



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, December 6, 2004

JUDGMENT in the name of the Republic of Latvia

in case No. 2004 – 14 – 01

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

under Article 85 of the Republic of Latvia Satversme (Constitution) as well as Articles 16 (Item 1), 17 (Item 9 of the first Part) and 28¹

on the basis of the claim by the Administrative Regional Court

on November 9 and 16, 2004 at the Court session in written proceedings reviewed the case

”On the Compliance of Section 61 (the sixth Paragraph) of the Immigration Law with Article 92 of the Republic of Latvia Satversme (Constitution)”.

The establishing part

1. Up to May 1, 2003 the procedures for the entry, residence and expelling of aliens and stateless persons in the Republic of Latvia was regulated by the Law ”On Entry into and Residence in the Republic of Latvia of Aliens and Stateless Persons”. The procedure for issuing entry permits for entering the territory of the Republic of Latvia was determined by the Cabinet of Ministers April 6, 1999 Regulations No.131 ”The Procedure for Issuing the Republic of Latvia Visas”. Item 22.13 of the Regulations determines that the visas shall not be issued if the person ”takes part in a criminal, totalitarian, terrorist or other organization,

practicing violent methods or in any other way poses threat to the state security or public order of the Republic of Latvia, Republic of Estonia and the Republic of Lithuania”. In its turn Item 24 of the Regulations anticipates that the Minister for the Interior shall take the decision regarding including an alien in the List of those persons for whom the entry in the republic of Latvia is prohibited. Neither these Regulations nor the above Law envisaged the procedure for contesting or appealing against the decision of the Minister for the Interior.

2. On October 31, 2002 the Republic of Latvia Saeima – the Parliament (henceforth – the Saeima) passed the Immigration Law. It took effect on May 1, 2003 and both – the Law ”On Entry into and Residence in the Republic of Latvia of Aliens and Stateless Persons” and the Cabinet of Ministers Regulations No. 131 ”The Procedure for Issuing the Republic of Latvia Visas” became invalid.

Section 61 of the Immigration Law envisages cases for including persons in the List (henceforth – the List) of those persons for whom the entry in the Republic of Latvia is prohibited and names the officials, who experience the right of taking the decision on including aliens in the List (henceforth – the Decision). The Law authorizes: the Minister for the Interior, the Minister for Foreign Affairs, the Director of the Consular Department or a diplomatic official of the representation, which is authorized to perform consular functions, the Head of the Citizenship and Migration Affairs Office and the Chief of the State Border Guard to take the decision on the above. Each of the above officials acts within the competence established for him/her.

In accordance with the first Paragraph of Section 61 the Minister for the Interior takes the decision if:

- ”1) competent State authorities have reason to believe that the alien participates in anti-state or criminal organizations or is a member thereof;
- 2) competent State authorities have reason to believe that an alien causes a threat to national security or public order and safety or, by entering Latvia, may hinder pre-trial investigations or the work of law enforcement institutions in discovering a criminal offence.
- 3) competent State authorities have reason to believe that an alien has committed or is planning to commit a serious or extremely serious crime;
- 4) an alien has committed a crime against humanity, an international or war crime or has participated in mass repression if such has been determined by a court judgment;

5) competent foreign authorities have supplied information which forbids an alien to enter and reside in the Republic of Latvia;

6) the entry and residence of an alien into the Republic of Latvia is not desirable for other reasons on the basis of the opinion delivered by competent authorities of the Republic of Latvia.

In its turn, if an alien is an undesirable person for the Republic of Latvia (*persona non grata*) then, in conformity with the second Paragraph of Section 61, a decision regarding his or her inclusion in the List shall be taken by the Minister for Foreign Affairs.

The sixth Paragraph of Section 61 of the Immigration Law determines that "a decision taken in accordance with Paragraph one or two of this Section shall not be subject to appeal".

3. Article 6 of the State Security Institutions Law envisages: "if a person holds that the state security Institutions with their activities have violated his/her legitimate rights and freedoms, the person experiences the right of submitting a claim to the procurator, who – after verification – expresses the conclusion on the conformity of the activity by the official with the law; he/she may also submit the claim to the court".
4. On May 14, 2004 the submitter of the claim – the Administrative Regional Court, on the basis of the appellate claim of Elvīra Petrjuka against the Riga Central District Court January 19, 2004 Judgment, reviewed an administrative case – the complaint (claim) by Elvīra Petrjuka on unlawful act by the officials of the Ministry for the Interior.
 - 4.1. It follows from the claim and the documents attached to it that the submitter requests to assess the compliance of Section 61 (the sixth Paragraph) of the Immigration Law with Article 92 of the Republic of Latvia Satversme (henceforth – the Satversme). Besides- only the compliance of the decision, which has been taken in accordance with the first Paragraph of Section 61 of the Immigration Law (henceforth – the impugned norm).
 - 4.2. When reviewing the above case it has been established that Elvira Petrjuka has requested to grant her the permanent residence permit in the Republic of Latvia but the State Secretary of the Ministry for the Interior with his September 13, 2002 Decision (Document No. 1/33-188-p) has declined the request, as the documents, attached to the request, have been untruthful.

On December 13, 2002, in accordance with Item 22.13 of the Cabinet of Ministers Regulations No. 131, the Security Police in the letter No 21/1-2091 asked the Department of Citizenship and

Migration Affairs of the Ministry for the Interior to include the citizen of Moldova Elvīra Petrjuka (Elvira Petriuca) in the List of those persons for whom the entry in the Republic of Latvia is prohibited. Taking the above into consideration, on December 20, 2002 the Minister for the Interior issued order No. 937 "Regarding including a person in the List of those persons for whom the entry in the Republic of Latvia is prohibited", requiring to include Elvīra Petrjuka in the List.

On February 28, 2003 E.Petrjuka submitted an application to the State Secretary of the Ministry for the Interior, requesting to repeal September 13, 2002 decision on non-issuance of the permanent residence permit.

On March 26, 2003 the State Secretary of the Ministry for the Interior informed E.Petrjuka (document No. 1/33-473-515-P) that on the basis of the Minister for the Interior order No.937 entry of E.Petrjuka into the Republic of Latvia has been prohibited for indefinite time and the Decision on including her in the List of those persons, to whom the entry in the Republic of Latvia is prohibited, has been adopted.

When reviewing the complaint of E.Petrjuka about unlawful activity of the officials of the Ministry for the Interior, the Riga Central District Court rejected it on January 19, 2004. The Judgment has been substantiated by the fact that E.Petrjuka is included in the List of those persons, to whom the entry in the Republic of Latvia is prohibited. In conformity with Section 34 (Item 7 of the first Paragraph) of the Immigration Law the issue of a residence permit shall be refused and the request of E.Petrjuka may not be satisfied.

On May 14, 2004 the Security Police gave a reply to the representative of E.Petrjuka about the verification, which resulted in setting aside of the prohibition on entry (document No.21/1-1860). At the Administrative Court session the representative of the Ministry for the Interior submitted May 14, 2004 letter No.1/35-1214 by the Ministry for the Interior in which it is explained that the prohibition regarding E.Petrjuka has been revoked. However, the representative of E.Petrjuka upheld the claim and requested the Court to review the case on its merit and revoke Order No. 937 of the Minister for the Interior.

- 4.3.** The Administrative Regional Court in its decision points out that a person is not allowed to appeal against the decision of the Minister for the Interior, which creates specific legal public relations and

accessibility to alternative and efficient procedure has not been ensured either.

On May 14, 2004, when reviewing the appellate complaint by E.Petrjuka about the Central District Court Judgment, the Administrative Regional Court decided to suspend the proceedings in the administrative case and submit a claim on the conformity of the sixth Paragraph of Article 61 of the Immigration Law with Article 92 of the Satversme to the Constitutional Court.

The Administrative Regional Court concludes that "the order of the Minister for the Interior to include a person in the List of those persons, to whom entry in the Republic of Latvia is prohibited is an administrative act in the understanding of the Administrative Procedure Law: it is externally directed, has been passed by a State institution of the section of public rights, regarding a separate individual or persons, when creating, amending, establishing or terminating concrete legal relations".

5. The institution, which has passed the impugned act – **the Saeima** in its written reply points out that the impugned norm is not at variance with Article 92 of the Satversme.

The Saeima holds that the state has ensured for a person as effective means of legal protection as possible, taking into consideration the fact that to information, which is connected with the List of those persons, to whom entry in the Republic of Latvia is prohibited, has been determined the status of limited accessibility. The Saeima explains that "the Minister for the Interior may take the decision on including the person in the List only in cases, anticipated in the Immigration Law and only on the basis of the opinion of competent institutions or the court judgment. In accordance with the State Security Institutions Law all the institutions mentioned in the Law shall be regarded as competent within the range of their authority". If a person holds that the State Security Institutions with their activities have violated his/her legitimate rights and freedoms then the person – in accordance with the procedure determined in Article 6 of the State Security Institutions Law - experiences the right of submitting a claim to the procurator, who shall evaluate the violation of the rights of the person and its proportionality to the security interests of the state, which are to be protected.

The legitimate aim of the impugned norm to the mind of the Saeima is to protect the State and public security as well as to create quick and effective means for cases, when State and public security is endangered. The Saeima holds that in the democratic society the impugned norm is a necessity and it is proportionate to the aim – the protection of State and

public security, as well as guaranteeing that information of limited access shall not be made publicly known.

Besides, it is pointed out in the written reply that "even though the impugned norm denies the right of the alien to enter Latvia for an unlimited time, simultaneously, other norms of the law ensure revision of the above decision at any time after receiving a request of the person; thus it is ensured that substantiation of the prohibition to enter the State is verified and, circumstances changing, is abrogated".

The Saeima motivates its viewpoint by several Judgments of the European Court of Human Rights (henceforth – ECHR), in which ECHR has acknowledged the right of the state to determine the procedure of entry and residence of aliens as well as the right of deportation of a person, if he/she causes threat to public security and the above threat is proportionate to the restriction of the rights of a person. The state has the right of deporting aliens and it complies with the European Convention for the Protection of Human Rights and Fundamental Freedoms (henceforth – the Convention), if deportation does not restrict other rights, guaranteed to a person by the Convention.

The Saeima mentions the argument that "the same norm – that the state has the right of prohibiting entry of aliens in the state, which shall not be challenged - exists also in other states, namely, in the Hungarian law regarding aliens there is the norm, which is analogous to the impugned norm".

6. **The Ministry for the Interior** (henceforth – the Ministry), when answering to the questions, asked by the Constitutional Court, points out that the Minister for the Interior takes the decision on including the alien in the List in strictly regulated cases when "the threat to the state and public interests is really vital and immediate action is necessary". Simultaneously the Ministry points out that in case of adoption of the above decision not the adopted decision but the particular court judgment or the viewpoint of the competent institution (State Security Institution) lies at the basis of violation of person's rights. Because of this, the most efficient mechanism for the person to protect its rights is appeal against the concrete court judgment in accordance with the procedure determined in normative acts or submitting a claim to the procurator in accordance with the procedure determined in Article 6 of the State Security Institutions Law. Thus the right to a fair court, determined in Article 92 of the Satversme, has been observed.

Neither Article 116 of the Satversme nor the Convention envisages absolute enumeration of person's rights and freedoms. In conformity with Article 13 of the Convention the duty of the State is to ensure

effective mechanism for the protection of human rights and freedoms, included in the Convention.

The Ministry points out that the norm, included in the sixth Paragraph of Section 61 of the Immigration Law, is connected with the policy of migration. If an alien is deported in the interests of public order or on the basis of considering security interests, then in accordance with the Convention (Item 2 of the Seventh Protocol) the state experiences the right of deporting an alien before he/she - in compliance with the procedure of the First Item - has realized the right of appealing against the decision.

The objective of a democratic society is not only to guarantee a person the right of appealing against an adopted decision, but also to balance the above right with the security interests of the state and rights and freedoms of other persons, residing in the state. The Ministry holds that "the sixth Paragraph of Section 61 of the Immigration Law is the mechanism, protecting the interests, determined in Article 116 of the Republic of Latvia Satversme".

7. **The State Human Rights Bureau** holds that separate rights, incorporated in Article 92 of the Satversme may be restricted if the State security is threatened; however – included in Article 92 of the Satversme guarantee – access to court may not be restricted. This right shall not be subjected to restrictions.

The concluding part

8. The first sentence of the Satversme Article 92 determines: "Everyone has the right to defend their rights and lawful interests in a fair court". However it does not mean that the person is guaranteed the right to review every important for him/her issue in the court.

As it has been repeatedly concluded in the Judgments of the Constitutional Court,, if there is doubt about the contents of the human rights norms, they shall be interpreted in compliance with the practice of application of international norms of human rights (*see e.g. the Constitutional Court August 30, 2000 Judgment in case No. 2000-03-01, Item 5 of the concluding part*).

The norm, included in Article 92 of the Satversme just as Article 6 of the Convention anticipates the right to a fair court. However, ECHR acknowledges that the right of appealing at court is not absolute. The above right may be limited if the limitations applied do not restrict or reduce the access left to the individual to such an extent that the very

essence of the right is impaired (see *ECHR Judgment in case "Golder v. the United Kingdom"* §38 and in case *"Stubbings and Others v. the United Kingdom"* §50).

The Constitutional Court has also concluded: even though the Satversme does not directly envisage cases in which the right to a fair court might be restricted, it is not absolute. The Satversme is a single aggregate body and the norms, incorporated into it shall be interpreted systemically (see the *Constitutional Court October 22, 2002 Judgment in case 2002-04-03, Item 2 of the concluding part; November 26, 2002 Judgment in case 2002-09-01, Item 1 of the concluding part and June 27, 2003 Judgment in case No. 2003-04-01, Item 1.1 of the concluding part*). The assumption that it is not allowed to determine any limitations to the rights of any particular person, envisaged in Article 92 of the Satversme, would be at variance with both – the fundamental rights of other persons, guaranteed by the Satversme and other norms of the Satversme (see the *Constitutional Court November 26, 2002 Judgment in case No. 2002-09-01 and June 27, 2003 Judgment in case No. 2003-04-01, Item 1.1 of the concluding part*).

9. As ECHR has concluded, the right to access to court may be limited if the limitation, regarding the rights anticipated in Article 6 (the first part) of the Convention, is determined by the law, if the limitation has a legitimate aim and is proportionate to the legitimate aim (see *ECHR Judgment in case "Fayed v. the UK"* §65).

9.1 The right to access to court has been limited by the legal norm, determined in the sixth Paragraph of Section 61 of the Immigration Law, which incorporates the prohibition for the court to review the case on its merit.

Thus the restriction has been determined by the law.

9.2 The aim of the impugned norm is to protect the state and public security. ECHR accepts that the protection of national security is a legitimate aim which may entail limitations on the right of access to court (see *ECHR Judgment in case "Devenney v. the United Kingdom"* §26; in case *"Tinnelly & Sons Ltd and Others and McElduff and Others v. the United Kingdom"* §76).

Thus the limitation has a legitimate aim.

9.3 If there is a legitimate aim, then it is necessary to assess whether the proportionality between the concerns for the protection of the national security invoked by the authorities and the impact, which the means they employed left on the right of the applicant to address the court. To

determine the proportionality of the limitation, it shall be assessed whether it has been the most considerate, namely, whether the aim could not have been reached with means, restricting the fundamental rights in a lesser way.

The Parliamentary Assembly of the European Council in its Recommendation No. 1402 (1999) on Control of Internal Security Services in Council of Europe Member States has pointed out that internal security services often put the interests of what they perceive as those of their country above respect for the rights of the individual and in case if the internal security services are inadequately controlled, there is a risk of abuse of power and violations of human rights [*Recommendation 1402 (1999) Control of internal Security services in Council of Europe Member States, para.2*]. Internal Security Service shall be authorized to effect their legitimate aim – to protect the state security, but they shall not be given an uncontrolled possibility of violating fundamental rights and freedoms. Proportionality between the right of a democratic society to national security and the human rights of an individual shall be achieved.

The Parliamentary Assembly of the European Council stresses that ” the judiciary should be authorized to exercise extensive *a priori* and *ex post facto* control [...] The overriding principle for *ex post facto* control should be that persons, who feel that their rights have been violated by acts (or omissions) of security organs, should in general be able to seek redress before courts or other judicial bodies. These courts should have jurisdiction to determine whether the actions complained of were within the powers and functions of the internal security services as established by law. The court should have the right to determine whether there was undue harassment of the individual or abuse of discretionary administrative power in his/her regard” [*Recommendation 1402 (1999) Control of Internal Security Services in Council of Europe Member States; Guidelines, para.C.iii*].

- 10.** In conformity with Section 61 of the Immigration Law the opinion of competent State authorities (in this particular case – the opinion of the State Security Institution) lies at the basis of the decision by the Minister. The person, who challenges his/her inclusion in the List, as a matter of fact does not agree with the facts, expressed in the decision, which are often connected with the issues of state security. When reviewing such claims, use of confidential material may be unavoidable. Even though in cases, connected with national security, the possibility of legal examination is limited, this does not mean the national authorities can be free from effective judicial control in all the cases, whenever they choose to assert that national security and terrorism are

involved (*see ECHR Judgment in case "Chahal v. the United Kingdom" §131*).

Even though the limits of application of the rights, mentioned in the first Part of Article 6 of the Convention and the first sentence of Article 92 of the Satversme, may be contracted, this does not mean that there are no legal guarantees. They are determined in Article 13 of the Convention, which guarantees effective remedy to everyone, who holds that his/her rights and freedoms, set forth in the Convention, have been violated. This provision is as if "supplementing" other Articles, as it does not formulate concrete rights, but serves as a procedural guarantee of this right (*see e.g. ECHR Judgment in case "Klass and Others v. Germany" §64*).

ECHR has repeatedly pointed out that "where questions of national security are in issue, an "effective remedy" under Article 13 must mean "a remedy that is effective as can be", given the necessity of relying upon secret sources of information" (*see ECHR Judgment in case "Chahal v. the United Kingdom" §142*).

On the basis of ECHR case law under Article 13 of the Convention 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 of supervision and its performance.

If the violation of the rights of a person is the result of the decision of a competent institution (State security institution), on the basis of which the Minister for the Interior has adopted the decision, one can agree with the opinion voiced in the letter by the Ministry of the Interior, that the person has the possibility of protecting its rights by lodging a complaint to the procurator under the procedure, determined in Article 6 of the State Security Institutions Law. As regards assessment of the activity of the State Security Institution in this case the State has ensured the protection remedy for the individual, which is as effective as possible in the circumstances, when the issue is connected with the state security and, possibly, use of confidential information. The Constitutional Court in its Judgments has already pointed out that "in Latvia the Office of the Prosecutor may be regarded as an effective and available means of protection, because the status and the role of the prosecutor in supervision of law secures independent and impartial review of cases in compliance with Article 13 of the Convention" (*see the Constitutional Court October 11, 2004 Judgment in case No. 2004-06-01; April 23, 2003 Judgment in case No. 2002-20-0103*).

Thus, as regards assessment of the competent (State Security) institution, the State has secured effective protection under Article 13 of the Convention.

11. In its turn Section 64 of the Immigration Law allows the alien to request the Minister for the Interior to take the decision to reduce the term of prohibition of entry or revoke the prohibition of entry, if the circumstance on the basis of which the alien was included in the List have changed. Even though the Saeima points out that the norm ensures revision of the decision at any time on the request of the person, it refers only to cases, when the circumstances have changed.
12. Item 2 of Section 2 of the Administrative Procedure Law determines subjection of actions of executive power to the control of an independent, impartial and competent judicial power as one of the basic objectives of this Law. In compliance with the first Part of Section 103 of the above Law the substance of administrative procedure in court shall be court control of the legality and validity of administrative acts issued by an institution. The claim on revoking of an administrative act shall be submitted to the court and the court process in such cases takes place in accordance with the Administrative Procedure Law, ensuring observation of its basic objectives. The legislator has strengthened the principle of court accessibility with these norms.

Thus the legislator has determined for the person extensive possibilities of appealing at court, if the state action (or inactivity) has violated his/her legitimate interests.

13. The impugned norm concerns the decision of the Minister, allowing of no appeal. Therefore we have to ascertain whether the decision of the above official is an administrative act, which, in accordance with the Administrative Procedure Law, may be appealed against.

In conformity with the third part of Section 1 of the Administrative Procedure Law 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 persons establishing, altering, determining or terminating specific legal relations or determining an actual situation. The decision of the Minister for the Interior to include a person in the List shall be regarded as an administrative act, if it complies with all five basic provisions of the administrative act.

First of all, the decision of the Minister for the Interior is an act, issued by the institution, because the decision on including the person in the List is issued by the Minister for the Interior to whom the above

authority is endowed by Section 61 (the first Paragraph) of the Immigration Law and Sections 1 (Item 8) and 19 of the State Administration Structure Law. In its turn the Institution, which issues a legal act, is a legal subject (institution, structural unit or official), to whom by the normative act are granted definite state power authority in the sector of State Administrative Structure.

Secondly, the decision of the Minister for the Interior is publicly legal, as the legal norms, regulating its issuance, are public legal norms, i.e., a corresponding legal norm is the norm, which may be used only by a legal subject, authorized by the state power. The right to take the decision on including a person in the List, as an exceptional right has been delegated to the Minister for the Interior, who in this case is the executor of the state power.

Thirdly, the decision of the Minister for the Interior refers to a certain individual, as the Minister for the Interior includes in the List a concrete person, in this case – Elvīra Petrjuka.

Fourthly, with the decision of the Minister for the Interior concrete legal relations are established, because by it the publicly legal status of the person is determined.

Fifthly, the decision of the Minister for the interior is a legal act, as it creates legal consequences. Administrative act may only be such an action, which has influence out of the administrative institution (*see Paine Frantz Joseph. General Administrative Law of Germany, German Administrative Procedure Law.-Riga: Agency of the Courts. 2002 [XXVI], p.116*). The European Court of Justice has determined that in every particular case it shall be assessed what is the external influence of the corresponding decision, that is – the corresponding legal consequences have to be evaluated (*see Schwarze J. European Administrative Law.- London: Sweet and Maxwell, 1992, pp. 958 -960*). If the act does not have external legal consequences, it is not an administrative act. The legal consequences of the decision by the Minister for the Interior are directed to influencing legal relations out of the institution, thus it is an external legal act.

It shall be admitted that in the context of this case the situation may arise when the person has been included in the List but may be left ignorant of the fact, as the particular decision has not to be conveyed to the person. The decision of the Minister takes effect as of the moment of its issuance, regardless of the fact whether the person is informed about it; however, as regards the concrete person, it takes effect on the moment when the person is informed about it, that is, when the person has expressed the wish to enter the state or receive residence permit.

Thus the decision of the Minister for the Interior is an administrative act and with regard to the concrete person it takes effect at the moment, when it is applied for regulation of concrete relations and is announced to the addressee.

14. The European Court of Justice has also determined that in cases, when it is difficult to "draw a borderline" between the administrative acts and legal remedies, which are not binding, one shall take the decision in favour of the individual, so that he/she is able to protect his/her rights to the maximum.

Besides, not in all cases state security may serve as the basis for limiting the rights of a person. Assessment of this fact may be subjected to the court.

"While procedural restrictions may be necessary to ensure that no leakage detrimental to national security would occur and while any independent authority dealing with an appeal against a deportation decision may need to afford a wide margin of appreciation to the executive in matters of national security, that can by no means justify with doing away with remedies altogether whenever the executive has chosen to invoke the term "national security"" (see *ECHR Judgment in case "Al Nashif v. Bulgaria"*, §137).

ECHR points out that in the sector of state security there are also such issues, which may be submitted to the court for adequate assessment. Presuming that a situation may arise when the court control is completely excluded if state security is mentioned in the arguments, the right to the possibility of protecting human rights, which is envisaged in legal acts shall be substantially limited and the state institutions shall be groundlessly discharged of liability (see *ECHR Judgment in case "Tinnelli & Sons Ltd and Others and McElduff and Others v. the United Kingdom"* §62).

Thereby the determined limitation is not the most considerate means (it is possible to make use of the means, which limit the fundamental rights in a lesser degree for reaching the objective). It means that the limitation is not proportionate to the legitimate aim. Thus the impugned norm disproportionately limits the right of a person to a fair court.

15. ECHR reiterates that it is for the Contracting States to maintain public order and control the entry and residence of aliens and notably to order the expulsion of aliens convicted of criminal offences (see *ECHR Judgment in case "C v. Belgium"* §31).

As the Constitutional Court has pointed out in its Judgments, the notion "a fair court", mentioned in Article 92 of the Satversme, includes two aspects, namely, "a fair court" as an independent institution of the judicial power, which reviews cases and "a fair court" as a due process, which complies with a law-based state, in which the case is being reviewed (*see the Constitutional Court March 5, 2002 Judgment in case No.2001-10-01 and April 23, 2003 Judgment in case No. 2002-20-0103*).

The fact, that the decision of the Minister for the Interior may be connected with interests of state security, does not deny the State to determine such a procedure, under which the judicial institutions in certain cases and under a definite procedure may acquaint themselves with the materials connected with state security. The particular institution may even take the decision on presenting separate documents in the necessary amount if the documents do not include the state secret. Article 6 of the Convention if read together with Article 5 also envisages such a solution, among other things discharging the states with a special positive duty, in accordance with which they have to create institutional infrastructures, which are necessary for implementation of a fair court, as well as to enact legal norms, which guarantee that the procedure is fair and impartial (*see Law and Practice of the European Convention on Human Rights and the European Social Charter, Council of Europe, 1996, p. 157*).

As an example ECHR in its Judgment *Chahal v.the United Kingdom* mentions that in Canada an effective form of judicial control has been developed, which ensures the protection of legitimate security interests as regards intelligence information and its sources, at the same time according the individual a substantial measure of procedural justice (*see ECHR Judgment in case "Chahal v. the United Kingdom" §131*). The above controlling mechanism is anticipated in the Canadian Immigration and Refugee Protection Act (2001, c.27, <http://laws.justice.gc.ca/en/I-2.5/index.html>, viewed on October 5, 2004), and Chapter IX "Protection of Information" determines the procedure under which the court secures the protection of the information of limited confidentiality.

Thus the impugned norm does not ensure realization of a person's right to a fair court, guaranteed in Article 92 of the Satversme.

16. In conformity with Article 32 (the third part) of the Constitutional Court Law legal norms, which the Constitutional Court has determined as incompatible with the legal norm of higher force, shall be considered invalid as of the date of publishing the judgment of the Constitutional Court, unless the Constitutional Court has ruled otherwise. When taking

the decision on the moment of the impugned legal norm losing validity, the Court takes into consideration that the legitimate objective of the norm is state security. Thereby a comparatively long period shall be at the disposal of the legislator so that it is able to determine a special procedure for the court to review cases, connected with the decisions concerning issues of state security. This procedure shall simultaneously protect the security interests of the State and ensure the right of a person to a fair court.

The substantive part

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

hereby rules:

to declare the phrase "a decision taken in accordance with Paragraph one of this Section shall not be subject to appeal", which is incorporated in Section 61 (the sixth Paragraph) of the Immigration Law as unconformable with Article 92 of the Republic of Latvia Satversme and null and void as of May 1, 2005.

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

A.Endziņš