



LATVIJAS REPUBLIKAS SATVERSMES TIESAS TIESNESIS

Jura Alunāna iela 1, Rīga, LV 1010

Tālrunis: 67830735, 67210274 Fakss: 67830770

e-mail: tiesa@satv.tiesa.gov.lv

DISSENTING THOUGHTS

of the Constitutional Court justice JURIS JELĀGINS

in case No. 2004-01-06

”On the Compliance of Article 114² of the Administrative Violation Code with April 9, 1965 Convention on Facilitation of International Maritime Traffic”.

The submitter of the claim- the Riga Northern District Court – requested to assess the conformity of Article 114² (the first Part) of the Administrative Violation Code of Latvia (henceforth – the impugned legal norm) with Standard 3.15 of the Convention on Facilitation of International Maritime Traffic (henceforth – the Convention).

The impugned norm anticipates imposing penalty upon the carrier, if the passenger does not have valid travelling documents for crossing the State border of the Republic of Latvia; in its turn the Convention determines that no penalty shall be imposed upon the carrier.

The Judgment was reached and the impugned norm was declared as ”unconformable with the Convention and null and void as concerns the carriers of those States, which are the Contracting States of the above Convention”.

I hold that there was no legal basis for making the Judgment and the proceedings in the case should have been terminated.

1. In accordance with Article 85 of the Republic of Latvia Satversme (Constitution) the Constitutional Court shall review cases concerning the compliance of laws with the Satversme. In its turn the first part of the Constitutional Court Law determines that ”the Constitutional Court shall review cases concerning the compliance of laws and other legal norms with the Satversme”. Article 16 (the first Part) establishes that the Court shall review cases regarding : 1) compliance of laws with the Constitution; 2) compliance with the Constitution of international agreements signed or entered into by Latvia; 3) compliance of other normative acts or their parts with the legal norms (acts) of higher legal force”.

Thus within the jurisdiction of the Constitutional Court is included review of cases on the compliance of legal norms with the legal norms of higher legal force.

2. Article 16, Item 6 of the Constitutional Court Law determines that the Constitutional Court shall review cases "regarding compliance of the national legal norms of Latvia with the international agreements entered into by Latvia, which are not contrary to the Constitution".

Interpreting this norm as being read in conjunction with the above legal norms, one has to conclude that the Constitutional Court reviews cases, in which the conformity of national legal norms with such international agreements that are of higher hierarchy of legal force than the national legal norms has to be assessed.

Therefore to assess whether the case is within the competence of the Constitutional Court, it is necessary to establish the place of the particular international agreement in the hierarchy of legal norms.

3. As is well-known, the legal force of legal norms depends: 1) on the institution, which has adopted it; 2) on the procedure of adoption of the legal norm. For example, the legal norm, adopted by the Saeima has a higher legal force than the legal norm, adopted by the local authority. In its turn the legal norms, which the Saeima has passed under Article 76 of the Satversme (by a qualified quorum and by a majority of not less than two-thirds of the members present) have a higher legal force than the legal norms, passed under Articles 23 and 24 of the Satversme (by a simple majority of votes). Or rather, the Satversme (constitutional) law, passed by the Saeima has a higher legal force than an ordinary law.
4. The legal force of the international agreements shall be determined on the same criteria.

Article 68 of the Satversme determines that "all international agreements, which settle matters that may be decided by the legislative process, shall require ratification by the Saeima." In their turn "international agreements in which a part of State institution competencies are delegated to international institutions may be ratified by the Saeima in sittings in which at least two-thirds of the members of the Saeima participate, and a two-thirds majority vote of the members present is necessary for ratification".

Thus, if an agreement is ratified by the Saeima by passing an ordinary law, then the agreement is of an ordinary legal force. But if the agreement is confirmed in a sitting, in which at least two-thirds

of the Saeima members participate and by a two-thirds majority vote of the members present, then the agreement shall be regarded as being of the force of the Satversme (constitutional) law.

The international agreement and the law by which it has been ratified may not be of differing legal force. There are of equal legal force.

5. The above viewpoint can be found in legal doctrine. For example, Lutz Treder – the German legal scientist – writes: "As the (German) international agreements are included in national laws by Federal laws, then the international agreements have the force of the Federal laws." (*Lutz Treder, Methoden und Technik der Rechtsanwendung.-Heidelberg, 1998*).

The issue on the force of international agreements has been solved also in case law. For example, the Republic of Lithuania Constitutional Court bases its practice on the opinion that the international agreements, which have been ratified by the Seimas, acquire the force of the law. As in accordance with the Constitution the Constitutional Court shall reach Judgments in cases on conformity of laws with the Republic of Lithuania Constitution, it does not review cases on the compliance of laws with normative acts having the force of the law.

On the basis of the above the Constitutional Court made the decision to refuse initiating a case on the application by the Administrative Court of the Vilnius Region, in which it requested to assess the conformity of a law with the European Charter of Local Self-Government (*see Decision of the Constitutional Court of the Republic of Lithuania, April 25, 2002*). The Seimas had confirmed the Charter by passing a law.

6. Several normative acts incorporate the "norm of clash", which determines how the established contradictions between the national legal norm and the international agreement of equal legal force shall be solved. Such a norm can be found in Article 13 of the Law "On International Agreements" – "If the international agreement, which the Saeima has ratified, establishes different provisions as those incorporated in the Republic of Latvia legislative acts, then the provisions of the international agreement shall be applied"; Article 15 of the Administrative Procedure Law determines: "if a conflict

between a legal norm of international law and a norm of Latvian law of the same legal force is determined, the legal norm of international law shall be applied". If a national legal norm is at variance with an international agreement – the international norm (agreement) has only the advantage of application, in the same way as the special legal norm and the general legal norm; i.e. the national legal norm is still valid, only it cannot be applied in the particular case.

7. The Saeima confirmed the Convention on September 11, 1997 by passing the Law "On the International Convention on Facilitation of International Maritime Traffic", thus this international agreement has the force of the law.

As the legal force of the impugned norm and the Convention is the same, then the assessment of the conformity of the impugned norm is not within the competence of the Constitutional Court.

Riga, July 7, 2004

The justice of the Constitutional Court Juris Jelāgins