THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, November 26, 2002

JUDGMENT
in the name of the Republic of Latvia
in case No. 2002-09-01

" On the conformity of Article 19^2 (the fourth part) of the Constitutional Court Law with Articles 91 and 92 of the Republic of Latvia Satversme (Constitution)."

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session Aivars Endziņš, justices Andrejs Lepse, Romāns Apsītis, Ilma Čepāne, Juris Jelāgins, Ilze Skultāne and Anita Ušacka,

under Article 85 of the Republic of Latvia Satversme as well as Paragraph 1 of Article 16, Article 17 (Paragraph 11 of the first part), Article 19^2 and Article 28^1 of the Constitutional Court Law

holding the proceedings in writing reviewed the case:

"On the Conformity of Article 19^2 (the fourth part) of the Constitutional Court Law with Articles 91 and 92 of the Republic of Latvia Satversme (Constitution)."

The establishing part

1. On November 30, 2000 the Saeima passed the Law "Amendments to the Constitutional Court Law", which took effect on January 1, 2001 (henceforth - the Amendments). The Amendments enlarged the range of subjects, who experience the right of submitting a claim, envisaging that also the persons, whose fundamental rights, incorporated into the Republic of Latvia Satversme (henceforth - the Satversme), have been violated. The Constitutional Court Law was supplemented with a new - 19^2 Article "Constitutional Claim (application)". The fourth part of this Article envisages that a constitutional claim may be submitted to the

Constitutional Court within six months from the date of the decision of the last institution becoming effective.

In accordance with Item 4 of the Transitional Provisions of the Amendments to the Law, as regards the right of the person to submit the constitutional claim, shall take effect on July 1, 2001.

2. **Imma Jansone, the authorized representative (**henceforth - the representative**) of the applicant of the claim Valters Poķis (**henceforth - the applicant) in the claim points out that two constitutional claims by the applicant had been forwarded to the Constitutional Court on November 12, 2001. The first claim challenged the conformity of Article 91 of the Law "On the Insolvency of Enterprises and Entrepreneur Companies", but the second one - compliance of Article 358 of the Civil Procedural Law with Articles 89, 91 and 92 of the Satversme as well as with Article 6 (the first part) of the Convention for the Protection of Human Rights and Fundamental Freedoms (henceforth - the Convention) and Article 10 of the UNO Universal Declaration of Human Rights.

   On December 13, 2001 the Constitutional Court panel, after examining the claims of the applicant, reached the decision to refuse initiating the case and pointed out that the six months term had been exceeded.

   The representative in her claim points out that the norm, incorporated into the fourth part of Article 19^2 of the Constitutional Court Law (henceforth - the challenged norm) has served as the basis for reaching the Constitutional Court decision, unfavourable for the applicant.

   The representative stresses that in accordance with the Satversme everybody has the right to defend his or her rights and lawful interests in a fair court. The above should refer also to the right of a person to submit a claim to the Constitutional Court, if he/she holds that the fundamental rights have been violated by a legal norm.

   To her viewpoint the challenged norm together with Item 4 of the Transitional Provisions has created inequality before the law and the court.

   To her mind the above is apparent if the term of six months from the date of the decision, allowing to submit the constitutional claim, has taken legal effect on July 1, 2001 shall end only on January 1, 2002. In its turn to the applicant, in whose case the decision of the last institution became effective on May 9, 2001 was also applied the same term of six months even though it had ended on November 9, 2001.

Thus the Saeima has created unequal conditions for the persons who begin making use of the fundamental right, determined in Article 92 of the Satversme - that of submitting a constitutional claim. If the equal attitude to all persons would be envisaged in the Law, the applicant would have had the right of submitting the constitutional claim up to January 1, 2002.

The representative holds that the limitation of six months with regard to submitting the constitutional claim does not comply with the principle of proportionality and does not guarantee legal stability. Besides the above restriction is not envisaged with regard to any other subject named in Article 17 of the Constitutional Court Law.

In her written viewpoint on the Saeima written reply, addressed to the Constitutional Court, the representative points out that she does not question the right of the legislator to establish terms for the submission of constitutional claims. She holds that the length of the procedural terms shall depend on the fact how well the democratic traditions and fundamental values are established in the state. The more democratic the state, the shorter the term for submission of the constitutional claim. Referring to the terms for submission of a constitutional claim, established by other states, to her mind would be well grounded only at the time of Latvia reaching the stage of democratic development of those countries.

3. **The Republic of Latvia Saeima** (henceforth - the Saeima) in its written reply affirms that the challenged norm is not at variance with Articles 91 and 92 of the Satversme and requests to declare the claim as ungrounded and dismiss it. The Saeima points out that establishment of the term for the submission the constitutional claim follows from the nature of the constitutional claim itself and is practised also in other states. The requirement to submit the claim in a certain term has been determined in international human rights instruments as well. For example, Article 35 of the Convention also determines the term of six months. The European Commission of Human Rights (henceforth - the Commission) also has pointed out that the objective of the provision on the six months term is to maintain reasonable legal clarity and ensure that cases are reviewed in a reasonable time. Its aim is to ensure that relevant state institutions and persons do not find themselves in the status of permanent uncertainty. Besides the provision has been elaborated also to help in ascertaining the circumstances in the case, because, time passing it is more difficult to do it and thus reaching a fair result becomes problematic.

The Saeima in its written reply points out that when elaborating the Amendments, it had discussed the challenged norm. The Saeima, on the basis of the principle of legal stability, rejected the motion to extend the term of the submission of the constitutional claim up to one year.

The Saeima holds that it is within the authority of the legislator to determine the time of a legal norm taking effect and - among other things - also to attribute retrospective force to a norm. Before elaboration of the Amendments Article 92 of the Satversme did not incorporate the right of the person to submit a constitutional claim to the Constitutional Court. Thus it does not follow from the Satversme that also the persons, with regard to whom the decisions have been taken before the challenged norm took effect, had also the right of addressing the Constitutional Court.

From the challenged norm does not follow different attitude to different persons. From the time of the challenged norm taking effect the provision on six months term shall be equally applied to all the submitters of the claims.

The concluding part

1. The application includes the claim on the compliance of the challenged norm with Article 92 of the Satversme. However from the claim it follows that in fact the conformity of the first sentence of the Satversme Article 92, determining that everyone has the right to defend their rights and lawful interests in a fair court is challenged. The concept "their rights and lawful interests", incorporated into Article 92 of the Satversme is wider than that included in the International Covenant on Civil and Political Rights, which guarantees the right of everyone to address a fair court " if any criminal accusation against him is being reviewed, or the right to a fair court on "the validity of the charge", envisaged in the Convention (*see March 5, 2002 Constitutional Court Judgment in case No. 2002-04-03).* In cases, when a legal norm, which is unconformable with the legal norm of higher legal force, violates the fundamental rights, fixed in the Satversme, the Constitutional Court is that institution of the judicial power where the person shall defend his/her rights and lawful interests. In the above cases the right to a fair court, fixed in Article 92 of the Satversme incorporates also the right to submit a constitutional claim to the Constitutional Court.

Even though the Satversme does not envisage those cases, when the right to a fair court might be infringed, however the right is not absolute. The Satversme is a single whole and norms, incorporated into it, shall be interpreted

systemically (*see October 22, 2002 Constitutional Court Judgment in case No. 2002-04-03).* Presumption, that it is not allowed to determine any limitations to rights envisaged in Article 92 of the Satversme for every particular person, would come into collision both with the other fundamental rights, fixed in the Satversme, and the other norms of the Satversme. The European Court of Human Rights has also concluded that the right to a fair court is not absolute. Even though the person shall not be deprived of the above right in essence, the latter may be limited (*see February 21, 1975 European Court of Human Rights Judgment in case "Golder v. United Kingdom").* However limitations of this right as well as limitations of any other right shall be determined by law or based on the law, shall be justified with a legitimate aim and be proportional to that aim. "The concept "a fair court", incorporated into Article 92 of the Satversme, includes two aspects, namely "a fair court" as an independent institution of the judicial power and " a fair court" as an adequate process, characteristic to a law-based state in which the case is being reviewed. In the first aspect this concept shall be read together with Chapter VI of the Satversme, in the other- together with the principle of a law-based state, which follows from Article 1 of the Satversme… Judicial stability is an essential constituent part of the principle of a law-based state. Among other things it requires not only a settled process of legal procedure but also such completion of it, which is judicially stable" (*see March 5, 2002 Constitutional Court Judgment in case No. 2001-10-01).*Established terms for accomplishment of procedural activities serve in ensuring judicial stability. Procedural activities of the constitutional legal process, just as those in criminal, civil and administrative processes require an adequate and determined time limit.

The objective of the determination of the time limit is to ensure reviewing of the case in a reasonable period of time, at the same time ensuring the trust of the other party that the solution of the conflict will not be revised.

The Constitutional Court holds that the considerations, mentioned in the Saeima written reply, are well grounded. Firstly, the more the person tolerates violation of his/her rights, the less interested the person is in the protection of constitutional rights. Secondly, protection of the interests of the second party are also to be ensured, so that the solved controversy does not become actual after some period of time, besides relations of both parties shall be settled in a reasonable term. Thirdly, establishment of the term helps to avoid several problems, which are connected with execution of the decision of the court of general jurisdiction and rehabilitation of person's legal status in case, if the Constitutional Court acknowledges violation of person's rights. Fourthly, there is the necessity to determine the term so that it shall be possible to react quickly and in reasonable time to violation of rights and to ensure legal order in the state.

Determination of an unreasonably long term for the submission of the constitutional claim together with a potential indecent lingering to challenge a

legal norm will only prolong uncertainty in the activities of the parties. Besides, it is not always possible to satisfactorily reach a decision in cases, which have lost their urgency. Limitation of the term protects cases from delay and its harmful consequences.

The Arbitrary Court of Belgium, which carries out also the functions of the constitutional court, has also reached the same conclusion. The Court acknowledged that - taking into consideration the demand for stability, which in public law is especially important when reviewing cases of individuals versus the state or between several state institutions - determination of the time limit is based on the necessity to limit the time period in which the "future" of the law remains uncertain (*see November 18, 1998 Belgium Arbitrary Court Decision No. 118/98, its third part, Item 4).*

At the Saeima plenary session, when debating on the Draft Amendment Law and the motion to prolong the term for submitting constitutional claims, a speaker of an answerable commission pointed out that the motion " had not been backed, as it did not further creation of legal stability in the state". When the constitutional claim is submitted after all the other legal means have been exhausted (all the court instances, appelation and cassation courts have been addressed) and the decision has taken effect, then adding one more year (instead of six months) will not serve as the guarantee of legal stability, because the decisions, which have taken legal effect shall remain stable." The Saeima agreed with the viewpoint of the commission and rejected the proposal to prolong the term for submission of a constitutional claim to one year (*see the verbatim report of September 28, 2000 plenary session).*

The Constitutional Court holds that the term for the submission of a constitutional claim has been determined with a legitimate objective. Limitation of this kind has been internationally acknowledged as the means, guaranteeing legal certainty and stability in the state.

2. The challenged norm envisages two provisions, to be observed when submitting a constitutional claim to the Constitutional Court. First of all, it may be submitted to the Constitutional Court within six months. Secondly, this term is counted from the date of the decision of the last institution becoming effective.

2.1 Well grounded is the viewpoint of the representative that the legislator experiences the right of determining a specific procedure for realisation of the right, among other things limiting the period of time, in which the person has the right to address the Constitutional Court with a constitutional claim to protect his/her fundamental rights, guaranteed by the Satversme.

Determination of the term for the submission of the constitutional claim follows from the essence of the constitutional claim. The constitutional claim serves as a subsidiary mechanism for the protection of fundamental human rights after all the other legal means to protect the fundamental human rights have been exhausted (a claim to the higher institution or official, a claim or an application to the court of general jurisdiction etc.).

As the constitutional claim is an extraordinary instrument of legal protection, the time limit should not be too extensive, but sufficiently long to allow the person to find a lawyer (as the representative) or to write the claim himself/herself (*see The protection of fundamental rights by the Constitutional Court, Brionia, Croatia 23-25 September 1995//European Commission for Democracy through Law, Council of Europe, p. 149).* The term for the submission of application on the one hand shall be as long as is necessary for ensuring of legal stability but on the other hand it shall be long enough to give the person the possibility to think everything over and make the decision of submitting the claim. And if so, then one needs time to decide what specific claims and arguments to use (*see August 29, 1997 European Court of Human Rights Judgment in case "M v. Belgium").*

The Commission motivated its viewpoint with the fact that the term of six months is an element of legal stability, and it protects not only the interests of the defendant state government but also the principle of legal certainty, which is the value in itself (*see May 17, 1984 European Commission of Human Rights decision in case "K v. Ireland", Item6).*

In those European states, in which persons experience the right of submitting constitutional claims at the constitutional courts, the terms for the submission of the claim is 20 days in Spain, one month in Germany and Croatia, 60 days in the Czech Republic, Hungary, Slovenia and Slovakia (*see the case material, volume 3, pp. 13 -25).*

When comparing the terms for the submission of constitutional claims, it was established that they are not shorter than 20 days and not longer than three months (*see Harutjunjan G., Mavčič A., Constitutional Review and its Development in the Modern World/ a comparative constitutional analysis/, Yerevan- Ljubljana, 1999, p. 298).* Besides, one should take into consideration that at the time of elaboration of the above paper constitutional claim was not introduced in Latvia and the term of six months, later incorporated into the Amendment, could not be included in the comparative analysis.

Thus, the legislator by the challenged norm has determined at least twice as long a term for the submission of constitutional claims, if compared with the legislative acts of other states.

Thus the Constitutional Court holds that the viewpoint of the representative, namely, that in the democratic state the term, established in the challenged norm is discrepant, disproportionately short and insufficient for constructing and submitting the constitutional claim, is ungrounded.

2.2 The Constitutional Court cannot agree with the point of view of the representative, that the term of six months for the submission of the constitutional claim shall be counted from July 1, 2001, when the Constitutional Court was granted the right of reviewing constitutional claims by persons and not from May 9, 2001, when the decision of the last court instance became effective.

Item 4 of the Transitional Provisions envisaged that Amendments to the Constitutional Court Law as regards constitutional claim, thus also the challenged norm, shall take effect on July 1, 2001 and not on January 1, 2001. Thus only from July 1, 2001 persons could realise their right of submitting the constitutional claim to the Constitutional Court. It means that beginning from July 1, 2001 a person could submit the constitutional claim to the Constitutional Court if the decision of the last judicial institution had not been declared more than six months ago.

The same principle has been fixed in the Convention. The first part of Article 35 determines that the case shall be submitted to the European Court of Human Rights in the term, which is counted from the day of the decision by the last instance taking effect.

The Commission (and now also the European Court of Human Rights) points out that legal norms, regulating the procedure of submission of the claim, shall not have retrospective force. The Convention Member States, when signing the Convention, experience the right of incorporating a pretext, stating that the particular state envisages recognition of the jurisdiction of the European Court of Human Rights not from the moment of signing the Convention but after a certain period. The Commission has determined that the term of six months, established in the Convention, shall be counted from the date of the decision of the last national institution becoming effective and not from the day, when the state has acknowledged the right of the person to submit the claim to the European Court of Human Rights (*see December 13,*

1982 European Commission of Human Rights decision in case "X v. France, Item 16).

The Constitutional Court concludes, that the term established for the submission of the claim, incorporated into the challenged norm does not forbid a person to protect his/her rights and lawful interests in the Constitutional Court.

3. Article 91 of the Satversme determines that all human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind.

3.1. Ungrounded is the statement of the representative that the challenged norm discriminates the applicant if compared with all the other legal subjects, named in Article 17 of the Constitutional Court Law, who experience the right of submitting the claim to the Constitutional Court to realise the above right without any time limit.

The principle of equality, which follows from the first sentence of Article 91 of the Satversme, prohibits state institutions to pass norms, which - without any reasonable objective - allow differentiated attitude to persons, who find themselves in equal and under certain criteria comparable circumstances. The principle of equality allows and even demands a differentiated attitude to persons, who are in diverse circumstances or even if they are in equal circumstances but there is objective and reasonable motivation for it.

The first part of Article 17 of the Constitutional Court Law names those public legal subjects, who experience the right of submitting an application to realise abstract control of a legal norm. The model of abstract control does not envisage a fixed term for the submission of the claim. The subjects, who are named, may address an appeal to the Constitutional Court to protect public interests. In its turn the constitutional claim is the means of protection for a particular person. Therefore the person, in difference from legal public subjects, experiences the right of submitting the claim to the Constitutional Court only when his/her fundamental rights have been violated.

The applicant as a physical entity and the legal public subjects, enumerated in the first part of Article 17 do not find themselves in equal and under certain criteria comparable circumstances. Therefore the differentiated attitude to the issue on the term of

submission of the constitutional claim, determined by the Constitutional Court Law cannot be considered as discriminating.

3.2. To evaluate conformity of the challenged norm with Article 91 of the Satversme, one has to establish whether the challenged norm creates a differentiated attitude to the applicant and those applicants of constitutional claims, to whom counting of the established term of six months started after July 1, 2001.

To realise the right of addressing the claim to the Constitutional Court the person has to observe the procedure of submission of the constitutional claim, envisaged by the Amendments and the four following provisions. The first - the applicant of the constitutional claim shall submit the claim only after exhausting the ordinary legal remedies if there are such remedies. The second - the decision of the last institution shall take effect not earlier than on January 1, 2001. The third- the claim shall be submitted not later than six months from the date of the decision of the last institution becoming effective. The fourth - the right to submit the constitutional claim shall be realised beginning from July 1, 2001.

After the Amendments taking effect to all the persons - those in whose cases decisions of the last institution became effective before July 1, 2001 and those in whose cases the decisions took effect after the above date - was fixed the same term for submission of the constitutional claim - six months. On May 9, 2001 the applicant had exhausted all the possibilities of protecting his rights with the ordinary legal remedies. It means that already from that date and for six months he had the possibility to weigh and evaluate his further activities for the protection of his rights at the Constitutional Court. Exceeding the time limit of six months, the applicant forfeited the possibility of protecting his rights at the Constitutional Court.

The Constitutional Court holds that the viewpoint of the representative, who states that counting of the six months term should have begun on July 1, 2001, would create ungrounded and differentiated attitude to other persons, who find themselves in equal and comparable circumstances. In such a case, by taking into consideration the moment of the decision of the last institution, some persons would have to submit the constitutional claim in the term of six months envisaged by the law, but others, say, persons, the decision on whose case had taken effect on January 1, 2001,the term for submission of the constitutional claim would be twice as long. Such an attitude should be considered as discriminating.

In its turn, the challenged norm envisages for both - the applicant and other persons, who hold that their rights, guaranteed by the Satversme have been violated, an equal term for preparing and submitting the constitutional claim.

Thus the challenged norm does not create differentiated attitude to the applicant of the claim and is not discriminating.

The substantive part

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

decided:

to declare the fourth part of Article 192 of the Constitutional Court Law **as conformable** with Articles 91 and 92 of the 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 A.Endziņš