



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT ON BEHALF OF THE REPUBLIC OF LATVIA

in Riga, May 16, 2007,

in Case No. 2006-42-01

The Republic of Latvia Constitutional Court, composed of the Chairman of the Court session Gunārs Kūtris, as well as the justices Kaspars Balodis, Aija Branta, Juris Jelāgins, Uldis Ķinis and Viktors Skudra,

under Section 85 of the Constitution of the Republic of Latvia and Item 1 of Article 16, Item 3 of the first part of Article 17 and Article 28¹ of the Constitutional Court Law,

having regard to the Application regarding initiation of proceedings of eleven deputies of the 9th Saeima of the Republic of Latvia - Vladimirs Buzajevs, Valērijs Buhvalovs, Juris Sokolovskis, Jakovs Pliners, Nikolajs Kabanovs, Miroslavs Mitrofanovs, Valērijs Agešins, Ivans Ribakovs, Jānis Tutins, Aleksejs Vidavskis, Ivans Klementjevs, Sergejs Mirskis, Sergejs Fjodorovs, Oļegs Deņisovs, Aleksandrs Golubovs, Artūrs Rubiks, Jānis Urbanovičs, Nils Ušakovs, Sergejs Dolgopolovs and Vitālijs Orlovs (hereinafter – Submitter of the Application)

on April 17, 2007 at the Court session in writing examined the case

“On the Compliance of the Third Part of Section 24 of the Strike Law with Section 108 of the Satversme (Constitution) of the Republic of Latvia”.

The Constitutional Court has established:

1. On April 23, 1998, the Saeima (the Parliament) passed the Strike Law. The third part of Section 24 of the Law provides: “If an application regarding the acknowledging of the declaration of a strike to be illegal has been submitted to the court by the date of the commencement of the strike specified in the declaration of the strike, the strike may not be commenced until the judgment of the court comes into effect” (hereinafter – the contested provision).

2. The Submitter of the Application holds that the contested provision is in conflict with Section 108 of the Satversme (Constitution) of the Republic of Latvia (hereinafter – the Satversme).

It is indicated in the Application that the contested provision restricts the right of employed persons to strike, provided for by Section 108 of the Satversme thus making implementation of the right dependent on action of an employer. The restriction manifests itself in cases if an application regarding the acknowledging of the declaration of a strike to be illegal has been submitted to the court by the date of the commencement of the strike specified in the declaration of the strike, the strike may not be commenced until the judgment of the court comes into effect.

The Submitter of the Application agrees that in separate cases, under Section 116 of the Satversme, the State has right to restrict the basic rights guaranteed by the Satversme, among them right to strike. The right can be restricted only in cases established in the Satversme: first, if the restriction is provided by law, second, if the restriction complies with the legitimate objective that the State wants to achieve by the restriction, and, third, if the principle of proportionality is observed.

The Submitter of the Application emphasizes that the contested provision is in conflict with the principle of proportionality, since there exist other, more lenient measures to achieve the legitimate objective, e.g., simplification of the assessment

procedure of legitimacy of the declaration of a strike by establishing adjudication of this kind of applications within a period of three days or letting the Court to discontinue an unlawful strike according to a grounded request of an employer. Thus it is possible to prevent blocking of strikes by ungrounded application of an employer.

The contested provision established many possibilities for employers to delay of commencement of a strike. Hence the restriction of rights of employed persons can not be proportionate with the benefit that the society in general gains from the restriction.

After acquainting themselves with the materials of the case, the Submitter of the Application emphasized that Chapter 48 of the Civil Procedure Law, which regulates the order of adjudication of legitimacy of the declaration of a strike, does not guarantee *per se* adjudication of the case within a period of 10 days. The Submitter of the Application holds that adjudication of the case can be retarded, whereby the right of employed persons to strike are non-proportionally restricted.

3. The institution that passed the contested act – the Saeima of the Republic of Latvia (hereinafter – the Saeima) – in its response letter asks the Constitutional Court to acknowledge the Application as ungrounded, but the contested provision – as being in compliance with the first sentence of Section 108 of the Satversme.

The Saeima indicated that one of the ways to solve collective disputes is strike. Employed persons are economically dependent on the employer, and an objective unequally prevails in the relations between employees and the employer, which is why the employer, when taking advantage of his/her possibilities, may not take into account the interests of employees. Employees in this situation may use the right to strike established in Section 108 of the Satversme in order to equalize the power proportion and make the employer to observe the grounded and protected interests of employees. But the right of employed persons to strike are also restricted

by rights and legal interests of other person – the employee, since productivity and performance of an enterprise thus is encumbered, and the employer undergoes losses.

The Saeima agrees that the contested provision restricts the right to strike established in the first sentence of Section 108 of the Satversme for it prohibits commencement of a strike until the court adjudicates the application of the employer regarding the acknowledging of the declaration of a strike to be illegal. The Saeima indicated that in the basis of each restriction of basic rights of a person there are circumstances and arguments why the restriction is necessary. Hence the restriction is established for the purpose of important interests – a legitimate objective.

The response letter bears a viewpoint that the restriction is established according to a law – the contested provision – passed in an appropriate order. It has a legitimate objective – to protect the rights of other persons by achieving a corresponding balance of rights and interests of employees and the employer.

The Saeima holds that the State is responsible for creation of appropriate legal instruments for provision of a legitimate objective. But they can not be in conflict with the principle of proportionality, which requires that a reasonable balance of interests of a person and other persons, as well as those of the State and the society are observed in cases when the public power restricts rights and legal interests of a person.

The Saeima indicates that the Submitter of the Application offers an alternative solution. At the same time the Saeima takes notice of the fact that the Submitter of the Application interprets the Strike Law isolated and has not acquainted with all laws that regulate acknowledging of a strike as illegal. The contested provision provides only for the following: if an application regarding the acknowledging of the declaration of a strike to be illegal has been submitted to the court by the date of the commencement of the strike specified in the declaration of the strike, the strike may not be commenced until the judgment of the court comes into effect.

It is indicated in the response letter that the Strike Law does not establish a special adjudication procedure, according to which the Court shall decide on acknowledgment of the application of the employee to be illegal. This adjudication

procedure is regulated in details by the Civil Procedure Law, Item 13 of Section 215 of which provides that cases regarding declaration of a strike or an application to strike as being unlawful shall be adjudicated in accordance with special adjudication procedures, whereas Chapter 48 of the Civil Procedure Law provides for the order of proceedings in such cases. Under the first part of Section 392 of the Civil Procedure Law, the court shall adjudicate an application within 10 days of the day when it is received, the second part of Section 394 of the same Law provides that the court judgment shall be final and shall not be subject to appeal by way of appellate procedures.

The Saeima holds that the proposition of the Submitter of the Application to introduce a similar order of repealing an administrative act is ungrounded due to several reasons.

First, the Saeima indicates that this order can not and should not be applied, since the application is adjudicated within 10 days. For instance, under the sixth part of Section 185 of the Administrative Procedure Law, the Court shall examine the application regarding the setting aside of an administrative act within ten days. The first part of Section 392 of the Civil Procedure Law also provides that the court shall adjudicate the application of an employer within 10 days of the day. Second, the institution of setting aside of an administrative act has a different meaning – to ensure a temporary protection of a person against unfavourable decision of the institution during the period of examination of the case, e.g. to suspend payment of the fine due to unpaid tax. Whereas, if there is some disagreement concerning lawfulness of a strike, the final legal act is needed instead of a temporary protection by court – a decision on discontinuation of a strike – on the day when the strike is initiated. Third, a strike of one of ways of solving a collective interest dispute is regulated within the frameworks of the Civil Procedure Law. For assessment of its regulation, no institutions that are included in the administrative procedure should be employed.

The Saeima holds that the present normative acts deal with the issues indicated by the Submitter of the Application, and it also provides for a shortened term of

adjudication of an application and for appealing against a judgment (which shall be immediately executed).

According to the Saeima, the contested provision complies with the principle of proportionality, since it provides for handing over the issue on the balance of rights and interests of employees and the employer to a competent and independent institution, a court, for its examination. The Saeima indicates that a strike is not an aim in itself for employees to achieve observance of their interests in relationships with the employer, the rights and interests of which in the case of a strike could be considerably affected. Hence a strike is the last and the utmost measure of solving legal conflicts of work. The Saeima holds that delay of a strike not more than for 10 days due to legal proceedings is not a violation of the first sentence of Section 108 of the Satversme.

4. Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) indicates in its statement that the right to strike is one of measures that can be used by employed persons with a view to facilitate and protect their economic and social rights. The contested provision restricts the right to strike, though the right to strike is not absolute. In order to make this restriction consistent with the Satversme, it has to be established by law due to a legitimate objective and the selected measures have to be proportionate.

The Ombudsman considers that in this case the restriction is established by law, i.e. the third part of the Strike Law. The restriction is established due to a legitimate objective. According to the Ombudsman, a strike can manifest itself in different ways but it can generally be described as a full or partial discontinuation of work. Thus the employee is considerably affected, since in the result of the strike he may undergo losses. Since a strike may considerably violate the rights and interests of an employee, usually right to strike are subject to laws whereby the preconditions of commencement of a strike are established. By means of such regulation the legislator tries to achieve balance between the interests of employees and the employer. The Ombudsman indicates that the employer has submitted an application to the Court. Thus the

contested provision serves as a means of protection of the rights (including rights to property) of the employer and protects the employer from ungrounded losses that could emerge in the result of an unlawful strike.

The Ombudsman emphasizes that in the case of a strike, damage can also be done to economic welfare of the society. Hence the objective of the contested provision also is protection of welfare of the society. Under Section 116 of the Satversme, protection of rights of other persons and welfare of the society is regarded as a legitimate objective. Hence the restriction is established by law and it has a legitimate objective. Thus one has to assess in this case, whether the State selected means of reaching the legitimate objective are proportionate. Prior to determining it, one has to establish whether it is admissible that the Court adjudicates lawfulness of a strike.

The Ombudsman considers that it is admissible. Laws usually provide for different preconditions for commencement of a strike. If there raises a dispute on whether these preconditions are observed, then the best solution is settlement of the dispute in fair proceedings in an independent and objective institution. There is also a conclusion that follows from the practice of application of European Social Charter that authority of a court to adjudicate the lawfulness of a strike is not in conflict with the fourth part of the European Social Charter.

The International Labour Organization has emphasized that proceedings that are to be applied before commencement of a strike (settlement, reconciliation), have to be fast enough. The Ombudsman concludes that the right to strike would be non-proportionally restricted if such applications were not examined in a reasonable term. The contested provision does not provide for the term when the application should be examined by the court. It is established by the Civil Procedure Law.

When analysing the provision of the Civil Procedure Law, the Ombudsman concludes that in the result of application of the contested provision commencement of a strike can be delayed not more than for 10 days if the application of the declaration of a strike is acknowledged as lawful. Such term is considered to be fast enough.

The Ombudsman emphasizes that damage done to a person by restriction of the right to strike is insignificant. Lawful commencement of a strike is delayed only by 10 days, because the Court has to examine the application during 10 days, and its judgment is final. The Ombudsman holds that the benefit gained by the society from the contested provision is significant, since it does not permit to do any damage to welfare of the society and the employer. Hence the contested provision proportionally restricts the right to strike and complies with Section 108 of the Satversme.

5. The Free Trade Union Confederation of Latvia (hereinafter – FTUCL) in its statement indicated that the legitimate objective is not effectively ensured by the contested provision, because the restriction to initiate a strike is not proportionate.

The FTUCL indicates that it has participated in elaboration of the Strike Law and amendments to it and expressed its viewpoint, namely: the contested provision prohibits exercising the rights established in Section 108 of the Satversme. Therefore the FTUCL demanded to repeal the third part of Section 24 of the Strike Law.

The FTUCL holds that the contested provision violates the basic rights established in Section 108 of the Satversme. This provision establishes a possibility for an employer to achieve restriction of a legitimate strike by submitting an application regarding the acknowledgement of the declaration of a strike to be illegal, thus delaying commencement of a legitimate strike and making the rights to strike provided by the Satversme non-effective.

The restriction to initiate a strike until the judgment of the court comes into effect established in the contested provision is ungrounded and non-proportionate. The restriction to initiate a strike is non-proportionate, because, e.g. submission of an application regarding the acknowledgement of already initiated strike to be illegal does not discontinue the strike. In order to protect an employer from an arbitrary commencement of strike, the second part of Section 3 of the Strike Law provides that the right to strike shall be exercised as a last resort if no agreement and reconciliation has been reached in the collective interest dispute. If employees use a strike as the

utmost measure of settlement of the collective interest dispute, the employer has rights to a response action for protection of his or her economic interests, namely, the right to lockout.

The FTUCL asks to pay attention to the fact that commencement of a lawful strike at present can be restricted up to 14 days, since the second part of Section 24 of the Strike Law provides that the employer shall submit to the court an application regarding the acknowledgement of the declaration of a strike to be illegal within a period of four days from the day of the declaration of a strike, whereas the second part of Section 392 of the Civil Procedure Law provides that the court shall adjudicate an application within 10 days of the day when it is received. This term is non-proportionate restriction of rights and it can not be justified.

6. The Employers Confederation of Latvia (hereinafter – ECL) in its statement indicated that the ECL has participated in elaboration of the Strike Law and amendments thereof.

It is emphasized in the statement, that the term established in the first part of Section 392 of the Civil Procedure Law - within 10 days of the day when it [application] is received – is short enough in order not to allow the employer delaying the strike and to establish balance between the rights of employees to strike and the rights of the employer to contest a strike or declaration of a strike. Therefore, with the aid of the contested provision, the legitimate objective – to protect the rights of other persons by establishing balance between rights and interests of employees and the employer – is ensured.

The Constitutional Court holds that:

7. The rights of employed persons to strike are established in Section 108 of the Satversme, which provides: “Employed persons have the right to a collective labour agreement, and the right to strike. The State shall protect the freedom of trade unions.”

International human rights provisions binding on Latvia and the practice of their application at the level of constitutional rights serves as a measure of interpretation in order to determine the context and range of basic rights and principles of a judicial state insofar as it leads to decreasing or restriction of the basic rights established by the Satversme. Such interpretation of basic rights established by the Satversme follows from Section 89 of the Satversme that provides that The State shall recognise and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding upon Latvia, i.e. norms of international rights binding on Latvia (*see: Judgment of May 13, 2005 by the Constitutional Court in the case No. 2004-18-0106, Para 5 of the Concluding Part*).

Thus compliance of the contested provision with Section 108 of the Constitutional Court is to be analyzed in connection with the acts of international rights that regulate the rights of employed persons to strike.

7.1. Item “d” of Article 8 of the International Covenant on Economic, Social and Cultural Rights provides that the States Parties to the present Covenant undertake to ensure the right to strike, provided that it is exercised in conformity with the laws of the particular country.

Item 4 of Article 6 of the European Social Charter provides that with a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

The Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) also indirectly include the right to strike. The first part of Article 11 of the Convention provides that: “Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests”. Thus the Convention guarantees the fights to protect professional interests of the members of labour unions

with the aid of collective action of the labour union. Article 11 of the Convention provides also for a large freedom of action of the State for reaching this objective.

A strike is the last and the utmost measure for protection of interests of employed persons. Moreover, a strike is not an aim in itself for employees to ensure observance of their interests in relationship with their employer, the rights and interests of whom in the case of a strike can be considerably affected. Exercising of the rights to strike is related to a body of particular circumstances and preconditions, which witnesses of impossibility to settle down the collective labour dispute. A possibility to exercise the above rights exists only in the case of no agreement or conciliation has taken place regarding the collective interest dispute.

Hence the right to strike is acknowledged as one of the basic rights of a person and a value of a democratic society. The right to strike is a constitutional right of employed persons, and the duty of the State is to ensure exercising of these rights.

7.2. The Saeima, on April 23, 1998 passed the Strike Law that established the context of the rights to strike and order of implementation thereof.

Under the first par of Section 3 of the Strike Law, a strike is an instrument of settlement of interest disputes. Whereas the rights to strike are one of the most important measures that can be used by employed persons with a view to facilitate and protect their economic and professional interests (*see: Freedom of Association. Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO.Fifth (revised) edition, p.109, <http://www.ilo.org/ilolex/english/23e2006.pdf>.*)

8. The rights of employed persons to strike are not absolute. Section 116 of the Satversme *expressis verbis* provides that the rights of persons to strike set out in Section 108 of the Satversme may be subject to restrictions in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals.

When establishing the order how employed persons can exercise their rights to strike, the State can also provide for restrictions of these rights. Hence the State ensures exercising of the corresponding basic rights and also protects the rights of other persons and other constitutional values. One of the restrictions is included in the contested provision, namely, the strike may not be commenced until the judgment of the court comes into effect.

The basic rights can also be restricted only in the cases established by the Satversme. Hence the rights of employed persons to strike can be restricted, if the restriction is established by a law passed in a proper order due to important interests, i.e. a legitimate objective and is proportionate with the objective (*see: e.g. Judgment of April 11, 2006 by the Constitutional Court in the case No. 2005-24-01, Para 8*).

If, when assessing the legal provision, it is acknowledged that it is in conflict with at least one of the above criteria, then it is in conflict with the principle of proportionality and is unlawful (*see: Judgment of March 19, 2002 by the Constitutional Court in the case No. 2001-12-01, Para 3.1 of the Concluding Part and Judgment of June 27, 2004 by the Constitutional Court in the case No. 2003-04-01, Para 3 of the Concluding Part*).

9. The rights of employed persons to strike are restricted by a law passed in proper order. Namely, the contested provision is included in the Strike Law, which is passed and promulgated according to the order established by the Satversme and the Rules of Order of the Saeima.

Hence the restriction included in the contested provision is provided by law.

10. Restriction of basic rights can be justified only in the case if it serves for a particular legitimate objective – to protect the constitutional values of other rank (*see: Judgment of December 22, 2005 by the Constitutional Court in the case No. 2005-19-*

01, Para 9) or other important interests, for protection of which the restriction is indispensable (*see: Judgment of April 11, 2006 by the Constitutional Court in the case No. 2005-24-01, Para 8*). Therefore one has to investigate, whether the contested provision is passed due to a legitimate objective.

According to the scientific literature, temporary restriction of rights to strike can be justified if it is established with the aim to facilitate common welfare and is not an excessive burden for employed persons who want to strike (*see: The International Covenant on Economic, Social, and Cultural Rights. A Perspective on its Development. Matthew C.R. Craven, Oxford, Clarendon Press, 1995, p. 285.*).

Both, the Saeima and the Ombudsman indicate that the contested provision establishes balance between the rights of employed persons to strike and the rights and legal interests of other person – the employee. A strike hampers productivity and performance of an enterprise, in the result of which the employee undergoes losses. The Submitter of the Application draws attention to the existence of the legitimate objective of the contested provision, i.e. protection of the rights of the employer.

Moreover, a strike may negatively affect “not only its direct participants, but also those who do not strike and other third parties, as well as the society” (*Vildbergs H.J., Feldhūne G. Salīdzinošās konstitucionālās tiesības: atsaucēs pamattiesībām. Rīga: Eurofaculty, 2001, pp.59*). The Constitutional Court shares a viewpoint of the Ombudsman that in the case of a strike, damage can be done to economic welfare of the society. Therefore the objective of the contested provision is not only protection of the interests of the employer, but also protection of welfare of the society.

Hence the contested provision has a legitimate objective – to achieve an appropriate balance between the rights and legal interests of employees and the employers and to protect the rights of other persons.

11. The principle of proportionality provides that if the public power restricts rights and legal interests of a person, one has to observe a reasonable balance between the interests of a person and the State of the society. In order to assess, whether the

legal provision passed by the legislator complies with the principle of proportionality, one has to investigate:

first, whether the means utilized by the legislator are suitable for achieving the legitimate objective;

second, whether such action is indispensable, i.e., whether the objective can not be reached by other means that restrict the rights and legal interests of a persons at a lesser extent;

third, whether the action of the legislator is proportionate or commensurate, i.e., whether the benefit gained by the society is greater than the losses caused to the rights and legal interests of a person.

If, when assessing the legal provision, it is acknowledged that it is in conflict with at least one of the above criteria, then it is in conflict with the principle of proportionality and is unlawful (*see: Judgment of March 19, 2002 by the Constitutional Court in the case No. 2001–12–01, Para 3 of the Concluding Part*).

11.1. In order to assess whether the contested provision reaches the legitimate objective, one has to investigate whether the measures selected by the legislator, namely, assessment of lawfulness of a strike at court, is appropriate for achieving of the above objective.

The European Committee of Social Rights has also assessed whether interference of the court in the rights of employed persons to strike makes these rights non-effective (*see: Digest of the Case Law of the European Committee of Social Rights, p.70-72, http://www.coe.int/t/e/human_rights/esc/7_Resources/Digest_en.pdf*).

For instance, when assessing the report of the Netherlands on execution of European Social Charter, the European Committee of Social Rights did not indicate that a court is not entitled to adjudicate lawfulness of a strike, but it emphasized that it is in conflict with the fourth part of Article 6 of the European Social Charter that a justice assesses whether a strike is not untimely and whether it really is the utmost measure (*see: European Social Charter. European Committee of Social Rights. Conclusions XVII-1. Vol. 2, p.319, http://www.coe.int/t/e/human_rights/esc/3_reporting_procedure/2_recent_conclusions*

[/2 by year/Conclusions XVII-1 Vol2.pdf](#)). This means that a court can adjudicate lawfulness of a strike and *per se* it is not an inadmissible restriction of the rights to strike.

The International Labour Organization emphasises that the issue on acknowledgment of a strike as unlawful must be adjudicated by an independent and impartial institution (*see: Freedom of Association. Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO. Fifth (revised) edition, p.128, <http://www.ilo.org/ilolex/english/23e2006.pdf>*).

Hence the Court is entitled to adjudicate lawfulness of a strike and this circumstance *per se* is not an inadmissible restriction of a strike. The measure selected by the State (the restriction included in the contested provision) is directed towards reaching of a legitimate objective.

11.2. According to the first part of Section 14, the declaration of a strike shall be submitted not later than seven days prior to the commencement of the strike, whereas the employer shall submit an application to the court within four days from submission of the declaration of the strike. Section 392 of the Civil Procedure Law provides that the court shall adjudicate an application within 10 days of the day when it is received. The application shall be adjudicated in a court sitting, regarding which prior notice shall be given to the employer, the State Labour Inspection and the strike committee. Whereas the second part of the same article provides that the participation of the submitter of the application at the court sitting is mandatory. His or her failure to attend shall be cause for the court to terminate the matter.

Hence this means that in the result of application of the contested provision, commencement of a strike is delayed not more that for seven days if the declaration of the strike is acknowledged as lawful.

Hence it is necessary to assess, whether the term of seven days of strike delay is a proportionate measure for ensuring balance between the rights of employed persons to strike and rights and legal interests of other persons.

The European Commission of Social Rights has acknowledged that the rights to strike are non-proportionally restricted if the strike can be commenced when the process of conciliation has lasted for 30 days and no understanding was reached [*European Social Charter. European Committee of Social Rights. Conclusions XVIII-1 (Czech Republic)*], p.16, http://www.coe.int/t/e/human_rights/esc/3_reporting_procedure/2_recent_conclusions/1_by_state/Czech_Rep_XVIII-1.pdf]. At the same time the European Committee of Social Rights has acknowledged the provision that one has to declare a strike 14 days prior to commencement thereof as being in compliance with the fourth part of Article 6 of the European Social Charter [*European Social Charter (Revised). European Committee of Social Rights. Conclusions 2006 (Estonia)*], p.14, http://www.coe.int/t/e/human_rights/esc/3_reporting_procedure/2_recent_conclusions/1_by_state/Estonia_2006.pdf].

Hence the delay of a strike for a reasonable period of time due to court examination of the case that is concluded by a final judgment that is not subject to appeal can not be regarded as violation of the first sentence of Section 108 of the Satversme.

11.3. Moreover it has to be investigated whether the legitimate objective can be achieved by other measures that restrict the rights and legal interests of a person at a lesser extent.

A lenient measure is not any other measure but the one, whereby it is possible to achieve the legitimate objective at the same level of quality. Moreover, when investigating whether more lenient measures are available, the Court can not act instead of the legislator and the State administration (*see: Judgment of May 13, 2005 by the Constitutional Court in the case No. 2004-18-0106, Para 9*).

The Submitter of the Application questions effectiveness of the measure included in the contested provision, since it offers more possibilities for the employer to non-proportionally delay commencement of a strike. The Submitted of the Application indicates that a more lenient measure would be, for instance,

establishment of three-day examination of the case at court in the Strike Law or to offer a possibility to adjudicate discontinuation of a strike only due to a grounded request of the employer.

According to the materials of the commissions of the Saeima and meetings thereof, during passage of the contested provision, there were debates on other possible wordings of the provision (*see: materials of the case, pp. 44 – 103*). However the Constitutional Court holds that the Submitted of the application has not indicated any more lenient measure in the meetings of the Saeima, nor in the Application that would allow achieving of the legitimate objective at the same level of efficiency.

First, the Submitter of the application indicates that the legislator has rejected its propositions by grounding it with the fact that the term of case examination should be established in procedure laws. Hence the legislator has acknowledged that the cases on an application regarding the acknowledgment of the declaration of a strike to be illegal should be provided for a particular examination term. But the viewpoints of the Submitter of the Application and the legislator differed regarding the duration of the term and way of determination thereof.

The legislator has not provided for the procedural order in the Strike Law according to which a court adjudicates the application of the employer regarding the acknowledgment of the declaration of a strike to be illegal. This order is regulated in details by the Civil Procedure Law, Item 13 of Section 251 of which provides that Courts shall adjudicate the matters regarding declaration of a strike or an application to strike as being unlawful in accordance with special adjudication procedures, whereas Chapter 48 of the same Law provides for the order and term of legal proceedings in the above cases. Hence the contested provision is to be assess in connection with other normative acts that provide for the order of proceedings in the cases on an application of the employer regarding the acknowledgment of the declaration of a strike to be illegal. Therefore it is not crucial if the order of legal proceedings and the term of examination of the case is provided for in another law, namely, the Civil Procedure Law.

Second, the Submitter of the Application offers an alternative solution, namely, to establish by law that the rights of employed persons to organize strike are restricted not by an application of the employer to the court, but in the case if the Court has satisfied the request of the employer regarding discontinuation of a strike. A similar solution is established in Section 185 of the Administrative Procedure Law regarding actions in the case of appealing of an administrative act.

Once can agree to what has been said in the response letter of the Saeima, i.e. that the institution of setting aside of an administrative act has another meaning – to ensure temporary protection of a person against disfavour of the institution during the period of examination of the case, e.g. to suspend payment of the fine due to unpaid tax. However, in the case of a strike, if there exists disagreement regarding its lawfulness, commencement of a strike requires a final legal act instead of a temporary protection by court – a decision on discontinuation of a strike. Moreover, a strike is one of the measures of settlement of collective labour disputes and it is regulated by civil means, as well as in assessment of its regulation one should not use the institutions included in the administrative procedure. There is no reason to include a provision in the Strike Law, similar to, e.g. the one included in the Law “On Meetings, Processions and Pickets”, which provides for the order of appeal against an administrative act, in accordance to which the proving possibilities of the defendant – an official – are restricted by what is established in the administrative act.

The Constitutional Court holds that, at present, the legal norms solve the issues indicated by the Submitter of the Application and provides of a shortened term of examination of the application, as well as for that the judgment is not subject to appeal (is to be executed immediately).

Moreover, the contested provision is flexible enough. It allows, with the aid of the mechanism of timely examination (before commencement of a strike) of lawfulness of the declaration of a strike to prevent possible damage that could be caused by unlawful activities if the Court acknowledged the strike as illegal. Hence the contested provision allows protection the rights of other persons and welfare of the society.

The contested provision complies with the principle of proportionality, since.

first, a strike can be delayed only in the case if the employer has submitted an application regarding the acknowledgment of the declaration of a strike as illegal to the Court,

second, a strike is delayed only for the time until the judgment of the court comes into effect,

third, a court examines the case in a shortened and reasonable term.

Hence the restriction included in the contested provision is proportionate.

The Substantive Part

Under Articles 30 – 32 of the Constitutional Court Law, the Constitutional Court

holds:

the third part of Section 24 of the Strike Law complies with Section 108 of the Satversme of the Republic of Latvia.

The Judgment is final and not subject to appeal.

The Judgment takes effect as of the day of publishing it.

The Presiding judge

G. Kūtris