not correct.

The Constitutional Court has already pointed out that the international lenders, within the framework of their competence, define the main aims for the state, however, the choice of the most suitable and adequate means for reaching these aims is left at the discretion of the state. The Constitutional Court did not receive information that the international lenders had set the adoption of the contested provisions as the pre-condition for receiving the loan (*See: Judgement of 21 December, 2009 by the Constitutional Court in the case No. 20019-43-01, para. 30.1.*). Moreover, the international commitments undertaken by the Cabinet of Ministers cannot serve as an argument for restricting the independence of judges defined in Article 83 of the Satversme.

24.4. It can be established from the materials of the case that the Parliamentary Legal Affairs Committee in connection with the draft law received many letters from Latvian courts. During 29 October, 2008 meeting of the Legal Affairs Committee the committee member Vineta Muižniece pointed out: "Courts have submitted letters with substantive argumentation, with pronounced disagreement, however, we are at the same time politicians, responsible for the situation in the state, and therefore we have to take a decision on the course of the draft law" (case materials, Vol. 7, p. 35).

During the Saeima meeting on 30 October, 2008 the member of the Saeima S. Āboltiņa noted with regard to the adoption of the budget and the judges' salaries, that "nobody, except the Minister for Justice, has tried to reach an agreement with judges and to arrive at a kind of a compromise." Neither does the Saeima deny that, when deciding on the contested provisions, the opinion of the judiciary was not heard. The Saeima in its written response noted directly that "such consultations would be meaningless", moreover, the issue had been very urgent (*see: case materials, Vol. 1, p. 96*).

The obligation to listen to the opinion of an institution representing the judiciary follows from the principles of the division of power and the independence of judges. The argument about the urgency of the issue cannot justify the infringement of these principles. Moreover, the materials of the case allow establishing that the

representatives of the judiciary had expressed their opinion. The Saeima, in its turn, has not submitted materials proving that it assessed the opinion expressed and arguments presented by the judges.

Thus, the legislator, in adopting the contested provisions, did not comply with the principle of the division of power.

25. This judgement establishes a number of incompatibilities, which influence the financial security of judges and, thus, also the independence of judges. The introduced amendments and the identified breaches, in view of the existing conditions, cannot be regarded as reasonable and acceptable. The other guarantees of the independence of the judiciary, which, undoubtedly, have great significance, do not compensate for the disproportional restrictions of a judge's financial security.

Since by disproportionally restricting the financial security of judges the principle of the independence of judges has been breached, the contested provisions are incompatible with Article 83 of the Satversme.

26. In accordance with the case law of the Constitutional Court, if the contested legal provisions are declared incompatible with a provision of the Satversme, the Court does not asses the compliance of these provisions with other provisions of the Satversme.

27. In the examination of a case the Constitutional Court is bound by the limits of the claim, i.e., it has to verify the compatibility of the contested provisions with the provisions of higher legal force, taking into consideration the argumentation of the Applicants and the motives and considerations reflected in the Applications. In this case the Applicants have contested the second sentence of Paragraph 7 and Paragraph 17 of the Transitional Provisions of the Law "Amendments to the Law "On Judicial Power"" in 14 November, 2008 wording of the Law. As it was already indicated in this Judgement, while this case was being prepared and adjudicated, the contested provisions were amended further with the Law of 16 June, 2009 "Amendments to the Law "On Judicial Power"" and the Law of 1 December, 2009 "Amendments to the

Law "On Judicial Power". The amendments to the Law adopted in June and December, 2009 envisage, *inter alia*, to apply the "freezing" of the judges' salaries also to the years 2010 and 2011, but with regard to the judges of Land Register Offices – also to 2012. Namely, the second sentence of the contested Paragraph 7 in the wording, which is currently in force, provides "the monthly salary of a judge, except the monthly salary of a Land Register judge, in 2007, 2008, 2009, 2010 and 2011 shall be calculated, taking into consideration the average monthly gross remuneration of employees in 2005, keeping the coefficient 4.5 unchanged." The contested Paragraph 17, in its turn, envisages that the monthly salary of a judge of a Land Register Office shall be calculated "in 2010 and 2011 – taking into consideration the average monthly gross remuneration of the employees in 2006, applying the coefficient 2.9; in 2012 – by applying the coefficient 3.5 to the average monthly gross remuneration of the employees in the state in the previous year, as announced in the official statistical report of the Central Statistical Bureau, which has been approximated till lats."

Since the principle of "freezing" equally applies both to 2009 and also 2010, 2011 and 2012, the new wording of the contested provisions, to the extent they prolong the period for "freezing" the salaries, essentially maintain the situation of the judges set by the contested provisions for several more years.

Therefore, abiding by the principle of procedural economy, the Constitutional Court has the grounds to broaden the claim and attribute its conclusions also to Paragraphs 7 and 17 of the Transitional Provisions, to the extent they in the same way as the contested provisions define the procedure for calculating the judges salary also in 2010, 2011 and 2012.

28. The Constitutional Court already concluded that the contested provisions envisaged decrease of judges' remuneration (*See: para. 18 of this Judgement*). Upon establishing that the principle of "freezing" is applied also to the years 2010 and 2011, but with regard to the judges of Land Register Offices - also to 2010, it can be concluded that the period of decreasing judges' remuneration has been significantly extended. In fact the "freezing" of salaries has been set for the period from 2007 till 2011, while it is being calculated on the basis of the average remuneration in 2005.

However, taking into consideration that in 2009, 2010 and 2011 various remuneration linked restrictions have been set also with regard to the representatives of other branches of state power, the Constitutional Court can agree to the statement that the decrease of remuneration till 2012 can be regarded as having a fixed term. The legislator has provided that judges will receive remuneration in full amount starting with 2010, but the judges of Land Register Offices – starting with 2013. Wherewith the legislator has envisaged a fixed-term decrease of the judges' remuneration and has clearly set in the law the end of the term of decreased remuneration.

29. In accordance with Paragraph 11 Article 31 of The Constitutional Court Law, in the case when the Constitutional Court declares a legal provision incompatible with a norm with higher legal force, it has to set a date as of which said provision would become invalid. The Applicants in this case have requested to declare the contested provisions invalid from the day of their coming into force, i.e., 9 December, 2008. Thus the Constitutional Court has to determine a date, as of which the contested provisions should be regarded invalid.

The third part of Article 32 of The Constitutional Court Law provides that a legal provision (act), which the Constitutional Court has declared incompatible with a legal provision with a higher legal force, shall be regard invalid as of the day when the judgement of the Constitutional Court is published, unless the Constitutional Court has provided otherwise. Thus the legislator has granted to the Constitutional Court discretion to decide the date as of which the contested provision, which has been declared incompatible with a legal norm with a higher legal force, becomes invalid. To declare the contested provision invalid from another day, not the moment when the judgement is published, the Constitutional Court has to substantiate its opinion.

In determining the moment when the contested provisions on decreasing judges' remuneration become invalid, the Constitutional Court, to the extent possible, should see to it that the interests of these persons are not harmed, i.e., the unlawfully withheld remuneration should be paid. Even though the members of the Saeima have been informed about the possible consequences, namely, deputy S. Āboltiņa pointed out that the savings made by decreasing judges' remuneration was "illusory", because "these will have to be repaid"

(*Transcript of 16 October, 2008 and 30 October, 2008 sessions of the Saeima*), the Constitutional Court still has to assess the specific conditions, since such a situation, which would be incompatible with the Satversme even more than the situation if the consequences of the contested provisions would continue for some time, would not be admissible. Moreover, the payment of judges' salaries in full amount and compensation for all unpaid sums could seriously threaten the stability of the basic budget of the state and the welfare of the whole society, including the Applicants themselves. It has been recognised in the case law of the Constitutional Court: even though certain provisions have been recognised as incompatible with the Satversme, however, instant increasing of the financial resources to be paid to the persons, without considering the possibility of taking well-considered measures to ensure the payments, could significantly influence the payments intended for other persons, hinder the implementation of the functions of other institutions and thus encumber the fulfilling of the state functions in general. (*See: Judgement of 4 January, 2007 by the Constitutional Court in the Case No. 2006-13-0103, para. 12)*

With the annulment of the contested provisions, the salary of judges should be set in accordance with the Articles 119^1 and 120^1 of the Law "On Judicial Power", to the extent that this salary is not restricted by the amendments to the law that envisaged decrease in percentage of the judges' remuneration. Taking into consideration what has been established in this case – that the judges' salary, which is being paid in accordance with the contested provisions, is calculated by multiplying the average remuneration with coefficient 2.78, but the judges of Land Register Offices – coefficient 1.89, not 4.5 or 3.5 as was previously envisaged in the Law, it can be concluded that the salary of judges, if it were paid in full amount, i.e., in accordance with the provisions of the system of judges' remuneration, it would increase almost twice.

An immediate enforcement of the Judgement could have an adverse impact upon the state budget. The annulment of the contested provisions starting as of the date they came into force, i.e., 1 January, 2009, could create even more adverse consequences. Therefore the Constitutional Court has to set the most appropriate date on which the contested norms shall become invalid.

30. Paragraph 12 of Article 31 of the Constitutional Court Law in substance envisages similar rights as the ones granted to the constitutional courts of other states for ensuring the enforcement of their judgements, i.e., an authorisation granted to the constitutional court itself to define significant legal consequences of its judgements. Moreover, the law not only authorises the Constitutional Court, but also places responsibility upon it, so that its judgements in the social reality would ensure legal stability, clarity and peace (*See: Judgement of 21 December, 2009 by the Constitutional Court in the case No 2009-43-01, para. 35.1*).

The Constitutional Court has already concluded that it, to the extent possible, should see to it that the situation, which could develop starting with the moment when the contested provisions become invalid, should not breach the fundamental rights of the Applicants and other persons guaranteed in the Satversme and would not cause significant harm to the interests of the state or society (*See: Judgement of 16 December, 2005 by the Constitutional Court in the case No. 2005-12-0103 , para. 25 and Judgement of 21 December, 2009 in the case No. 2009-43-01, para. 35.1).*

If the Constitutional Court were not to decide upon issues linked with the enforcement of this Judgement, i.e., would not set the date as of which the contested provisions become invalid, a situation, which might threaten the stability of the state budget, could develop.

The Substantive Part

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

h o l d s:

1. To declare the second sentence of Paragraph 7 of the Transitional Provisions of the Law "On Judicial Power", in the wording of the law from 14 November, 2008, 16 June, 2009 and 1 December, 2009 incompatible with Article 83 of the Satversme of the Republic of Latvia and invalid starting with 1 January, 2011.

2. To declare Paragraph 17 of the Transitional Provisions of the Law "On Judicial power", in the wording of the law from 14 November, 2008, 16 June, 2009 and 1 December, 2009 incompatible with Article 83 of the Satversme of the Republic of Latvia and invalid starting with 1 January, 2011.

The Judgement is final and not subject to appeal.

The Judgement comes into force on the day of its publication.

The Presiding Judge G. Kūtris