



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT

IN THE NAME OF THE REPUBLIC OF LATVIA

Riga, June 20, 2002

in Case No. 2001-17-0106

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

Under Article 85 of the Republic of Latvia Satversme (Constitution) as well as Paragraph 1 of Article 16, Article 17 (Paragraph 11 of the first part) and Article 28¹. On the basis of the constitutional claims by Vladis Vaitonis and Tatjana Šnēvele holding the proceedings in writing reviewed the case.

„On the Compliance of the Latvian Administrative Violation Code Article 279 (the Second Part) and Article 280 (the First Part, Paragraph 4) in the Part Determining that a Court Judgment on the Decision of an Official about Imposing Administrative Punishment is Final and the Latvian Civil Procedure Code Article 239 (the Fourth Part) with Articles 89, 91 and 92 as well as Article 6 of November 4, 1950 European Charter for the Protection of Human Rights and Fundamental Freedoms”.

The establishing part

1. On December 27, 1963 the Supreme Soviet of the Latvian SSR adopted the Latvian Civil Procedure Code (henceforth – CPC), which became invalid as of March 1, 1999. However, the section ”Proceedings in Cases Arising from Administrative Legal

Relations” is still in effect. The fourth part of Article 239 of the above section determines that the district (city) court judgment on the decision of administrative violation is final.

2. On December 7, 1984 the Supreme Soviet of the Latvian SSR adopted the Latvian Administrative Violation Code (henceforth – AVC). The second part of Article 279 of the Law determines that the decision of the district (city) judge’s decision on imposing administrative fine (punishment) is final and- under the procedure of administrative violation proceedings - allowing of no appeal with an exception of cases envisaged in the legislative acts. In its turn the first part of AVC Article 280 determines: ”The decision in the administrative violation case may be appealed against: 1) the decision of the administrative commission to the district (city) court and its decision is final; 2) deleted by May 28, 1997 law; 3) the decision of the chairperson of the district, city and pagasts (or his/her deputy) as well as the decisions of the municipality directors – to the district (city) court and its decision is final ; 4) decision of another institution (official) on imposing an administrative fine – to a higher institution (official) or the district (city) court, the decision of which is final; the decision on infliction of other administrative punishment – to a higher institution (official), but in this case the claim may be submitted to the district (city) court, the court decision is final”.

3. On June 4, 1997 by the Law ” On the European Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950 and its Protocols No. 1, 2, 4, 7 and 11” the Saeima ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms (henceforth – the Convention) and its Protocols No. 1, 2, 4, 7 and 11. The first part of Article 6 of the Convention establishes that in the determination of his civil rights and obligations or of any criminal charge against him the person is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. In its turn Article 2 of Protocol 7 determines:” 1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law. 2. This right may be subject to exceptions in regard to offences of a

minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal”.

4. The submitter of the constitutional claim Vlads Vaitonis challenges the compliance of the AVC Article 279 (its second part) with the Republic of Latvia Satversme (henceforth- the Satversme) Articles 91 and 92 as well as with the first part of Article 6 of the Convention. V.Vaitonis holds that the second part of the AVC Article 279 is at variance with Article 91 of the Satversme, which determines that all human beings in Latvia shall be equal before the law and the courts and with Article 92 of the Satversme, determining that everyone has the right to defend their rights and lawful interests in a fair court. The applicant points out that the challenged legal norm denies the person the right of appealing against the court decision to at least two court instances.

In his constitutional claim V.Vaitonis describes the actual circumstances of the case. On July 27, 2001 the Riga Zemgale district court judge declared the claimant guilty of an administrative offence and imposed a punishment of deprivation of the driver's license for twenty four months. The decision of the judge reads that the decision is final and allowing of no appeal. On August 14, 2001, not agreeing with the above decision of the judge, Vaitonis requested the Riga Road Transport Prosecutor's Office to evaluate the circumstances of the case and to submit a protest on the judgment. The above prosecutor's office did not submit the protest. V.Vaitonis holds that in a law-based state fair court is unthinkable without the procedural right of the person to appeal against any court decision at least to one instance. Review of the case at a higher instance ensures not only the protection of the human rights but also furthers the development of the court practice, which is an integral part of an up-to-date law-based state. He points out that since the time of the challenged norms becoming effective, only grammatical amendments to it have been adopted and thus the changes of the political and legal systems of the state, under which appellate proceedings were introduced, have not been taken into consideration. V.Vaitonis has exhausted all the

legal remedies, envisaged by the law, to protect the violated rights, i.e., he has submitted a claim to the higher legal instance.

V.Vaitonis holds that the notion "a fair court", incorporates elements of the principle of appeal, and he is of the opinion that the challenged norm violates his rights, guaranteed by the Satversme, namely – to protect his violated rights and lawful interests at a fair court.

5. The claimant Tatjana Šnevele questions compliance of Paragraph 4 of the AVC Article 280 (its first part) in the part establishing that the court judgment in the case on the decision of the official on inflicting the administrative punishment is final as well as the conformity of the fourth part of CPC Article 239 with Articles 89 and 92 of the Satversme and Article 6 of the Convention. She holds that the norm of Paragraph 4 of the above AVC Article, which determines that the court judgment on the decision of the official on infliction of an administrative punishment is final. Besides she holds that the fourth part of the CPC Article 239 is unconformable with Article 89 of the Satversme, establishing that "the State shall recognize and protect fundamental human rights in accordance with the Satversme, laws and international agreements binding upon Latvia, Article 92 of the Satversme and Article 6 of the Convention. T.Šnevele expresses the viewpoint that – if the case has already been reviewed at the court of the first instance - the challenged legal norms deny her the right of a repeated review of the case at an independent and objective court.

In her constitutional claim T.Šnevele describes the factual circumstances of the case. On February 12, 2000 at the customs post of the Ludza district state revenue office "Zilupe" the protocol on administrative violation as well as the protocol on examination and removal of documents and objects (things) has been drawn up. Six sets of food supplement, which the customs officials had mistakenly qualified as medical remedies, have been removed. On February 25, 2000 T.Šnevele appealed against the decision in the administrative violation case to the Ludza district court. On September 18, 2000 the court had reached the judgment, leaving the challenged decision unchanged and her claim on the decision rejected. The judgment includes a

note that it is allowing of no appeal. T Šnevele holds that the Ludza district court, when reviewing the case on its merit has violated the procedural norms.

In specification of the constitutional claim T.Šnevele expresses the viewpoint that a fair court is ensured only in cases if the person is given the possibility of protecting the lawful interests both at the court of the first instance and under the procedure of appellation and cassation. To her mind the legal norms, questioned by her, deny the right to a fair court.

6. The institution, which has issued the challenged legal acts –**the Saeima**- in its written reply on the constitutional claim by V.Vaitonis points out that Article 92 of the Satversme does not disunite the right of appealing against a judgment as a constituent part of the right to a fair court. The content of the human rights norms, incorporated into the Satversme, in cases of doubt shall be interpreted in accordance with the practice of application of international human rights norms. The Saeima holds that Article 92 of the Satversme shall be interpreted by taking into consideration the interpretation of Article 6 of the Convention at the European Court of Human Rights (henceforth- the Court of Human Rights). Thus in judgments *Delcourt v. Belgium (1970)* and *the Belgian Linguistic case(1968)* the court has stated that the right of appealing against the court judgment is not incorporated into Article 6 of the Convention. The right of appealing against the court judgment is determined by Article 2 of Protocol 7 and even then only in regard to criminal cases. Article 92 of the Satversme shall be interpreted in the same way, because V.Vaitonis' criminal procedure rights have not been violated. Limitation of appealing against the court decision by the person himself/herself shall not be considered as unconfordable with Article 92 of the Satversme.

The Saeima points out that AVC norms envisage the possibility of verifying the lawfulness and validity of the court decision in an administrative violation case. The first part of AVC Article 287 determines that the judges' decisions in administrative violation cases may be repealed or amended by the judge himself/herself after the

prosecutor expresses the protest or – regardless of the prosecutor’s protest- by the chairperson of the higher court.

The Saeima holds that the legal norm, challenged by V.Vaitonis, does not violate the rights of a person to equality before the law and the court, fixed in the Satversme, because the challenged norm does not include a different regulation but is applied to all the persons in the same way.

7. In the written reply to the constitutional claim by T.Šnevele, the Saeima points out that the concept ”to protect”- in the understanding of Article 92 of the Satversme- does not mean an infinite court process but quite to the contrary – the process which has to be completed in a reasonable time and with a confirmed and valid judgment. One of the provisions guaranteeing access of the person to the court is the efficiency of the access, which means a quick review of the case. The legal norms, challenged by T.Šnevele, have also been created by observing the above objective. The court reaches a decision only after it has evaluated and examined the decision by the administrative institution on its merit. Thus, by taking into consideration the specific legal relations, in accordance with Article 92 of the Satversme the right to a fair court is guaranteed.

The Saeima points out that in compliance with AVC Article 280 (the first part of Paragraph 4) the submitter has had the right of appealing at a higher instance against the decision on imposing the administrative punishment. She did not make use of the right but immediately appealed against the decision at the court. Besides several AVC norms envisage other guarantees for fair adjudication of a case and observation of the rights of a person: judicial review of the prosecutor on observance of laws (Article 242), appeal against administrative arrest, inspection of the person, its belongings and documents as well as removal of the latter (Article 259), the right of the person, who is called to account for administrative liability, to request the assistance of the advocate (Article 260), reprieve of the implementation of the decision in case if the claim or the protest have been submitted (Article 283) as well as submission of the prosecutor’s

protest on the decision, which has been adopted in connection with the decision on the administrative violation case (Article 288).

The Saeima holds that the legal norms, challenged by T.Šnevele, are in compliance with Article 89 of the Satversme and Article 6 of the Convention. To their mind the challenged norms envisage the right of a person to appeal against the decision in an administrative violation case to the court. Thus the guarantees of the right to a fair court are realized.

The concluding part

1. In different states the administrative process is regulated in a different way. Besides administrative violation cases in separate legal systems may differ as regards their contents and volume. Therefore to evaluate the conformity of the challenged norms with the legal norms of higher legal force it is necessary to analyze the procedural process of administrative violation cases, which is in effect in Latvia.

In Latvia, as in the most post-socialist states, the administrative process, in difference from civil and criminal processes, has a general feature that the court (judge's) decision in an administrative violation case is final and allowing of no appeal to the higher instance court. Decisions on infliction of fines as well as the decisions which are reached after reviewing a claim on the decision in an administrative case take effect and shall be implemented immediately.

As concerns administrative violation cases in Latvia, a different procedural process has been determined: they can be reviewed at concrete institutions or at the courts. It creates distinctive legal consequences also with regard to the procedure of appeal.

1.1. AVC delegates adjudication of administrative violation cases, firstly, to certain offices, officials, municipal administrative committees, secondly to the judges of district (city) courts. In both cases the administrative violation case is adjudicated in compliance with the AVC norms and all the above subjects – in accordance with the

competence, determined by law- have the right of imposing an administrative punishment.

However in these cases distinctive scope of appeal has been determined:

- 1) the interested party (person) may appeal against the decision of an institution, official or municipal administrative committee to the court; the court decision is final;
- 2) if the administrative violation has been reviewed by the judge, the appeal against his/her decision is not envisaged.

Thus in both cases the court decision in an administrative violation case is final and allowing of no appeal.

1.2. In its turn, when reviewing the administrative violation case at the court, the administrative proceedings are also regulated in two ways. Firstly, the administrative violation cases on the basis of AVC norms are reviewed by the judge. The court procedure in this case is realized as the clarification of the legal duties or rights of the person. Secondly, the general principle of appealing against the administrative punishment shall be used: firstly - the claim to a higher institution or higher official, after that – the claim to the district (city) court. In this case the process is realized as the court control over the administrative act by the institution or as examining of the lawfulness and validity of the action of the institution. The only determined exception is for the cases when the sanction for the administrative violation is the fine. Then there exists an alternative – the claim to a higher institution (official) or the claim to the district (city) court. If the court reviews the claim on the decision in an administrative violation case, it is based on the general provisions of the Civil Procedure Law and the norms of the Civil Procedure Code Chapters still in effect.

Even though depending on the legal status of the person in both types of review there is a different scope of procedural rights, in both cases the person is denied the right of appealing against the decision of the court or the judge. Besides, it does not depend on the type of proceedings when reviewing the claim of the person on the decision of an

institution (official) in an administrative violation case: either when the court (the judge) inflicts the administrative punishment or when the court reaches the decision.

2. Article 6 of the Convention is not explicit and does not strictly determine that the right to the review of a case at the fair court may be realized only by appealing at the court. Not only the court but also specially created independent and uninterested in the outcome of the case institutions, which have been delegated the right by the law and which may ensure an objective and open process, may review the administrative violation cases as the first instance.

If the court reviews the administrative case as the higher instance, the process may be regarded as the process of appeal only if the case in the lower instance were reviewed by an objective, uninterested in the outcome of the case institution. In Latvia no alternative institution has been created. State administrative institutions or the highest officials, who in accordance with the administrative procedure are reviewing claims of persons on the inflicted administrative punishment in Latvia, cannot be regarded as objective institutions or officials in the understanding of Article 6 of the Convention, because they are more or less interested in the outcome of the particular case. In point of fact the above procedure can be regarded as the self-controlling mechanism of the institution. Thus the envisaged by the administrative procedure claim to a higher official or institution is an appeal against the decision of an official or the institution, which is interested in the outcome of the case. Such a system justifies itself only in cases when a favorable for the person decision has been taken. However, if an unfavorable for the person decision has been reached, then it is impossible to believe that the person has been given the opportunity of protecting its violated rights and lawful interests at an objective institution. Thus in case of unfavorable for the person decision the system is incomplete and the rights of the persons are groundlessly infringed.

Even though when reviewing an administrative violation case, if it is done by a particular institution (official), the procedural rights of an individual are more

extensive than when being reviewed by a judge, however the above diversity does not exclude the necessity of ensuring the right to appeal at a court of higher instance.

3. The practice of the last years testifies that in the post-socialist states the problems, connected with regulation of the administrative procedure, are solved in compliance with the principles of human rights and a law-based state, e.g. enlarging the scope of appeal. Some states have already passed new administrative procedure laws or are going to do it. In its turn, other states solve the above problems by assessing violations of human rights at the Constitutional Courts.

Constitutional Courts of several states acknowledge that appeal against the decision in an administrative violation case shall be guaranteed. After receiving several claims by its citizens, in its May 28, 1999 Judgment in administrative violation cases the Constitutional Court of the Russian Federation declared as unconfordable with the Constitution norms, prohibiting to revise court decisions on administrative violation cases, to examine the lawfulness and validity of the court decision at least at another court instance. By its July 8, 1999 Judgment the Republic of Azerbaijan Constitutional Court declared the norms, prohibiting appeal against a court decision in administrative violation cases as null and void. The Constitutional Courts of both countries evaluated and declared norms of equivalent content, prohibiting appeal against the decision in an administrative violation case at the higher instance court, as unconfordable with the norms of higher legal force. The legal norms challenged at the Constitutional Court are analogous. Besides, unconfordability is equal to the norms, guaranteeing the right of a person to the protection of the court, which are included also in the Constitutions of the Russian Federation and the Republic of Azerbaijan. Our Constitutional Court also has to evaluate the compliance of the challenged legal norms with the norms, incorporating the same right, of the Satversme.

On January 14, 1999 the Administrative Procedure Law was adopted in the Republic of Lithuania. It took effect on May 1 of the same year. By implementing the principles of a democratic, law-based state, the new Law has changed the former procedure for reviewing the administrative violation cases and envisages a specific court instance

system for administrative cases. The regional administrative tribunals and the Supreme Administrative Tribunal have been formed in Lithuania. These two instances embrace the jurisdiction of the administrative procedure of the whole state and determine the extensive right to appeal.

The legislator of Latvia has also enlarged the right to appeal in administrative violation cases. Namely, on October 25, 2001 the Saeima passed the Administrative Procedure Law, which will take effect on July 1, 2003. It envisages the right of the administrative process participant to appeal against the decision in an administrative violation case to a court of higher instance. However, one has to take into consideration that a specific law shall determine the above law taking effect. Thus, when discussing the draft law in its first reading, it was stated that a transitional period of several years would be needed before the law took effect, because much state funding would be needed (*see the Verbatim report of the 7.th Saeima June 10, 1999 spring session*). However the circumstance that the above guarantees shall be ensured in future does not justify violation of human rights by legal norms, which are applied at present.

4. Appellation against the court decision is submission of the claim on a judgment which has not taken legal effect. The objective of appellation is to examine the lawfulness and validity of the court decision as well as to eliminate errors, which might have been committed by a court of lower instance when reviewing cases on violated rights and interests of a person, which are protected by law. Persons, who are interested in the cases and who hold that the judgment of the court of the first instance when reviewing the case on its merit has been erroneous, experience the right of submitting a claim. The law also envisages the possibility of submitting an additional claim on different procedural decisions, which have not taken effect.

In Latvia appeal against the judgment in criminal cases and part of civil cases has been established, however the possibility to appeal against a court judgment in an administrative violation case to a higher court instance is denied.

One cannot agree with the Saeima conclusion that appeal against the decision in administrative violation cases is envisaged by realizing the established by law right to reject or amend the judge's decision in cases on administrative violation (by the judge himself/herself after receiving the prosecutor's protest or by the chairperson of the higher court with or without prosecutor's protest). Prosecutor's supervision is an element, which has remained from the socialistic rights and is characteristic to the rights of some post-socialist states. In the practice of legal systems of the democratic states it is not applied. In point of fact prosecutor's protest can be regarded as the discretionary power but not effective means of protecting the rights in the understanding of the Convention. (See the 1999 European Court of Human Rights Judgment "Tumilovich against Russia") Discretionary power is the right of an employee or an institution to act as they choose (See the dictionary of foreign words. Riga: Jumava, 1999, page 160).

The right of the chairperson of a higher court to reject or amend the decision of a judge cannot be regarded as the means of legal protection, which is does not depend on the will of the participant in the case. As the decision reached in an administrative process takes effect without delay, in both the above cases only the decision, which has already taken legal effect, may be affected. If an administratively punished person addresses the prosecutor or the chairperson of a higher court it does not create the same legal consequences as the mandatory court verification after receiving the claim on an administrative violation case. The claim of a person does not oblige the above officials to repeatedly review the court (judge's) decision, which has taken the legal effect.

In the same way all the guarantees for the protection of the rights of a person, mentioned in the Saeima written reply (prosecutor's supervision, the right of the interested party to appeal against administrative detainment, inspection of the person, inspection of the things and removing of things or documents, the right to assistance of the advocate, suspension of the implementation of the decision after the submission of a claim or a protest, objection to the decision on a claim), are not connected with an appeal against the court decision. To realize a fair adjudication of the case and take into consideration the rights of a person, the concerned (interested) person has to be

given the possibility to request revising the decision at the court of higher instance on his/her own initiative.

5. Article 92 of the Satversme determines the possibility of everyone to defend his/her rights and lawful interests in a fair court. To evaluate the compliance of the challenged norms with the legal norm of higher force, it is necessary to establish whether the concept "a fair court" includes also the right of appealing against the court decision in an administrative violation case. Article 92 of the Satversme does not determine it in a definite way.

To establish whether Article 92 of the Satversme includes the right of appealing against the decision in an administrative violation case to the court of higher instance, on the one hand the Convention, which determines the minimum right of appeal, incorporated into the concept of a fair court for the Member States, has to be analyzed. Besides, interpretation of the Convention in the practice of the European Court of Human Rights has to be taken into consideration. On the other hand the enlarged right to appeal, incorporated into Article 92 of the Satversme has to be observed.

Well-grounded is the statement, mentioned in the Saeima written reply, that the Court of Human Rights in several of its judgments has stressed that Article 6 of the Convention does not directly indicate the right of access to appellation. The only precisely formulated provision on appellation is included in Article 2 of the Convention Protocol 7 and it guarantees the above right only in cases of criminal offence (*See Human Rights. The 1998 Act and the European Convention. Sweet & Maxwell, London, 2000, p.231 and the Court of Human Rights Judgments in cases "Delcourt v. Belgium" /1970/ and "Belgian Linguistic case"/1968/*). Thus the Court of Human Rights has stated that Article 6 of the Convention does not compel the States to institute a system of appellate courts. The State, in accordance with its legal system, may determine the scope of the principle of appeal. When creating the system of appellate courts, the State may determine the category of cases, which have no right of access to appeal. In Latvia there exists an enlarged scope of the right to appeal as there is the possibility of appealing against decisions in civil cases on rights reviewed

under the procedure of proceedings as well (*See the Constitutional Court January 17, 2002 Judgment in case No. 2001-08-01*).

Thus neither the norms of the Convention nor Article 92 of the Satversme include the mandatory right to ensure the possibility of reviewing every administrative violation case at a court of higher instance and the concept "a fair court" does not guarantee the right of appealing against the decision on this case.

6. To establish whether the right to appeal in administrative violation cases is incorporated into the Satversme and the Convention, the type of administrative violation cases, regulated by the AVC, shall be assessed. Thus one has to clarify whether administrative violation cases, referred to by the challenged norms, do not contain elements characteristic for criminal or civil cases, which allow the procedure of appeal.

Administrative violation cases may be conditionally divided into cases, which:

- 1) are comparable with criminal cases;
- 2) are comparable with civil cases;
- 3) do not contain criteria, allowing to compare the case to the category of another case.

From the above division depends whether the appeal on the particular administrative violation case to the court of higher instance is the right guaranteed by Article 92 of the Satversme.

6.1. The minimal standard, incorporated into Article 2 of the Convention 7th. Protocol envisages exceptions in the right to appellation in regard to offences of a minor character. In Latvia the right to appeal to a court of higher instance is guaranteed in every criminal case. Thus, by taking into consideration that the legislator has determined enlarged rights to appellation in criminal cases in Latvia, it is useful to study the practice of the Court of Human Rights and compare the right to appeal in regard to criminal cases and administrative violation cases.

In several of its judgment the Court of Human Rights has ascertained that Article 6 of the Convention applies also to administrative cases. In this occasion the essence of the case and not the fact how the national law has classified it is of importance. Besides, if it is established that in this particular occasion to the case, regulated by the administrative process, Article 6 of the Convention, read together with Article 2 of the Convention 7th. Protocol, is applied, then it does not mean that the case shall be attributed to the criminal process. Establishment of the particular features only allows applying the guarantees of Article 6 of the Convention to the case. (*See Theory and Practice of the European Convention on Human Rights. Third edition by P.van Dijk, G.J.H.van Hoof. Kluwer Law International, The Hague- London-Boston, 1998, p. 410*)

The Court of Human Rights has determined three alternative criteria to establish whether the administrative violation case has the elements characteristic for the criminal case. The criteria are as follows:

- 1) classification of the particular violation of the right in the national legal system, binding this violation either only with the criminal law or with the administrative law, or with both of them;
- 2) feature of the offence;
- 3) conformity or unconformity of the sanction with the criminal law sphere. To state that the violation is a criminal one in the understanding of the Convention, it suffices if just one of the above criteria complies with the features. (*See the European Court of Human Rights Judgment in case "Engel v. Netherlands"/ 1976/*)

When analyzing administrative violation cases, regulated by AVC, it can be seen that some of the sanctions envisage a fine or an arrest. Both – the fines and the arrests have the character of a criminal case penalty, thus the above sanctions may be regarded as criminal sanctions. The objective of the Convention determines that these serious sanctions shall be protected by Article 6 of the Convention and Article 2 of its 7th. Protocol.

Another part of administrative violation cases like driving a car while under the influence of alcohol, narcotics, psycho tropical or other intoxicating substances as well

as violations against the environment are attributed to administrative law or criminal law sphere by the State legal system, because, if, within the period of a year another offence (criminal violation) of the same type has been committed, criminal liability sets in. Thus in the above case persons, to whom penalty about an administrative violation has been imposed, are protected by Article 6 of the Convention and Article 2 of the Convention 7th.Protocol.

Thus it may be concluded that Article 92 of the Satversme incorporates also guaranteed appeal rights in administrative violation cases, if by the above or some other criterion they comply with the elements of a criminal case.

6.2. Some administrative violation cases have elements characteristic for a civil case. The Court of Human Rights has concluded that by their nature administrative violation cases may be regarded as civil cases, if they contain elements of lawful private transactions: e.g. business activities, gaining profit, contracts with clients (*see the Court of Human Rights Judgment in case "Pudas v. Sweden"/1987/*). Thus the circumstance that the state regulates certain public rights does not exclude the existence of civil rights in the particular case in the understanding of the Convention. If an administrative case has elements of a civil case, then the extensive appeal right, envisaged by the national law shall be observed.

6.3. In its turn public cases, i.e. cases in which public interests are the priority, for example, decisions on taxes, immigration, granting of visas or the right of vote cannot be regarded as civil cases in the understanding of the Convention. In the same way violations of the legal procedure, incorporated into AVC, which do not have the elements characteristic for the sector of the criminal law are not included in Article 6 of the Convention and Article 2 of the Convention 7th. Protocol. Thus the national law may envisage categories of administrative violation cases, which are allowed of no appeal.

However AVC regulates the procedure of different administrative violation cases – both with the elements of private and the elements of public rights. Cases are not

classified in the way to determine different procedures of appeal just on the basis of the features and elements of the administrative offence.

Thus the challenged legal norms do not comply with the concept of fair court, incorporated into the Satversme and the Convention and are at variance with Article 89 and 92 of the Satversme as well as with Article 6 of the Convention and Article 2 of the Convention 7th. Protocol.

7. If the legal norms are declared as unconfordable with at least one legal norm of higher legal force then there is no necessity to evaluate also the compliance of the challenged legal norms with Article 91 of the Satversme.

8. Categories of administrative violation cases, appeal against decisions on which is limited by the legal norms of AVC Article 280, are evaluated in the Judgment. The Constitutional Court concludes that not only the challenged but also the unchallenged norms of the above Article, determining that the court decision in an administrative violation case is final are unconfordable with the legal norms of higher legal force.

9. As the challenged legal norms contradict the legal norms of higher legal force and taking into consideration the fact that the procedure of appeal in administrative violation cases to the moment of the legal norms of Administrative Procedure Law taking effect has not been established, claims on administrative violation cases shall be reviewed by courts of general jurisdiction under the principle of procedural analogy, regarding the possibility of appeal as a newly revealed circumstance in the case.

10. In compliance with the third part of Article 32 of the Constitutional Court Law, legal norms, which the Constitutional Court has determined as incompatible with the legal norms of higher force shall be considered as invalid as of the date of publishing the Constitutional Court Judgment, unless the Constitutional Court has ruled otherwise. Taking into consideration the fact that the challenged norms have violated the human rights of the claimants and they have requested to evaluate their violated rights at the Constitutional Court, protection of the right to appeal of the above persons

has to be insured by retroactive legal force. Thus both V.Vaitonis and T.Šnevele experience the right to appeal against the decision taken in the administrative violation cases, described in their claim, to the court of higher instance to repeatedly review the cases on their merit.

The Substantive part

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

decided:

1. To declare the norms of the fourth part of the Latvian Civil Procedure Code Article 239 as well as the norms of the second part of Article 279 and those of Article 280 of the Administrative Violation Code, determining that the court judgment on the decision taken in an administrative violation case is final as unconformable with Articles 89 and 92 of the Satversme and null and void as of the day of publication of the Judgment.
2. As regards the submitter of the constitutional claim V. Vaitonis - to declare the second part of Latvian Administrative Violation Code Article 279 as invalid as from July 27, 2001 .
3. As regards the submitter of the constitutional claim T. Šnevele - to declare the norm of Article 280 (Paragraph 4 of the first part), determining that the court judgment in the case on the decision by an official about imposing of an administrative penalty is final as well as the fourth part of Article 239 of the Latvian Civil Procedure Code as null and void as from September 18, 2001.

The Judgment takes force as of the day of its publishing.

The Judgment is final and not allowing of the appeal.

The Chairman of the Court session

A.Endziņš