

**Conference of European Constitutional Courts
XIIth Congress**

*The relations between the Constitutional Courts
and the other national courts,
including the interference in this area
of the action of the European courts*

**Report of
the Constitutional Court
of the Republic of Latvia**

1.-2. Judicial power in the Republic of Latvia is vested in district (city) courts, regional courts, the Supreme Court and the Constitutional Court.

District (city) courts. A district (city) court is the court of first instance for civil matters, criminal matters, and matters which arise from administrative legal relations. The Laws on Civil Procedure and on Criminal Procedure determine the civil matters and criminal matters, which are within the jurisdiction of a district (city) court.

There are 34 district (city) courts in Latvia. Civil cases are generally heard by the judge alone. Criminal cases and civil cases of specific categories are heard by a panel consisting of a professional judge and two lay judges.

Regional Courts. A Regional Court is the court of first instance for those civil matters and criminal matters, which are within the jurisdiction of regional courts in accordance with law. A Regional Court is a court of appellate instance for civil matters, criminal matters and administrative matters, which have been adjudicated by a district (city) court, or by a single judge.

These courts have been set up in four regions of Latvia and in the City of Riga. At the appeal instance a panel of three professional judges reviews appeals, while at the first instance the composition of court is formed as in district (city) courts.

Supreme Court. The composition of the Supreme Court of the Republic of Latvia shall be the Senate; and two judicial panels: the Civil Matters Panel and the Criminal Matters Panel. All the justices of the Supreme Court shall form a Plenum (general meeting of justices).

A Panel of the Court is the court of appellate instance for matters, which have been adjudicated, by regional courts as courts of first instance. A Panel of the Courts shall be composed of the Chairperson of the Panel and the judges of the Supreme Court on this Panel. A Panel of the Court, comprising three judges shall adjudicate matters collegially.

The Senate of the Supreme Court shall be the court of cassation instance for all matters, which have been adjudicated, by district (city) courts and regional courts and court of first instance for matters concerning decisions of the Council of the State Audit Office, which are taken in accordance with the procedures of Section 21 of the Law On the State Audit Office. The Senate shall be composed of the Chief Justice of the Supreme Court and senators (judges of the Senate.) The Senate shall be composed of three departments: the Civil Matters Department, the Criminal Matters Department and the Administrative Matters Department. The Senate of the Supreme Court shall adjudicate matters collegially, in panels composed of three senators.

Appointment of judges of the ordinary courts. All judges are appointed by the Saeima at the recommendation of the Minister of Justice (judges of the Supreme Court – at the recommendation of the Chairman of the Supreme Court). Only a Latvian citizen – highly qualified and honest lawyer – may be appointed as a judge. The following requirements must be complied with for the appointment to the post of a district (city) court judge: a degree in

law, at least 25 years of age, at least 2 years of in-service time in a legal profession, success at passing a special qualification exam. For the appointment to the post of a judge at a regional court or the Supreme Court, a determined duration of in-service time at court of the previous level or as an attorney, prosecutor or a lecturer at the Department of Law at a higher educational establishment is required.

Persons who are morally unfit to hold the post (have a criminal record, have had criminal charges brought against them or are under investigation; have participated in organisations hostile to the State of Latvia or banned in the Republic of Latvia) cannot be nominated as candidates to the post of a judge.

Constitutional Court. It is not a part of the general court system. The Constitutional Court is an independent institution of judicial power, which within the jurisdiction set forth in the Constitution of the Republic of Latvia and in the Constitutional Court Law, shall review cases concerning the compliance of laws and other legal norms with the Constitution, as well as other cases placed under its jurisdiction by Constitutional Court Law.

The Saeima shall confirm the appointment of justices of the Constitutional Court for the ten years term, by secret ballot with a majority vote of not less than fifty-one members of Saeima. Three justices of the Constitutional Court shall be confirmed upon the recommendation of not less than ten members of the Saeima, two — upon the recommendation of the Cabinet of Ministers, but two justices of the Constitutional Court — upon the recommendation of the Plenum of the Supreme Court. The Plenum of the Supreme Court may select candidates for the office of a justice of the Constitutional Court only from among Republic of Latvia judges. Any citizen of Latvia who has a university level legal education and at least ten years' working experience in a legal profession or in a scientific or educational field in a judicial speciality in a research or higher educational establishment, may be confirmed a justice of the Constitutional Court. A person, who may not be nominated for the office of a judge of the ordinary court, must not be appointed a justice of the Constitutional Court.

3. The Constitutional Court shall review cases regarding:

- 1) compliance of laws with the Constitution;
- 2) compliance with the Constitution of international agreements signed or entered into by Latvia (even before the Saeima has confirmed the agreement);
- 3) compliance of other normative acts or their parts with the legal norms (acts) of higher legal force;
- 4) compliance of other acts (with an exception of administrative acts) by the Saeima, the Cabinet of Ministers, the President, the Chairperson of the Saeima and the Prime Minister with the law;
- 5) compliance of Regulations by which the minister, authorised by the Cabinet of Ministers, has rescinded binding regulations issued by the Dome (Council) of a municipality with the law;
- 6) compliance of the national legal norms of Latvia with the international agreements entered into by Latvia, which are not contrary to the Constitution.

To the time of the Law on Administrative Proceedings taking effect, the Constitutional Court shall continue reviewing cases on the compliance of administrative acts of the Cabinet of Ministers and the Prime Minister with legal norms of higher legal force.

4. The competence is exclusive.

5. The review carried out by the Constitutional Court is a subsequent review, with an exception of cases on compliance with the Constitution of international agreements signed or entered into by Latvia. In the above cases the law envisages both – the subsequent review and the prior review.

6. The Constitutional Court accomplishes abstract control and since July 1, 2001 also – also specified control.

7. The Constitutional Court reviews cases after receiving applications of persons envisaged by the law on initiating a case regarding incompliance of legal acts of lower force with legal norms (acts) of higher legal force (see question No.3).

All the cases to be reviewed at the Constitutional Court shall be attributed to control of norms. The cases adjudicated up to the present moment can be attributed to abstract control. Since July 12, 2001, specified control has been included into the competence of the Constitutional Court. Up to November 1, 2001 no judgment on the above issue has been declared.

The Constitutional Court does not review cases on compliance of decisions by courts of general jurisdiction with the Constitution.

The Constitutional Court does not review preliminary questions.

8. Yes. See Question 2. The Constitutional Court may review cases on compliance of any legal norm of lower legal force with the legal norm of higher legal force.

9. The following have the right of submitting applications to initiate a case on conformity of the legal norm of lower legal force with the norm of higher legal force:

a) The President; the Saeima; not less than twenty members of the Saeima; the Cabinet of Ministers; the Prosecutor General; the Council of the State Control, the State Human Rights Bureau. The above applicants have no time restrictions and the challenged legal norm should not necessarily violate their rights.

b) The Dome (Council) of a municipality only if the disputable act violates the rights of the relevant Dome (Council), however no time limit is established.

c) A court, when reviewing an administrative, civil or criminal case and a judge of the Land Registry when entering real estate- or thus confirming property rights on it- in the Land Book. (Also no time limit is envisaged).

d) A person whose fundamental rights established by the Constitution have been violated (constitutional claim), only after exhausting the ordinary legal remedies (a claim to a higher institution or official, a claim or application to a court of general jurisdiction etc.) or if there are no other means, within six months from the date of the decision of the last institution becoming effective. If the review of the constitutional claim is of general importance or if the legal protection of the rights with general legal means cannot avert material injury to the applicant of the claim, the Constitutional Court may reach a decision to review the claim (application) before all the other legal means have been exhausted.

10. During the period of reviewing a case, the Constitutional Court cannot suspend the validity of a normative act.

When initiating a case on a constitutional claim, the Constitutional Court may suspend the execution of the court decision.

Any legal norm (act) which the Constitutional Court has determined as incompatible with the legal norm of higher force shall be considered invalid as of the date of publishing the judgment of the Constitutional Court, unless the Constitutional Court has ruled otherwise.

11.-25. The Constitutional Court does not review preliminary questions!

BUT , in compliance with the Constitutional Court Law, the court of general jurisdiction or the judge of the Land Registry may submit an application on initiating a case.

Any court of general jurisdiction, when reviewing a civil, criminal or administrative case, as well as the judge of the Land Registry may submit the application. Namely, the application shall be submitted if:

- 1) a court of general jurisdiction- when reviewing a civil, criminal or administrative case in the first instance, under the procedure of cassation or appeal- holds that the norm to be applied to the case does not comply with the legal norm (act) of higher force;
- 2) a judge of the Land Registry, when entering the real estate or confirming the right to the property in the Land Book, is of the opinion that the norm to be applied does not comply with the legal norm (act) of higher force.

The application shall be expressed in the form of a motivated decision. The decision is adopted and signed by the court, which is reviewing the respective civil, criminal or administrative case or by the judge of the Land Registry, entering real estate or confirming the right to it in the Land Book. Parties of the particular civil, criminal or administrative case may ask the court to appeal to the Constitutional Court, however the above request is not binding on the court.

When an application to the Constitutional Court has been submitted, proceedings of the relevant civil, criminal or administrative case are suspended.

The Constitutional Court adjudicates only issues on conformity of legal norms of lower legal force with legal norms of higher legal force, but, after the Constitutional Court judgment takes effect, the relevant civil, criminal and administrative cases are reviewed on their merit by the court of general jurisdiction.

As to the applications, submitted by courts of general jurisdiction or judges of the Land Registry, no screening procedure is envisaged. The Constitutional Court Panel may refuse to initiate a case only if the case is not within the jurisdiction of the Constitutional Court, if the applicant is not entitled to submit the application, if the application does not comply with the requirements of the Law or an application on an already reviewed claim has been submitted.

The Constitutional Court has to evaluate the legal motivation, incorporated into the application. However, the Constitutional Court does not have to limit the examination by the legal motivation alone. Taking into consideration the principle of clarifying the truth, the Constitutional Court may formulate its viewpoint, substantiating it by arguments, which have not been included either in the application or the written reply.

The Constitutional Court has to review the claim included in the application. Up to now the Constitutional Court has not evaluated a normative act, which was not included in the formulated claim of the application.

As concerns the rights of the parties (even if it is a court, which has submitted a petition), two cases of the Constitutional Court process shall be separated:

1) If the case is reviewed at the Court session with the participants in the case taking part, then participants in the case shall be notified of the time and place of the session not later than 15 days before the session. Following the adoption of the decision to forward the case for review participants in the case — the applicant and the institution or official who issued the disputable act— may examine the case material.

In turn, the participants in the case experience the right of expressing the legal motivation, asking questions to other participants in the case, invited persons and experts. They also answer questions by the justices, other participants in the case and experts, submit evidence and voice requests, take part in the court debate and express remarks.

2) In cases when the documents attached to the case suffice, it is possible to hold Court proceedings in writing, without the participants in the case attending the Court session. If the decision on the Court proceedings in writing has been adopted, the participants in the case shall be notified about it. The participants in the case receive announcements about it in a written form.

Fifteen days after receiving the announcement on Court proceedings in writing, the participants in the case have the right of examining the case material and expressing their viewpoint on it in a written form.

Participant in the case – the applicant as well as the institution or official who issued the disputable act– may perform procedural actions at the Constitutional Court himself/herself or be represented by his/her respective representative. Participants in the case may employ the assistance of a sworn advocate. The sworn advocate has all the rights of the participant in the case, with an exception of closing of proceedings.

The process of the Constitutional Court does not envisage counsel for the defence and counsel for the prosecution.

The Constitutional Court Law establishes that in several cases proceedings in the case may be closed by a decision of the Constitutional Court before the judgment is announced. It can be done also upon a written request of the applicant and in other cases, when continuation of proceedings is impossible. Thus, if there is “the withdrawal of suit before the court a quo or the death of a party before the same court”, then, depending on circumstances, the Constitutional Court may close or continue proceedings.

26. Any person, who holds that his/her fundamental rights, established by the Constitution, have been violated by applying a normative act, which is not in compliance with the legal norm of higher legal force, may submit a claim (an application) to the Constitutional Court. The object of a constitutional claim is compliance of the legal norm of lower legal force with the legal norm of higher legal force in cases when the constitutional fundamental rights of a

person have been violated. Rulings of courts of general jurisdiction cannot be regarded as objects.

27. Any person may do it, if:

- its fundamental rights established by the Constitution have been violated by a legal norm, which is unconformable with the legal norm of higher force;
- this person has exhausted the ordinary legal remedies (a claim to a higher institution or official, a claim or application to a court of general jurisdiction etc.), or if there are no other means and has submitted the claim within six months from the date of the ruling of the last institution becoming effective, or if the review of the constitutional claim is of general importance or if legal protection of the rights with general legal means cannot avert material injury to the applicant of the claim.

28. Yes. The constitutional claim shall be submitted only after exhausting the ordinary legal remedies (a claim to a higher institution or official, a claim or application to a court of general jurisdiction etc.) or if there are no other means;

If the review of the constitutional claim is of general importance or if legal protection of the rights with general legal means cannot avert material injury to the applicant of the claim, the Constitutional Court may reach a decision to review the claim (application) before all the other legal means have been exhausted.

29. Yes. When reviewing the constitutional claim, the Panel may refuse to initiate a case if the legal justification of the claim is evidently insufficient to satisfy the appeal.

30. The rights of the participants in cases, which have been initiated on claims by various petitioners, do not differ.

1) If the case is reviewed at the Court session with the participants in the case taking part, then participants in the case shall be notified of the time and place of the session not later than 15 days before the session. Following adoption of the decision to forward the case for review participants in the case — the applicant and the institution or official who issued the disputable act— may examine the case material.

In their turn, the participants in the case have the right of expressing legal motivation, asking questions to other participants in the case, invited guests and experts. They also answer questions of the justices, other participants in the case, submit evidence, express requests, take part in the Court debate and express remarks.

2) In cases when the documents attached to the case suffice, it is possible to hold Court proceedings in writing, without the participants in the case attending the Court session. If the decision on the Court proceedings in writing has been adopted, the participants in the case shall be notified about it. The participants in the case receive announcements about the fact in a written form.

Fifteen days after receiving the announcement on Court proceedings in writing, the participants in the case have the right of examining the case material and express their viewpoint on it in a written form.

31. The rights of participants in cases, which have been initiated on various petitions, do not differ. Participant in the case – the applicant as well as the institution or official, who issued the disputable act– may perform procedural actions at the Constitutional Court himself/herself or be represented by his/her respective representative. Participants in the case may employ the assistance of a sworn advocate. The sworn advocate has all the rights of the participant in the case, with an exception of closing of proceedings.

Counsel for the defence and counsel for the prosecution is not envisaged in the Constitutional Court process.

32. No, it is not the task of the Constitutional Court to circumscribe the respective jurisdictions of the other courts.

33. See quest. 1.2. Two justices are confirmed by the Saeima upon the recommendation of the Plenum of the Supreme Court from among the judges.

34. The Constitutional Court does not review cases on compliance of rulings by courts of general jurisdiction with the Constitution on its merit. The Constitutional Court adjudicates compliance of legal norms, applied when reviewing the case, with the legal norms of higher legal force.

There are no procedural links between the Constitutional Court and the court of general jurisdiction, which has reviewed the case.

If the Constitutional Court declares that the legal norm, applied when reviewing the case, contradicts the legal norm with higher legal force, then the judgment of the Constitutional Court is considered as a new circumstance to revise the case at a court of general jurisdiction.

35. A judgment of the Constitutional Court shall be binding on all state and municipal institutions, offices and officials, including the courts, also natural and juridical persons.

36. The judgment of the Constitutional Court includes ruling of the Constitutional Court whether or not the disputed legal norm (act) complies with the legal norm of higher force. If the Constitutional Court has declared that the norm (act) does not comply with the legal norm of higher force, then the Constitutional Court with regard to the effective disputable legal norm (act) determines the time by which the disputed legal norm (act) is no longer in effect.

37. As to legal effects, please see Quest. 35.

As refers effects in time: any legal norm (act) which the Constitutional Court has determined as incompatible with the legal norm of higher force shall be considered invalid as of the *date of publishing* the judgment of the Constitutional Court, unless the Constitutional Court has ruled otherwise. In practice there have been several cases when challenged norms (acts) have been declared invalid as of the date of their adoption and in some cases declaring of invalidity was connected with some time in future.

38. Up to now there were no cases when the judgments of the Constitutional Court had not been respected.

39. Rulings of other courts of Latvia, when interpreting the Constitution and legal norms of higher legal force are not binding on the Constitutional Court.

40. The substantive provisions of the Constitutional Court judgments are binding on courts of general jurisdiction. As there have been no cases of non-observance, it is not possible to answer what would happen then.

41.-42. Up to the present moment the Constitutional Court has not reached purely interpretative decisions.

43. As concerns compliance of the Latvian normative acts with the Convention, practice of the European Court of Human Rights is binding on the Court. The Constitutional Court has acknowledged that the practice of the European Court of Human Rights shall be used when interpreting the norms, incorporated into the Constitution.

Thus Judgment in case No. 2000-03-01 includes the following viewpoint: The Constitution determines that the State recognises and protects the fundamental rights of a person in accordance with the Constitution, the laws and international agreements binding on Latvia. From this Article it can be seen that the aim of the legislator has not been to oppose norms of human rights, included in the Constitution to the international ones. Quite to the contrary- the aim has been to achieve mutual harmony of the norms.

In cases, when there is doubt about the contents of the norms of human rights included in the Constitution, they should be interpreted in compliance with the practice of application of international norms of human rights. The practice of the European Court of Human Rights, which in accordance with liabilities Latvia has undertaken (Article 4 of the Law "On November 4, 1950 European Convention for Protection of Human Rights and Fundamental Freedoms and its Protocols 1, 2, 4, 7 and 11) is mandatory when interpreting the norms of the Convention. This practice shall be used also when interpreting the respective norms of the Constitution."

45. If the rights of a person, determined by the Constitution, have been violated by a legal norm, which does not comply with the legal norm of higher legal force and the case has been adjudicated in the court of general jurisdiction after January 1, 2001, then before submitting a claim to the European Court of Human Rights, the person shall apply to the Constitutional Court.

In other cases one need not petition the Constitutional Court before submitting a claim to the European Court of Human Rights.

46.-48. No. Latvia is not a Member of the EU .