



CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT

on behalf of the Republic of Latvia

Rīga, 18 October 2024

Case No. 2023-42-01

The Constitutional Court composed of the chairperson of the court Irēna Kucina, judges Jānis Neimanis, Anita Rodiņa, Jautrīte Briede, Veronika Krūmiņa, and Mārtiņš Mits,

pursuant to the constitutional complaints submitted by Nikolajs Korbs and Kristiāns Zeltiņš,

on the basis of Article 85 of the Constitution of the Republic of Latvia and Section 16, Clause 1, Section 17, Paragraph one, Clause 11, as well as Section 19.² and Section 28.¹ of the Constitutional Court Law,

on 18 September 2024, in the written procedure, examined the following case:

“On conformity of Section 185, Paragraph four of the Law on Administrative Liability with the fourth sentence of Article 92 of the Constitution of the Republic of Latvia”.

Establishing Part

1. On 25 October 2018, the *Saeima* adopted the Law on Administrative

Liability which entered into force on 1 July 2020.

Section 185, Paragraph four of the Law on Administrative Liability (hereinafter – the contested norm) stipulates the following: “The complaint shall be signed by a submitter. If the complaint is submitted by a representative on behalf of the submitter, he or she shall append a relevant power of attorney or another document to the complaint which attests to the authorisation of the representative to submit the complaint.”

2. Two cases were initiated before the Constitutional Court in relation to the conformity of the contested norm with the fourth sentence of Article 92 of the Constitution. In accordance with Section 22, Paragraph six of the Constitutional Court Law, they were joined into one case, i.e. Case No. 2023-42-01 “On conformity of Section 185, Paragraph four of the Law on Administrative Liability with the fourth sentence of Article 92 of the Constitution of the Republic of Latvia”.

3. The applicants, i.e. Nikolajs Korbs and Kristiāns Zeltiņš, (hereinafter – the applicants) consider that the contested norm, insofar as it does not provide for the right of the defence counsel of the person to be held liable to sign the complaint, as well as the ancillary complaint, in order to submit it to the court, fails to conform to the fourth sentence of Article 92 of the Constitution of the Republic of Latvia (hereinafter – the Constitution).

The decisions of the Rīga Municipal Police imposed administrative penalties on the applicants. The applicants have appealed the decisions taken in the administrative offence cases before the court. The complaints have been signed by the defence counsels of the applicants for the purpose of submission thereof to the court. However, in both cases, the courts of first instance refused to accept the complaints, considering that they had been submitted by persons who did not have such right. Nikolajs Korbs and his defence counsel submitted an ancillary complaint against the decision of the court, but the appellate court decided to uphold the decision of the court of first instance. In addition, the appellate court refused to accept the ancillary complaint signed by the defence counsel of Kristiāns

Zeltiņš. The courts have also based their refusal to accept the complaint signed by the defence counsel on the contested norm, stating that the defence counsel of a natural person of legal age who is to be held liable has no right to sign a complaint or an ancillary complaint in order to submit it to the court.

According to the applicants, the fourth sentence of Article 92 of the Constitution also contains one of the fundamental elements in the right to defence, i.e. the right of the defence counsel to sign and submit a complaint to the court on behalf of the defendant. Similar to criminal proceedings, the right to defence in administrative offence proceedings must be ensured at all stages of the proceedings, including the appeal stage. The right to defence guaranteed by the Constitution must be practical and effective, not formal. The Law on Administrative Liability does not prevent the defence counsel of a person from preparing a complaint, but it does prevent him or her from signing the complaint in order to submit it to the court. Hence, the requirement in the contested norm to sign the complaint in order to submit it to the court is a restriction on the right to defence, but such a restriction is contrary to the requirements of fair and effective judicial proceedings.

The contested norm itself caused infringement of the fundamental rights of the applicants, given that it is on this basis that the courts refused to accept complaints and ancillary complaints signed by the defence counsels in administrative offence cases. During the drafting of the contested norm, the legislator deliberately decided that the defence counsel does not have the right to sign the complaint in order to submit it to the court. Such a situation cannot be regarded as an unintentional legal loophole that could be remedied through interpretation and application of a legal norm.

The restriction on fundamental rights contained in the contested norm is established by law; however, it cannot be established that this restriction has any legitimate objective. The legislator may have wanted to reduce the number of complaints submitted to the court and thus reduce the workload of the courts. The legislator may also have aimed at reducing the amount of costs that a person would have to compensate in accordance with the Law on Compensation for Damage

Caused in Criminal Proceedings and Administrative Offence Proceedings by eliminating the need to compensate such legal assistance costs as the costs related to submission of a complaint. However, even in such a case, there is no evident actual benefit to the public from the respective restriction.

4. The authority which issued the contested act, i.e. the *Saeima*, believes that the proceedings in the case should be terminated because the alleged infringement of the fundamental rights of the applicants was caused not by the contested norm itself, but by its incorrect application, i.e. by the erroneous conclusion of the court that the contested norm prevented the defence counsel from signing the complaint in order to submit it to the court. If the Constitutional Court were to conclude that the proceedings in the case should not be terminated, the *Saeima* notes that the contested norm conforms to the fourth sentence of Article 92 of the Constitution.

The conclusions of the Constitutional Court and the European Court of Human Rights, as well as the findings expressed in the legal doctrine of criminal proceedings on the provision of legal assistance and the institute of a defence counsel within the framework of criminal proceedings as prosecution proceedings are applicable in the present case. These conclusions and findings are applicable insofar as their content and meaning can be applied to the provision of legal assistance and defence in administrative offence proceedings. The present case also falls within the scope of the requirement under the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) that the right to legal assistance must be practicable and effectively enforceable. Thus, the right to the assistance of counsel guaranteed in the fourth sentence of Article 92 of the Constitution extends also to the right of the defence counsel of a person to sign a complaint in order to submit it to the court.

Although the contested norm grammatically establishes only the right of the representative to sign the complaint in order to submit it to the court, such right is also applicable to the defence counsel. The grammatical wording of the contested norm constitutes a legal loophole which can be remedied by further development of the law by analogy with the Criminal Procedure Law. Neither during the

discussion and adoption of the contested norm nor during the discussion and adoption of the related legal regulation at the *Saeima* there was any discussion that the right of a person to legal assistance provided by a defence counsel should be narrowed down in such a way that only the person who is held liable could sign a complaint in order to submit it to the court. In the course of adoption of the contested norm, the legislator did not express a specific intention to narrow down the right of a person to receive legal assistance with regard to signing a complaint in order to submit it to the court. Moreover, one cannot agree with the view expressed in the legal literature that the principle of personal participation laid down in the Law on Administrative Liability limits the institute of the defence counsel to the provision of legal assistance by participation only, but does not include the right of representation of natural persons. Such an interpretation is contrary not only to the essence of the institute of the defence counsel, but also to the legal framework of the Law on Administrative Liability. In particular, the principle of personal participation enshrined in Section 40, Paragraph two of the Law on Administrative Liability, as in criminal proceedings, is to be interpreted narrowly. Signing of a complaint in order to submit it to the court is not, as in the pre-trial proceedings, a personal obligation which can be performed only by the person to be held liable. Consequently, the contested norm has been incorrectly interpreted and applied in the administrative offence cases of the applicants.

5. The Ministry of Justice, i.e. the invited party, believes that the contested norm conforms to the fourth sentence of Article 92 of the Constitution. The contested norm does not prevent the defence counsel of the person to be held liable from signing the complaint in order to submit it to the court. It is possible to remedy the infringement of the fundamental rights of a person by a correct interpretation and application of the contested norm.

The fourth sentence of Article 92 of the Constitution is specified in conjunction with Article 6(3)(c) of the Convention, including the right of the defence counsel in administrative offence proceedings to sign a complaint in order to submit it to the court. The Law on Administrative Liability provides for such a possibility. Moreover, in administrative offence proceedings, the defence

counsel has all the same rights as the defendant. The Ministry of Justice agrees with the *Saeima*: the fact that the contested norm does not mention the defence counsel is a deficiency in the text of the law. The authority applying the law can remedy this deficiency by using legal methods, including the understanding of the institute of the defence counsel, the role of the defence counsel in the administrative offence proceedings, and the purpose of the legislator. The procedural rights of the defence counsel are to be determined by analogy in accordance with the Criminal Procedure Law. In particular, the defence counsel in administrative offence proceedings has all the same rights as the defendant insofar as the presence of the defendant is not necessary for the examination of the case. By interpreting the contested norm in accordance with the fourth sentence of Article 92 of the Constitution and applying the methods of further development of law, for instance, the inference from the smallest to the largest and the examination of a legal norm in accordance with the ‘plan of law’, it is possible to reach a result that complies with the Constitution.

However, taking into account the necessity to prevent the possibility of different interpretations of the legal norms regulating the institute of the defence counsel and the problems of their application, the Ministry of Justice has proposed that the legislator amends the contested norm for the sake of legal clarity. The amendments should further strengthen the role of the institute of the defence counsel in administrative offence proceedings by providing that the defence counsel has the rights and obligations of the person to be held liable or punished insofar as they are not related to the necessity to clarify the subjective opinion of the person.

6. The Ombudsman, i.e. the invited person, considers that the contested norm conforms to the fourth sentence of Article 92 of the Constitution; however, the contested norm, insofar as it prohibits a person to submit a complaint to the court through a defence counsel, disproportionately restricts the right to access to court guaranteed to a person in accordance with the first sentence of Article 92 of the Constitution.

For the purposes of the fourth sentence of Article 92 of the Constitution, the

right to the assistance of counsel is to be interpreted primarily as meaning that the State has the obligation to ensure minimum guarantees of the right to legal assistance. According to the European Court of Human Rights on the scope of Article 6(3)(c) of the Convention, such minimum guarantees include the right to communicate and consult a counsel before hearing, the right to give confidential instructions to a defence counsel, as well as the right to be physically present during hearing in pre-trial proceedings. However, the representation of a person and the signing of a complaint in order to submit it to the court on behalf of the person do not constitute legal assistance by counsel within the meaning of either international or national legislation. Signing of a complaint and subsequent submission thereof to the court is comparable to representation. When signing the complaint, the defence counsel is acting as an agent or a representative of the person, not as the provider of legal assistance.

The contested norm does not restrict the right of a person to choose his or her own defence counsel and to receive qualified legal assistance and, consequently, does not restrict the right to the assistance of counsel guaranteed in the fourth sentence of Article 92 of the Constitution. However, the contested norm infringes the right to access to court guaranteed to a person in the first sentence of Article 92 of the Constitution. In other words, it effectively restricts the freedom of a person to choose the person through whom he or she can exercise his or her fundamental right, i.e. the right to submit a complaint to the court. The legitimate objective of the restriction established by the contested norm cannot be discerned.

7. According to the opinion of **the Latvian Council of Sworn Advocates, i.e. the invited party**, the contested norm conforms to the fourth sentence of Article 92 of the Constitution. The fact that the contested norm does not provide for the right of the defence counsel to sign and submit a complaint is considered to be a legal loophole which can be remedied by correct interpretation and application of the contested norm.

Preparing and signing of a complaint in order to submit it to the court the court is one of the most important aspects in exercising the right to defence. By submitting a complaint to the court, the person to be held liable is defending his or

her fundamental rights in the administrative offence proceedings. In order to ensure the effective exercise of the right to defence provided for in Section 33 of the Law on Administrative Liability, it is essential that the person to be held liable be provided with all the opportunities arising from legal assistance for the exercise of his or her defence, including the assistance of a defence counsel in such an important procedural action as signing the complaint in order to submit it to the court. The contested norm, if interpreted grammatically, renders the right of a person to legal assistance provided by a defence counsel less effective.

It should be taken into account that one of the duties of an advocate in accordance with the Advocacy Law of the Republic of Latvia, i.e. the duty to prepare legal documents, also includes the right to sign and submit such documents. Such an interpretation of the contested norm, which prohibits the defence counsel from signing a complaint in order to submit it to the court in an administrative offence case, is not consistent with the essence of the institute of a defence counsel, nor with the functions of an advocate established by the Advocacy Law of the Republic of Latvia.

The opinion of the *Saeima* that the right of a defence counsel to sign a complaint in order to submit it to the court in administrative offence proceedings should be determined by analogy with the right of a defence counsel in criminal proceedings is justified. However, if the correct application of the contested norm is possible only through further development of the law, the infringements of the fundamental rights of the persons to be held liable cannot be prevented effectively and consistently. Consequently, the contested norm cannot be considered to be sufficiently clear as required by Article 90 of the Constitution.

8. Dr. iur. Kristīne Strada-Rozenberga, i.e. the invited party, considers that the contested norm fails to conform to the fourth sentence of Article 92 of the Constitution.

The right to defence cannot be merely declaratory. The objective of the Convention implies the obligation of the State to provide effective and practical legal assistance. The contested norm substantially limits the authorisation of the defence counsel in administrative offence proceedings and, consequently, the

capacity of the defence counsel to provide effective and qualitative defence.

When ascertaining the content of the contested norm within the scope of the Law on Administrative Liability, it is necessary to take into account the principle of personal participation laid down by law, which derives from Section 33, Paragraph two, Section 40, Paragraph two, and Section 53, Paragraphs one and two of the Law on Administrative Liability. The legislator has emphasised the obligation of the person to be held liable to participate in the administrative offence proceedings in person, and the person cannot delegate this right to a defence counsel. Hence, the law does not provide for a subjective right of the defence counsel in administrative offence proceedings to sign a complaint in order to submit it to the court. According to the intention of the legislator, the defence counsel in administrative offence proceedings only participates by providing legal assistance within the scope of the authorisation provided for by law, and the defence counsel has no right to sign a complaint to be submitted to the court against the decision taken by the authority in an administrative proceedings.

Given the differences between criminal law and administrative offences law, it is also not possible to accept that an infringement of fundamental rights can be remedied by further development of the law and by application of a legal analogy. Moreover, in the process of adoption of the contested norm, the legislator has expressed its intention to exclude the defence counsel from the range of subjects who are subject to the application of the procedures for signing a complaint for submission to the court. Consequently, the silence of the law cannot be regarded as an open legal loophole and no further development of the law is permissible in this case.

There is no legitimate objective to be achieved by restricting the right of the defence counsel to sign a complaint in order to submit it to the court. Even assuming that the legislator had intended to achieve a certain legitimate objective, the appropriateness of the means chosen to achieve any legitimate objective is questionable.

Moreover, it should be taken into account that the contested norm has been interpreted inconsistently in the valid court rulings in administrative offence cases.

Consequently, even if it could be concluded that the infringement of the fundamental rights of the applicants was caused not by the contested norm, but by its incorrect application, the conformity of the contested norm with the requirements of clarity and predictability of legal norms is doubtful.

Concluding Part

9. The *Saeima* requested to terminate legal proceedings in the case on the basis of Section 29, Paragraph one, Clause 6 of the Constitutional Court Law, because, according to the *Saeima*, the infringement of the fundamental rights of the applicants provided for in the fourth sentence of Article 92 of the Constitution is caused by incorrect application of the contested norm, not by the contested norm itself. The Ministry of Justice and the Latvian Council of Sworn Advocates express similar views.

The applicants, however, claim that it is the contested norm that causes infringement of their fundamental rights. The same view is shared by *Dr. iur.* Kristīne Strada-Rozenberga, i.e. the invited party, pointing out that the content of the contested norm is the result of a conscious choice of the legislator. It also follows from the opinion of the Ombudsman that the contested norm has been applied to the applicants in accordance with its content.

If arguments on termination of legal proceedings have been presented in the case, the Constitutional Court shall assess them before assessing the constitutionality of the contested norm (*see, for instance, Paragraph 9 of the decision of the Constitutional Court of 10 December 2021 on termination of legal proceedings in Case No. 2021-11-01*). The Constitutional Court has repeatedly recognised that it is essential to distinguish the matter of constitutionality of the contested regulatory framework from the matter of whether the contested regulatory framework has been correctly applied to a person (*cf. Paragraph 11.2 of the judgment of the Constitutional Court of 29 December 2021 in Case No. 2021-09-01*).

Consequently, in order to decide whether the proceedings in the case should be terminated, the Constitutional Court must establish whether the infringement of

the fundamental rights of the applicants is caused by the contested norm itself or by the application thereof.

9.1. The contested norm is contained in Section 185 of the Law on Administrative Liability which lays down the requirements for the form and content of a complaint. The same requirements also apply to an ancillary complaint (*see Section 238, Paragraph one of the Law on Administrative Liability*).

The first sentence of the contested norm provides that the complaint shall be signed by a submitter. According to the second sentence of the contested norm, if the complaint is submitted by a representative on behalf of the submitter, he or she shall append a relevant power of attorney or another document to the complaint which attests to the authorisation of the representative to submit the complaint.

It follows from the wording of the contested norm that the submitter or a representative of the submitter, but not the defence counsel, may sign a complaint, including an ancillary complaint, in order to submit it to the court. However, the grammatical method of interpretation is only one method of interpreting a legal norm.

9.2. According to Section 33 of the Law on Administrative Liability, any person to be held liable has the right to defence. Such right can be exercised in several ways: first, by the person to be held liable himself or herself, second, with the participation of a defence lawyer, and third, through intermediation of a representative.

According to Section 53, Paragraphs one and two of the Law on Administrative Liability, the legal term ‘defence counsel’ means a person who provides legal assistance to the person to be held liable, but does not replace such person. Moreover, Section 40, Paragraph two of the Law on Administrative Liability establishes the obligation of the natural person to be held liable to participate in the examination of an administrative offence case in person insofar as the administrative offence case requires personal fulfilment of obligations.

The meaning of the legal term ‘representative’ is explained in Section 54, Paragraph one of the Law on Administrative Liability. In particular, a representative is a person who, on the basis of law or contract, shall act on behalf

of a represented person. Authorisation shall give the right to a representative to perform procedural actions on behalf of a represented person (*see Section 54, Paragraph five of the Law on Administrative Liability*). Only a certain range of persons may participate in the administrative offence proceedings through a representative, i.e. a legal person, a victim, an owner of infringed property, a minor, or an official of the legal person governed by public law (*see Section 54, Paragraph one of the Law on Administrative Liability*).

It follows from the framework of the Law on Administrative Liability that the scope of the concepts of ‘participation of a defence counsel’ and ‘intermediation of a representative’ is different in administrative offence proceedings. One of the differences is that the rights of a defence counsel and a representative to perform procedural actions on behalf of the person to be held liable in administrative offence proceedings are different. Moreover, the range of persons entitled to defend with the participation of a defence counsel or through intermediation of a representative also varies. A natural person of legal age who is to be held liable, including the applicants, may defend himself or herself in administrative offence proceedings with the participation of a defence counsel, but not through intermediation of a representative.

9.3. Draft law No. 1160/Lp11 “Law on Administrative Offence Proceedings” (hereinafter – the draft law) initially established the right of a person of legal age who is to be held liable to defend himself or herself both with the participation of a defence counsel and through intermediation of a representative. The draft law also initially provided for the possibility that a defence counsel may sign a complaint in order to submit it to the court by attaching a relevant power of attorney thereto (*see Sections 35, 41, 54 and Section 202, Paragraph four of draft law No. 1160/Lp11 submitted to the Saeima on 21 May 2014. Available at: saeima.lv*).

In the course of consideration of the draft law, the proposal of the Legal Office of the *Saeima* was assessed as to whether a person of legal age who is to be held administratively liable should have the right to exercise his or her defence both with the participation of a defence counsel and through intermediation of

a representative (*see Paragraph 32 of the opinion of the Legal Office of the Saeima No. 111.13/1-17-12/17 of 31 January 2017 on the draft law “Law on Administrative Offence Proceedings”. Available at: saeima.lv*). After discussion of this proposal, the initial wording of the draft law was not supported, but it was established that a natural person of legal age who is to be held administratively liable may exercise the right to defence only with the participation of a defence counsel (*see minutes of the meeting of the Criminal Law Policy Subcommittee of the Legal Affairs Committee No. 93 of 16 January 2018 and minutes of the meeting of the Legal Affairs Committee No. 324 of 25 September 2018, as well as audio recordings of these meetings in vol. 1 and 2 of the case file*). Consequently, both the responsible committee, i.e. the Legal Affairs Committee, and the *Saeima*, supported the proposal to exclude the right of a defence counsel to sign a complaint in order to submit it to the court (*see minutes of the meeting of the Legal Affairs Committee of the Saeima No. 327 of 2 October 2018, vol. 1, pp. 130–131, as well as the transcript of the Saeima sitting of 25 October 2018. Available at: saeima.lv*).

Thus, the historical development of the contested norm confirms that the legislator has excluded from the draft law the right previously provided to the defence counsel to sign a complaint on behalf of a person in order to submit it to the court.

9.4. The *Saeima*, in its response, points out that the intention of the legislator in respect of the meaning and purpose of the contested norm is being misunderstood. In particular, the legislator did not intend to deprive the defence counsel of a natural person of legal age who is to be held liable of the right to sign the complaint in order to submit it to the court.

From the draft law development materials it can be concluded that at the meeting of the Criminal Law Policy Subcommittee of the Legal Affairs Committee, when assessing whether it is necessary to provide both a defence counsel and a representative for a person of legal age who is to be held liable in administrative offence proceedings, it was pointed out that the functions of a defence counsel and a representative are different. It was stressed that a representative in administrative offence proceedings is a person who replaces

another person and his or her actions are binding on the represented person, while a defence counsel, as a provider of legal assistance, has no right to act on behalf of a person and his or her procedural actions are not binding on the person. The legislator decided that a person of legal age who is to be held liable must participate in the administrative offence case in person and does not require a representative (*see minutes of the meeting of the Criminal Law Policy Subcommittee of the Legal Affairs Committee No. 93 of 16 January 2018, as well as the audio recording of this meeting in vol. 2 of the case file*).

The minutes and audio recordings of the Subcommittee and the Committee also show the reasons why the legislator decided in favour of a broad scope of the principle of personal participation. In particular, the legislator considered that only the natural person to be held liable may provide information on the circumstances of the offence, the motives for the offence, mitigating or aggravating circumstances, and other circumstances to be ascertained in the administrative offence case (*see minutes of the meeting of the Criminal Law Policy Subcommittee of the Legal Affairs Committee No. 93 of 16 January 2018 and minutes of the meeting of the Legal Affairs Committee No. 324 of 25 September 2018, as well as audio recordings of these meetings contained in vol. 1 and 2 of the case file*).

Moreover, during the discussion of the draft law, the legislator agreed upon the framework for the content of the complaint to be submitted to a higher official and to the court (*see Section 176, Paragraph two and Section 185, Paragraph two of the Law on Administrative Liability*). The range of persons entitled to submit a complaint to a higher official or to the court is the same (*see Section 166, Paragraph one and Section 183, Paragraph one of the Law on Administrative Liability*). However, it follows from the provisions of Section 167, Paragraphs three and four of the Law on Administrative Liability that a complaint submitted to a higher official shall be accompanied by a power of attorney or another document certifying the authorisation of a representative or a defence counsel to submit a complaint: the law allows both for a representative to sign a complaint to be submitted to a higher official and for a defence counsel to sign such a complaint. Hence, the principle of personal participation is specified differently

in the norm regarding the obligation of a person to sign a complaint to be submitted to a higher official than in the contested norm. No confirmation was found in the draft law development materials that the legislator has directly considered the matter of the right of the defence counsel to sign on behalf of a person also a complaint to be submitted to the court or the necessity to establish uniform requirements for signing complaints to be submitted to a higher official and to the court.

Having ascertained the intention of the legislator with regard to the meaning and purpose of the contested norm, it can be concluded that the legislator has deliberately chosen to separate the functions of a representative and a defence counsel by establishing that the provision of legal assistance does not include the right of a defence counsel to perform procedural actions on behalf of the defendant. The way in which the legislator has specified the scope of the participation of a defence counsel in signing a complaint in order to submit it to the court, i.e. the fact that the legislator has not allowed the right of a defence counsel to sign a complaint on behalf of a natural person of legal age who is to be held liable, corresponds to the intention of the legislator to separate the authorisation of a representative and a defence counsel in administrative offence proceedings.

9.5. The practice of its application must also be taken into account when ascertaining the content of a legal norm. The practice of the regional courts, which are the final instance in the examination of administrative offence cases, including the rulings in the administrative offence cases of the applicants, shows that the courts basically interpret the contested norm as meaning that a defence counsel does not have the right to sign a complaint in order to submit it to the court. The courts have concluded that, according to the principle of personal participation enshrined in the Law on Administrative Liability, the person to be held liable must participate in the administrative offence proceedings in person. The courts also point out that the regulatory framework contained in the Latvian Administrative Violations Code did not allow, same as the Law on Administrative Liability, the right of a defence counsel of a person to sign a complaint in order to submit it to the court (*for instance, the decision of the Latgale Regional Court of*

2 September 2020 in Case No. 103AA-0102-20 and the decision of the Zemgale Regional Court of 28 October 2020 in Case No. 106AA-0162-20/15).

Such interpretation of the contested norm is also consistent with the conclusion expressed in the legal doctrine that the person to be held liable must participate in the administrative offence proceedings in person and cannot delegate this duty to a defence counsel, moreover, a defence counsel cannot replace the defendant in performing procedural actions (*cf. Putra I., Bērziņš G. 39.–56. panta skaidrojumi [Explanatory Notes of Sections 39–56]. Book: Danovskis E., Kūtris G. (scientific editors) Administratīvo pārkāpumu tiesības. Administratīvās atbildības likuma skaidrojumi [Administrative Offences Law. Explanatory Notes of the Law on Administrative Liability]. Rīga: Tiesu namu aģentūra, 2020, p. 224*).

9.6. Taking into account all of the above, the Constitutional Court concludes that the wording of the contested norm, the meaning and purpose of this norm in the system of the Law on Administrative Liability, as well as the course of development of the contested norm reveal the intention of the legislator to deprive a defence counsel of the right to sign a complaint in order to submit it to the court on behalf of a natural person of legal age who is to be held liable. Hence, the content of the contested norm is the result of a conscious choice of the legislator. Consequently, the contested norm causes the infringement of the fundamental rights of a person.

Accordingly, the legal proceedings in the case should not be terminated.

10. The fourth sentence of Article 92 of the Constitution stipulates the following: “Everyone has a right to the assistance of counsel.”

The right to the assistance of counsel is one of the elements of specification of the general legal principle, i.e. the right to a fair trial, included in Article 92 of the Constitution (*see Paragraph 19.4 of the judgment of the Constitutional Court of 7 February 2014 in Case No. 2013-04-01*). The State has the obligation to prescribe such procedures for the examination of the case, including the administrative offence proceedings, so that a person could effectively defend his or her rights and legal interests in a fair and impartial trial (*cf. Paragraph 12 of the judgment of the Constitutional Court of 14 June 2018 in Case No. 2017-23-01*).

When specifying the content of the right guaranteed in the fourth sentence of Article 92 of the Constitution, the Constitutional Court has recognised that the right to the assistance of counsel is to be understood as the subjective right of a person to receive qualified legal assistance (*see Paragraph 10 of the judgment of the Constitutional Court of 25 March 2022 in Case No. 2021-25-03*). Moreover, the right of a person to the assistance of counsel contained in this norm is to be interpreted broadly. Namely, a person has the right to receive qualified legal assistance provided by a freely chosen defence counsel or a representative from the widest possible range of qualified lawyers and, in individual cases, also from the range of other persons (*see Paragraphs 1.3 and 2 of the concluding part of the judgment of the Constitutional Court of 6 October 2003 in Case No. 2003-08-01*).

Consequently, the right of a person to exercise his or her defence through the provider of legal assistance of his or her choice is a special procedural guarantee included in the fourth sentence of Article 92 of the Constitution which ensures the exercise of the right of a person to a fair trial. The European Court of Human Rights has also recognised that the right to defence of a person is a guarantee of the right to a fair trial, the purpose of which is to ensure that the proceedings as a whole would be fair (*see Paragraph 169 of the judgment of the Grand Chamber of the European Court of Human Rights of 1 June 2010 in Gäfgen v. Germany, application No. 22978/05, and Paragraph 265 of the judgment of 13 September 2016 in Ibrahim and Others v. the United Kingdom, application No. 50541/08, etc.*).

In prosecution proceedings, such as administrative offence proceedings, legal assistance for defence purposes means that the provider of legal assistance has the authorisation to defend the rights and legal interests of a person in the best and most appropriate way. This may require the provider of legal assistance not only to participate in the defence procedure, for instance, by advising the person on his or her rights and obligations, drafting legal documents, and assisting the person in court, but also to actually act in the interests of the defendant. Signing of a complaint in order to submit it to the court also falls within the scope of the legal assistance provided by a defence counsel.

Derogations from the procedural safeguards, i.e. the right of a person to defence through the provider of legal assistance of his or her choice, are permissible if there are objective and reasonable grounds and if a fair trial as a whole is ensured to the person (*cf. Paragraph 80 of the judgment of the Grand Chamber of the European Court of Human Rights of 20 October 2015 in Dvorski v. Croatia, application No. 25703/11*). When assessing whether derogations from the guarantees contained in Article 92 of the Constitution are permissible, the Constitutional Court has also taken into account both the grounds for the relevant derogation and the specific aspects of the proceedings, as well as in general the effect of the derogation on the right of a person to a fair trial (*cf. Paragraph 16 of the judgment of the Constitutional Court of 12 March 2020 in Case No. 2019-13-01, Paragraphs 13 and 14 of the judgment of 16 July 2020 in Case No. 2019-23-01, as well as Paragraphs 14 and 15 of the judgment of 14 April 2022 in Case No. 2021-38-01*).

Consequently, the Constitutional Court must examine whether the regulation which deprives a defence counsel of a natural person to be held administratively liable of the right to sign a complaint in order to submit it to the court ensures the right of a person to his or her defence through the provider of legal assistance of his or her choice, as specified in the fourth sentence of Article 92 of the Constitution.

11. When assessing the conformity of the contested norm with the fourth sentence of Article 92 of the Constitution, the Constitutional Court shall first of all ascertain whether there are objective and reasonable grounds for the defence counsel of a natural person to be held administratively liable to be deprived of the right to sign a complaint in order to submit it to the court. The Constitutional Court will thereafter examine whether the fact that the defence counsel of a natural person to be held administratively liable has no right to sign a complaint in order to submit it to the court, in general, ensures the legal assistance necessary for the person to exercise his or her right to defence.

11.1. Submission of a complaint to the court confirms the intention of a person to exercise his or her right to appeal the decision taken in an

administrative offence case. The submission of a complaint in accordance with the law means that all the requirements, including those relating to the form and content of the complaint (*see Section 185 of the Law on Administrative Liability*), have been fulfilled, including the requirement in the first sentence of the contested norm to sign the complaint.

Signing of a complaint in order to submit it to the court is not just a technical step needed to initiate the case. By signing the complaint, the signatory certifies that the content of the document corresponds to the intention of the person, as well as the intention to initiate or continue the administrative offence case in court. By signing the complaint, the person expresses, for instance, his or her intention to submit evidence to the court or to require the court to demand additional evidence, his or her intention to make known to the court observations on how, in his or her opinion, the appealed decision is manifestly wrong, as well as other information which, in his or her opinion, may be relevant for the examination of the administrative offence case. The person may also include explanations in respect of the administrative offence case in the complaint. Moreover, the signature of a person is of particular importance in administrative offence proceedings, as it links the person to the administrative offence case.

If the administrative offence case is examined in the oral procedure, the person himself or herself shall explain the circumstances of the offence and provide other information necessary for decision-making in the case, which is known only to the person himself or herself. In contrast, in the written procedure, which is the main procedure in which administrative offence cases are examined in court (*see Section 185, Paragraph one and Section 178 of the Law on Administrative Liability*), it is the signature of a natural person of legal age who is to be held liable that ensures his or her personal participation in the examination of the case.

The Constitutional Court concludes that the obligation for a natural person of legal age who is to be held liable to sign the complaint to be submitted to the court is established in order to implement the principle of personal participation in the examination of an administrative offence case before the court. The contested

norm and the related norms of the Law on Administrative Liability, which apply to the obligation of a person to participate in the examination of the case in person, ensure that the circumstances of committing an administrative offence are confirmed by the natural person of legal age who is to be held liable himself or herself, since only the respective natural person can provide such information most accurately. This ensures the fulfilment of the objectives laid down in Section 1 of the Law on Administrative Liability, i.e. to ensure efficient administrative offence proceedings and to achieve just settlement of legal relations, which are aimed at ensuring the right to a fair trial of persons in a democratic state governed by the rule of law. Thus, the principle of personal participation provided for in the Law on Administrative Liability promotes the efficiency of the court proceedings, ensuring proper functioning of a democratic state system (*cf. Paragraph 14.3 of the judgment of the Constitutional Court of 25 March 2022 in Case No. 2021-25-03*).

Accordingly, the Constitutional Court concludes that there are objective and reasonable grounds for the defence counsel of a natural person of legal age who is to be held administratively liable to be deprived of the right to sign a complaint in order to submit it to the court.

11.2. In administrative offence proceedings, the penalty for the administrative offence is imposed by the authority. The court, however, examines the legality and validity of the decision taken by the authority in an administrative offence case, examining the administrative offence case within the scope and limits of the claims made in the complaint, which may not be exceeded, except in cases where there are doubts about the guilt of the person or aggravating circumstances (*see Sections 48 and 178 of the Law on Administrative Liability*). Thus, examination of an administrative offence case in the court allows a person to ascertain the lawfulness of the decision taken by the authority, including whether the authority has correctly assessed all the circumstances of the administrative offence case and correctly applied the legal norms.

By signing a complaint in order to submit it to the court, a natural person of legal age who is to be held liable exercises the right provided for in Section 41,

Paragraph one, Clause 8 of the Law on Administrative Liability to appeal the decision taken by the authority in an administrative offence case. In substance, the contested norm is part of a set of procedural rules governing the procedures for exercising the right of a person to appeal.

The contested norm does not prevent a natural person of legal age who is to be held liable from signing the complaint himself or herself in order to submit it to the court. When exercising the right to appeal the decision taken in an administrative offence case, a natural person of legal age who is to be held liable has the right to legal assistance provided by a defence counsel of his or her choice. The Law on Administrative Liability does not prohibit the defence counsel of the person from analysing the decision taken by the authority, drawing the attention of the person to possible factual or legal errors and deficiencies in the decision of the authority, advising the person on the complaint process and the possible outcome of the appeal procedure, pointing out arguments that would help the defendant achieve the result he or she prefers or speaking in the discussions before the court. Similarly, neither the contested norm nor other norms of the Law on Administrative Liability prohibit a natural person of legal age who is to be held liable to invite the provider of legal assistance in order to receive his or her assistance in the preparation, drafting or court examination of a complaint or an ancillary complaint.

The fact that a natural person of legal age who is to be held liable must sign the complaint prepared by the defence counsel himself or herself, thus participating in the administrative offence proceedings in person and expressing his or her intention to exercise the right to appeal the decision taken in an administrative offence case, does not preclude the natural person of legal age who is to be held liable from receiving legal assistance from the defence counsel.

11.3. In view of the above, the Constitutional Court concludes that there are objective and reasonable grounds for the provision in the contested norm that the defence counsel of a natural person to be held administratively liable has no right to sign a complaint in order to submit it to the court. Accordingly, the manner in which a natural person of legal age who is to be held liable in an administrative

offence case may exercise his or her right to defence with the participation of a defence counsel at the stage of judicial proceedings, in general, ensures the right of a person to exercise his or her defence through the provider of legal assistance of his or her choice, as specified in the fourth sentence of Article 92 of the Constitution.

Consequently, the contested norm conforms to the fourth sentence of Article 92 of the Constitution.

Substantive Part

Pursuant to Sections 30 to 32 of the Constitutional Court Law, the Constitutional Court

decided as follows:

It is hereby declared that Section 185, Paragraph four of the Law on Administrative Liability conforms to the fourth sentence of Article 92 of the Constitution of the Republic of Latvia.

The judgement is final and not subject to appeal.

The judgement shall enter into force as of the date of its publication.

Chairperson of the court hearing

Irēna Kucina