THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, January 4, 2005

JUDGMENT
in the name of the Republic of Latvia

in case No. 2004 – 16 – 01

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session Aivars Endziņš as well as the justices Ilma Čepāne, Romāns Apsītis, Aija Branta, Juris Jelāgins and Gunārs Kūtris under Article 85 of the Republic of Latvia Satversme (Constitution) as well as Articles 16 (Item 1), 17 (Item 9 of the first Part), 19^1 and 28^1 on the basis of the claim by the Administrative Regional Court on December 8, 2004 at the Court session in written proceedings reviewed the case

"On the Compliance of Section 124 (the first and the second Paragraphs) on Payment of State Fees in Matters of Misdemeanor of the Administrative Procedure Law with Article 92 of the Republic of Latvia Satversme (Constitution)".

The establishing part

1. On December 7, 1984 the Supreme Council of the Latvian SSR adopted the Law "On the Confirmation of the Latvian SSR Administrative Misdemeanor Code". The first Article of the above Law establishes that the Latvian SSR Administrative Misdemeanor Code shall be confirmed and it will take effect on July 1, 1985. Article 280 (the third Paragraph) of the Latvian SSR Administrative Misdemeanor Code envisages that no payment of the State fee is required if a person has appealed against the decision on imposing a fine. The above legal norm has not been altered and at the moment of submission of the claim was in effect in its initial wording.

On August 29, 1991 the Republic of Latvia Supreme Council adopted the Law "On Application of the Latvian SSR Legislative Acts within the

Territory of the Republic of Latvia". Item 1 of the above Law enumerated those codes, the titles of which included the abbreviation "SSR". In its turn Item 2 determined that till the time of adoption of new Republic of Latvia Codes all the Latvia SSR codes should be regarded as codes of Latvia. Thus since August 29, 1991 the abbreviation "SSR" was deleted from the title of the Latvian SSR Administrative Misdemeanor Code and it has to be read as "the Latvian Administrative Misdemeanor Code" (hereinafter – LAMC).

2. On October 25, 2001 the Republic of Latvia Saeima – the Parliament – (hereinafter – the Saeima) passed the Administrative Procedure Law (hereinafter – APL), which took effect on February 1, 2004. The first Paragraph of Section 124 of the Law determines that a State Fee in the amount of ten lati shall be paid in regard to the submission of an application regarding initiation of a matter in court, but the second Paragraph of the above Section determines that a State Fee in the amount of five lati shall be paid in regard to an appellate complaint (hereinafter – the impugned norms).

3. **The submitter of the claim – the Administrative Regional Court** names the following actual circumstances of the matter: on January 14, 2004 the inspector of the Ogre District Municipal Police in accordance with Article 122 (the first Paragraph) of the LAMC fined Igors Zvirbulis for violation of the regulations on parking with a State fee in the amount of five lati. With the January 26, 2004 decision of the Ogre District Municipal Police Chief I.Zvirbulis appeal on the abrogation of the decision in the matter of misdemeanor was rejected and the decision of the above inspector was considered as valid.

On February 16, 2004 the judge of the Administrative District Court took the decision of leaving I.Zvirbulis claim against the January 16, 2004 decision by the inspector of the Ogre District Municipal Police not proceeded with, because the document, which would confirm that the State fee had been paid, was not attached to the claim. I. Zvirbulis submitted a neighboring claim on the February 16, 2004 decision of the judge of the Administrative District Court, pointing out that the third paragraph of LAMC does not envisage the payment of the State fee in matters of misdemeanor and shall be regarded as a specific legal norm contrary to the first paragraph of Section 124 of the APC.

The Administrative Regional Court by its June 11, 2004 decision rejected the neighboring claim of Zvirbulis, at the same time declaring that the matter shall be forwarded to the Constitutional Court.

4. The Administrative Regional Court, following the decision by the Republic of Latvia Supreme Court Administrative Cases Senate

(hereinafter – the Senate) in the matter SKA-100, concludes that the provisions of the third Paragraph of LAMC Article 280 shall be applied only at the administrative procedure institution, but not at the administrative court.

The Administrative Regional Court holds that the procedure, demanding payment of the State fee when submitting a claim on matters of misdemeanor, is ungrounded and not admissible in a democratic society. To their mind such a precondition violates the right of a person to a fair court. It shall be taken into consideration that matters of misdemeanor have to be regarded as special administrative matters, as when reviewing them the lawfulness of the fine, equaled to the criminal sanction, is verified. The action, determined in the impugned norm – the payment of the State fee - to their mind may groundlessly restrict the right of a person to appeal at the Administrative Court.

The Administrative Regional Court stresses that one of the fundamental objectives of APL in accordance with Item 2 of Section 2 of the Law is to subject actions of executive power relating to specific public legal relations between the State and a private person to the control of an independent, impartial and competent judicial power. Thus APL shall be regarded as one of the main mechanisms of implementation and protection of human rights in the Republic of Latvia. Questionable is the fact that the requirement of the payment of the State fee in matters of misdemeanor, included in the impugned norms, as if makes the mechanism more effective.

When answering to the questions of the Constitutional Court the Administrative Regional Court points out that up to October 15, 2004 forty four matters of misdemeanor have been sent to the court of the first instance for payment of the State fee. Thus it may be stated that even at the Administrative District Court there exists the practice of demanding the payment of the State fee when submitting any claim, including matters of misdemeanor. In its turn, the Senate Decision in case SKA-100 shall be viewed separately from the actual circumstances of the case, as it incorporates the interpretation of Section 3 of APL, regarding application of APL both – in an institution and in court. The above Decision has not enforced any changes in the Administrative Regional Court practice.

5. The institution, which has passed the impugned act – **the Saeima –** in its written reply does not agree with the viewpoint of the Administrative Regional Court and points out that – in accordance with the first Paragraph of Article 2 of the Law on the Procedure by which the Administrative Procedure Law Takes Effect (henceforth – the Law on the Law Taking Effect) –APL regulation has not been planned as wholly

exhaustive, namely, a different legal order may be determined in the specific norms of other laws. The Saeima does not agree with the viewpoint of the Administrative Regional Court, that special norms, which are envisaged in other laws and codes, shall not be applied in the administrative procedure.

The Saeima holds that in conformity with Section 15 (the ninth Paragraph) of APL the older special norm of law shall be applied insofar as its purpose is not in conflict with the purpose the most recent general norm of law. Even though the Senate in its decision in case SKA-100 has not referred to the ninth Paragraph of Section 15 of APL, the notion of the above decision on its merit is just like it. When interpreting the ninth Paragraph of Section 15 of APL as being read in conjunction with the main objectives of the Law, determined in Section 2 of the Law, it is necessary to choose that legal norm, which will most effectively secure the protection of the right of a person to a fair court, established in the first sentence of Article 92 of the Republic of Latvia Satversme. The Saeima points out that the legal norm, incorporated in APL, might supersede an older norm of law only in case, if the legal norm, included in APL, guarantees more extensive rights to the individual. However, in this case the legal norm, more favorable for a person, is incorporated in LAMC and it shall be applied.

The Saeima points out that the claim has been submitted at the time when there is a certain Transitional Period in regard to matters of misdemeanor. Article 2 (the second paragraph) of the Law on the Administrative Procedure Law Taking Effect determines that beginning with March 1, 2005 a special law shall regulate the procedure of reviewing matters of misdemeanor and implementing of decisions on them. In its turn Item 5 of the Transitional Provisions of the Law determines that up to June 1, 2004 the Cabinet of Ministers shall elaborate the Draft Law, regulating the procedure of reviewing matters of misdemeanor as well as that of implementing the decisions on matters of misdemeanor and submit it to the Saeima.

Thus the Saeima draws a conclusion that during the Transitional Period the third paragraph of Article 280 of the LAMC and not the impugned norms, which comply with Article 92 of the Satversme, shall be applied in matters of misdemeanor. The Saeima requests to declare the claim of the Administrative Regional Court as groundless and reject it.

6. **The Senate** points out that it has not received any neighboring complaints on the payment of State fees in matters of misdemeanor and it – to the mind of the Senate – indirectly testifies that the existing regulation has not been an obstacle for the protection of the rights and legitimate interests of a person at the court. Besides, it should be taken

into consideration that – in accordance with Section 128 of the APL - the judge, taking into account the financial situation of a natural person, may decrease the amount of the State fee. The above regulation diminishes to the minimum the potential restriction of the rights of a person.

The concluding part

7. It follows from the claim that the Constitutional Court is requested to assess whether the impugned norms comply with the notion of a fair court, incorporated in the first sentence of Article 92 of the Satversme.

7.1. Even though the Satversme does not directly envisage cases in which the right to a fair court might be restricted, the right is not absolute. The Satversme is a single aggregate body and the norms, incorporated into it, shall be interpreted systemically (*see e.g. the Constitutional Court October 22, 2002 Judgment in case No. 2002-04-03, Item 2 of the concluding part and June 27, 2003 Judgment in case No. 2003-04-01, Item 1, Sub-item 1 of the concluding part).* Presumption that it is not allowed to determine any limitations to the rights envisaged in Article 92 of the Satversme for every particular person, would be at variance with both – the fundamental rights of other persons, guaranteed by the Satversme , and the other norms of the Satversme (*see the Constitutional Court November 26, 2002 Judgment in case No. 2002-09-01, Item 1 of the concluding part and June 27, 2003 Judgment in case No. 2003-04-01, Item 1, Subitem 1 of the concluding part).*

7.2. The impugned norms include the requirement to pay a State fee for the submission of an application to the Administrative Court. Thus, the determined payment – the State fee – indirectly restricts one of the elements of a fair court, namely, the access of a person to court.

8. To assess the conformity of the above restriction with the notion of a fair court, included in the first sentence of Article 92 of the Satversme, it is necessary to establish whether the restriction has been determined by law, whether it has a legitimate aim as well as whether it complies with the principle of proportionality.

8.1. Access to court has been limited by the impugned norms – the first and second Paragraph of Section 124 of APL. **Thus the restriction has been determined by law.**

8.2. The aim of the impugned norms is to secure the effectiveness of the court system – not only to lessen the possibility of submitting

ungrounded claims or appellate complaints but also to partially cover the expenses of supporting the court. **Thus the restriction has a legitimate aim.**

8.3. If there is a legitimate aim, then it is necessary to assess whether the balance between the preconditions for effective functioning of the court on the one hand and the access of a person to a court on the other hand has been secured. To take the decision on the proportionality of the restriction, it has to be assessed whether the legislator has chosen the most considerate means, namely – whether the aim could not be reached with means, restricting the fundamental rights in a lesser degree.

8.4. The access to the court may be indirectly limited in two ways, first of all, by payments, determined by the State and, secondly, by remuneration to the advocates or other representatives. On August 24, 2004 the Cabinet of Ministers passed Regulations No. 735 "Regulations on the Procedure of Payment of Remuneration and its Amount to the Representative of a Natural Person in an Administrative Matter, which is Complicated for the Addressee", which envisages that for complicated administrative matters at the institution or the court the representative of a natural person shall receive a definite remuneration. Thus, the above Regulations of the Cabinet of Ministers at least in complicated administrative matters ensure for a natural person legal aid free of charge.

8.5. In its turn the requirements of the impugned norms – to pay ten lati for the submission of a claim and five lati for the submission of and appellate complaint – envisages State determined payment, which undoubtedly serves as a certain kind of a barrier and indirectly restricts the access of a person to the court.

However, the third Paragraph of Section 128 of APL envisages for the judge freedom of action and, taking into account the financial situation of the natural person, he/she is allowed to decrease the amount of the State fee. With the help of the above regulation the legislator has secured the observance of the principle of equality, determined in Article 91 of the Satversme and the requirement for a fair court, incorporated in Article 92 of the Satversme.

Besides, the first Paragraph of Section 126 of the APL determines that in cases when the application is fully or partly allowed, the court shall adjudge as against the defendant, in favour of the applicant, the State fee paid by the applicant. Besides, the court, on the basis of the second Paragraph of Article 126 of APL, shall take the decision on

the issue regardless of the fact whether the applicant has expressed the particular request.

Thus the legislator has incorporated in the norms of APL several means, which – when applying the impugned norms- may simultaneously secure application of more considerate means for the above restriction. Besides, one shall take into consideration that the amount of the State fee determined in the impugned norms – ten lati in regard to the submission of an application and five lati in regard to appellate complaint – is a comparatively small sum, which the submitter has to pay.

Thus the impugned norms shall be acknowledged as proportionate and conformable with the notion of a fair court, incorporated in the first sentence of Article 92 of the Satversme.

9. Simultaneously with the conclusion that the impugned norms incorporate a groundless requirement to pay the State fee for every administrative matter, the Administrative Regional Court in its claim has also made reference to Article 280 (the third Paragraph) of LAMC, which requires no payment of the State fee in matters of misdemeanor. The impugned norms and Article 280 (the third paragraph) of LAMC include opposite legal regulation. Thus – as concerns this matter on its merit – obscurities are connected with application of the impugned norms and Article 280 (the third part) in the administrative procedure in court in **matters of misdemeanor.**

10. On the basis of the first Paragraph of Section 3 of APL the Law shall be applied to administrative procedure in institutions insofar as special norms of law in other laws do not provide otherwise. In its turn the second Paragraph of Section 3 of APL determines that administrative proceedings in court shall take place in accordance with this Law. Thus there exist two ways of administrative procedure – administrative procedure in institutions and administrative proceedings in court.

The fundamental duty of an institution in the administrative procedure is – within the competence authorized to it - to ensure legal, effective and accurate application of legal norms, impartial clarification of actual and legal circumstances as well as to take the most conformable (suitable) decision.

In its turn the fundamental duty of the court in administrative proceedings, following from the principle of impartial investigation, is to ensure effective court control of the lawfulness and usefulness of the activities (failure to act) of the executive power. In a more extensive sense the court duty in administrative proceedings is to realize control of

the legality (usefulness) of the use of the authority vested to the executive power. Besides, executive power within the range of this process shall be understood functionally but not institutionally.

Taking into consideration the legal regulation in effect, matters of misdemeanor are also being reviewed in Administrative Court proceedings. These matters may be divided into two types – matters, which are reviewed by institutions, which impose penalties; as well as matters, which in accordance with Article 213 of LAMC are reviewed by the district (city) court judge, who imposes penalties.

11. It can be concluded from the claim that the administrative courts, when requiring payment of the state fee in matters of misdemeanor, are guided only by Section 3 (the second paragraph) of APL and do not apply the third Paragraph of Article 280 of LAMC. The Senate decision in case SKA-100 is mentioned as the reason for the above practice. When assessing, whether the decision of the judge in a matter of misdemeanor shall be appealed against within the term determined by APL or by LAMC, the Senate in the above decision has concluded that in administrative court proceedings shall be applied the longest, i.e. more favorable for the person, term, which is determined in APL. Besides, in the above decision it was concluded that "the Administrative Court in court proceedings shall be guided only by the Administrative Procedure Law, not taking into consideration different norms, determined in special laws. In other words, the Administrative Procedure Law gives **complete** regulation of the Administrative Court proceedings, completely substituting the older regulation" (*May 11, 2004 Decision by the Republic of Latvia Supreme Court Administrative Cases Department in case SKA-100; Item 11; see p. 55 of the Case).*

Therefore in cases, when the State fee, determined by the impugned norms in regard to the submission of applications to the Administrative Court, has not been paid, the decision of leaving the application not proceeded with is taken. The above is motivated by the second Paragraph of Section 3 of APL, but it was simultaneously pointed out that even though Article 280 (the third Paragraph) does not envisage payment of the State fee in regard to the matters of misdemeanor, the State fee shall be paid as the impugned norm anticipates it (*see the Administrative Regional Court May 24, 2004 Decision in case No. AA 381-04, Item 1; and June 2, 2004 Decision in case No. AA 415-04/3, Item 3; pp. 95, 124, 125 of the case).*

12. Up to the moment of APL taking effect the administrative procedure in an institution was regulated by the Cabinet of Ministers June 13, 1995 Regulations No. 154 " Regulations on the Procedure of Administrative Acts", but administrative proceedings in the court took place in accordance with the Civil Law and several Chapters of the still valid Civil Procedure Law of Latvia.

In its turn the procedure of the review of matters of misdemeanor in a court was regulated both by the norms of LAMC and the 24th. Chapter of the Civil Procedure Law " Review of Complaints on the Activities of Institutions and Officials in Regard to Imposing of Administrative Fees". After APL taking effect the legal norms of the Civil Procedure Law lost validity. However, LAMC was not abrogated and is in effect even now. Besides, it can be seen that the Saeima has repeatedly amended LAMC after APL taking effect, but the third Paragraph of Article 280 of LAMC has not been altered.

Thus, the legislator has separated from the administrative proceedings in court a special type - the procedure for reviewing matters of misdemeanor.

13. In accordance with Article 2 (the first Paragraph) of the Law on the Law Taking Effect the legislator has established a special Transitional Period for the review of matters of misdemeanor. The second sentence of the above Article (of the first Paragraph) anticipates that APL and the legal norms of the above law shall be applied to the extent that special norms of law in other laws do not provide otherwise. Besides, the second Paragraph of Article 2 of the above Law, which enacts a certain Transitional Period up to March 1, 2005 in regard to matters of misdemeanor, shall also be taken into consideration.

The Constitutional Court agrees with the viewpoint of the Saeima that the regulation of APL has not been intended as complete or exhausting. Even though Section 3 (the second Paragraph) establishes that administrative proceedings in court shall take place in accordance with this Law, it is necessary to interpret this norm as being read in conjunction with both Section 15 (the ninth and tenth Paragraph) and Section 102 (the second Paragraph) of APL as well as with Article 2 (the first, the second, the third Paragraphs) of the Law on the Law Taking Effect.

Besides, it would be groundless to hold that in one normative act – APL – are generalized all the procedural legal norms to be applied in administrative proceedings at court just by referring to Section 3 (the second Paragraph) of APL. Thus, for example, in accordance with Article 17 of the Law " On Meetings, Processions and Pickets" limitations or refusals to organize meetings, processions and pickets, established by the municipality officials, may be appealed against to the Administrative District Court, which under the procedure determined by APL shall review the case within three days.

Also in Article 11 (the second Paragraph) of the Law "On the Procedure of Terminating the Activities of Enterprises, Institutions and

Organizations" it is determined that the decrees (decisions), mentioned in Articles 1 and 10 of the Law, may be appealed against at the Administrative District Court under the procedure determined in APL, besides, submission of a claim on abrogation of a decree (decision) and announcement of it losing the validity or being invalid does not stay its operation. In this case, on the basis of Article 11 (the second Paragraph) of the above law and Section 185 (Item 1 of the second Paragraph) of APL, the first Paragraph of Section 185 of APL, which envisages that submission of an application to the court stays the operation of the administrative act from the day the application is submitted, shall not be applied.

Thus all the legal norms, regulating administrative proceedings, are not included in APL and APL cannot be regarded as the only source of legal norms of the administrative process.

14. Administrative Regional Court in several cases has concluded that, when reviewing matters of misdemeanor and establishing the norms of the Administrative Procedure Law in effect, the court shall take into consideration that in matters of misdemeanor LAMC norms, which determine the procedure of proceedings in matters of misdemeanor, may also be applied (*see the Administrative Regional Court November 24, 2004 Decision in case No. AA1025-04/4, Item 7, p.110 of the case).* Besides, during the Transitional Period, determined in the Law, the duty of the Administrative Court is to secure observation of the fundamental rights of a person in concrete publicly legal relations between a person and the State, which follow from the fact of commitment of misdemeanor (*see the Administrative Regional Court September 14, 2004 Decision in case No. AA872-04/5, Item 7, pp. 98 and 99).*

Thus in separate decisions the Administrative Regional Court applies the Senate conclusion, incorporated in the Decision in case SKA-100 and requires payment of the State fee in matters of misdemeanor. However, in other cases, when taking the decision on application of separate norms, included in LAMC, for example, on issues of the duty of a person to observe the procedure of contesting the decision out of court or the duty of the court to draw up a full text of the judgment, the court takes into consideration also the collision norms, included in Section 15 (Paragraphs 9 and 10) of APL even then, if they determine a different procedure than the legal norms incorporated in APL.

15. As it has been already pointed out in Items 7 and 8 of this Judgment, the State fee shall be acknowledged as a legitimate way in which, by observing the principle of proportionality, it is admissible to restrict the access of a person to a court.

However, such restriction shall be determined by law. Regarding the payment of the State fee in matters of misdemeanor, it cannot be concluded that this restriction has been determined by law. It appeared only as the result of interpretation (application) of the legal norms by the courts. It has to be taken into consideration that the result of interpretation (application), which leads to groundless decrease or restriction of the fundamental right of the person, determined in the first sentence of Article 92 of the Satversme, shall be regarded as inadmissible. When choosing the legal norm to be applied, preference shall be given to the norm, which may guarantee a higher degree of security (ensurance) for the particular fundamental right.

The judgment of the court of higher instance is not an external normative act. The judge has to take into consideration the judgment by the court of a higher instance only insofar as it is substantiated, conclusive and attributed to actual and legal circumstances of the particular case. However, the judge, when reviewing another matter and in case of doubt, may choose another, more conformable with the actual and legal circumstances of the particular case, result of interpretation of the legal norm. If for this reason it is necessary to deviate from the conclusions of the former court practice then the judge experiences the right to do so, however he/she has to substantiate the viewpoint (*see the Constitutional Court February 4, 2003 Judgment in case No. 2002-06-01, Item 2, Sub-item 4).*

The above conclusion follows also from Article 83 of the Satversme, which determines that judges shall be independent and subject only to the law. Independence in the understanding of this Article means self-dependence of the judge in reaching the judgment. In its turn, dependency on the law means that in the process of application of legal norms the judge shall try to reach the most fair and useful result, which complies with the legal system.

Thus the conclusion of the Administrative Regional Court, that the requirement of the payment of the State fee in matters of misdemeanor violates the right of the person to a fair court, shall be considered as well-grounded. Access to the court is very important in these cases, as the legality of such an administrative act, which is connected with application of punishment like the criminal sanction, is being verified. The requirement of the State fee may lessen the motivation of an individual to address the court. It is inadmissible in cases, when the executive power realizes the function of punishment.

16. In its turn the Administrative Court process at the cassation instance is of publicly legal nature and it is directed to secure uniform application of legal norms. The cassation instance takes decisions on interpretation

issues of fundamental norms of the administrative procedure, but it cannot act as the legislator. The Senate has also expressed such a viewpoint (*see the Republic of Latvia Supreme Court Administrative Cases Department Senate November 9, 2004 Decision in case SKA-246, Item 14, pp. 121, 122 of the case).*

17. The basic duty of the Constitutional Court is not to decide how the legal norms shall be interpreted or applied in every particular case. To reach the most fair and useful result, which complies with Article 92 of the Satversme both – the submitter of the claim – the Administrative Regional Court and any other judge of the Administrative Court in accordance with Section 102 (the second Paragraph) of APL 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.

18. The Constitutional Court asks the Saeima to pay attention to the fact that the wording of Section 3 (the second paragraph) of APL creates a delusion on the prohibition of application in the administrative court process of legal norms, incorporated in other normative acts. Thus, the issue of expressing the above legal norm in a new wording might be considered.

The substantive part

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

hereby rules:

to declare the first and second Paragraphs of Section 124 of APL on the payment of State fee in matters of misdemeanor as conformable with Article 92 of the Republic of Latvia Satversme.

The Judgment is final and allowing of no appeal.

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

The Chairman of the Court session Aivars Endziņš