



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga , December 5, 2001

JUDGMENT in the name of the Republic of Latvia

in case No. 2001-07-0103

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

under Article 85 set by the Satversme (Constitution) as well as Items 1 and 3 of Article 16, Article 17 (the first Part, Item 11) and Article 28¹,

held the Court proceedings in writing to review the constitutional complaint, submitted by Andris Ķiploks

” On the Conformity of Article 2 of the Law ”On Compensation for Damages, Suffered as a Result of the Unlawful or Groundless Action of Investigator, Prosecutor or Judge” and Item 3, Subitem 1 of the Cabinet of Ministers August 31, 1998 Regulations No. 327 ”On the Procedure for Submitting and Considering Applications, Passing Decisions, Reinstating Employment and Social Guarantees and Payment of Compensation for Damages” with Articles 91 and 92 of the Satversme””.

The Constitutional Court **established:**

On May 28, 1998 the Saeima passed the Law ”On Compensation for Damages, Suffered as a Result of the Unlawful or Groundless Action of Investigator, Prosecutor or Judge” (henceforth – the Law on Compensation). The Law determines the extent and the procedure of recovering losses, which as a result of the unlawful or groundless action of an investigator, prosecutor or judge in the course of fulfilling their official duties, are caused to physical persons, as well as establishes the procedure in which the offended social and

employment guarantees of such persons are ensured. Article 2 of the Law determines that legal basis for compensation for losses is:

- 1) a court verdict of not guilty, regardless of the reason for acquittal;
- 2) ceasing of a criminal case because of circumstances exonerating such a person;
- 3) recognition of an administrative apprehension as unlawful, and termination of the administrative proceedings.

Article 7 (the fourth Part) of the Law determines that the procedure for the payment for losses as well as the procedure for renewing social and labor guarantees shall be determined by the Cabinet of Ministers.

On August 31, 1998 the Cabinet of Ministers passed Regulations No.327 "On the Procedure for Submitting and Considering Applications, Passing Decisions, Reinstating Employment and Social Guarantees and Payment of Compensation for Damages" (henceforth – Regulations No.327). Item 3 of the above Regulations enumerates what documents shall be attached to the submitted application – namely, a copy of the court verdict of not guilty, a certificate on the period spent at the place of deprivation of liberty etc.

The applicant of the constitutional complaint – Andris Kļiploks (henceforth – the applicant) challenges compliance of Article 2, Item 1 of the Law on Compensation (henceforth – the disputable legal norm) and Item 3, Subitem 1 of Regulations 327 (henceforth – the disputable norm) with Articles 91 and 92 of the Republic of Latvia Satversme (Constitution) (henceforth – the Satversme).

The applicant points out that the court found him guilty of a criminal violation and sentenced to deprivation of liberty for one and a half years. In his case detention was applied as a security measure and he had spent almost three years in custody. Therefore he holds that his rights have been violated and compensation for serving in the custody twice as much time as envisaged in the court decision was due to him. However, the disputable norms prohibit him - a convicted person - to receive appropriate compensation. The norms envisage compensation for ungrounded time of confinement only in cases of a court verdict of not guilty. Thus he expresses the viewpoint that the disputable norms are discriminatory and contradicting Articles 91 and 92 of the Satversme as they do not ensure his right to compensation.

The Saeima in its written reply does not agree with the viewpoint of the applicant that by adjudging a sentence shorter than the applied safety measure – the confinement, his rights have been violated. The Saeima expresses a viewpoint that limitation of liberty has not been the punishment for a criminal activity but a measure ensuring the judicial proceedings. The disputable norm reasonably guarantees compensation to a person, in case the court has reached

the verdict – not guilty. Thus it is not contradicting Articles 91 and 92 of the Satversme.

The Saeima stresses that if the claim of the applicant to declare the disputable norms invalid was satisfied, the possibility of all the acquitted persons to receive compensation would be denied.

The Saeima expresses a viewpoint that the disputable legal norm is not the only one to reveal the contents of Article 92 of the Satversme, as it is guaranteed both by the disputable legal norm, the norms of the criminal action and other legal norms. The disputable legal norm is not at variance with Article 91 of the Satversme either, as it does not envisage different regulation depending on any specific features, but is equally applied to all persons.

The Cabinet of Ministers in its reply explains that by realization of human rights without discrimination, one should understand implementation of rights without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. By elaborating the disputable normative acts, no human rights, established in Article 91 of the Satversme have been violated, as the above normative acts refer to all the inhabitants of Latvia without any discrimination or limitations.

The Cabinet of Ministers stresses that when interpreting Article 92 of the Satversme one shall take into consideration the notion on groundless infringement of rights. The right to adequate compensation in case of groundless infringement of rights is one of the " canon laws" therefore the person experiences the right of appealing at the court and requesting an adequate compensation from the state for unlawful action of the state institutions and their officials.

The Cabinet of Ministers explains that the "Law on Compensation" determines the procedure in which as a result of the unlawful or groundless action by the investigator, prosecutor or judge in the course of fulfilling their official duties damages are caused to physical persons as well as the procedure in which the offended social and employment guarantees of such persons are ensured. The Cabinet of Ministers expresses the viewpoint that the disputable legal norms do not contradict Article 92 but specify it.

The Constitutional Court, by evaluating the compliance of the disputable legal norms with Articles 91 and 92 of the Satversme

concluded:

1. Protection of human rights - as one of the most important guarantees of a law-based state - establishes the obligation of the state to ensure efficient protection to anybody whose rights have been violated.

In conformity with international instruments every state experiences the right of creating a mechanism of legal protection, making use of different means –i.e. not only courts but also established by law administrative institutions. Efficiency of the above mechanism is evaluated, firstly, depending on the fact if the national legal system envisages possibilities of an individual to make use of means of legal protection to examine legality and validity of a disputable action. Secondly, it depends on the fact if there exists a competent institution, authorized to make decisions on payment of compensation to an individual, whose rights have been violated.

The third sentence of the Satversme Article 92 envisages that: "In the event of a groundless offense of rights everyone has the right to a corresponding compensation". This norm includes a general guaranty – if the state has violated the rights of an individual, the latter has the right to compensation.

As any norm of human rights, the legal norm, incorporated into the third sentence of Article 92 of the Satversme shall be applied directly and immediately. Besides, the norm does not envisage that a special law is needed to specify it. The fact that such a law does not exist is connected with the possibility of direct application of Article 92 (the third sentence) of the Satversme. It cannot serve as a reason for the court of refusing to accept the claim of an individual to receive compensation.

The experience of the courts of general jurisdiction testifies that non-existence of a specifying law is no obstacle of accepting a claim (in case the rights of an individual have been violated) and satisfying it. Thus, for example, in 1996, before the Law on Compensation had been passed, the Riga Regional Court, when exacting a compensation from the state in case of a court verdict of not guilty, acknowledged that non-existence of a special law, determining the procedure of payment of compensation to an unlawfully sentenced person, cannot influence the state responsibility before the above person. (see V.G. v the State of Latvia. Latvian Court Judgments// the Journal of Human Rights, 1997/5, page 87).

If the submitter holds that his rights have been groundlessly violated, he, making reference just to the third sentence of Article 92 of the Satversme, has the right of submitting a claim at the court of general jurisdiction on receiving a corresponding compensation. The duty of the court is to evaluate the motivation and length of the confinement of every individual case and, if establishing ungrounded violation of the rights of a person, to determine the

amount of the compensation in the judgment. Non-existence of a special law does not limit and endanger the constitutional right of the submitter to protection of his/her rights.

2. In difference from the guarantees of general legal protection, fixed in Article 92 of the Satversme, in Article 13 of the European Convention for the Protection of Human rights and Freedoms (henceforth- the Convention), in the third part of the UNO International Covenant on the Civic and Political Rights (henceforth – the pact), in international and national rights, possibilities of protection of rights, referring to direct groups of persons or direct violations of rights have been established.

Thus the fifth part of Article 5 of the Convention and the fifth part of Article 9 of the Covenant envisage the right to compensation for unlawfully arrested or detained persons, which may serve as the basis of the claim.

Article 3 of the 7th. Convention Protocol and the sixth part of Article 14 of the Covenant have a different content. Their norms refer to persons, who - after serving the sentence - are exonerated or pardoned because they have been groundlessly sentenced. These norms specify the cases when the above persons shall receive compensation.

On June 27, 1997 the Convention and its 7th. Protocol became effective in Latvia. Article 3 of the Protocol establishes: "When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the non disclosure of the unknown fact in time is wholly or partly attributable to him."

When meeting international liabilities, envisaged in the above Article of the Convention Protocol and other international instruments (see the Saeima May 28, 1998 Verbatim report - the third reading of the Law and the minutes of the Saeima November 26, 1997 Defense and Internal Affairs Committee session), the Law on Compensation determines the extent and the procedure in which the losses are compensated to a certain range of persons – persons who, even though they are not guilty of a criminal liability or administrative violation, have been detained. i.e. persons, whose rights have been vitally violated and who have experienced material injury.

In compliance with the Law the procedure of compensation is simplified, it shall be received in an administrative way and not after legal proceedings. To receive compensation the persons, mentioned in the Law, shall submit a

written application to the Ministry of Justice or the Office of the Procurator General.

By envisaging compensation to the persons, determined by the Compensation Law, the above Law specifies the third sentence of Article 92 of the Satversme. Thus the objective of the Law is not to regulate the compensation procedure of all and every case when - as a result of groundless action of a state institution or an official - losses are caused to persons and have to be recovered.

Thus, the statement of the applicant that the Law denies his right to compensation is ungrounded. The Law shall not be attributed to persons, who do not meet the criteria, established in Articles 1, 2 and 3, besides it does not and cannot limit the contents incorporated into the norm of the third sentence of the Satversme Article 92.

3. Article 91 of the Satversme determines that all persons within the Latvia are equal before the law and the courts. Human rights shall be implemented without any discrimination.

The principle of equality follows from the first sentence of this Article that forbids the state institutions to pass norms, which without a reasonable ground permits different attitude to persons who are in really equal and comparable conditions. The principle of equality allows and even demands different attitude to persons who are in different circumstances, as well as allows different attitude to persons who are in equal circumstances, if there is an objective and reasonable ground (see the Constitutional Court Judgment in case No. 2000-07-0409).

In the challenged legal norm the court verdict of not guilty is determined as the legal basis for receiving the compensation. The criterion of the addressees of the Law on Compensation is non-existence of person's guilt. Thus, it refers only to those persons, whose liberty has been limited because of an arrest, but who are not guilty of a criminal case and the fact has been acknowledged by a court judgment. Therefore the applicant, as a person, who – in the procedure envisaged by the law - has been found guilty cannot be considered as being in equal and comparable circumstances with the acquitted persons and the disputable legal norm does not discriminate him.

4. As the disputable legal norm does not contradict Articles 91 and 92 of the Satversme, it shall be considered as conformable with the legal norms of higher legal power, because its content is in compliance with the challenged legal norm and does not exceed the authorization determined by law.

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

**the Constitutional Court
decided:**

to declare Article 2, Item 1 of the Law " On Compensation for Damages Suffered as a Result of the Unlawful or Groundless Action of Investigator, Prosecutor or Judge" and Item 3, Subitem 1 of the Cabinet of Ministers August 31, 1998 Regulations No. 327 " On the Procedure for Submitting and Considering Applications, Passing Decisions, Reinstating Employment and Social Guarantees and Payment of Compensation for Damages" as **being in compliance with** Articles 91 and 92 of the Satversme (Constitution) and not violating the fundamental rights of a person, established by the Constitution.

The Judgment takes effect from the moment of its announcement.
The Judgment is final and allowing of no appeal.

The Chairman of the Constitutional Court session

A.Endziņš