



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

J U D G E M E N T

On Behalf of the Republic of Latvia

Riga, 7 October 2010

Case No. 2010-01-01

The Constitutional Court of the Republic of Latvia, composed of the Chairman of the Court hearing Gunārs Kūtris, Justices Kaspars Balodis, Aija Branta, Kristīne Krūma, Vineta Muižniece and Viktors Skudra,

having regard to a constitutional complaints of Mr. Bertolt Martin Flick, an alliance of political parties “*Zaļo un Zemnieku savienība*” and Vladimirs Čerkasovs (hereinafter all together referred to as Applicants),

according to Article 85 of the Satversme (Constitution) of the Republic of Latvia, Article 16 1st indent, Article 17 (1), 11th indent, Article 19.² and Article 28.¹ of the Constitutional Court Law,

on 14 September 2010, in writing examined the case

“On Compliance of Section 286.¹⁴ of the Latvian Administrative Violations Code with Article 91 and Article 92 of the Satversme of the Republic of Latvia”.

The Facts

1. On the date when the applications were lodged before the court, Section 286.¹⁴ of the Latvian Administrative Violations Code (hereinafter – the LAVC) provided the following:

“Appellate instance court judgment shall not be subject to appeal and shall come into force on the date of drafting” (hereinafter – the Contested Norm).

2. **The Applicants** indicated that the Contested Norm does not comply with Article 92 of the Satversme of fundamental rights included in this section are interpreted in conjunction with Article 89 of the Satversme of the Republic of Latvia (hereinafter – the Satversme) and Article 2 of Protocol No. 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention). Although neither the Satversme nor the above mentioned norm of the Convention provide that each administrative case should be allowed to be reviewed by a court of a higher instance; however, character of a particular administrative case could serve as grounds for establishing the possibility to appeal. Namely, certain cases on administrative violations could be compared to criminal cases due to their character and taking into account punishment to be applied.

The Contested Norm establishes restriction of the fundamental rights of the Applicants because it prohibits appealing against court judgments in administrative violation cases before an appellate instance court.

It has been indicated in the applications that it is not possible to establish any legitimate aim of the Contested Norm. The annotation to the draft law neither contains any substantiation for the necessity to adopt the Contested Norm. It can be concluded from the transcript of the Saeima [Parliament] of the Republic of Latvia (hereinafter – the Saeima) that the above mentioned draft law has been adopted without discussions. The Applicants suggest that the legitimate aim of the Contested Norm could be ensuring of functioning of the Administrative Case Department of the Senate of the Supreme Court

of the Republic of Latvia (hereinafter – the Senate) by means of reducing its workload on account of insignificant cases. However, the legislator has failed to take into consideration the fact that the Saeima decides on fundamental issues regarding material and procedural rights, which is substantial for administrative violation cases, too. By prohibiting forming case-law of the Senate regarding administrative violation cases, protection of fundamental rights of many persons is not being ensured.

The Applicants draw attention of the Constitutional Court to the fact that in 2008 administrative cases constituted only 10 percent of workload of the Senate. Consequently, in the result of adoption of the Contested Norms, “workload has been reduced only in terms of several tens of cases”.

It has been emphasized in the application that the restriction established in the Contested Norm would be proportional only in case of other measures of the same effectiveness did not exist. The right of the Senate to refuse initiating cassation proceedings at steering meeting as established in Section 338.¹ of the Administrative Procedure Law (hereinafter – the APL).

Having regard to a constitutional complaint of Mr. B. M. Flick, a case has also been initiated regarding compliance of the Contested Norm with Article 91 of the Satversme. It has been indicated in the constitutional complaint that the imposed administrative punishment, in fact, can be regarded as an administrative act in the meaning of Section 1 (3) of the APL. However, the APL permits appealing against any administrative act before three courts. Person, on whom an administrative punishment is inflicted, enjoy such conditions that are comparable to those of persons who are issued administrative acts. Consequently, no such situation that the legislator establishes different attitude towards persons enjoying equal conditions can be permitted.

Moreover, Mr. B. M. Flick indicates that the fine applied to him was greater than the minimum fine established in Section 41 of the Criminal Law. Pursuant to the Criminal Procedure Law, any criminal punishment shall be appealed according to cassation procedure. Consequently, it is not clear why the legislator has conferred to right to access cassation courts to the person who has been inflicted lesser punishment in the frameworks of a criminal case if compared to the one he has been imposed.

After having got acquainted with case materials, it has additionally been mentioned that reducing of workload of the Senate cannot be regarded as the legitimate aim of the Contested Norm. In order to reach such aim, it is possible to apply other less restricting measures, for instance, case examination in writing.

In the opinions submitted in the frameworks of the case under review, institutions have failed to assess the fact that certain administrative violation cases comprise features of civil cases. In respect to this aspect, the principle of equality has been breached if compared to the right of persons to submit an appeal as established in the Civil Procedure Law (hereinafter – the CPL).

Taking into account the aforesaid, the Applicants ask to recognize the Contested Norm as non-compliant with Article 91 and Article 92 of the Satversme, whilst, in respect to the Applicants – as unconstitutional and null and void as from the date of adopting thereof.

3. The institution that issued the contested act, the Saeima does not agree with argumentation of the Applicants and ask the Constitutional Court to recognize the Contested Norm as non-compliant with legal norms of a higher legal force.

The Contested Norm has been adopted after long discussions launched by the Saeima Legal Committee on 10 October 2007. The Commission has examined issue suggested by the Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) regarding amendments to the LAVC regarding compliance of the procedure for appealing against administrative arrest with norms on human rights. Possible solutions to optimize appeal in administrative violation cases have also been assessed. Suggestions provided, among the rest, reduction of number of courts reviewing administrative violation cases.

The Legal Committee, in several meetings, has discussed and assessed different suggestions – both the suggestion to preserve a cassation instance court in administrative violation cases and to reduce terms for performing several procedural activities and the suggestion to exclude the cassation instance court in the above mentioned cases. It has been concluded in the discussions that the cassation instance court is not obligatory in particular cases because an appellate instance court plays a greater role in protection of rights of a person. Moreover, representatives of the Supreme Court of the Republic of

Latvia (hereinafter – the Supreme Court) have objected against the cassation instance court in administrative violation cases.

When assessing compliance of the Contested Norm with the Convent, it is necessary to take into account the fact that Article 13 thereof requires ensuring effective protection by public institutions; however, the Article does not require examination of the issue before a court. However, Article 6 (1) of the Convention establishes the duty to examine certain cases at the court; however, it does not require ensuring the possibility to appeal against a court decision before an appellate instance court or a cassation instance court. Nonetheless, Article 2 of Protocol No. 7 of the Convention provides that, under certain conditions, it is necessary to ensure the possibility to have his or her court decision be reviewed by a higher court in case if a person is convicted of a criminal offence.

The Saeima holds that the Contested Norm does comply with the above mentioned norms of the Convention because it establishes both, access to a court and the possibility to appeal against a court decision before an appellate instance court. Consequently, there is no need to assess whether the particular punishment is equal to conviction of a criminal offence.

According to the Saeima, arguments of Mr. B. M. Flick regarding non-compliance of the Contested Norm with Article 91 of the Satversme are ungrounded because the fine imposed on him is greater than the minimum fine established in Section 41 of the Criminal Law. For example, the European Court of Human Rights (hereinafter – the ECHR) has recognized that imminent consequences for a person, namely, administrative arrest are not grave enough to classify the offence as pertaining to the domain of criminal law.

Likewise, it is necessary to take into account the fact that consequences of conviction of a criminal offence are graver, whilst persons who are inflicted any of punishments established in the Criminal Law are established greater restrictions if compared to person who have been punished in accordance with norms of the LAVC. There is no reason to consider that the procedure of appeal in administrative violation ceases should be established based on the same principles applied in criminal cases. Consequently, the Contested Norm that establishes different attitude towards person does have a reasonable grounds and it does comply with Article 91 of the Satversme.

As to compliance of the Contested Norm with Article 92 of the Satversme, the Saeima indicates that the content of this Article is broader than the content of the particular norms of the Convention.

The Saeima shares the viewpoint of the Applicants that Article 92 of the Satversme does not require that appeal at three courts would be ensured in all kinds of proceedings. The Saeima holds that the Contested Norm does have a legitimate aim, namely, protection of the rights of other persons and ensuring security of the society. Appeal before a cassation instance court would be regarded as reasonable in cases where contribution must be made in uniform interpretation of law. Moreover, case-law of courts is formed not only by the Senate but also by courts of first instance and courts of appeal.

Before the date of coming into force of the Contested Norm, it was necessary to review the above mentioned cases also according to cassation proceedings, which has considerably prolonged the term of case adjudication and delayed execution of administrative punishment. This has resulted in infringement of interests of the society because a person having committed an administrative violation could avoid administrative liability for a considerable period of time.

In order to establish whether, by introducing restriction of appeal in administrative violation cases, the principle of proportionality has been observed, it is necessary to take into account the fact that proceedings could be shortened in some other way.

First, by preserving the cassation instance court and by considerably reducing terms for performing certain procedural activities. However, this could lead to worsening of procedural quality. Availability of the cassation instance court in particular cases would not compensate possible deficiencies that occur in the first two court instances due to cut of procedural terms.

Second, by selecting such a method of appeal that would envisage reviewing a case at the court of first instance and to appeal against its decision at the cassation instance court, the right of a person to transfer of obtained evidence for examination by a court would be substantially restricted because the cassation instance court does not deal with assessment of evidence.

Third, by preserving the possibility to appeal against a court decision according to cassation procedure, however, by also permitting applying Section 338.¹ of the APL, the

Senate would not be released from reviewing many issues uncharacteristic to it, and this would not ensure duly application of administrative punishments. Moreover, the above mentioned norm of the APL has not been established as a filter for deselecting ungrounded and uncharacteristic issues.

The Contested Norm does restrict access to one of the three court instances. However, such restriction does not influence adjudication quality of an administrative case. The legislator has established the regulatory framework included in the Contested Norm because it was the most appropriate and less restrictive measure with regard to interests of private persons.

Taking into account the aforesaid, the Saeima asks the Court to recognize the Contested Norm as compliant with Article 91 and Article 92 of the Satversme.

4. The Ministry of Justice informs the Constitutional Court that on 28 November 2007 it had formed a work group, the task of which was elaboration of amendments to the LAVC. The work group has made a conceptual agreement that administrative violation cases are, in fact, “small criminal cases”.

The work group has also considered the issue whether examination of administrative violation cases requires three court instances, or reviewing of cases by the court of first instance and an appellate instance court would suffice. Likewise, the work group has considered the possibility to preserve the cassation instance court in review of administrative violation cases, whilst the right to access to the cassation instance court should be considerably restricted.

Having supported the suggestion of the Supreme Court, the work group has conceptually agreed that it is permissible to review administrative violation cases only at two courts with the purpose to ensure expedient use of State resources.

The work group of the Ministry of Justice has concluded that no duty to ensure review of administrative violation cases in all three court instances follows from the Satversme or norms of international law. The group has also considered the issue whether persons would have been conferred any legitimate trust into the fact that all three court instances are available in the frameworks of administrative violation cases. Therefore the

Ministry of Justice has supplemented the submitted draft law by amendments to Section 286.¹⁴ of the LAVC.

The Ministry of Justice also indicates that statistical data regarding cases now being reviewed by the Senate do not allow making unequivocal conclusions that increase of cases reviewed and reduction of number of cases accumulated was related with the particular amendments to the Latvian Administrative Violations Code.

Arguments of the Ministry of Justice substantiating constitutionality of the Contested Norm are similar to those of the Saeima.

5. The Supreme Court indicates that in certain cases the first sentence of Article 92 of the Satversme guarantees the right to appeal against a decision of a court of first instance in an administrative case; however, the Article does not *per se* include the right to appeal against first instance court decisions according to cassation procedure. Consequently, the Contested Norm does not contradict the first sentence of Article 92 of the Satversme.

When assessing compliance of the Contested Norm with the principle of equality established in Article 91 of the Satversme, it is indicated that a person who is inflicted administrative punishment enjoy equal and comparable conditions if compared with a person convicted of a criminal offence. In both cases, a person is being inflicted a public law punishment for having committed an offence detrimental for the society. However, the legitimate aim of the Contested Norm is improvement of effectiveness of courts.

As to their character and punishment to be inflicted, administrative violations are less grave if compared with criminal offences. Consequently, restriction of rights of private persons in administrative violation cases, from the objective point of view, is lesser. As to their content, a great deal of administrative violation cases can be considered as very simple and insignificant cases or such cases that require fast final regulation of legal relations.

Moreover, it is necessary to take into account the fact that an appellate instance court is envisaged in all administrative violation cases, which would thus allow correcting mistakes made by the court of first instance.

In the light of the Convention, similarity between administrative violation cases and civil cases is too indistinct to hold that participants of administrative violation cases enjoy comparable conditions with participants of civil proceedings. Moreover, a considerable difference lies in the fact that, in administrative violation cases, there is no dispute between private persons. The parties of the dispute are the State and a person; like in administrative cases and criminal cases. It is appropriate and sufficient to compare regulatory framework of administrative violation cases with that of criminal cases and administrative cases. Consequently, the Supreme Court holds that the Contested Norm does not contradict the first sentence of Article 91 of the Satversme.

The Supreme Court also indicates that in each category of cases, administrative violation cases included, it is necessary to deal with fundamental questions regarding interpretation and application of norms. Consequently, it is not possible to maintain that review of the above mentioned cases according to cassation proceedings would be inexpedient. Based on Section 338.¹ of the APVC, the Senate can ensure, in the frameworks of formation of case-law, that insignificant cases are not reviewed according to cassation proceedings. The above mentioned norm is also used in administrative violation cases.

6. The summoned person, **the Ombudsman** holds that the Contested Norm does not contradict Article 91 and Article 92 of the Satversme. Arguments of the Ombudsman substantiating the above mentioned opinion are similar to those of the Saeima.

The Ombudsman adds that neither the Convention, nor Article 92 of the Satversme include an obligatory requirement to ensure the possibility to review each administrative violation case at a higher court. The notion “fair court” does not guarantee the right to have each such case be appealed against. This has also been concluded by the Constitutional Court. Consequently, review of such cases before a cassation instance court is not an obligatory part of the right to a fair court.

The Contested Norm does comply with human rights also in case if the right to address a cassation instance court is excluded from the law after lodging of the application before the Court. Such conclusion follows from Section 14 of the Law

“Amendments to the Latvian Administrative Violations Code” adopted on 9 October 2008.

7. The summoned person – **Pro-Rector of the Graduate School of Law Dr. iur. Mārtiņš Mits** indicates that the right to appeal against court decision pertain to the scope of the right to a fair court.

The Convention *expressis verbis* obligates the legislator to ensure the right to appeal in cases that can be considered as criminal cases as to their character. However, the Convention does not commit the legislator to ensure additional possibility to appeal against a court decision before a cassation instance court.

The administrative punishment inflicted on Mr. B. M. Flick can be regarded to conviction of a criminal offence in the meaning of Article 2 of Protocol No. 7 of the Convention. Consequently, the duty of the State that follows from the Convention is limited to an appellate instance court, which is ensured in administrative violation cases.

This particular case should be examined in the light of the right to access a court because the State has refused from a cassation instance court, which previously was established by law. The restriction of rights has been property established by law, whilst its aim, which is to ensure more effective case adjudication by reducing workload of courts, is a legitimate one.

Crossing out of a cassation instance court in administrative violation cases shall be regarded as a step back from the level of human rights protection in the frameworks of the right to a fair court. However, the core of the right to access to courts is not infringed because review of cases on their merits is ensured in both courts, that of first instance and that of appeal. Likewise, there is no reason to suggest that the legislator, within the frameworks of its scope of competence, would have failed to establish balance between reduction of workload for courts and ensuring of effective case adjudication, on the one hand, and the right to access to courts in administrative violation cases, on the other hand. Consequently, it can be concluded that the Contested Norm does comply with Article 92 of the Satversme, Article 6 of the Convention and Article 89 of the Satversme.

The situation when the law does not provide the right to appeal against a court decision before a cassation instance court shall be assessed differently from the situation when such right has been established initially and then denied during the course of proceedings. As to the second situation, it is necessary to assess two issues. First, whether the new or the old regulatory framework shall be applied; second, whether the new procedural norm ensures observance of the principle of equality.

As to procedural norms, one shall apply a general principle that they shall be applied as from the date of coming into force of it and shall be applied to all legal situations formed before coming into force of a particular norm. This principle is confirmed by section 8 (3) of the LAVC, whilst its lawfulness has been acknowledged by the ECHR in the context of a cassation instance court. This means that there is no reason to apply the legal regulatory framework that provided for a cassation instance court and was effective at the moment when an application was lodged before the administrative district court.

In order to establish whether the principle of equality has been infringed, first it is necessary to make sure whether a person who has been inflicted criminal punishment can be regarded as a person who has been held administratively liable. In the Latvian legal system, administrative violations are regulated differently than criminal offences. Assessment of danger caused to the society by administrative violations and criminal offences, respective legal record keeping and legal proceedings, as well as legal consequences thereof also differ. Consequently, it can be concluded that administratively punished and criminally punished persons do not enjoy comparable conditions also in respect to their right to appeal against court decision before a cassation instance court, and the principle of equality has not been breached.

Moreover, the second part of Article 2 of Paragraph 7 of the Convention confers the Member States broad freedom of action even in respect to the right of appeal in an appellate instance court. Article 6 of the Convention permits a Member State to derogate from rights previously guaranteed by law if the requirements of the Convention are met.

The argument mentioned in the reply of the Saeima that it is not necessary to assess whether the inflicted administrative punishment can be considered as conviction of criminal offence is grounded. Lack of punishment severity as such does not mean that such punishment cannot be considered as conviction of criminal offence. Therefore, both,

Article 2 of Protocol 7 of the Convent and Article 6 of the Convention shall be applicable to the case under review.

Moreover, the issue whether a particular administrative punishment is of private law nature pays a secondary role because this would help us establishing whether, in the light of the Convention, guarantees of a fair trial that follows from Article 6 of the convent shall be applicable to the present case.

Consequently, it can be concluded that the present regulatory framework on appeal in administrative violation cases does comply with Article 92 of the Satversme, Article 6 of the Convention and Article 89 of the Satversme.

8. The summoned person – Ms. Ieva Višķere, a candidate for a doctor’s degree of the Faculty of Law of the University of Latvia indicates that neither from the Satversme, nor from the Convention follows any duty of the State to ensure, all kinds of proceedings, the possibility to review cases in several court instances. Even if a cassation instance court is established, the State does not have the duty to ensure access to it in all kinds of cases.

Article 2 of Protocol No. 7 of the Convention establishes only the right to review evidence of guilt or a judgment in a higher court. However, the above mentioned legal norm does not confer persons the right to request review of a case before a cassation instance court if the State has already ensured the right to review a case before an appellate instance court.

In the context of the present case, it is necessary to assess whether the legislator, when adopting the Contested Norm, had to consider whether persons could have legitimate trust into the fact that such cases would be reviewed by three court instances. Procedural law is aimed at formation of subjective rights of persons. The aim of such rights is to establish legal procedure, according to which a person might exercise and protect his or her subjective rights, rather than to establish new independent subjective rights. Consequently, norms or procedural rights usually cannot confer rights having independent character pursuant to requirements of justice. Also the right to appeal against a decision according to cassation procedure shall not be regarded as independent subjective right because no one has the right to litigate “just for sake of litigation”.

Even if a person has lodged an application before an administrative district court when the Contested Norm was not yet adopted, it is necessary to take into account the regulatory framework that was effective at the time when a cassation complaint was submitted. If a person has not yet submitted a cassation complaint before coming into force of the Contested Norm, this means that he or she is conferred “the acquired right” to review of a case by a cassation instance court. Trust of a person into the fact that a case would be reviewed by a cassation court shall be considered as valid and protected only if the person would have already initiated cassation proceedings or had submitted a cassation complaint before coming into force of the Contested Norm.

When assessing whether the Contested Norm complies with the principle of equality, Ms. I. Viškere indicates that, with the purpose to ensure procedural economy and that of resources, the legislator has the right to differentiate procedures of appeal. However, the legislator does not have the right to act arbitrarily. First, the legislator has to ensure that the new model of appeal would comply with requirements of the right to a fair court. Second, the decision of the legislator must be substantiated by means of rational considerations regarding usefulness of the new model of appeal. Third, the choice of the legislator cannot cause any infringement of the principle of equality, namely, a similar model of appeal should be applied in similar cases. The principle of equality would be regarded as breached if broader possibilities of appeal would be established in rather simple and insignificant cases if compared to grave and important ones.

When selecting the model of appeal, the legislator should compare administrative violation cases with criminal cases. Although, in criminal proceedings, appeal is ensured before an appellate instance court and a cassation instance court, the procedure of appeal established in the Contested Norm is still justifiable. First, administrative violation cases are related with infringement of less important interests. Second, punishment inflicted in the frameworks of administrative violation cases is less grave than that in criminal cases. Third, administrative punishment does not cause that grave legal consequences for a person if compared with conviction of a criminal offence. Consequently, differences in the procedures of appeal in criminal cases and administrative violation cases are justifiable.

The Constitutional Court has established:

9. Three cases have been merged into the case No. 2010-01-01. In the present case, the Applicants ask the Constitutional Court to assess constitutionality of the Contested Norm. Two norms have been initiated on compliance of the Contested Norm with Article 92 of the Satversme, whilst one case – on compliance of the Contested Norm with both, Article 91 and Article 92 of the Satversme.

It can be concluded from the applications, the reply of the Saeima, as well as opinions of the summoned persons that the basic issues of the present case pertain to the scope of Article 92 of the Satversme and deal with one of the aspects of the right to a fair court, i.e. the right to access a court.

Consequently, the Constitutional Court will first assess compliance of the Contested Norm with Article 92 of the Satversme.

10. Although the Applicants have requested to assess compliance of the Contested Norm with Article 92 of the Satversme, it still follows from the applications that, in fact, compliance of the Contested Norm with the first sentence of Article 92 of the Satversme is contested, namely, “everyone has the right to defend his or her rights and lawful interests in a fair court”.

10.1. It has been established in the case-law of the Constitutional Court that the term “fair court” established in the first sentence of Article 92 of the Satversme means, among the rest, an adequate process, complying with the law-governed state, under which the case is being adjudicated (*see, e.g.: Judgment of 5 March 2002 by the Constitutional Court in the case No. 2001-10-01, Para 2 of the Concluding Part, and Judgment of 20 December 2006 in the case No. 2006-12-01, Para 9.3*). In this light, Article 92 of the Satversme commits the State to form a proper judicial system and adopt procedural norms, according to which the court would examine cases based on procedure ensuring fair and objective adjudication of cases (*see: Judgment of 17 May 2010 by the Constitutional Court in the case no. 2009-93-01, Para 8.2*). The right to a fair court

means that a person has the right to access to court. Namely, fairness of the court would be of no importance, if access to court were not ensured (*see, e.g.: judgment of 14 March 2006 by the Constitutional Court in the case No. 2005-18-01, Para 8*).

However, Article 92 of the Satversme does not provide for a duty of the State to provide for a possibility to appeal against a decision according to appellation procedures and cassation procedures in all cases (*see: judgment of 17 January 2002 by the Constitutional Court in the case No. 2001-08-01, Para 4, and Judgment of 2 June 2008 in the case No. 2007-22-01, Para 11*).

10.2. International liabilities of Latvia in the field of human rights influence interpretation of fundamental rights and the principle of the law-governed state. International norms of human rights and the practice of their application serve as means of interpretation on the level of constitutional law to determine the contents and scope of fundamental rights and the principle of the law-governed state, as far as it does not lead to decrease or limitation of fundamental rights included in the Satversme (*see: Judgment of 18 October 2007 by the Constitutional Court in the case No. 2007-03-01, Para 11*).

Article 6 of the convention provides, among the rest, that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. The ECHR has recognized that no duty of the State to ensure the possibility to review a case before several courts, including a cassation instance court, follows from the first part of Article 6 of the Convention. However, if the State has established the particular courts, their functioning must comply with requirements of Article 6 of the Convention in the aspect of their accessibility, fairness of procedures and other aspects of the right to a fair court (*see, e.g.: Judgment of the ECHR in the cases: Staroszczyk v. Poland, no. 59519/00, Para. 125, 22 March 2007; Dunayev v. Russia, No. 70142/01, Para. 34, 24 May 2007*). It has also been established in jurisprudence that Article 6 of the Convention does not commit the State to ensure the right to appeal if legal acts of the Member State does not establish such possibility (*see: Pieter van Dijk et. al (eds.) Theory and Practice of the European Convention on Human Rights, 4th ed., Intersentia, Antwerpen-Oxford, 2006, p. 564*].

The right to appeal has been established only in Article 2 of Protocol 7 of the Convention; namely, the first part of the above mentioned article establishes that

everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. Whilst the second part provides that this right may be subject to exceptions in regard to offences of a minor character.

The first part of Article 14 of the International Covenant on Civil and Political Rights (hereinafter – the Covenant) provides that all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. However, the fifth part of it provides that everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. Findings of the ECHR regarding interpretation of Article 6 of the Convention and Article 2 of Protocol No. 7 of the Convention are identical to that of the above mentioned article of the Covenant (*see: Nowak M. U.N. Covenant of Civil and Political Rights. CCPR Commentary. 2nd revised edition: Norbert Paul Engel Verlag, e.K., 2005, p. 318*).

Consequently, neither the Satversme, nor international legal acts binding on Latvia commit the State to ensure accessibility of a cassation instance court.

11. It has been indicated in the applications that the Saeima was not entitled to exclude review of cases before a cassation instance court in administrative violation cases. Such step of the legislator is non-proportional, and it infringes the fundamental rights of the Applicants. However, the Saeima indicates that adoption of the Contested Norm is proportional with the necessity to make functioning of court system more effective.

The Applicants had lodged their applications before the administrative court at the moment when the Contested Norm had not yet been adopted, namely, persons still had the right to appeal against decisions of the Regional Administrative Court before the Senate. In this aspect, exclusion of a cassation instance court from administrative violation cases shall be regarded as a step back from the level of human rights protection in the frameworks of the right to a fair court (*see: Opinion of Mr. M. Mits, case materials, Vol. 2, pp. 136*).

The Ministry of Justice has also indicated that reduction of number of courts is a restriction of the right to a fair court, which can only be permitted if such restriction has a legitimate aim and measures selected are proportional with the aim to be reached (*see: Letter of the Ministry of Justice of 12 May 2008 to the Saeima Legal Committee, case materials, Vol. 1, pp. 50*).

Consequently, the Contested Norm does restrict the right of the Applicants to access to courts.

12. Even though the Satversme does not directly envisage cases in which the right to a fair court might be restricted, the right is not absolute (*see: Judgment of 4 January 2005 by the Constitutional Court in the case No. 2004-16-01, Para 7.1*). The Satversme is a single aggregate body and the norms, incorporated into it, shall be interpreted systemically. Presumption that it is not allowed to determine any limitations to the rights envisaged in Article 92 of the Satversme for every particular person, would be at variance with both – the fundamental rights of other persons, guaranteed by the Satversme, and the other norms of the Satversme (*see: Judgment of 22 October 2002 by the Constitutional Court in the case No. 2002-04-03, Para 2 of the Concluding Part*). The right to access to courts can be restricted; however, it is necessary to verify whether the restriction is justifiable, namely, 1) whether it has been established by law; 2) whether it has a legitimate objective; 3) whether it is proportional (*see, e.g.: Judgment of 27 June 2003 by the Constitutional Court in the case No. 2003-04-01, Para 1.2 of the Concluding Part*).

12.1. The present case contains no materials questioning the fact that the Contested Norm would not have been adopted and proclaimed according to proper proceedings. The Applicants also *expressis verbis* indicate that the restriction has been established by law.

Consequently, the restriction of fundamental rights included in the Contested Norm has been established by law.

12.2. Circumstances and arguments why it is needed shall be the basis for any restriction of fundamental rights, namely, the restriction is determined because of significant interests – the legitimate aim (*see: Judgment of 22 December 2005 by the Constitutional Court in the case No. 2005-19-01, Para 9*).

When establishing restrictions of rights, this is the institution that adopted a contested act, which, in the present case, is the Saeima, to present and substantiate legitimate aim of such restrictions.

The Saeima substantiates adoption of the Contested Norm by the necessity to protect rights of other persons, as well as security of the society. Rights of other persons are protected in a way that the Contested Norm, by providing that the Regional Administrative Court shall be the final court instance in administrative violation cases, would ensure faster review of administrative cases and reduce workload of courts, particularly, the Senate. However, the reply contains no information regarding ways of protection of security of the society.

The Constitutional Court has already concluded that the notion "to protect" in the understanding of Article 92 of the Satversme does not mean the right to an unending court process, on the contrary – to the process, which has to be completed in a reasonable period of time with a stable, effective court decision (*see: Judgment of 5 March 2002 by the Constitutional Court in the case No. 2001-10-01, Para 5 of the Concluding Part*). The aim to ensure quick and effective review of cases by reducing workload of courts can be regarded as a legitimate aim in case of restrictions to the rights established in Article 92 of the Satversme (*see: Judgment of 17 January 2005 by the Constitutional Court in the case No. 2004-10-01, Para 8.4*). Likewise, the right to a fair court can be restricted with a view to ensure effectiveness of court functioning (*see, e.g.: Judgment of 4 January 2005 by the Constitutional Court in the case No. 2004-16-01, Para 8.2*).

It has also been indicated in the Conception for Making Administrative Proceedings more Effective that administrative legal proceedings, as to its nature and essence, is closely related with quick and effective review of cases. One of the reasons why cases are reviewed by administrative courts within considerable timeframe is heavy workload of courts. Moreover, preparation of a case for review thereof takes more time if compared with the same procedure at a court of general jurisdiction. This can be explained by the fact that, in civil proceedings, the court reviews cases based on the principle of competition, whilst, in administrative proceedings – in accordance with the principle of unbiased investigation [*see: Conception for Making Administrative Proceedings more Effective, pp. 4 – 6 of the informative part. <http://polsis.mk.gov.lv/view.do?id=2413>, consulted on 21 September 2010; the*

Conception was approved by Order of 5 December 2007 by the Cabinet of Ministers No. 775 (Latvijas Vēstnesis, 7 December 2007, No. 197)].

The Constitutional Court admits that faster and more effective review of cases by reducing workload of administrative courts is a legitimate objective, and it has been established with the purpose to fulfil requirements of Article 116 of the Satversme, which is protection of the rights of other persons.

The Constitutional Court has concluded that security of the society as a legitimate aim of regulatory framework can be related with protection of democratic regime of the State and it can be permitted generally in case if issues regarding threat to state and society security are dealt with (*see, e.g.: Judgment of 6 December 2004 by the Constitutional Court in the case No. 2004-14-01, Para 9.2, Judgment of 17 October 2005 in the case NO. 2005-07-01, Para 7.2, and Judgment of 11 April 2006 in the case No. 2005-24-01, Para 10*).

For the Saeima to be able to refer to security of the society as a legitimate aim of a legal regulatory framework, it would have to substantiate the present or potential link between adoption of a particular legal regulatory framework and strengthening of security of the society, prevention of threats to security or reduction thereof. Moreover, if compared to the requirement included in Article 116 of the Satversme, namely, “rights of other people”, the notion “public safety” as a legitimate aim of the legal regulatory framework has relatively stricter preconditions of application thereof.

In the present case, no substantiation to the fact that the Contested Norm would infringe or be related with public safety has been presented. The Constitutional Court has neither found such substantiation. Consequently, there is no reason for the Court to recognize security of the society as the legitimate aim of the Contested Norm.

12.3. In order to establish whether the restriction is proportional with the legitimate aim that the State wanted to achieve by establishing the present restriction, it is necessary to investigate whether a fair balance between restriction of the fundamental rights of persons and interests of the society is ensured.

The Constitutional court shares the viewpoint of Mr. M. Mits, namely, that formation of structure of the judicial system and optimization of functioning thereof is basically an issue of legal policy (*see: Opinion of Mr. M. Mits, case materials, Vol. 2,*

pp. 136). The adoption of the legal regulation on the citizenship issue has a political aspect, which indirectly defines the limits of the control realised by the Constitutional Court (*see, e.g.: Judgment of 20 January 2009 by the Constitutional Court in the case no. 2008-08-0306, Para 12, and Judgment of 13 May 2010 in the case No. 2009-94-01, Para 17*). Limits of field of competence of the Constitutional Court is established by the Constitutional Court Law that does not entitle the Court to assess political efficiency of actions of constitutional institutions of other power branches (*see: Judgment of 11 November 2005 by the Constitutional Court in the case No. 2005-08-01, Para 9*).

However, the Constitutional Court has to establish whether the legislator has or has not exceeded the limits of its freedom of action and whether it has or has not observed the principle of proportionality. Consequently, it is necessary to assess whether the Contested Norm ensures a fair balance between the right of the legislator to optimize functioning of courts, on the one hand, and the right of the Applicants to access to courts, on the other hand. To evaluate whether the legal norm, adopted by the legislator, complies with the proportionality principle one has to ascertain:

first, if the means, used by the legislator are suitable for achieving the legitimate objective;

second, if such an activity is required, i.e., if it is not possible to attain the objective by other means, which would less limit the rights and legal interests of an individual;

third, if the activity of the legislator is proportionate or adequate, i.e., if the benefit, obtained by the society, is greater than the loss incurred to the rights and lawful interests of an individual.

If, after evaluating the legal norm, it is acknowledged that it does not comply with even one of the above criteria, then it shall be considered as not being in conformity with the principle of proportionality and illegitimate (*see: Judgment of 19 March 2002 by the Constitutional Court in the case No. 2001-12-01, Para 3.1*).

13. Measures selected by the legislator are appropriate for reaching of the legitimate objective in case if the aim is reached by means of the particular regulatory framework.

13.1. The Constitutional Court holds that the Contested Norm must first of all be examined in conjunction with amendments to the LAVC introduced by 9 October 2008 Law “Amendments to the Latvian Administrative Violations Code”. The Contested norm is a part thereof; therefore it would not be reasonable to assess it separately from the above mentioned law.

It can be concluded from the case materials, that discussions, elaboration and adoption of the Contested Norm was closely related with amendments to Section 317 of the LAVC regarding procedure of execution of administrative arrests. Namely, on 10 October 2007, the Saeima Legal Committee heard the Ombudsman regarding non-compliance of the procedure of immediate execution of administrative arrest with Article 92 of the Satversme. In this particular and in subsequent meetings of the Saeima Legal Committee, it was concluded that procedure of execution of administrative arrest does not comply with the Satversme and the Convention; therefore it should be amended. It was also recognized that legal regulatory framework related to procedure of appeal against administrative arrest must ensure execution of punishment inflicted within a reasonable time frame (*see: Minutes of Saeima Legal Committee meeting of 10 October 2007, 12 February 2008 and 4 March 2008, case materials, Vol. 1, pp. 128 – 144*).

Due to this reason, on 2 April 2008, the Saeima Legal Committee commissioned the Ministry of Justice elaboration of amendments to the LAVC by establishing that decisions in administrative violation cases, wherein administrative arrest is imposed, would be transferred to regional courts of general jurisdiction, and decisions of the latter would be final and not subject to appeal.

However, in the letter of 19 May 2008 by the Supreme Court to the Saeima Legal Commission, it has been indicated that the legal regulatory framework regarding refusal from the possibility to appeal against decisions of regional courts of general jurisdictions, wherein administrative arrest is imposed, would be applicable also to other kinds of administrative violation cases. Otherwise, this would cause a situation when a person could appeal against imposition of administrative arrest only before an appellate instance court; whilst any other punishment for an administrative violation envisaging a lesser punishment could be appealed against in all instances up to the Senate. Therefore, it is necessary to establish that decisions of an appellate instance court (notably, that of Regional Administrative Court) in other kinds of administrative violation cases are final.

The Supreme Court asks the Saeima Legal Commission to establish the following wording of Section 286.¹⁴ of the LAVC: “Appellate instance court judgment shall not be subject to appeal and shall come into force on the date of drafting” (*see: Letter of 19 May 2008 by the Supreme Court, case materials, Vol. 1, pp. 47*).

The opinion of the Supreme Court was heard by the Saeima Legal Committee, and the suggested wording of the Contested Norm was supported at the meeting of 21 May 2008 (*see: Minutes of the meeting of 21 May 2008 of the Saeima Legal Committee, case materials, Vol. 1, pp. 153*). Then the Contested Norm was adopted and came into force in the above mentioned wording.

Consequently, it can be concluded that the Contested Norm first of all ensured uniform legal regulatory framework regarding appeal in all administrative violation cases. Namely, this prevented the situation when in cases, wherein administrative arrest is imposed, a person would have less right to appeal if compared with other kinds of administrative cases envisaging lesser punishment. However, the aforesaid does not mean that it would be reasonable to recognize the Contested Norm as non-appropriate for reaching of the legitimate aim.

13.2. It can be concluded from the information provided by the Supreme Court that, before 1 January 2009, administrative violation cases constituted a considerable part of all cases reviewed by the Senate according to cassation procedure. For instance, about 20 percent of the entire amount of cases was administrative cases. Likewise, in 2008, 58 percent of refusals to initiate cassation proceedings concerned administrative violation cases in particular (*see: Information furnished by the Supreme Court, case materials, Vol. 1, pp. 180*).

It can also be concluded from information received from the Court Administration that in the period from 2005 to 2008, the number of such administrative violation cases that were appealed against according to cassation proceedings increased more than four-fold (*see: Information furnished by the Court Administration, case materials, Vol. 1, pp. 178*). Consequently, it can be concluded that administrative violation cases constituted a considerable portion of all cases reviewed by the Senate.

Based on the Contested Norm, the Senate was fully released from the duty to review cassation complaints in administrative violation cases, and the Senate was no

more competent to review cases of the above mentioned category. Consequently, it is possible to establish causal relationship between legal consequences caused by the Contested Norm and the legitimate aim indicated by the Saeima, which is reduction of workload of cassation instance court and ensuring of timely final regulation of legal relations in administrative violation cases.

Consequently, measures selected by the legislator are appropriate for reaching of the legitimate aim.

14. The restriction of fundamental rights determined in the Contested Norm is proportionate only if there are no other means, which are as effectual and by choosing them the fundamental rights will be restricted in a lesser degree. When assessing whether the legitimate aim may be reached in a more lenient way, the Constitutional Court takes into consideration that a more lenient means are not any means, but only such by which the aim may be reached in the same quality (*see: Judgment of 13 May 2005 by the Constitutional Court in the case No. 2004-18-0106, Para 19*).

It has been indicated in the applications that the right of Council of Senators to refuse initiating cassation proceedings, as established in Section 338.¹ of the APL, could be regarded as a more lenient measure. Thus the legislator has created mechanism for reducing workload of the Senate by cancelling review of ungrounded complaints. Likewise, the right of the senate to review cases in writing could be regarded as a more lenient measure, this practice being common at the Criminal Case Department of the Senate.

The Constitutional Court does not share the above mentioned conclusion and admits that measures suggested by the Applicants cannot be regarded as more lenient ones. Namely, a more lenient measure would exist in case if the legislator could regulate infringed legal relations in a different way, for example, by providing for a different wording of the Contested Norm, which would thus infringe the rights of the Applicants at a lesser extent but would also reach the legitimate aim established by the legislator at the same quality.

The solution suggested by the Applicants applies to preservation of such *status quo* that existed before adoption of the Contested Norm. Exercise of the rights referred to

in Section 338.¹ of the APL in administrative violation cases did not solve the problem of workload for the Senate because, for a panel to be able to adopt such decision, it in any case had to make assessment of respective case and cassation complaint. The Senate had to investigate, among the rest, whether any infringements in establishing the facts or examining evidence have been committed. Moreover, in case if the reason for refusal to initiate cassation proceedings referred to in Section 338.¹ is not established, the case would in any case be reviewed by the Senate. Also, when passing to review of administrative violation cases in writing, workload of the Senate would be reduced only partially. Specific character of work of the Senate requires a comprehensive examination and understanding of each case, which is a time-consuming process (*see: Conception for Making Administrative Proceedings more Effective, pp. 6 of the informative part*).

Consequently, the legitimate aim would not be reached at the same quality if the legislator would have preserved application of Section 338.¹ of the APL in administrative violation cases or would have conferred the Senate the right to review cases in writing.

Moreover, it can be concluded from documents on elaboration of the Contested Norm that the issue regarding exercise of the rights of the Council of Senators was also considered by the Saeima Legal Committee. It is indicated in the documents that, in the majority of administrative violation cases, applicants ask to assess questions that do not fall within the jurisdiction of a cassation instance court. Consequently, cassation complaints already submitted are recognized as non-compliant with requirements of law. The representative of the Supreme Court also admitted that persons submitting cassation complaints in the frameworks of an administrative violation case generally ask examination of evidence (*see: Minutes of the meeting of 21 May 2008 of the Saeima Legal Committee, case materials, Vol. 1, o. 153*).

The Constitutional Court concludes that adoption of the Contested Norm was indispensable because were no other equally effective solutions that would allow reach the legitimate aim at the same quality.

15. When assessing compliance of a restriction of the fundamental rights with legitimate aim, it is necessary to investigate whether less advantageous consequences caused to a person in the result of restriction of his or her fundamental rights is or not

greater than benefit gained in general by the society due to the restriction. Namely, the Constitutional Court has to establish interests to be balanced in the case under review and decide, which of the parties should be granted priority.

15.1. The legislator substantiates adoption of the Contested Norm by the necessity to make functioning of the Senate more effective and relieve it from reviewing insignificant cases. Consequently, in the present case, interests to be balanced are accessibility of cassation instance court in administrative violation cases and making of court system functioning more effective.

A cassation instance court fulfils a special function that determines characteristic features of legal proceedings lead by this court instance. A particular feature of a cassation instance is the fact that this is these are political legal interests rather than interests of parties that are protected enough when case is examined on its merits if first two court instances that plays the decisive role. A cassation instance court reviews only *quaestiones iuris*, namely, issues regarding correct application of material or procedural norms. One of the aims of cassation instance court is to facilitate uniform interpretation and application of legal norms in the entire State. Submitting an appeal before a cassation instance court is admissible only in cases that could contribute into uniform interpretation of law (*see: Judgment of 27 June 2003 by the Constitutional Court in the case No. 2003-04-01, Para 2.1 of the Concluding Part*).

15.2. The majority of administrative violation cases are not complex or they do not require quick final ruling. Moreover, an appellate instance court is established in all administrative violation cases, it being able to correct mistakes committed by a court of first instance. Moreover, a person has the duty to act, within limits, in a way that a court of the first instance could already ensure his or her rights taking into account specific features of particular legal proceedings.

It can be concluded from the statistical data provided by the Court Administration that, in one year, several tens of persons have taken the advantage to address the Senate in the frameworks of administrative violation cases. For instance, 2005, a cassation instance courts received 19 complaints, in 2006 – 34 complaints, in 2007 – 66 complaints, whilst in 2008 – 86 complaints in the frameworks of administrative violation cases. To compare the number of decisions adopted by appellate instance courts in the

frameworks of administrative violation cases with the number of judgments repealed by the Senate, it is possible to conclude that stability of the Regional Administrative Court was rather high (*see: Information provided by the Court Administration, case materials, Vol. 1, pp. 178 and 179*).

On the one hand, the Contested Norm denies persons the right to access to a cassation instance court in the frameworks of any administrative violation case. On the other hand, infringement of the rights of persons in respect to access to court is considerably limited by the fact that any administrative violation case, in fact, based on individual initiative and without the duty to pay a State tax, can be reviewed at two court instances. The statistical data neither show that an appellate instance court could establish such relevant deficiencies in review procedure of administrative violation cases, which would give grounds to question capacity of courts to protect the fundamental rights of persons and ensure the right to a fair court.

It is possible to understand the will of a person to have his or her substantial issues reviewed by as much court instances as possible in case if a decision of the court of first instance is unfavourable for the person. However, this will is contrasted by objective possibilities of the State to ensure effective functioning of court system taking into account rights of other persons and resources available. There is no reason for the Constitutional Court to suggest that, by adopting the Contested Norm, the legislator would have taken measures, in arbitrary or ungrounded manner, in favour of interests of efficiency of court functioning and restricted, in a non-proportional manner, rights of a person to access to courts.

It cannot be considered that a person would have any subjective right following from the *Satversme* to request legislator adopting or preserving a particular legal regulatory advantageous for a person by thus ensuring adjudication of a case according to desirable procedure. From the viewpoint of the Constitution, duties of the legislator exceed only insofar as compliance of legal regulatory framework with legal requirements of norms of a higher force is ensured, the latter first of all being requirements of norms of the *Satversme*.

Consequently, it would not be reasonable to assess the Contested Norm only in the context of restriction of the rights established in Article 92 of the *Satversme*. Making of

functioning of courts more effective, in the frameworks of which the Contested Norm was adopted, is causation of the duty of the State to ensure protection of the fundamental rights of other persons and ensuring of optimal access to courts to other participants of legal proceedings.

15.3. The Applicants indicate that the Contested Norm prohibits the Senate forming case-law and ensure uniform application of legal norms in administrative violation cases. It has also been admitted in the reply of the Saeima that appeal against decision before a cassation instance court is justifiable in cases that could contribute into uniform interpretation of law.

Information provided by the Senate show that, in administrative violation cases, the Senate has solved a range of material issues regarding interpretation of legal norms (*see: Information furnished by the Supreme Court, case materials, Vol. 1, pp. 186 and 187*).

The Constitutional Court admits that a uniform case-law is substantial from the point of view of the right to a fair court. Courts have the duty to adjudicate similar cases in a similar manner, whilst different cases – differently based on the principle of equality. The ECHR has already admitted that a State infringes the right to a fair court guaranteed in article 6 of the Convention if its supreme court has failed to ensure uniformity of case-law and there are no mechanisms that would ensure uniformity of case-law, or if no such mechanisms have been applied (*see: Judgment of the ECHR in the case Jordan Jordanov et autres c. Bulgarie, arrêt du 2 juillet 2009, requête n° 23530/02, paragraphes 48 à 53*).

In the particular case, the Constitutional Court does not have the reason to suggest that the consideration indicated by the Applicant regarding uniform interpretation of legal norms would serve as grounds for questioning constitutionality of the Contested Norm. Namely, this argument is abstract and it is not connected with the present case. It neither follows from constitutional complaints or decisions of courts of general jurisdiction attached to the case materials that, in any of decisions adopted in relation to the Applicants, legal norms would have been applied differently from the procedure applied in other similar cases. A representative of the Supreme Court has indicated at the Saeima Legal Committee meeting that, in administrative violation cases, the Regional

Administrative Court interprets legal norms well enough (*see: Minutes of the meeting of 21 May 2008 by the Saeima Legal Committee, case materials, Vol. 1, pp. 153*).

The Constitutional Court concludes that unfavourable legal consequences caused by the Contested Norm are lesser than the benefit gained by the society after adoption of the Contested Norm, and it restricts the rights of the Applicants in a proportional manner.

Consequently, the Contested Norm is adequate for reaching of the legitimate objective and therefore complies with the principle of proportionality and the first sentence of Article 92 of the Satversme.

16. The Saeima adopted the Contested Norm on 9 February 2008, and it came into force on 1 January 2009. Consequently, norms that provided for the right to a cassation instance court in category of administrative violation cases were effective in relation to Applicants at the moment when administrative punishments were inflicted, as well as at the moment when they lodged applications before the administrative district court. However, when judgments of the Regional Administrative Court were adopted, lodging of a cassation complaint, pursuant to the Contested Norm, was not allowed for almost one year. Judgments of the Regional Administrative Court in relation to the Applicants were adopted on 16 and 26 November 2009, as well as on 9 February 2010 (*see: case materials, Vol. 1, pp. 17 – 28, Vol. 2, pp. 72 – 81, and pp. 108-111*).

Consequently, it is necessary to investigate, whether the legislator, when adopting the Contested Norm, had to take into account trust of the Applicants into the fact that their cases would be reviewed by three court instances, and whether such trust could emerge when proceedings were initiated at the court of first instance.

Section 8 (3) of the LAVC provides that legal proceedings regarding administrative violations shall be conducted in accordance with the law, which was in force at the time and place of the committing of the violation. The fundamental principle of intertemporal application of legal norms is enshrined in the above mentioned norm, this principle envisaging immediate application of legal norms. However, Para 12 of Transitional Provisions of the Code provides: If the Senate has initiated cassation proceedings before 1 January 2009, it shall continue the review pursuant to provisions of the APL. Case-law of the Senate and interpretation of the above mentioned norm proves

its most lenient application possible in relation to the Applicants. Namely, *the Senate has recognized that cassation complaints submitted before coming into force of the Contested Norm must be reviewed also after coming into force of the Contested Norm unless the judgment of the appellate instance court was adopted before coming into force of the Contested Norm (see: Opinion of Ms. Višķere, case materials, Vol. 2, pp. 7).*

Lawfulness of the principle of immediate application of a new procedural law at a cassation instance court was also recognized by the ECHR by indicating that the above mentioned principle, unless the law establishes exceptions, is one of the most common principles of procedural rights. However, restriction of the right to submit a cassation complaint shall be regarded as legitimate when preventing review of insignificant cases at a cassation instance court (*see: Judgment of the ECHR in the case Brualla Gómez de la Torre v. Spain, judgment of 19 December 1997, Reports 1997-VIII, p. 2956, paras. 35, 36*). Although the ECHR provided the above mentioned interpretation in a case, wherein restriction of access to a cassation instance court was assessed rather than liquidation of the above mentioned instance, the applicant of the case still was fully deprived of the right to submit a cassation complaint, provided that a appellate instance court stated the right of the applicant to submit the complaint. Consequently, the Constitutional Court holds that differences between the case under review and that of the ECHR, namely, *Brualla Gómez de la Torre v. Spain*, are not that substantial to prohibit the Constitutional Court applying, in the present case, conclusions made by the ECHR.

It has been concluded in legal literature that the principle of immediate application of a new regulatory framework shall apply if, first, the new regulatory framework applies to a court instance that has not yet been initiated proceedings at the moment when the new regulatory framework comes into affect or, second, the new regulatory framework applies to a non-instituted instance in proceedings already initiated. Moreover, from intertemporal point of view, a cassation instance court is regarded as a new procedural phase, and therefore the legal norm that is effective at the moment of submitting a cassation complaint shall be applied to the procedure for submitting a cassation complaint and review of it (*see: Rudevskā B. Procesuālā likuma intertemporālā piemērošana administratīvajā un civilprocesā. Jurista Vārds, Nr. 33, 14 August 2007, pp. 11 and 16*). The principle of immediate application of a new procedural law is a common principle of procedural rights (*see: Opinion of Mr. M. Mits, case materials, Vol. 2, pp. 137*).

As to persons having initiated proceedings in a cassation instance court, namely, they have submitted a cassation complaint, they should be given the right to have their case be reviewed by a cassation instance court after coming into force of the new legal norm, which does not establish the possibility to have one's case be reviewed by a cassation instance court. However, persons who have not yet submitted a cassation complaint before coming into force of the Contested Norm, shall not be conferred the right to have their case be reviewed by a cassation instance court.

Consequently, the right to have one's case be reviewed at a cassation instance court shall be admitted in relation to the Applicants *only in case if their judgments of the Regional Administrative Court were adopted before coming into force of the Contested Norm.*

The legal regulatory framework that was effective at the time when applications were lodged before the administrative district court did not give the Applicants any grounds to trust into the fact that the regulatory framework effective at that time would not be amended.

17. The present case has also been initiated based on a constitutional complaint of Mr. B. M. Flick regarding compliance of the Contested Norm with Article 91 of the Satversme. Although the application contains a request to assess compliance of the Contested Norm with the entire Article 91 of the Satversme, it still follows from the application that, in fact, compliance of the norm with the first sentence of Article 91 of the Satversme is contested, namely, that "all human beings in Latvia shall be equal before the law and the courts".

When interpreting Article 91 of the Satversme, the Constitutional Court has recognized in its case-law that the legislator has incorporated two mutually closely connected principles in Article 91 of the Satversme: the equality principle – in the first sentence and the principle of prohibition of discrimination – in the second sentence (*see: Judgment of 14 September 2005 by the Constitutional Court in the case No. 2005-02-0106, Para 9.2*).

The principle of equality forbids to the State institutions passing such norms, which without a reasonable ground permit a differentiated attitude to persons, who are in equal

and under certain criteria comparable circumstances. The principle of equality permits and even requires a differentiated attitude towards persons, who are in different circumstances as well as permits a differentiated attitude towards persons, who are in equal circumstances, if there is an objective and reasonable basis for it (*see: Judgment of 3 April 2001 by the Constitutional Court in the case No. 2000-07-0409, Para 1 of the Concluding Part, and Judgment of 11 November 2005 in the case No. 2005-08-01, Para 5*).

The principle of equality shall guarantee the existence of unified legal procedure. Namely, its task is to ensure that the demand of the law-governed state of an all-embracing influence of the law on all persons, as well as securing of applying the law without any privileges is realized. It guarantees complete effect of the law, objectivity and impassiveness of its application as well as the fact that nobody is allowed not to observe the instructions of the law (*see: Judgment of 26 June 2001 by the Constitutional Court in the case No. 2005-02-0106, Para 9.1*). However, such uniformity of legal procedure does not imply levelling because “equality allows a differentiated approach, if it can be justified in a democratic society” (*see: Judgment of 26 June 2001 by the Constitutional Court in the case No. 2001-02-0106, Para 4 of the concluding part*).

Consequently, after having assessed compliance of the Contested Norm with the first sentence of Article 91 of the Satversme, it is necessary to investigate, whether, first, persons (groups of persons) enjoy equal and comparable conditions; second, whether the contested norm provides for a different attitude; third, whether the different attitude has an objective and reasonable grounds, namely, whether it has a legitimate objective and whether the principle of proportionality has been observed.

Mr. B. M. Flick indicates that a person, who has been inflicted administrative punishment, enjoys equal and comparable conditions if compared to a person who has been imposed criminal punishment and a person who is a party to civil proceedings, as well as a person who is an application in administrative proceedings. The Criminal Procedure law, the CPL and the APL confer these persons the right to have their case be reviewed by a cassation instance court. Consequently, there is no reason to deny, in the Contested Norm, the right to access to a cassation instance court for those persons who have already been inflicted administrative punishment.

It can be concluded from the reply of the Saeima that a person who has been inflicted administrative punishment enjoy comparable circumstances if compared with a person who has been imposed any of punishments established in the Criminal Law. However, a different attitude does have reasonable grounds.

The Constitutional Court has concluded in its case-law that the legislator has separated from the administrative proceedings in court a special type – the procedure for reviewing matters of administrative violations (*see: Judgment of 4 January 2005 by the Constitutional Court in the case No. 2004-16-01, Para 12*). The work group formed for making administrative procedure more effective has concluded that administrative violation cases are not, in fact, subjects of administrative procedure (*see: Conception for Making Administrative Proceedings more Effective, pp. 3 of the informative part*).

The first sentence of Article 92 of the Satversme does not regulate what kinds of cases should be reviewed according to what kind of proceedings (administrative proceedings, civil proceedings or criminal proceedings). When adopting respective procedural laws, the legislator enjoys freedom of action when establishing the kind of proceedings and kinds of cases to be reviewed according to particular proceedings. The legislator has the right to establish that lawfulness and usefulness of an administrative act would be assessed in three instances of an administrative court, which is the great majority of instances. However, the legislator also has the right to reduce number of court instances, for example, by establishing that decisions adopted according to the procedure established in Section 213 of the LAVC by a district (city) court judge regarding inflicting of administrative punishment can be appealed against only before the Regional administrative Court (*see: Judgment of 14 March 2006 by the Constitutional Court in the case No. 2005-18-01, Para 16.3*). Likewise, the legislator can also envisage categories of administrative violation cases, which are allowed of no appeal (*see: Judgment of 20 June 2002 by the Constitutional Court in the case No. 2001-17-0106, Para 6.3 of the Concluding Part*).

However, the freedom of action of the legislator is not absolute; namely, its boundaries are determined by efficiency considerations and the essence of the right to a fair court. It is also necessary to take into consideration that the kind of the process, in which respective cases are reviewed, shall not deny a person the right to a fair court on its essence or substantially restrict the right of a person to protect his/her rights (*see:*

Judgment of 14 March 2006 by the Constitutional Court in the case No. 2005-18-01, Para 16.2).

The Constitutional Court holds that the above mentioned conclusions can be applied when interpreting the first sentence of Article 91 of the Satversme.

The legislator enjoys a broad freedom of action when adopting procedural laws and establishing categories of cases that are reviewed in respective proceedings, as well as to decide on procedure of review of different categories of cases. Likewise, the legislator has the right to establish the procedure for review of cases, including decisions and rulings that would comply with the fundamental rights. Establishment of mechanical and uniform mechanism for review of all categories of cases would not be possible or preferable. Legal proceedings have objective differences, including those that are related with infringed legal relations, initiation of proceedings, duty to provide evidence, specialization of a court, or application of interim preventive means.

Acceptance of interpretation of the first sentence of Article 91 of the Satversme suggested by the Applicant would lead to unreasonable levelling of legal regulatory framework of procedural law, as well as would deny the legislator the possibility to establish reasonable differences in legal regulatory framework of legal proceedings. By comparing legal regulatory framework of different legal proceedings, it would certainly be possible to find several features or analogous characteristics common to all proceedings. However, this would not serve as grounds for a request of a person to fully equalize all these legal proceedings by establishing, for instance, identical right of participants of all kinds of legal proceedings to appeal against court decisions.

Different cases are reviewed based on procedures established by the Criminal Procedure law, the CPL, the APL and the LAVC when the court assesses different legal relations. Likewise, procedure of particular legal proceedings, as well as actions of the subject of particular procedural relations, them exercising their procedural rights or fulfilling procedural duties, is regulated in a different way. The legislator also has the right to provide different regulatory framework for the limits of procedural rights for participants of different kinds of proceedings.

It would not be reasonable to hold that a person who has been inflicted administrative punishment would enjoy equal and comparable conditions in relation to the

right to appeal against a court decision before a cassation instance court if compared to a person who has been convicted of a criminal offence, or a person who is a party to civil proceedings, or a person who is an applicant in administrative proceedings. Assessment of the above mentioned legal relations by mutually comparing participants of the different legal relations cannot be done in the context of the first sentence of Article 91 of the Satversme. Consequently, the legislator shall have the right to establish a different regulatory framework in each kind of legal proceedings in relation to the right to appeal against court decisions before a cassation instance court.

Consequently, the Contested Norm does comply with the first sentence of Article 91 of the Satversme.

The Constitutional Court

Based on Article 30 – 32 of the Satversme of the Republic of Latvia,

h o l d s :

Section 286.¹⁴ of the Latvian Administrative Violations Code does comply with Article 91 and Article 92 of the Satversme of the Republic of Latvia.

The Judgment is final and not subject to appeal.

The Judgment shall come into effect on the date of publishing it.

Presiding Judge

G. Kūtris