THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

Riga, October 11, 2004

JUDGMENT
in the name of the Republic of Latvia

in case No. 2004 - 06 – 01

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

on the basis of the claims by Jānis Zips, Juris Ulmanis, Jānis Svārpstons and LLC (Limited Liability Company) ”Kempmayer Media Latvia”

under Article 85 of the Republic of Latvia Satversme (Constitution) as well as Articles 16 (Item 1), 17 (Item 11 of the first part) and 28^1 of the Constitutional Court Law

on June 16 and September 14 at the Court session in written proceedings reviewed the case

”**On the Compliance of Articles 220 and 222 of the Latvian Criminal Procedure Code with Article 92 of the Republic of Latvia Satversme (Constitution).**

The establishing part

Article 220 of the Latvian Criminal Procedure Code (hereinafter – LCPC) envisages the appealing procedure against the activities of an investigator. The Article determines: ” The suspected, the accused , their defenders and legal representatives, witnesses, experts, interpreters, warrantors as well as the victim, claimant, defendant, their representatives and other persons may submit claims to the prosecutor on the activities of the investigator. The claims shall be submitted directly to the procurator or with the help of the intermediary – the persons on whose activities the claim is being submitted. The claim may be

either in the written or in the oral form. In the latter case the prosecutor or the investigator enters the claim in the protocol and the plaintiff signs it. The investigator shall forward the submitted claim together with his/her explanations to the prosecutor within the next twenty four hours. Submission of the claim does not suspend execution of the appealed activity, if the prosecutor or the investigator considers it unnecessary."

Article 221 determines the procedure under which the prosecutor shall reach the decision on the submitted claim but Article 222 determines "Claims on the activities of a prosecutor shall be submitted to the prosecutor or higher rank and decisions shall be reached under the procedure established in Articles 220 and 221 of this Code".

2. On September 1, 2003 criminal case No. 3870001003 was initiated on the indications of criminal offence, which are established in the second parts of Articles 317 and 319 of the Criminal Law, namely, on the State official intentional acts, which evidently exceed the limits of rights and authority and in case if the State official fails to perform his/her assigned duties.

The investigator requested the judge to sanction search, pointing out that in the whereabouts of several persons there might be documents and other subjects, which were of importance for the criminal case. On October 24, 2003 the judge made the decision on the search.

On the basis of this decision on October 27, 2003 several searches were made. The protocols, drawn up during them, confirm the fact that the search was made with the purpose of finding and withdrawing documents and other subjects, which could be of importance for reviewing of the case. As the result of the search – several subjects were withdrawn.

On October 29, 2003 the submitters of the claim requested the Bureau for Averting and Fighting Corruption (hereinafter – BAFC) to return part of the withdrawn during the search subjects. On November 3, 2003 the request was rejected and in the motivation part of the decision it was stressed that the withdrawn subjects contain information, which is important for the review of the criminal case. In the refusal it was stated that on the basis of a written request the submitters of the claim will be allowed to copy the information included in the withdrawn subjects. They did not make use of this opportunity.

On October 31, 2003 the submitters of the claim addressed an appeal to the Investigating Department of Particularly Relevant Cases of the Republic of Latvia Prosecutor General's Office, indicating the shortcomings of the court decision, as well as requesting immediate return of all the documents and subjects withdrawn during the search or at least those things, which were personal or belonged to other persons. On November 19, 2003 the Prosecutor's Office rejected the request, substantiating it by the fact that the documents and

subjects were needed for procedural activities. If after carrying out the above activities it would be proved that the withdrawn subjects and documents had no importance for evidence in the criminal matter, they would be returned.

On November 3, 2003 a complaint on the October 24, 2003 decision of the judge on the search as well as the activities of the investigator during the search on October 27, 2003 was submitted to the Riga Regional Court. On November 11, 2003 the Riga Regional Court in an open court session reviewed the materials in the criminal case and left the decision of the judge on the search irrevocable but the complaint in the part of the activities of the investigator during the search was not reviewed.

On November 6, 2003 under the procedure of Article 220 of the LCPC the complaint was submitted to the prosecutor of the Department of Investigation of Particularly Relevant Cases on the activities of the investigator during the search, stressing that the investigator had acted illicitly, withdrawing documents and subjects, which evidently were not connected with the reasons pointed out in the decision of the judge on the search.

From November 21, 2003 till January 14, 2004 seven complaints have been submitted, each time to the procurator of a higher range. All the complaints, including the complaint addressed to the Republic of Latvia Prosecutor General (henceforth –Prosecutor General), were rejected.

3. The constitutional claims were submitted by Jānis, Zips, Juris Ulmanis, Jānis Svārpstons and LLC ”Kempmayer Media Latvia”. They include the request to declare LCPC Articles 220 and 222 (henceforth – the opposed norms) as unconformable with Article 92 of the Republic of Latvia Satversme (hereinafter – the Satversme), as they forbid to appeal against the activities of the investigator and the prosecutor. As the legal justification, subject of the claim and its basis were not different, the initiated cases were combined into one case.

The submitters of the claims hold that the right to a fair court, guaranteed by Article 92 of the Satversme, has been violated as the procedural activities of the investigator, when carrying out the search, allow of no appeal. The opposed norms to their mind envisage the right of addressing an appeal only to the Prosecutor’s Office, which under the criminal procedure cannot be regarded as an independent instance in the meaning of Article 92 of the Satversme, especially in cases, when the violation of the human rights is of a high degree.

4. The institution, which has passed the opposed norms – the Saeima does not agree with the viewpoint, expressed in the claims.

The Saeima points out that in accordance with Article 1 of the Office of the Prosecutor Law – in Latvia 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. The Office of the Prosecutor has functions of two kinds. On the one hand: criminal prosecution and maintaining the charges of the State; on the other hand – supervision of the work of investigative institutions and protection of the rights and lawful interests of persons and the State. Besides, in his/her activities the prosecutor does not depend on the institutions of the State power and management and on the officials. Thus to the mind of the Saeima impartial and conformable with the law review of complaints is ensured. Furthermore, after the completion of pre-trial investigation, the criminal matter is forwarded for adjudication, during which the court, after verifying the evidence, is able of assess the legitimacy of the procedural activities of the investigator or the procurator.

5. Prosecutor General holds that the opposed norms comply with the Satversme, the functions of the Office of the Prosecutor, determined in Article 2 of the Office of the Prosecutor Law and the principle of economy of the criminal procedure. The Office of the Prosecutor, when reviewing complaints under the procedure of the opposed norms, is an impartial and independent institution, which is able to react to misdemeanor made by the officials of institutions of pre-trial investigation. Statistics confirms it. Claims are settled in the form of the decision, if the LCPC envisages it, or in the form of the reply. In most cases claims, in which the submitter appeals against the decisions on rejection of initiation of criminal case, against the decision to initiate a criminal case or termination of the criminal case have been received. Many claims have been submitted also against long term investigation of a criminal case and potentially illegal actions when obtaining evidence.

6. The Criminal Case Department of the Senate of the Republic of Latvia Supreme Court in its letter to the Constitutional Court points out that the opposed norms restrict the rights of the person to appeal at the court against the activities of the investigator and the prosecutor. However, such a restriction is necessary and well-grounded. Its objective is to avert unjustifiable delay of pre-trial investigation. If any activity of the investigator of the process with which the participant in the process is dissatisfied were appealed against at the court, then the delay would take place.

7. The Council of Latvian Sworn Advocates points out that the opposed norms, which do not envisage the possibility of appealing against the decision of the prosecutor on the activities of the investigator or the prosecutor of a lower rank, are not consonant with the right to a fair court, incorporated in Article 92 of the Satversme. Similar norms exist also in other Articles of the LCPC. For example, Article 237 of the Code establishes that only the prosecutor experiences the right of submitting the protest on any decision of the organizational court session. The rights of other participants in the case to appeal against the above decisions are restricted.

8. The State Human Rights Bureau expressed the viewpoint that the opposed norms are in compliance with Article 92 of the Satversme. The Bureau holds that one has to assess whether the duty of the State to ensure effective protection of the rights, following from Article 89 of the Satversme, is not violated. When assessing the opposed norms one has to take into consideration the fact that the rights of the person to a fair court and effective protection shall be balanced with the right of the person to review of the criminal case in due time. Besides, the claim to secure the possibility of appealing at court against all the activities of the investigator or the prosecutor does not follow from Article 92 of the Satversme, as these activities do not always violate the rights and lawful interests of the person. In their turn the legal control is being ensured both at the stage of adjudication of the case and also in such a way that the person may claim compensation for the material and moral damage for the activities, which violate the rights and lawful interests of the person. The right of claiming compensation for the material damage is that effective remedy of the protection of rights, which shall be used in cases, when the activities of the investigator or the prosecutor do not have an effect on the issue about the guilt of the person in committing the crime, but have infringed the fundamental rights of the person.

9. The Latvian University Science Department of Criminal Law of the Faculty of Law and the Latvian Police Academy Chair of Criminal Law hold that the opposed norms are not in conformity with Article 92 of the Satversme as the norms do not anticipate that the activities of the investigator and the prosecutor may be appealed against at the court. To their mind it restricts the constitutional rights of the person and makes access to the court hard. The Prosecutor's Office shall not be regarded as "the fair court", as the procedure of reviewing cases does not comply with the requirement of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (henceforth – the Convention) on public hearing by an independent tribunal. In accordance with Article 40 (the second part) of the Latvian CPC, the prosecutor, when realizing his/her authority shall be guided not only by the law but also by the instructions of the Prosecutor General.

The Latvian University Science Department of the Criminal Law of the Faculty of Law stresses: if the procedural activity violates rights and freedoms of a person, then, when reviewing a complaint on such an activity, the Prosecutor's Office cannot be regarded as "a fair court", as an independent institution, as any prosecutor may join the criminal process as a maintainer of charges. It is clearly seen in the norms, regulating the performance of the prosecutor and the Prosecutor General – e.g. Article 41 of the Latvian CPC, Articles 2, 4, 6 and 23 as well as in other norms. In accordance with the above norms Prosecutor's Office participates in the criminal process as a single institution, and from that follows that access to court is not ensured to persons, as they may appeal only against the decision of the judge on the search. In its turn, an appeal on the activities during the search may be submitted only to the prosecutor.

10. Mārtiņš Mits – the lecturer of the Riga Graduate School of Law in his letter to the Constitutional Court points out that the limits of Article 6 of the Convention are narrow. It more refers to review of the case at the court. The European Court of Human Rights (henceforth – ECHR) has analyzed decisions, connected with the process of search, in conjunction with the provisions of Article 13 of the Convention. This Article may incorporate also the requirement of Article 6 to ensure access to the court; however its limits are more extensive. Article 13 of the Convention is not confined to court as the only remedy for the protection of rights; it requires ensuring any remedy of legal protection, which is effective. The fact that it is not possible to appeal against the activities of the investigator during the search to the court but only to the prosecutor and later – to the prosecutor of higher rank in itself is not violation of Article 13 of the Convention. It is important to observe the requirements of this Article, namely, that the State institution or official shall be authorized to review the complaint on its merit; it shall be authorized to provide eligible compensation (in its wider sense); it shall ensure sufficient protection against overmuch use of power and it shall be so independent that it can provide such protection.

The concluding part

11. Criminal process is the aggregate of all procedural activities, and it is divided into several basic stages: initiation of the criminal case, pre-trial investigation, putting the accused up to the court, adjudication of the matter at the court of the first instance and execution of the judgment. Besides, pre-trial investigation is divided into two stages- investigation at the investigation institution and pursuit.

12. In accordance with the opposed norms only the prosecutor has the right of reviewing complaints against the activities of the investigator, but against the activities of the prosecutor – the prosecutor of higher rank. The submitters of the claim hold that thereby the law is incomplete, as it does not envisage the possibility to apply to the court already during the pre-trial stage of the criminal process. Thus in the framework of this case the opposed norms have to be assessed only in the aspect whether Article 92 of the Satversme envisages the right of appealing against any activity of the investigator and the prosecutor to the court already during the stage of pre-trial.

13. Even though the case has been initiated at the Constitutional Court on the compliance of the opposed norm to Article 92 of the Satversme as the whole; it follows from the claims that the conformity of the opposed norms with only the first sentence of the Article has to be assessed. It determines that ”everyone has the right to defend their rights and lawful interests in a fair court”. The Constitutional Court has reiterated (*see e.g. the Constitutional Court August 30, 2000 Judgment in case No. 20000-03-01, Item 5 of the concluding part)* that

the contents of the above Article shall be interpreted as being read in conjunction with Article 89 of the Satversme, which determines that " the State shall recognize and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding upon Latvia". Thus the objective of the legislator has been to reach mutual harmony of international and national legal norms. In cases, when there is doubt about the contents of the human rights, included in the Satversme, they should be interpreted in compliance with the case law of international norms on human rights (*see the Constitutional Court June 27, 2003 Judgment in case No. 2003-04-01, Item 1 of the concluding part).* It means that Article 92 of the Satversme shall be interpreted by taking into consideration Article 6 of the Convention and conclusions fixed in the court law of ECHR.

14. Even though the Satversme does not directly envisage cases in which the right of addressing the court might be restricted, it does not mean that this right is absolute. The Satversme is a single whole and the norms, incorporated into it shall be interpreted systemically (*see the Constitutional Court October 22, 2002 Judgment in case No. 2002-04-03, Item 2 of the concluding part).* Presumption that the rights of persons, established in Article 92 of the Satversme, should not be restricted, would not be consonant with both - the fundamental rights of other persons, guaranteed by the Satversme, and other norms of the Satversme. Therefore both – the Constitutional Court and ECHR have unequivocally concluded that the rights of addressing the court may be restricted as far as they are not divested in point of fact (*see the Constitutional Court June 27, 2003 Judgment in case No. 2003-04-01, Item 1.1 of the concluding part, ECHR Judgments in case "Golder v. the United Kingdom"§38 and in case "Ashingdane v. the United Kingdom"§57).*

It concerns also the right of contesting the some of the activities of the investigator or the prosecutor. The Criminal Case Department of the Supreme Court Senate reasonably points out – if it were allowed to appeal against every decision and activity of the investigator of the process, pretrial investigation would be unjustifiably delayed. The Constitutional Court agrees with the viewpoint of the State Human Rights Bureau, that Article 92 of the Satversme does not demand the possibility of appealing against any activity of the investigator or the prosecutor. It would be at variance with the interests of public safety and violate rights of other persons, it would also endanger the completion of investigation of the criminal case and review at the court within a reasonable time.

Thus, the restriction is determined by the law and it has a legitimate aim.

15. The first part of Article 6 of the Convention, which relates to the first sentence of Article 92 of the Satversme, among other things envisages that "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a

reasonable time by an independent and impartial tribunal established by law". Thus from the text of the first part of Article 6 of the Convention it can be concluded that the limits of this part are narrow and the most important objective as concerns criminal issues is to ensure fair rcharge (*see D.J. Harris, M. O'Boyle, C. Warbrick. Law of the European Convention on Human Rights. London, Dublin, Edinburg, 1995, p. 195 as well as ECHR Judgment in case "Magee v. the United Kingdom"§41).*

16. However, if the requirements of the above Article, for example, on a public hearing were in completeness attributed to the pre-trial stage of a criminal process, the right to a fair court would lose its sense. It does not mean that this Article cannot be applied to the pre-trial stage of a criminal process. Quite to the contrary - Article 6 of the Convention, especially its third part, may be important also before passing the case for review, if and as far as the fairness of reviewing of the case may be relevantly endangered by non-observance of the requirements of this Article during the pre-trial stage of the criminal process. However, it should be assessed by taking into consideration the circumstances of the particular case. (*see ECHR Judgment in case "Magee v. the United Kingdom"§41).* Thus in the case *Imbrioscia v. Switzerland* ECHR overruled the argument of the government (*see ECHR Judgment, §34),* stating that the first part of Article 6 does not refer to pre-trial stage of a criminal process and pointed out that the requirement of the first part of this Article of reviewing the case within a reasonable time refers also to the pre-trial stages. A too long pre-trial stage may surpass reasonable terms and in such a way may violate the right to a fair court (*see ECHR Judgment §36.-38).* Similarly, non-observance of the rights envisaged in the third part of the above Article (to be promptly informed on the charge, to ensure legal assistance, to have assistance of an interpreter) already in the pre-trial stage endangers the right to a fair court.

17. The submitters of the claims hold that the procedure of appealing against the activities of the investigator and the prosecutor, anticipated in the LCPC, violates the right to a fair court, incorporated into Article 92 of the Satversme as they cannot appeal at the court against the activities of the investigator – withdrawal of specific documents and subjects during the search.

Interpreting Article 6 of the Convention and the first sentence of Article 92 of the Satversme one may conclude that these norms refer to the appeal against the activities of the investigator and the prosecutor in a very limited way. In the limits, as the Saeima reasonably points out, the right of a court to assess the admissibility and applicability of the evidence already during the pre-trial stage of a criminal process, as the submitters of the claim request, is certainly not included. Whereas the Prosecutor's Office experiences this right – it itself takes the decision on which evidence is important for maintenance of prosecution. The limits for means of reacting and application of the Prosecutor's Office are very extensive. The State Court of Estonia in its December 22, 2000 Judgment (Item 24) points out that during the pre-trial stages of investigation of a

criminal process the objective of the court is not to assess the necessity and usefulness of the activities carried out or even the fact, which of the obtained facts may be used as the evidence in a criminal process (*see: http://www.nc.ee/english/const/2000/3-3-3-38-00.htm*).

18. Even though the limit of application during the pre-trial stage of the right, included in the first part of Article 6 of the Convention and the first sentence of Article 92 of the Satversme, is narrow, it does not mean that there are no guarantees for the protection of the rights during these stages. They are determined in Article 13 of the Convention, which guarantees effective remedy for everyone, who holds that his rights and freedoms set forth in the Convention, are violated. This Article exists as an ”addition” to other Articles as it does not formulate specific rights, but serves as a procedural guarantee of these rights (*see: e.g. ECHR Judgment in case ”Klass and others v. Germany”, §64).* As concerns this Article, it is necessary to stress that ECHR does not always require guaranteeing the right to bring the matter before the court, but analyzes complaints, connected with the decisions on search in the context of Article 13. The limits of this Article are much more extensive and are not confined to the court as the only effective means of the protection of rights (*see, for example, ECHR Judgment in case ”Leander v. Sweden”§77 and in case ”Golder v. the United Kingdom”§33).* Effective protection in accordance with Article 13 of the Convention means the protection, which is ”as effective as can be”, when taking into consideration the circumstances of the particular case (*see e.g. ECHR Judgment in case ”Chahal v. the United Kingdom”§142).* ECHR also points out, that this Article guarantees availability of a remedy at national level, which allows protecting the rights and freedoms, guaranteed in the Convention, in whatever form they may happen to be secured in the domestic legal order. Its effect is to require the provision of a domestic remedy allowing the competent ”national authority” both to deal with the substance of the relevant Convention complaint and to grant appropriate relief. Besides, effectiveness of such remedies of protection does not depend on the fact whether the result will be benevolent for the submitter of the complaint (*see ECHR Judgment in case ”Vilvarahaj and Others v. the United Kingdom”§ 122,, in case ”Soering v. the United Kingdom”§120 and in case ”P.G. and J.H. v. the United Kingdom”§88).*

19. Article 21 of the LCPC imposes the Prosecutor General and the prosecutors, subordinated to him, with the task of supervising accurate and uniform observation of the law in a criminal process so as to avert any infringement of law, regardless of who has committed it; and the prosecutors shall execute the above task independently from any institutions and officials and conforming only to the law. Article 1 of the Office of the Prosecutor Law also determines that the task and the fundamental objective of the Prosecutor’s Office is ”to react to a violation of Law and to ensure the deciding of matters relating to such in accordance with the procedures prescribed by law”. For implementation of this task the law has determined adequate status of the

prosecutor and other guarantees. It should be noted that the Prosecutor General, upon the recommendation of the Chief Justice of the Supreme Court shall be approved by the Saeima (Article 38 of the Office of the Prosecutor Law). Besides, a special procedure has been envisaged for the dismissal of the Prosecutor General from Office. The Law requires an investigation by the Supreme Court and submission of the Plenary Session's opinion on the bases for the dismissal (Article 413).

In different States the Office of the Prosecutor may have different rights, authority and status. In many States, for example, in Estonia and Poland, the Office of the Prosecutor institutionally is an ingredient part of the executive power. In other States, e.g., the Ukraine, the President of Ukraine can dismiss the Prosecutor General from his position without the consent of the Parliament (*see, for example, ECHR Judgment in case "Merit v. Ukraine"§63).* In its turn in accordance with the first part of Article 1 of the Office of the Prosecutor Law the Latvian Office of the Prosecutor "is an institution of judicial power, which independently carries out supervision of the observance of law". The Latvian legislator has determined functions of two kinds – in conformity with Article 2 (Item 4) it "maintains charges of the state", but in accordance with Item 6 of the same Article, it "protects the rights and lawful interests of persons and the State in accordance with the procedures prescribed by law". The Office of the Prosecutor carries out the above functions efficiently. Statistics proves the above: in 2003 5023 complaints or information on the issues of the pre-trial activities of the officials of the investigating institutions have been received, in 958 cases infringement of law was established and the complaints have been satisfied. Besides, the greatest number of the complaints has been reviewed 6-9 times, every time at the higher rank of the Office of the Prosecutor instance (*see Vol.2, p.219 of the case).* It means that the laws secure adequate guarantees of independence for the prosecutors, but for the persons – guarantees against abuse of authority.

Thus from the above ensue the following conclusions :

1) **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;**

2) **the fact that it is not possible to appeal at court against the activities of the investigator and the prosecutor during the search but it is possible to appeal to the prosecutor and then – to the prosecutor of a higher rank is the violation of neither Article 6 nor Article 13 of the Convention.**

20. The conclusion is confirmed also by the fact that the court control on the activities of the investigator and the prosecutor in the criminal process expresses itself both in the fact that during the pre-trial investigation of a criminal process the court expresses consent to procedural activities, which are connected with the restriction of fundamental rights and in the fact that the matter is adjudicated on its merit during a special stage of the criminal process – the adjudicating stage.

This stage has the most important place in the system of all procedural activities and relations. All the activities before this stage are connected with the preparation and creation of the necessary circumstances for the ensurance of effective and fair proceedings in the case. After forwarding the criminal case to the court, the court is the institution, which assesses all the procedural activities, carried out in the earlier stages of the criminal process; even those, which restrict the fundamental rights of a person. Adjudication has a specific task, namely, to investigate at court only those circumstances in the case, which, as the result of the investigation, have been found to be important, so as to accurately solve the fundamental issue of any criminal case, namely, the issue on the criminality of the activity and the guilt of the accused, his/her liability. The task of the court is also to verify whether the potential infringement by the investigator and the prosecutor during the stage of acquiring evidence could create negative effect concerning the decision on the guilt of the person in committing the crime.

21. The rights of a person become unimportant if the universally recognized principle *ubi ius ibi remedium* is not considered, namely: if the law grants the rights, it has also to envisage how to secure these rights. Withdrawal of documents and subjects does not deprive the owner's right to property, it only restricts this right. The above restriction does not forbid the owner to defend his/her right to the property in a competent and independent institution.

Thus the Constitutional Court holds that the existing normative regulation allows persons to effective defend their fundamental rights during the pre-trial stage of the criminal process. If the person holds that he has not managed to defend the rights under the procedure envisaged in the opposed norms, then there is a possibility to reach the decision on the issue during the stage of adjudication of the case or under a civil process. Different *ex post facto* remedies – also another criminal process or civil suit on the collection of the loss – in many cases may be sufficient in conformity with the requirements of Article 13 of the Convention (*see e.g. ECHR Judgment in case "M.S. v. Sweden §55)*. Besides, there is still the guarantee of disciplinary liability of an official.

The mechanism of the appeal, envisaged in the opposed norms, is not evidently disproportionate. Thus these norms do not run contrary to Article 92 of the Satversme.

However, normative adjustment can always be supplemented and upgraded. It is especially necessary in cases, which are connected with the restriction of the fundamental rights of a person. One of the ways of guaranteeing the protection of fundamental rights of a person is to secure access to the court, which- in its turn – has to take into consideration such universally recognized principles as hearing within a reasonable time, equality before the court, the right of hearing etc. This tendency towards increasing the standards of protection of the fundamental rights of a person, when passing new laws on the process, has been observed in the last ten years. The LCPC, which is valid at the present time, has been adopted on January 6, 1961. Only recently the principle that several procedural activities, carried out during the pre-trial stages of a criminal process, are subject to direct court control, has been incorporated into it.

The Criminal Procedure Draft Law, which was adopted by the Saeima in its second reading on April 1, 2004, declares the above tendency. Even though the court control during the pre-trial stages of a criminal process is extended in the above Draft, however, it also envisages, that the activities and decisions of the prosecutor shall be appealed against only to the prosecutor of higher rank (Article 339, the second part, Item 3). However it is envisaged by the law to enact the institute of the investigation judge and the main function of this judge shall be controlling observation of the human rights during the pre-trial stage of the criminal process (Article 41).

How and whether there is the need of supplementing the normative acts, regulating a criminal process, so that separate activities of the investigator and prosecutor could be appealed against at the court, is the issue within the competence of the legislator.

The substantive part

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

hereby rules:

to declare Articles 220 and 222 as conformable with Article 92 of the Republic of Latvia Satversme (Constitution).

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