



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT

IN THE NAME OF THE REPUBLIC OF LATVIA

Riga, December 20, 2006

in case No. 2006-12-01

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session Aivars Endziņš, justices Gunārs Kūtris, Romāns Apsītis, Aija Branta, Juris Jelāgins and Andrejs Lēpse

under Section 85 of the Republic of Latvia Satversme (Constitution) as well as Sections 16 (Item 1), 17 (Item 9 of the First Paragraph) and 28¹ of the Constitutional Court Law

on the basis of the claim by the Administrative District Court

in written proceedings at November 21, 2006 Court session reviewed the matter

”On the Compliance of Section 1, Paragraph 1; Section 4, Paragraph 1; Section 6, Paragraph 3; Section 22 and Section 50 of the Office of the Prosecutor Law with Sections 1, 58, 82, 86 and 90 of the Republic of Latvia Satversme”.

The establishing part

1. On September 26, 1990 the Republic of Latvia Supreme Council passed the Law ”On the Public Prosecutor’s Supervision in the Republic of

Latvia". By this Law the Republic of Latvia Office of the Prosecutor – an institution independent from the USSR Prosecutor's Office - was formed.

On May 19, 1994 the Republic of Latvia Saeima (hereinafter – the Saeima) passed the Office of the Prosecutor Law, which is in effect since July 1, 1994. During these years several Amendments to the Law have been made.

Section 1, Paragraph 1 of the Office of the Prosecutor Law determines: "The Office of the Prosecutor is an institution of judicial power, which independently carries out supervision of the observance of law within the scope of the competence determined by this Law".

Section 4, Paragraph 1 determines: "The Office of the Prosecutor shall be a single, centralized three – level institutional system under the management of the Prosecutor General."

Section 6, Paragraph 3 determines: "The actions of a prosecutor may be appealed in the cases and in accordance with the procedures specified by this Law and procedural laws. Complaints regarding questions, which are only within the competence of the Office of the Prosecutor shall be submitted to a chief prosecutor of an Office of the Prosecutor institution, which is one-level higher, but regarding the actions of a prosecutor of the Office of the Prosecutor General, to the Prosecutor General. The decisions taken by such officials shall be final."

Section 22 determines: "The office of the prosecutor shall be composed of the Office of the Prosecutor General, Offices of Prosecutors of Judicial Regions, Offices of Prosecutors of Districts (Republic cities) and specialised offices of the prosecutor. All the institutions of the Office of the Prosecutor referred to in this Section have the rights of a legal person."

Section 50 determines: "The Office of the Prosecutor and the State institutions under its supervision shall be financed from the State budget and they shall have separate estimates of expenditures".

2. On April 21, 2006 the submitter of the claim – **the Administrative District Court** – reviewed the administrative matter on the abrogation of October 13, 2005 Order No. 1/1-26-277 (hereinafter – the appealed decision) by the Acting Prosecutor General on the reinstatement of Aivars Rutks to the post of the prosecutor and compensation of material losses.

2.1. It has been established in the administrative case that on October 14, 2005 by the appealed decision A. Rutks was dismissed from the post of the prosecutor of the Riga Motor Transport Prosecutor's Office in accordance with Section 40, Paragraph 2, Item 4 of the Office of the Prosecutor Law. This Item envisages the right of the Prosecutor General to dismiss the prosecutor from office if the qualification commission determines that his or her professional skills do not suffice. During the period of absence of Prosecutor General the Chief Prosecutor of the Criminal Department of the Office of the Prosecutor, whom the Prosecutor General had left such authority by his October 10, 2005 Order No. 1/1-26-273, had issued the above decision.

It was resolved that the Office of the Prosecutor General was the defendant in the administrative case and the Republic of Latvia Prosecutor General was invited to represent the party.

2.2. At the court session the representative of the defendant pointed out that in this matter she represented the Office of the Prosecutor, and the Office of the Prosecutor Law regulates its activities. When assessing the circumstances in the matter, legal norms and viewpoints of the parties, the Administrative District Court acknowledged that the Republic of Latvia, from the party of which Prosecutor General was invited, should be resolved the defendant in this matter, because the Office of the Prosecutor General and the Office of the Prosecutor (both of them or each of them) are State administration institutions.

On April 21, 2006 the Administrative District Court took the decision to terminate proceedings in the administrative matter and submit the claim to the Republic of Latvia Constitutional Court for assessing of the conformity of Section 1, Paragraph 1; Section 4, Paragraph 1; Section 6, Paragraph 3, as well as Sections 22 and 50 of the Office of the Prosecutor Law (hereinafter – the impugned norms) with Sections 1, 58, 82, 86 and 90 of the Satversme.

The Administrative District Court is of the opinion that because of uncertainty and impossibility of foreseeing of the impugned norms, it cannot be established who has the rights of the legal person and whether the defendant is "the Office of the Prosecutor (or the Office of the Prosecutor General) as the legal person of public rights or the Republic of Latvia as the legal person of public rights". It holds that the right of everyone to know about their rights, which is included in the Satversme, has been violated as the procedure for

challenging (appealing against) the appealed decision has not been indicated in the Office of the Prosecutor Law.

To the viewpoint of the Administrative Court the Prosecutor General and prosecutors cannot represent the Office of the Prosecutor General or the Office of the Prosecutor as the defendant as in accordance with Section 22 (the second sentence) the Office of the Prosecutor General and the Office of the Prosecutor as legal entities shall carry out their activities within the scope of its budget, however, they do not independently determine the income part of their budget.

2.3. It has been concluded in the Administrative Court decision that in the specific sector of public rights, prosecutors carry out the functions of State administration and not the functions of the judicial power. It is pointed out in the decision that the Office of the Prosecutor has not been mentioned in the Republic of Latvia Satversme (hereinafter – the Satversme) therefore it is not an ”adjudicating organ in the interpretation of the Satversme”, besides, it does not comply with the criteria of courts, determined in the Satversme and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The submitter of the claim points out: ”[...] even though it has not been determined in any normative act that the Office of the Prosecutor (- General) and/or the Prosecutor General and/or prosecutors are the State Administration Institutions, which represent the Republic of Latvia, however, the interpretation that the Office of the Prosecutor (- General) are not State Administration Institutions would be at variance with the Satversme as it would grant certain authority in the Sector of State Administration to formations not mentioned in the Satversme – to the Office of the Prosecutor General and the Office of the Prosecutor, which would not belong to any branch of the State power.

2.4. Making reference to several Constitutional Court Judgments, in which issues, connected with the Office of the Prosecutor were analysed, it is concluded that the compliance of the norms of the Office of the Prosecutor Law with the Satversme has not been assessed.

Even though the Administrative District Court in its decision has enumerated those norms of the Office of the Prosecutor Law, which to the mind of the Court are unconfordable; it not only indicates that ”the norms of the Office of the Prosecutor Law applied for the determination of the defendant

are uncomformable with the Satversme”, but also expresses its viewpoint on the place of the Prosecutor’s Office within the State constitutional system.

3. The institution, which has passed the impugned act – **the Saeima** – in its written reply points out that the impugned norms are not at variance with Sections 1, 58, 82, 86 and 90 of the Satversme.

3.1. The Saeima agrees with the submitter of the claim that the Prosecutor’s Office does not adjudge justice. Besides, the Saeima holds that – with an exception of separate cases, when the Law grants the Prosecutor’s Office the functions of a quasi-legal institution - it mainly carries out specific functions of the executive power, because the functions of the Prosecutor’s Office are not connected with adjudication of justice and it does not have legislative functions either. However, to their mind, Prosecutor’s Office shall be regarded as a functionally independent institution, which belongs to the judicial power and realizes its functions in this sector of power, but in separate issues of labour organization it is subordinated to the Cabinet of Ministers. Thus – to their mind – Sections 1, 58, 82 and 86 of the Satversme are being observed.

By the notion ”the institution of the judicial power” one has to comprehend such institutions and officials, whose activities are closely connected with court activities, as well as institutions, realization of functions of which might be burdened if they were included in the sector of general executive power and in organizational issues were subordinated to government institutions.

The Saeima explains that belonging of the Prosecutor’s Office to the judicial power or to the executive power is ”the issue of usefulness and traditions, which should not be assessed [...] within the scope of scrutiny of constitutionality”. It is pointed out in the written reply that it is freedom of action of the legislator and an issue of legal policy to choose one of the different models for the status of the Prosecutor’s Office.

3.2. As concerns the issue of the defendant in the concrete administrative matter and the budget from which the potential losses might be covered, the Saeima draws attention to the fact that the Office of the Prosecutor Law was adopted at the time, when the reform of the State Administration System had not taken place and adequate to the European continental understanding of legal scope as well as the theory on the state structure had not

yet developed. At that time entry on an institution as a legal entity, which is incorporated into the Law, had meant that the particular institution was entitled to conclude legal deals for ensurance of its performance and open an account in the bank.

The duties of the Prosecutor's Office are completely incompatible with the fact that the Prosecutor's Office could be regarded as the legal person of public rights. The Prosecutor's Office has no property, as to the Prosecutor's Office as to any other institution property, which belongs to the State, is handed over for use. In the same way the Prosecutor's Office does not have the budget of its own, separated from the State budget. The Saeima points out that the Prosecutor's Office is an institution of power, which acts in the name of the State. It is stressed in the written reply that the norm, which envisages the right of a legal entity to institutions of the Prosecutor's Office, shall not be regarded as such, which would grant the status of a legal person of public rights to the Prosecutor's Office. This norm was intended for regulation of legal private rights.

3.3. The Saeima holds that just because the Office of the Prosecutor Law does not precisely envisage the procedure for appeal against a decision, is not at variance with Section 90 of the Satversme. If this procedure is envisaged in another Law, namely, the Administrative Procedure Law, then there is no necessity to regulate it by the Office of the Prosecutor Law.

4. The Republic of Latvia Prosecutor's Office (hereinafter – the Prosecutor's Office), when answering to the questions asked by the Constitutional Court, points out that in Latvia the Prosecutor's Office has been objectively and reasonably included in the system of institutions of the judicial power, because the role of the Prosecutor's Office is not realization of State Administration functions. The Prosecutor's Office is an institution supervising law enforcement that has both – organizational and functional independence, which is ensured by belonging of the Prosecutor's Office to the judicial system. None of the functions of the Prosecutor's Office, mentioned in Section 2 of the Office of the Prosecutor Law, is characteristic to institutions of the State Administration.

When replying to a question asked by the constitutional Court, Prosecutor's Office explains that order by the prosecutor General on dismissal from the Office shall be regarded as an administrative act. Issuing of such an order is not connected with realization of functions, determined in Section 2 of

the Office of the Prosecutor Law but is "issuing of legal act of an institution in the sector of public rights, which refers to a certain individual in order to terminate concrete legal relations". Therefore, the procedure under which one may appeal against the order of the Prosecutor General on dismissing of a prosecutor from the post, shall not be connected with the procedure of appealing against an action of a prosecutor, which is determined in Section 6, Paragraph 3 of the Office of the Prosecutor Law. Such a decision shall be appealed against under the procedure, determined in the Administrative Procedure Law.

The concluding part

5. The Administrative District Court, when reviewing the matter has held that several norms of the Office of the Prosecutor Law are unconformable with Sections 1, 58, 82, 86 and 90 of the Satversme.

One may agree with the viewpoint expressed in the Saeima written reply that - as concerns this case - there is no necessity "to assess the compliance of every impugned norm with every legal norm of higher legal force" (*sk. lietas materiālu 20. lpp. //see p. 20 of the materials in the matter*). In the Administrative District Court Decision un conformity of every impugned norm with a concrete Section of the Satversme has not been substantiated either. Besides, from the content of the claim follows that the Administrative District Court requests not so much to assess the conformity of the impugned norms of the Office of the Prosecutor with the legal norms of higher legal force as to receive an answer to two legal issues:

1) about the status of the Prosecutor's Office in the State constitutional system, namely – about the compliance of Section 1, Paragraph 1 of the Office of the Prosecutor Law with Sections 1, 58, 82 and 86 of the Satversme;

2) about the conformity of the norms of the Office of the Prosecutor Law to be applied when determining the defendant with the criteria of clarity and foreseeability of the law as well as about the right of a person to know his/her rights, namely, the compliance of Section 4, Paragraph 1; Section 6, Paragraph 3; Sections 22 and 50 of the Office of the Prosecutor Law with Section 90 of the Satversme.

6. The status of the Prosecutor's Office and its place within the State constitutional system shall be determined in accordance with the principle of the division of power. It is impossible to analyse the procedure of realization of the State power, the status of an institution of the State power, disregarding the

issue on the separation of power. Realization of the principle of the separation of power is the central problematic legal issue of the organization of a contemporary State power.

6.1. Section 1 of the Satversme determines: "Latvia is an independent democratic republic". Several principles of a law-governed state follow from this Section, inter alia also the principle of separation of State power. The aim of separation of power is the maintenance of freedom guarantees of a person, so as not to allow substitution of the model of a democratic, law-governed state with authoritarian regime or autocracy of one person. Thus the essence of the principle of separation of power is separation of political influence on the State and public life and ensurance of moderation of power realization. This principle manifests itself in separation of the State power into legislative, executive and judicial power, which are realized by independent and autonomous institutions. It guarantees balance and mutual control among them and furthers moderation of power [*sk. Satversmes tiesas 1999. gada 1. oktobra sprieduma lietā Nr. 03-05(99) secinājumu daļas 1. punktu // see the Constitutional Court October 1, 1999 Judgment in case No. 03-05(99), Item 1 of the concluding part*].

6.2. Division of competencies of the State institutions of the three powers, which realize the power and create the system of "balance and counterbalance", has been embodied in the norms of the Satversme institutional part.

Such a division of functions for realization of power does not mean that the State shall form only three constitutional institutions, so that each of them would completely implement one of the three functions of power. For separation of power to reach its aim, separate functions of power shall be entrusted to different constitutional institutions (*sk. Satversmes tiesas 2006. gada 16. oktobra sprieduma lietā Nr. 2006-05-01 secinājumu daļas 10.3. punktu // see the Constitutional Court October 16, 2006 Judgment in case No. 2006-05-01, Item 10.3 of the concluding part*).

In the Satversme the competence of the State of Latvia is divided among the constitutional institutions of the State power – the aggregate body of citizens of Latvia, the Saeima, the State President, the Cabinet of Ministers, courts, the Constitutional Court and the State Control. It is an exhaustive division. Thus, there cannot exist a State competence, which has not been assigned to a constitutional institution of the State power; in its turn the

aggregate of the constitutional competencies of all the State power institutions creates the collective competence of the State [*sk.: Levits E. Valsts un valsts pārvaldes juridiskā struktūra; Jaunā pārvalde, 2002 Nr.1 (31) // see: Levits E. The Juridical Structure of the State and the State Administration; New Administration, 2002, No. 1 (31)*].

7. Chapter VI of the Satversme regulates the constitutional basis of the judicial power, but the Law "On Judicial Power" specifies it (*sk. Satversmes tiesas 2005. gada 17. janvāra sprieduma lietā Nr. 2004-10-01 secinājumu daļas 5. punktu // see the Constitutional Court January 17, 2005 Judgment in case No. 2004-10-01, Item 5 of the concluding part*).

When discussing the Draft of the Satversme, the reporter of the Commission for Elaboration of the Satversme Jānis Purgals stressed: "The only basis for the security of our State is such a structure, that the state highest power is correctly dissociated, correctly divided" (*Latvijas Satversmes sapulces IV sesijas 5. sēdes 1921. gada 28. septembrī stenogramma // September 28, 1921 Verbatim Report of the Constitutional Assembly of Latvia 5th. sitting of the IV session*). One of the most important preconditions of separation of power is institutional and functional separation of the judicial power from the legislative power and the executive power. As it was formulated by J.Purgals "courts, as the law enforcement institutions in the state shall be independent" (*Latvijas Satversmes sapulces IV sesijas 1. sēdes 1921. gada 20 septembra stenogramma //September 20, 1921 Verbatim Report of the Constitutional Assembly of Latvia 1st. sitting of the IV session*). When participating in the debate of the Constitutional Assembly sitting he stressed, "the court is the apparatus by which we maintain our legal structure in effect" (*Satversmes sapulces IV sesijas 20. sēdes 1921. gada 9. novembra stenogramma // November 9, 1921 Verbatim Report of the Constitutional Assembly 20th. sitting of the IV session*). One may conclude that the Constitutional Assembly in the notion "courts" included not only court institutions but also those institutions, which ensure realization of the court adjudicating function, namely, institutions, pertaining to courts.

8. Section 86 of the Satversme determines: "Decisions in court proceedings may be made only by bodies upon whom jurisdiction regarding such has been conferred by law. Military courts shall act on the basis of a specific law". In the first sentence of this Section is included authorization to the legislator to pass laws, which would confer to concrete state institutions the

functions of making decisions in court proceedings, as well as to adopt procedural laws, which would determine the procedure of adjudication.

9. Section 82 of the Satversme was expressed in a new wording by October 15, 1998 Amendments: "In Latvia, court cases shall be heard by district (city) courts, regional courts and the Supreme Court, but in the event of war or a state of emergency, also by military courts".

9.1. It might *prima facie* seem that by the above Amendment the legislator has defined all the institutions of the State power, which have the right of adjudicating justice. The grammatical formulation of the norm as if points out that the legislator prohibits realization of the authority, determined in the first sentence of Section 86 of the Satversme, simply by legislation and completely regulates the particular issue in Section 82 of the Satversme.. Such a conclusion would mean that the institutions, which are not mentioned in Section 82 may not realize the function of adjudication of justice and that the legislator may enlarge the scope of these institutions only by Amendments to Section 82 of the Satversme. However, the grammatical method of interpretation is only the first of methods of interpretation and it is not right to be guided only by the verbal meaning of the legal norm (*sk. Satversmes tiesas 2005. gada 22. aprīlā lēmuma par tiesvedības izbeigšanu lietā No. 2004-25-03 6. punktu // see the Constitutional Court April 22, 2005 Decision on termination of proceedings in case No. 2004-25-03, Item 6*). Therefore it is necessary to establish the content of Section 82 of the Satversme, by using also other methods of interpretation.

9.2. In Section 82 of the Satversme is included neither the exhaustive list of those institutions, which adjudicate justice, nor the institutions pertaining to judicial power.

First of all, Section 85 of the Satversme determines that in Latvia there shall be a Constitutional Court. When assessing the authority conferred to the Constitutional Court by Section 85 of the Satversme to review cases concerning the compliance of laws with the Satversme, as well as other matters regarding which jurisdiction is conferred upon it by law, it can be concluded that the Constitutional Court adjudicates justice. The Constitutional Court, on the basis of legal norms settles specific disputations on the compliance of legal norms with the norms of higher legal force in a process in which at least two members of the process with opposite viewpoints participate.

Secondly, Section 68, Paragraph 2 envisages that Latvia, with the purpose of strengthening democracy, may delegate a part of its State institution competencies to international institutions. For example, when acceding to the European Union, Latvia has delegated functions of adjudicating justice to the European Court of Justice and the Court of the First Instance. The right of the above courts to adjudicate justice has not been *expressis verbis* envisaged in Section 82 of the Satversme. Thus one may conclude that in Section 82 of the Satversme are not determined all "bodies upon whom the right of making court decisions has been conferred" (Section 86 of the Satversme). These issues are additionally regulated also in Sections 68 and 85 of the Satversme.

9.3. The norms of the Satversme Chapter VI are closely connected with the first sentence of Section 92 of the Satversme, which envisages the right of a person to address a fair court.

The notion "a fair court", mentioned in Section 92 of the Satversme, includes two aspects, namely, "a fair court" as an independent institution of the judicial power, which reviews a case and "a fair court" as an adequate process, complying with the law-governed state, under which the case is being adjudicated. In the first aspect this notion shall be interpreted as read together with Chapter VI of the Satversme; in the second – as interpreted together with the principle of a law-governed state, which follows from Section 1 of the Satversme (*sk. Satversmes tiesas 2002 gada 5. marta sprieduma lietā Nr. 2001-10-01 secinājumu daļas 2. punktu // see the Constitutional Court March 5, 2002 Judgment in case No. 2001-10-01, Item 2 of the concluding part*).

The first sentence of Section 92 of the Satversme does not require a person in order to protect his/her violated rights and legitimate interests to submit a claim just to the institutions of the judicial power, mentioned in Section 82 of the Satversme. On the basis of the European Court of Human Rights case law under Section 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms it can be concluded that ensurance of effective remedies does not depend only on the possibility of addressing the court, but on the whole mechanism or supervision and its performance (*sk. Satversmes tiesas 2004. gada 6. decembra sprieduma lietā Nr. 2004-14-01 secinājumu daļas 10. punktu // see the Constitutional Court December 6 Judgment in case No. 2004-14-01, Item 10 of the concluding part*). Not all the institutions, which belong to the judicial power, adjudicate justice. Besides, adjudication of justice – as has been repeatedly stressed by the Constitutional Court in its Judgments – is not the only effective means of the protection of the

rights. A person may effectively protect his/her violated rights and legitimate interests not only at the institutions, which adjudicate justice (*sk. Satversmes tiesas 2004. gada 11. oktobra sprieduma lietā Nr. 2004-06-01 Item 18 // see the Constitutional Court October 11, 2004 Judgment in case No. 2004-06-01, Item 18*).

Thus, the institutions, which the persons may address for the protection of his/her rights and legitimate interests, may be determined not only in the State Basic Law– the Satversme but also in other laws.

10. In each state the Prosecutor's Office may have different authority and status. One may agree with the viewpoint of the Saeima, that belonging of the Office of the Prosecutor to a concrete section of power is the issue of usefulness and traditions.

Thus, for example, in Estonia and Poland the Prosecutor's Office institutionally is a constituent part of the executive power. In other places, for example, in France, Chapter VIII of the Constitution "The Judicial Power" envisages an independent Supreme Magisterial Board, which comprises two Chambers – the Chamber of Judges and the Chamber of Prosecutors. Chapter I, Section 5 of the Greece Constitution "The Judicial Power" envisages the procedure for supervision and appointment of judges and prosecutors. Incorporation of the regulation for the status of a prosecutor in the Chapter "The Section of the Judicial Power" of the Constitution clearly means that the Prosecutor's Office in Italy belongs to the sector of the Judicial Power. In Chapter "Administering of the Courts" of the Constitution of Finland is included the authority to the legislator to determine a more detailed legal regulation regarding the prosecutors in the laws. Also in the Constitution of Russia and other states the Prosecutor's Office is incorporated in Chapters on the Judicial Power.

In every state the Office of the Prosecutor is formed on the basis of definite, fixed in the Constitution or specific laws, fundamental principles. The legislator usually chooses the above principles by taking into consideration specifics of the state institutional structure, historic development, the necessity to avert or struggle against some specific problems of the development of the state, as well as by planning improvement of the state institutional structure. As has been indicated in Section 1 of the Office of the Prosecutor Law, in Latvia Prosecutor's Office is an institution of the Judicial Power.

The choice of the optimum status of Prosecutor's Office is mainly determined by the traditions of the particular state and its judicial system. The change of this model is an issue of the legal policy, decision of which in a democratic, law- governed state shall be taken in a legislative way.

11. Recommendation Rec(2000)19 The Role of Public Prosecution in the Criminal Justice system, adopted on October 6, 2000 by the European Council Committee of Ministers permits the possibility of the state to form both – a subordinated to the state and an independent Prosecutor's Office. Institutional issues, connected with the Prosecutor's Office are left by the European Council for the state to take decisions on. Item 14 of this Recommendation determines that the state, in which the Prosecutor's Office is independent, shall implement effective measures in order to guarantee that the independence of the Prosecutor's Office as well as the degree of it are determined by the law. In its turn in Item 13 are included quite a lot of requirements for ensuring of the independence of the prosecutors in cases, when the Prosecutor's Office is subordinated to the government.

Thus, the state itself may determine the place of Prosecutor's Office in the system of state institutions, by ensuring for the Prosecutor's Office the status, needed for performing of its functions.

12. Elaboration and adoption of the Office of the Prosecutor Law by the Saeima in the beginning of the nineties was closely connected with the reform of the existing judicial power – the renewal of the Latvian traditional court structure, which started with the adoption of the Law "On the Judicial Power", adopted in 1992.

12.1. The Prosecutor's Office in its classical meaning was created in France. From France this institution was gradually taken over by other countries, also in the territory of Latvia, when implementing 1899 court reform in the Baltic Provinces. Initially the Office of the Prosecutor was regarded as an administrative institution – it performed functions of the executive power. Since the beginning of the XX century both – in legal science and the normative acts the Office of the Prosecutor was more and more considered to be an institution of the judicial power. In the period between the wars a tendency of ensuring the independence of the Prosecutor's Office from the executive power was observed, as well as strengthening of its place in the system of institutions of the judicial power, bringing the status of the prosecutor as close to the status of the judge as possible (*sk. Apsītis H. Par*

*prokuratūras stāvokli, Jurists, 1930, Nr.5; Vikmanis K. Tiesnešu biedrība par prokuratūras neatkarību, Jurists, 1933, Nr.3; Linde A. Prokuroru neatceļamība, Jurists, 1933, Nr.6 //see: Apsītis H. On the Status of the Office of the Prosecutor, Lawyer, 1930, No.5; Vikmanis K. Lawyers' Society on the Independence of the Office of the Prosecutor, Lawyer, 1933, No. 3; Linde A. Non-removal or non-dismissal of the Prosecutor from Office, Lawyer, 1933, No.6). In the legal science of that time the viewpoint was expressed that the prosecutors, when carrying out their duties were protectors of the law, defenders of public interests. The Office of the Prosecutor shall be a part of the judicial power (*Organ der Rechtspflege*), which depends only on the law, conscience of the officials of the Prosecutor's Office and public opinion but not an institution of the executive power [see: Lazarenko A.O. On the Independence of the Prosecutor's Office// *The Law and the Court*, 1934, No. 3 (430, pp. 1473-1478)].*

Already Item 8 of December 6, 1918 Provisional Statute on Latvian Courts and the Procedure of Adjudication determined that at the Senate there shall be the post of the Chief Prosecutor and his fellow-workers but at the Chamber and the regional court – a prosecutor and his fellow-workers. At that time prosecutors as well as the judges were appointed by the government from among the candidates nominated by the Ministry of Justice, and confirmed by the People's Council.

In accordance with Section 179 of 1924 Law on the Court Structure "general supervision of all the court institutions and officials of the court departments in the state pertains to the Minister of Justice as the Prosecutor General". At the same time the Law on the Structure of the Ministry of Justice (June 18, 1930) does not mention the Office of the Prosecutor and does not include it in the structure of the Ministry. Also later – in 1936 Regulations on the structure of the Prosecutor's Office and duties were included in the laws on the court structure (*sk.: Tiesu iekārta. Rīga; Kodifikācijas nodaļa, 1936, 5. lpp. // see: The Court Structure. Riga; Codification Department, 1936, p. 5).*

12.2. It is clear the judicial power was not limited only by the functions of adjudication, it had also "other functions, which on their essence are closer to the judicial power [...] than to administrative power" (*prof. J.Vēbera piezīmes par likumprojektu "Latvijas Republikas likums "Par tiesu varu""; lietas materiālu 171. lpp. // Remarks by Prof. J. Vēbers on the Draft Law "The Republic of Latvia Law "On the Judicial Power"; materials in the matter p. 171).* Debate on the Office of the Prosecutor Law at the Saeima on its October

7, 1993 session unmistakably testifies about a clear aim of the Saeima to renew the Prosecutor's Office in accordance with its pre-occupational period status and principles of performance (*Latvijas Republikas 5. Saeimas 1993. gada 7. oktobra sēdes stenogramma // Verbatim Report of the 5th. Saeima October 7, 1993 session*). The same conception is reflected in both – the Law "On the Judicial Power" and the Draft Law on the Court Structure, which is submitted to the Saeima at the present moment.

Prosecutor's Office as the institution of the judicial power has a twofold structure. On the one hand it is an undivided, centralized system of three grade institutions, headed by the Prosecutor General, but – on the other hand – officials of the Prosecutor's Office i.e. the prosecutors independently and unipersonally perform the functions of the Office of the Prosecutor.

The principle of subordination, which can be clearly seen in the system of the institutions of the Prosecutors' Office and which externally brings it nearer to the system of the executive power institutions, does not mean that the prosecutor of the higher level institution or the prosecutor of the higher grade of office may interfere in the activities of the prosecutor of a lower grade or from an institution of a lower level, by giving him binding (guiding) implications about adjudication of a case. The prosecutor in his activities is independent, inviolable and politically neutral – he in the same way as the judge is subordinated only to the law and rights, but that – of course – does not exclude the right of other persons to appeal against the action of the prosecutor under the procedure envisaged by law.

12.3. The Saeima in its written reply points out that by the notion "the institution of the judicial power" one shall understand "such institutions and officials, whose actions are closely connected with the performance of the courts, as well as the institutions, performance of whose functions may be made hard, if they were included in the general sector of the executive power and would be organizationally subject to government institutions" (*sk. lietas materiālu 19. lpp. // see materials in the matter, p. 19*). Independence of the Office of the Prosecutor and belonging to the judicial power is a guarantee for the protection of human rights and fundamental freedoms from the potential arbitrariness of the executive power.

The Saeima, when taking the decision on the status of the Office of the Prosecutor, has based the above decision on the considerations of succession and usefulness.

13. Duties of the Prosecutor's Office and their relations with the other powers have been regulated in several normative acts. When assessing the status of the Prosecutor's Office, the Office of the Prosecutor Law shall be reviewed by reading it together with Section 106¹ of the Law "On the Judicial Power", which precisely determines the place of the Prosecutor's Office, establishing that prosecutors are officials belonging to the court system, who participate in the adjudication of matters in a court and perform other duties in accordance with law. The Saeima, when making Amendments to the Law "On Judicial Power" and supplementing it by the above norm on January 29, 1997, once more confirmed and fixed in legal acts belonging of the Prosecutor's Office to the judicial power. The development that the prosecutors are regarded as the officials, belonging to the judicial power, but the Office, in which they work – the institution of the State Administration would be illogical.

14. It is pointed out in both – the claim and the Saeima written reply that in separate sectors of public rights the prosecutors perform specific functions of the State Administration and not those of the judicial power. However, one cannot agree with the viewpoint of the submitter of the claim that thereby the interpretation, in accordance with which the Office of the Prosecutor is not an institution of the State Administration, is at variance with the Satversme.

The principle of separation of power means that the State power is divided into legislation, State administration and court adjudication. The function of legislation is the adoption of normative acts, which determines the action of an individual in accordance with public aims. The function of administration is realization of the decisions by the legislator, namely, realization of the normative acts, passed by it. The function of adjudication is solving of disputes in accordance with the normative acts, adopted by the legislator.

One shall remember that the State power is divided not only functionally. The power, which is being realized with the help of State institutions as intermediaries, is divided depending on the competence of each institution – it is the institutional division of the State power. Besides, the functional and institutional division of the State power is not identical. Not always the competence of an institution completely belongs to one of the three sectors of the State power. To ensure efficient functioning of the State, as well as creating of the "balance and counterbalance" system of the three sectors of the State power deviations are permitted – an institution parallel to realization

of functions of one power may establish the competence (duty) to participate in realization of the functions of another power. Dividing of the State power in the institutional level does not exclude forwarding some functions of one sector of the state power to institutions, which belong to another sector of the State power.

Professor Kārlis Dišlers generally agrees with the classical viewpoint that a rational scheme should be like this: every function of the State power has to be assigned to a separate State organ and thus, each organ would completely perform its function and would not take an active part in realization of functions, which are entrusted to other organs. However, at the same time he points out that "in life we do not find such a system of State organs, which has been created on the basis of a rational receipt; because the State organs have appeared and developed gradually, during the historical development, side by side with the appearance and development of state duties and functions" (*Dišlers K. Latvijas valsts varas orgāni un viņu funkcijas; Rīga, Tieslietu Ministrijas Vēstneša izdevums, 1925, 19. lpp. // Dišlers K. Organs of the Latvian State Power and their Functions; Riga, Bulletin of the Ministry of Justice Vēstnesis, 1925, p. 19*).

The Administrative Cases Department of the Supreme Court Senate has also pointed out that an institution or official, included in the judicial power or belonging to it may be by law assigned to certain functions in the State Administration, and when realizing them these institutions or officials shall be regarded as institutions in the understanding of Section 1, Paragraph 1 of the Administrative Procedure Law [*sk.: Par prokurora lēmuma pārsūdzēšanu. Augstākās tiesas Senāta Administratīvo lietu departamenta 2004. gada 9. marta lēmums lietā SKA-39; Jurista Vārds, Nr. 17 (322), 2004. gada 11. maijs, 23. lpp. // see: On the Appeal against the Decision of the Prosecutor. The Administrative Cases Department of the Supreme Court Senate March 9, 2004 Decision in case No.SKA-39; the Word of a Lawyer, No. 17 (322), May 11, 2004, p. 23.*]. Besides, the Office of the Prosecutor is not the only institution, which performs separate functions of the executive power. Traditionally officials of other institutions, for example, court Chairmen, also perform such functions. In the same way the Constitutional Court has stressed –within the scope of the administrative process the executive power shall be understood functionally but not institutionally (*sk. Satversmes tiesas 2005. gada 4. janvāra sprieduma lietā Nr. 2004-16-01 secinājumu daļas 10. punktu // see the Constitutional Court January 4, 2004 Judgment in case No. 2004-16-01, Item 10 of the concluding part*).

The State Administration Structure Law determines the institutional system of State administration subordinate to the Cabinet of Ministers and basic provisions regarding the operation of State administration. In accordance with Section 3, Paragraph 3 of the above Law the principles of State administration and other provisions of this Law are also applicable to institutions that are not subordinate to the Cabinet, insofar as it is not otherwise prescribed in the special legal norms of other laws. The Office of the Prosecutor Law, the Criminal Procedure Law and other normative acts regulate operation of the Office of the Prosecutor. The norms of the State Administrative Structure Law and the Administrative Procedure Law regulate the operation of the Office of the Prosecutor or a prosecutor in cases, when the Office of the Prosecutor institution or its official – the prosecutor performs the functions of the State Administration, that is, activities, which are not specified in Section 2 of the Office of the Prosecutor Law.

Even though one and the same institution may perform both – the functions of the judicial power and those of the State Administration; one has to strictly separate the responsibility of the executive power and the judicial power for execution of the basic functions. Usually the executive power is responsible for public order and security within the State. Just because of that the institutions of the State Administration are responsible and have to see to it that criminal acts are detected. However, to ensure that in this sector, which essentially concerns human rights, the permissible minimum is not violated, the Prosecutor's Office and the courts – i.e. the judicial power supervises this procedure.

Prosecutor's Office as the "first echelon" of the judicial power or as a specific filter – when establishing violation of a law - tries to restore justice within the scope of its competence. Even more, in criminal process - already since 1987 Recommendations of the European Council Minister Committee on Simplifying of Criminal Justice – it is internationally acknowledged that a judge is not involved in adjudication of complicated to a lesser degree cases; but an institution, belonging to the judicial power realizes simplified written proceedings, which ends in a decision, similar to punishment. Only, it is important that the decision by the official of this institution is accepted by the accused (even if the decision is in incontestable form). Besides, the prosecutor supervises not only justice in criminal relations but also in other sectors [*sk. Eiropas Padomes Ministru Komitejas rekomendāciju Nr. R(87) 18 par dalībvalstu kriminālās justīcijas vienkāršošanu, 1987. gada 17. septembrī ; see*

September 17, 1987 Recommendation No. R(87) 18 of the European Council Minister Committee "On Simplifications of Criminal Justice of the Member States // [http://www.coecidriga.lv/tulkojumi/MKRek/R\(87\)18.htm](http://www.coecidriga.lv/tulkojumi/MKRek/R(87)18.htm)]. If the prosecutor's competence is insufficient (for example, if the concrete person, because of its character or gravity of his/her crime, has to be isolated from the society) or if - as the result of the activities of the prosecutor - it has not been possible to restore justice, the prosecutor forwards the concrete issue to a court for adjudication.

The institution of the executive power, when realizing control within the scope of its competence and when establishing offence, may apply penalty. In difference from the actions and decisions by the officials of the judicial power, one may appeal against actions and decisions of the officials of the executive power to the administrative court.

Just the existing status of the Office of the Prosecutor – an institution of the judicial power – best of all ensures both – effective execution of the functions of the Prosecutor's Office, and the independence of the judicial power, besides, it complies with the principle of separation of power. Thus, one may agree with the viewpoint that "Prosecutor's Office is an integral institution of the judicial power. Control carried out by the executive power and influence on the performance of the Office of the Prosecutor is inadmissible, as such an action would not comply with the notion of democracy, included in Section 1 of the Republic of Latvia Satversme. In a democratic state the prosecutor, when realizing his/her authority, shall act as an independent, inviolable and politically neutral official, belonging to the judicial power, which is subordinated only to the law and to the rights" (*Muciņš L. Demokrātija un prokuratūra; Muciņš L. Democracy and the Office of the Prosecutor // Diena, July 11, 1998*).

Thus – the Office of the Prosecutor is an institution of the judicial power and the norms of the Office of the Prosecutor Law, which regulate the status of the Prosecutor's Office, comply with Sections 1 and 86 of the Satversme.

15. Section 58 of the Satversme determines: " The administrative institutions of the State shall be under the authority of the Cabinet".

This is one of the norms, which ensure realization of the principle of separation of the State power. By this Section the Satversme has included the

function of the executive power within the authority of the Cabinet of Ministers. In a democratic law-governed state power is divided so as to reach the aims of separation of power, which allows deviations from formal realization of the principle of separation of power (*sk. Satversmes tiesas 2006. gada 16. oktobra sprieduma lietā Nr. 2006-05-02 secinājumu daļas 10. punktu // see the Constitutional Court October 16, 2006 Judgment in case No. 2006-05-01, Item 10 of the concluding part*). Thus, institutions belonging to other sections of power may perform separate functions of State administration. The circumstance that the Office of the Prosecutor Law or other laws vests the Prosecutor's Office with authority in the sector of State administration does not mean that just because of this reason Prosecutor's Office becomes an institution of State administration, belonging to the executive power.

When assessing the institutional status of the office of the prosecutor, relevant is the will of the legislator, which was expressed when adopting the Satversme, the Law "On the Judicial Power" and the Office of the Prosecutor Law.

As the Office of the Prosecutor is an institution of the judicial power, there is no need to assess the conformity of its status with Section 58 of the Satversme.

16. Section 90 of the Satversme determines one of the fundamental rights of a person: "Everyone has the right to know about their rights".

This constitutional norm introduces the catalogue of the fundamental rights, included in the Satversme and indicates the importance, which the legislator has envisaged for entrenchment of this fundamental right in the Satversme. Only a person, who knows his/her rights is able to effectively realize them and – in case of ungrounded violation – to protect them in a fair court. Thus the Satversme envisages the subjective public right of a person to receive information on its rights and also duties.

The State has not only the duty of passing normative acts, which regulate behaviour of persons in diverse legal relations but also – to create a mechanism, which ensures awareness of persons on the contents and changes of the legal regulation. It envisages also the right of a person to receive information of its rights in concrete relations, when entering in publicly legal relations with the institutions of the State power.

The right of a person to know about his/her rights determines also the scope of the action of the legislator. The laws and other normative acts shall be publicly accessible, sufficiently clear and understandable. In the same way the person has the right to find out the practice of application of the normative acts, namely, in a democratic law-governed state court judicature shall be freely accessible to every person, interested in it.

The submitter of the claim has pointed out that the Office of the Prosecutor Law does not anticipate the procedure for appealing (challenging) against the dismissal of the prosecutor and thus it violates the rights, determined in Section 90 of the Satversme. Besides, the norms, regulating the status of the Prosecutor's Office, just because of their vagueness and casualness to his mind does not allow to establish the defendant and the procedure for compensation of the potential material loss.

17. At the time when Section 6 of the Office of the Prosecutor Law was formulated, neither the Administrative Procedure Law nor the Criminal Procedure Law had taken effect. However, the content of the first sentence of the norm testifies that the legislator has not indicated only concrete procedural laws, which were in effect at the moment of passing of the norm.

Thus, in cases when the Office of the Prosecutor Law does not envisage a specific procedure for appeal, the complaint on the action of the prosecutor shall be submitted under the procedure, determined in procedural laws.

18. Section 6, the second sentence of Paragraph 3 envisages a specific procedure of appeal on issues, which are within the competence only of the Prosecutor's Office. The Constitutional Court agrees with the viewpoint of the Saeima that the above sentence shall be applied only if other laws, for example the Criminal Procedure Law or the Administrative Procedure Law do not envisage a different procedure.

The issue on dismissal of a prosecutor from the post shall not be regarded as an issue to which refers Section 6, the second sentence of Paragraph 3 of the Office of the Prosecutor Law, namely – an issue, which is only within the authority of the Prosecutor's Office, as that is not connected with realization of the functions of the Prosecutor's Office.

In accordance with Section 6, Paragraph 3 of the Office of the Prosecutor Law the decision of the Prosecutor General is final in cases, when it refers to issues, which are only within the competence of the Office of the Prosecutor. Even though the right of the Prosecutor General to dismiss a prosecutor is determined in the Office of the Prosecutor Law, in this case one shall not speak "only about the competence of the Prosecutor's Office" in the understanding of Section 6, Paragraph 3 of the Office of the Prosecutor Law. For example, application of disciplinary sanctions is also the right of the Prosecutor General, which is determined in the Office of the Prosecutor Law, however, Section 45, Paragraph 7 of the Office of the Prosecutor Law envisages that a person may appeal a decision regarding the imposition of a disciplinary sanction on him/her to a court.

The Constitutional Court agrees to the conclusion, expressed in the written reply of the Prosecutor's Office, that appeal or abrogation of an Order by the Prosecutor General about the dismissal of a prosecutor from a post shall not be linked with Section 6, Paragraph 3 of the office of the Prosecutor Law.

Thus, the second and third sentences of Section 6, Paragraph 3 of the Office of the Prosecutor Law shall not be applied regarding the Prosecutor General's Order to dismiss a prosecutor from post.

19. The Saeima points out: "there is no doubt that cases on the removal and dismissal of prosecutors from the post, as well as cases on the disciplinary sanctions applied to the prosecutors shall be reviewed under the procedure, determined by the Administrative Procedure Law, if the above decision complies with the requirements, determined in Section 1, Paragraph 3 of the Administrative Procedure Law".

The basic duty of the Constitutional Court is not to take the decision on how legal norms shall be correctly interpreted or applied in every particular case. The Constitutional Court has pointed out that everybody – the submitter of the claim, the Administrative Regional Court as well as any other judge of the Administrative court in order to reach the fairest and the most useful result on the basis of Section 102, Paragraph 2 of the Administrative Procedure Law are vested with the right of determining the administrative procedure norm to be applied. Application of legal norms, which comply with the Satversme, includes finding the right legal norm and adequately interpreting it; assessment of inter-temporal and hierarchic applicability, use of appropriate judicature as well as further advancement of the law (*sk. Satversmes tiesas 2005. gada 4.*

janvāra sprieduma lietā Nr. 2004-16-01 secinājumu daļas 17. punktu // see the Constitutional Court January 4, 2005 Judgment in case No. 2004-16-01, Item 17 of the concluding part).

Section 1, Paragraph 3 of the Administrative Procedure Law determines:

” An administrative act is a legal instrument directed externally, which is issued by an institution in an area of public law with regard to an individually indicated person or individually indicated persons establishing, altering, determining or terminating specific legal relations or determining an actual situation. Administrative acts are also decisions regarding the establishing, alteration or termination of the legal status of, or the disciplinary punishment of employees or of persons specially subordinate to the institution as well as other decisions if they significantly limit the human rights of the employees of or persons specially subordinate to the institution. An official in the understanding of this part of the Section is not an employee of the institution with whom – in accordance with normative acts – legal labour relations shall be established. An administrative act is not:

1) a decision or other type of action of an institution in the sphere of private law;

2) an internal decision of the institution, which affects only the institution itself, bodies subordinate to it or persons specially subordinate to it;

3) interlocutory matter (inter alia also a procedural decision) within the framework of administrative process, with an exception of the case, when it concerns essential rights or legitimate interests of a person or vitally burdens their realization;

4) a political decision (political announcement, declaration, invitation and announcement on election of officials and similar) by the Saeima, the President, the Cabinet of Ministers or local government city councils;

5) a decision regarding criminal proceedings and a court adjudication”.

Thus, the appealed decision is an administrative act.

The procedure under which to appeal against the Order of the Prosecutor General on dismissing a prosecutor from the post has not been established in the Office of the Prosecutor Law, with an exception of cases, when dismissing is a disciplinary punishment. The Saeima stresses that indication to the fact that the particular decision may be appealed under the procedure determined in the Administrative Procedure Law is included just for clarity. Another normative act, namely, the Administrative Procedure Law envisages the procedure under which the decision on the dismissing of a prosecutor shall be appealed. Non-existence of the norm in the Office of the Prosecutor Law does not prohibit applying of legal norms, which are included in other normative act.

It has already been established in the Judgment that the Prosecutor's Office – being an institution of the judicial power – performs activities also in the sector of the executive power. Court control on the legality or efficiency considerations of an administrative act, passed by an institution, takes place within the scope of freedom of action by taking into account the conclusion of the case law of the Administrative Cases Department of the Supreme Senate, that in the understanding of the Administrative process, the sector of the State administration does not include only those institutions, the direct duties of which are the functions of the executive power. The notion "executive power", which is mentioned in Section 2 of the Administrative Procedure Law, shall be understood functionally and not institutionally. "The decisions of the institutions of the judicial power and officials and their actual activities, which are connected with realization of functions of the State administration, have not been taken out of court control either" [*Par prokurora lēmuma pārsūdzēšanu. Augstākās tiesas Senāta Administratīvo lietu departamenta 2004. gada 9. marta lēmums lietā Nr. SKA-39; Jurista Vārds, Nr. 17 (322), 2004. 11. maijs, 23. lpp // On Appealing against the Decision of a Prosecutor. The Administrative Cases Department of the Supreme Court Senate March 9, 2004 Decision in case No.SKA-39; The Word of a Lawyer, No. 17 (322), may 11, 2004, p.23*].

Thus the Order of the Prosecutor General on the dismissing of the prosecutor from the post shall be appealed under the procedure of the administrative process.

20. The submitter of the claim, when referring to the second sentence of Section 22 of the Prosecutor's Law, which states that all the institutions of the Office of the Prosecutor have the rights of a legal person, has not been able to specify whether the defendant in this matter "is the Office of the Prosecutor (or the Office of the Prosecutor General) as the legal person of public rights, or the Republic of Latvia as the legal person of public rights".

The Saeima points out that in the particular historical period "by including in the law the remark that the institution is a legal person, the aim of the legislator has been to vest the respective institution with the right of concluding legal operations (deals) for ensuring the performance of the institutions as well as the possibility to open an account in a bank". In the written reply attention is drawn to the second sentence of Section 22 of the Prosecutor's Law, which envisages the rights of a legal person to the institutions of the Prosecutor's Office, shall not be interpreted as the sentence,

which vests the Prosecutor's Office with the status of a legal person of public rights. The above norm was intended for regulation of relations of private rights and shall be interpreted in the context of the reform of State administration and dealt with in connection with the fundamental principles of the State Administration Structure. The Saeima stresses that in accordance with the existing legal regulation of the legal understanding of the European continental law and the theory on the state structure, the Prosecutor's Office for regulating relations of legal rights does not need the status of a legal person.

21. Determination of the status of a legal person in the Office of the Prosecutor Law is connected with the viewpoint, dominating at the time of elaboration and adoption of the Law, namely, that State organs and institutions are legal persons. Therefore at the end of the nineties sometimes the particular institution and not the State as a legal person was considered to be the defendant in cases on the loss incurred to a private person. At that time many institutions were regarded as legal persons (*sk.: Lēbers D.A., Bišers I. Ministry Cabinets ; see: Lēbers D.A., Bišers I. The Cabinet of Ministers // Riga, 1998, p. 102*). For example the norm of the Law "On the State Revenue Service", which envisaged that the State Revenue Service and its territorial institutions had the status of a legal person, was amended only by June 16, 2005 Law. From the annotation to the draft Law "Amendments to the Law "On the State Revenue Service" it can be seen that one of the aims of amendments, included in the normative act, has been to harmonize the notions, used in the Law "On the State Revenue Service" and the State Administrative Structure Law.

On January 1, 2003 the State Administrative Structure Law, which determines the fundamental principles of a State structure, took effect. In accordance with this Law the State itself, i.e. – the Republic of Latvia, which is regarded to be the initial legal person of public rights, is a legal person.

The institution, which is regarded to be a legal person of public rights has its own property, its own budget, separated from the State basic budget; financing of such an institution is mainly its own income; such an institution is professionally, territorially or economically directed to the user. The Constitutional Court agrees with the statement of the Saeima that duties and functions of the Office of the Prosecutor are absolutely incompatible with the idea that the Prosecutor's Office shall be regarded as a legal person of public rights. The Prosecutor's Office has no property of its own. The Prosecutor's Office has no budget, separated from the State basic budget and its financing is

not formed from its income. The Prosecutor's Office always acts in the name of the State; it is not an institution, directed to the user.

Inadmissible is the situation when compensation of losses would be paid from those funds of the State budget, which have been allocated for ensurance of its performance. Such a procedure would essentially hinder the performance of the concrete State institution and limit realization of the functions, envisaged in the normative acts. The situation when - because of the compensation needed for repaying the loss – a State institution, which realizes significant State functions, shall go bankrupt is absurd. The Republic of Latvia is responsible for the liabilities of a State institution, because the particular institution acts in the name of the initial legal person of public rights, that is – in the name of the State.

In a case when under the procedure of the administrative process an Order of the Prosecutor General on dismissing of a prosecutor from the post is being appealed, the Republic of Latvia shall be the defendant.

22. The competence, granted to an institution, and not its status as a legal person determines the legal identity of it. In cases, when an institution of the Office of the Prosecutor or its official performs some duty in the sector of State administration, not realizing just the functions of the Prosecutor's Office, enumerated in Section 2 of the Office of the Prosecutor Law, it becomes a subject of administrative law, to which is vested certain authority of the State power in the sector of State administration. In such cases the institutions of the Prosecutor's Office are institutions in the understanding of Section 1 of the Administrative Procedure Law, which are invited as the party of the defendant. The Office of the Prosecutor, as an institution of the judicial power, performs certain activities in the sector of Administration and with regard to these activities shall be considered to be a State institution in the understanding of the Administrative Procedure Law.

Thus, the institution of the Prosecutor's Office or its official, from which the claimant requires adequate to its authority action, shall be invited in the party of the defendant.

23. To assess the conformity of the impugned norms with Section 90 of the Satversme, one shall establish whether they are explicit enough.

The European Court of Human Rights has repeatedly pointed out that the laws and legal norms shall be both – adequately understandable and predictable, that is, formulated with adequate precision so that an individual, in case of necessity and after consulting, could regulate his/her behaviour (*see, for example: The Sunday Times v. The United Kingdom, Judgment of 26 April 1979, Series A No. 30, p. 31, para.49; Kokkinakis v. Greece, Judgment of 25 May 1993, Series A No. 260-A, p. 19, para. 40*).

When applying legal norms it is necessary to establish their real sense. The grammatical method of interpretation is only the very first of methods of interpretation and it is not correct to be guided only by the verbal sense of a legal norm. If the issuer of a legal norm, when textually expressing his/her will, has done it inaccurately or if the perception of the law has developed or changed, the real will of the legislator has to be taken into consideration.

Thus, the impugned norms comply with Section 90 of the Satversme.

The operative part

On the basis of Sections 30 –32 of the Constitutional Court Law the Constitutional Court

hereby rules:

To declare Section 1, Paragraph 1; Section 4, Paragraph 1; Section 6, Paragraph 3; Sections 22 and 50 of the Office of the Prosecutor Law as conformable with Sections 1, 58, 82, 86 and 90 of the Republic of Latvia Satversme.

The Judgment is final and allowing of no appeal.

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

The Chairman of the Court session

A.Endziņš