



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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Riga, February 4, 2003

## JUDGMENT in the name of the Republic of Latvia

in case No. 2002-06-01

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

pursuant to Article 85 of the Republic of Latvia Satversme (Constitution), Articles 16 (Item 1), 17 (Item 11 of the first part) and 28<sup>1</sup>

on the basis of the constitutional claim by Antons Zīle

holding the proceedings in writing reviewed the case

**”On the Compliance of Article 49 (its second part) of the Law ”On Judicial Power” with Articles 1 and 83 of the Satversme (Constitution)”.**

### The establishing part

1. On December 15, 1992 the Republic of Latvia Supreme Council passed the Law ”On Judicial Power” (henceforth – the Judicial Power Law). The second part of Article 49 of the Law (henceforth – the challenged norm) determined: ” The Plenary Session issues opinions, which are binding on the courts, concerning the application of laws”.

At the present moment about 20 Supreme Court Plenary Session opinions (henceforth – Plenary Session Opinions) are in effect.

2. To ensure accurate and uniform application of the Labour Code (henceforth – LC) as well as to approximate court practice in cases on restoration to the post or office in accordance with March 17, 1992 Law

”On Amendments and Supplements to the Republic of Latvia Labour Code”, on December 28, 1992 the Supreme Court Plenum adopted Decision No. 16 ” On Court Practice in Cases on Restoration to the Post ” (henceforth – Plenum Decision No. 16). In Item 2, part 1 of the Decision the Supreme Court Plenum pointed out that ”in conformity with Article 217 of the LC the employee may submit a claim on his/her dismissal to the court within one month as of the day of receiving the service book”. Besides, in the second part of the same Item the Plenum explained that ”the judge has no right of abjuring from acceptance of the claim just because the above mentioned term has been exceeded. If the court acknowledges the reasons for exceeding the established term, it extends the term. If the court – after examining the material in the case – establishes that the term has been exceeded without any justifying reasons, it rejects the claim”.

On December 27, 1996 the Supreme Court Plenum amended the second part of Item 2 of the Plenum Decision No. 16, and interpreted Article 217 of the LC in the following way:” LC does not anticipate the right of extending the term for submission of the claim on restoring to the post to the court. Exceeding of the term shall not serve as the reason for adjuring from acceptance of the claim, but it may serve as the basis for rejecting the claim regardless of the reason for exceeding the time limit”.

In connection with the adoption of the Labour Law on March 11, 2002 the Supreme Court Plenum declared the Plenum Decision No. 16 as null and void.

3. On December 3, 2002 the Amendments to the Law on Judicial Power took effect. In compliance with the Amendments the second part of Article 49 of the Law is expressed in the following wording: ”The Plenum shall discuss issues on interpretation of topical legal norms”.
4. **The submitter of the Constitutional claim** Antons Zīle (henceforth – the submitter) in his claim challenges conformity of the second part of Article 49 of the Judicial Power Law (in the wording in effect up to December 3, 2002) with Articles 1 and 83 of the Satversme. He holds that in accordance with the challenged norm the Plenum Decision violates the right of the submitter to a fair court, which is guaranteed in Article 92 of the Satversme.

In his claim the submitter describes the real circumstances of the case.

On September 11, 2000 he was dismissed. As he held that the dismissal had been ungrounded, on October 11, 2000 he submitted a claim on restoration to the post to the Kurzeme District court. The court session was held on January 4, 2001 and the claimant attended it. The Kurzeme District Court did not review the case on restoration to the post as it

ascertained that the submitted claim in the name of the applicant had been signed by a person, who was not authorized to do it in the way established by the law. The court pointed out that in conformity with the first part of Article 85 of the Civil Procedure Law, representation by physical persons was to be authorized by a warrant drawn up by a notary. The court adopted the above decision without taking into consideration the fact that the applicant himself participated in the court session and certified the authority to submit a claim on his restoration to the post of a trade union representative.

On April 3, 2001 the submitter repeatedly addressed the Kurzeme District Court with the claim on restoration to the post. The court rejected the claim as the term of one month, envisaged for submitting the claim, had been exceeded. The Kurzeme District Court motivated its decision with Item 2 of the Plenum Decision No.16.

The submitter appealed against the Kurzeme District Court decision in the regional court. On November 12, 2001 the Riga Regional Court rejected the appellation claim, justifying the decision with Article 217 of the LC and Item 2 of the Plenum decision No.16: "In compliance with the Republic of Latvia LC the court does not experience the right of extending the exceeded time limit for submitting claims on restoration to post. The above is confirmed ... by the Plenum Decision No.16, Item 2, thus exceeding of the time limit is the basis for rejecting the claim".

In its turn at its December 27, 2001 organizational meeting the Supreme Court Senate terminated the cassation proceedings on the cassation claim against the Riga Regional Court decision.

The submitter is of the viewpoint that the challenged norm denies him access to court and thus – the possibility of protecting his interests. He points out that the principle of separation of powers follows from Article 1 of the Satversme. In compliance with this principle the legislative power in a democratic state belongs to the people and the legislator but not to the judicial power. The duty of a court is to review cases and it cannot undertake the functions of the legislator. When permitting the court to carry out also the functions of the legislator, the right of an individual to independent and fair court is violated. At the moment the courts have to comply with the Supreme Court Plenum opinion on how to interpret laws, without taking into consideration the circumstances in the case and development of rights. The decisions, reached by the Supreme Court Plenum, may not be appealed against.

The submitter expresses the viewpoint that the Plenum Decisions or opinions are binding as the claims are rejected on the basis of the above decisions. To his mind it is at variance with Article 83 of the Satversme,

which determines that the judges shall be independent and subject only to the law and is unbecoming also with the principle of independence of the judicial power.

5. **The Saeima** in its written reply partially agrees with the viewpoint of the submitter, namely that the binding character of the Plenum Decisions is unbecoming with the principle of separation of power. It points out that Plenum Decisions are not normative acts therefore they cannot be binding on courts, however, the Supreme Court Plenum cannot be forbidden to express its viewpoint on issues of interpreting certain legal norms, which are topical in the court practice.
6. **Gunārs Aigars – the Deputy Chairman of the Republic of Latvia Supreme Court** – in an answer to the request of the Constitutional Court to express the viewpoint of the Supreme Court, stressed that Article 3 of March 1, 1993 Law "On the Time and Procedure of the Renewed 1937 Republic of Latvia Civil Law Chapter on Obligations Taking Effect" includes provisions on limitation terms. In compliance with this Law, the Supreme Court Plenum in its Decision No. 16 has explained that the circumstance of one month for the submission of claims cannot be extended.

The Republic of Latvia Supreme Court justices are of the opinion that the challenged norm is unbecoming with Articles 1 and 83 of the Satversme as neither the Criminal Law nor the Civil Procedure Law and the Administrative Procedural Law do not envisage that the Plenum Decisions are binding on courts.

7. Even though the second part of Article 49 of the Judicial Power Law is expressed in a new wording, the representative of the submitter Jautrīte Briede requested the Constitutional Court not to terminate the case. She points out that the Constitutional Court Law may be the only legal way of the submitter to continue protecting his violated rights.

### **The concluding part**

1. Article 92 of the Satversme determines that everyone has the right to defend their rights and lawful interests in a fair court. The right to a fair court includes several mutually interconnected aspects. As concerns the particular case, two of them are of importance:

First of all – "a fair court" as an independent and objective institution of the judicial power, which reviews a case. In this aspect the above concept shall be read together both – with the principle of separation of power and the principle of independence of judges (courts), fixed in Article 83 of the Satversme.

Secondly – "fair court" as the appropriate process in a law- based state in which the case is being reviewed. In this aspect the concept "a fair court" shall be read together with the principle of justice, which follows from Article 1 of the Satversme (*see Constitutional Court March 5, 2002 Judgment in case No. 2001-10-01*).

2. To establish whether passing interpretations of binding legal norms is within the authority of the Supreme Court Plenum and is in conformity with the principle of separation of power and the independence of judges, the legal force of the Plenum Decisions has to be ascertained.
  - 2.1. First of all one has to make out the meaning of the word "binding" in this and the other laws.

In the Judicial Power Law the word "binding" is used not only in the challenged norm but also in the third part of Article 16 " A judgment in accordance with the procedures provided by law is binding on a court, when adjudicating other matters, which are related to such matter".

Article 96 (the third part) of the Civil Procedure Law determines that " a court judgment in a criminal case, which has taken legal effect is binding on the court that reviews the case on the civil liability of the person on whom the judgment in the criminal matter has been reached", but the first part of Article 476 establishes that "interpretation of the law, which is expressed in the cassation court judgment is binding on the court, which reviews the case anew".

In its turn Article 359 of the Criminal Procedure Law determines that "the court judgment or decision, which has taken legal effect, is binding on all enterprises, institutions and organizations, officials and other persons".

These examples show that the word "binding" in legal acts is used as a synonym to word "obligatory" – "something that is determined by legal norms, laws and which has to be fulfilled; something, which may not be freely chosen, which is "dictated" by provisions, directives". (*Dictionary of foreign words. Publishing house "Jumava", 1999 p. 527*)

- 2.2. The Latvian court practice confirms the mandatory nature of the binding interpretations of the Plenum Decisions. The courts, when reaching judgments, rather often apply the instructions

(directions) of the Plenum Decisions as generally binding legal norms (*see the Collection of the Republic of Latvia Appellate Instance Judgments in Civil Matters. 1999 -2000. Riga, Agency of the Court Houses, 2001, pp. 31, 51 -52, 102, 286, 291, 306 – 308*). Sometimes the court of a higher instance amends or repeals the decisions, reached by the courts of lower instance, if they are unconformable with the interpretations of the Plenum Decisions. For example the Supreme Court Senate Criminal Cases Department repealed the judgments of the Riga Regional Court Criminal Matters Division and the Supreme Court Criminal Cases Chamber because it held that ” the appellate instance court had erroneously interpreted Item 11 of the December 19, 1994 Republic of Latvia Supreme Court Plenum Decision No. 7 ”On Application of Law in Cases on Endangering Movable Property of Another, when Committing Robbery or Theft” (*see Decisions of the Republic of Latvia Supreme Court Senate Criminal Cases Department. 1998, Riga, the Educational Centre of Latvian Judges, 199, pp. 157 – 161*). Other state institutions also approximate their resolutions with the provisions of the Plenum Decisions. Thus materials of application No. 204 (2002) submitted to the Constitutional Court testify that the officials of the Republic of Latvia Prosecutor General’s Office and the Ministry of Justice, when giving an answer to applications of a certain person, have taken into consideration the interpretation of Article 56 of the Criminal Law, which has been expressed in July 23, 1999 Plenum Decision No.7 ”On Application of Several Norms in Criminal Matters Connected with the Criminal Law Taking Effect”.

Sometimes the Plenum Decisions incorporate such instructions, which cannot be regarded as specification of generally binding legal norms. For example, Item 4.7 of the already mentioned Plenum Decision No.7, establishes: ” If the accused person is hiding in another state and his/her hunt is announced, then the criminal liability limitation is terminated by forwarding the official request to the accused person”. However, Article 56 of the Criminal Law to which the above interpretation of the Plenum Decision is given, does not envisage such a reason for terminating criminal liability limitation period.

Thus in practice the Plenum Decisions have been applied not only as a legal supplementary source but - like the generally binding normative acts – have also acquired the status of an independent legal source.

- 2.3. The Supreme Court Plenum Decisions as the acts of normative versions of laws were used already at the time of the USSR rule and they are characteristic of the socialist legal system. The political conception on uniformity and indivisibility of power determined the existence of the Plenum Decisions. "The Supreme Court undertook the task of administering the court activities and realization of legal policy set by the Communist party, including the "filtering" and "correct" advancement" (*Meļķis E. On Uniformity of the court practice. Creation of the court practice. Scientific papers of the Latvian University, 2001, p.8*). The June 12, 1981 Law " On the Court System of the Latvian SSR" also determined that the leading interpretations of the Supreme Court Plenum shall be mandatory to courts, when reviewing similar cases as well as to other institutions and officials, who apply the law to which the above interpretation refers. Thus the Plenum Decisions served as the instructions for judges, who reviewed cases.

Even though in 1992, when adopting the Judicial Power Law, the deputies did not accept the motion to authorize the Supreme Court with the right of passing law interpretations (*see the Verbatim Report of the Republic of Latvia Supreme Council 30<sup>th</sup>. meeting of the 5<sup>th</sup>. Session, held on December 1, 1992*), the right to pass law interpretations binding on courts was incorporated into it.

Not denying the importance of a uniform court practice in ensuring legal stability, it is not admissible that the Supreme Court Plenum becomes similar to the legislator and determines generally binding (mandatory) instructions from which the judge, who is reviewing the case, is not allowed to deviate.

- 2.4. When adopting the May 4, 1990 Declaration " On the Accession of the Republic of Latvia to International Legal Instruments on Human Rights Issues", Latvia acceded also to the fundamental principles of the Independence of Judicial Power, determined by the United Nations Organization. In compliance with these principles the state shall guarantee the independence of the judicial power and fix it in the state Constitution or in law. "The judicial power shall review cases impartially on the basis of facts and in compliance with the law, without any restrictions, influences, stimuli, pressure, threats – direct or indirect – from any party or because of any reason" (*Fundamental Principles of Independence of Judicial Power – Human Rights. Collection of International Agreements, vol.I. UN, New York, Geneva, 1994*).

In Latvia the principle of independence of judges (courts) is incorporated into Article 83 of the Satversme: "Judges shall be independent and subject only to the law". This constitutional principle means that the judge, who reviews the case, shall not be subjected to any influence. Therefore the duty not to interfere with the process of reaching the judgment refers not only to the legislator and executive power but also to the court itself and to officials, who are connected with the realization of the judicial power.

Taking into consideration the objective of reaching a judgment i.e. – to find the right and fair solution of the case – the judge evaluates the specific circumstances of the case. When interpreting and applying the law he/she shall be guided only by his/her conviction, which is based upon the professional knowledge and skill, understanding of legal and public processes, culture, mental outlook, civic consciousness and other factors (*see Handbuch des Verfassungsrechts der Bundesrepublik Deutschland, 2.Auflag, Walter de Gruyter, Berlin, New York, 1995, S. 1618-1619*). If the necessity of deviating from the conclusions of the former court practice arises then the judge experiences the right to do so, however he/she has to substantiate the viewpoint. In its turn the possibility of appealing against a court decision envisages that the judge shall observe the law, correctly interpret it and apply in practice, but not interpret the law arbitrarily on his/her free will.

**Thus the challenged norm, which authorized the Supreme Court Plenum to pass binding on the courts decisions on application of laws, is at variance with the principle of separation of law and limits independence of judges (courts).**

3. "A fair court" as an appropriate process in a law-based state means a fair review of cases, namely, in every specific case the court has to observe the principle of justice. In its turn, as the result of the court activity is the court judgment then the concept "a fair court" in most cases is understood as "a fair judgment".

The guarantee of a fair court is closely connected with well-grounded decisions which comply with legal norms. Thus, for example, Article 189 (the third part) of the Civil Procedure Law establishes that the judgment has to be legitimate and well-grounded. It is also specified in Article 190: " 1.)When passing the judgment the court is guided by the legal norms of material and procedural law. 2.) The court substantiates the judgment on the circumstances, which have been verified and proved during the

process of review of the case”. However to reach a fair judgment it is not enough to interpret the legal norms grammatically. To reach the just and the most suitable objective judgment, the court shall make use of different methods of legal norm interpretation – not only the grammatical but also the historic, systemic and teleological methods.

Court decisions, which are reached only by observing the interpretations of legal norms presented in the Plenum Decisions, may turn out to be unjust, especially in cases when the multiform and constantly changing living conditions are not taken into consideration or when the judge experiences no right of deviating from the provisions of the Plenum Decisions.

Judgments of the courts of general jurisdiction, attached to the case, testify that the request of the submitter to restore him to the post was rejected because the courts had established exceeding of the time limit of one month determined in Article 217 of the LC. The courts of the first and the second instances referred to Item 2 of the Plenum Decision No.16, namely, that exceeding of the term, regardless of reasons, can serve as the basis for rejecting the claim. Therefore the courts had not evaluated the reasons of the above exceeding of the time limit, i.e. – the submitter had exceeded the term because he was compelled to repeatedly address the court with the claim to restore him to the post, as his initially submitted claim, that is, the claim submitted in one month, was not reviewed. The January 4, 2001 Riga Kurzeme District Court judgment declares that the claim had been signed by the person, authorization of whom was not notarially certified as envisaged by Article 85 (the first part) of the Civil Procedure Law. The court reached the above decision regardless of the fact that the submitter participated in the court session and confirmed the authorization to submit the claim on his restoration to post, entrusted to the trade union representative himself.

**Thus the court decisions, which have been passed by applying binding to courts Supreme Court interpretations, may come into collision with the principle of fairness (justice), which is incorporated into Article 1 of the Satversme.**

4. Taking into consideration the fact that on December 3, 2002 the new wording of Article 49 (part two) of the Judicial Power Law took effect, the Constitutional Court does not have to take a decision on the moment of the challenged norm becoming invalid.

However, at the period, when the challenged norm was in effect, the courts took decisions on the claim of the submitter to restore him to the post by strictly observing requirements of the Plenum Decision

No.16. Thus the challenged norm has violated the constitutional right of the submitter to a fair court. To ensure the protection of his rights and to give the possibility of initiating a case because of the newly discovered circumstances, the challenged legal norm – as concerns the submitter – shall be declared as invalid already at the time when the courts of general jurisdiction reviewed his case on restoration to the post.

### **The substantive part**

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

### **DECIDED:**

to declare the second part of Article 49 of the Law on Judicial Power (in the wording, which was valid up to December 3, 2002) **as unconfirmable with** Articles 1 and 83 of the Republic of Latvia Satversme and with regard to the submitter of the constitutional claim Antons Zīle as invalid from October 12, 2000.

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