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## **Constitutional Court of the Republic of Latvia: constitutional regulation, competence and content of the petitions**

**KEY WORDS:**

*Constitutional Court, constitution, competence,  
constitutional complaint, fundamental human rights*

### **Introduction**

Constitutional Courts by realizing functions provided by the constitution always play important role in each country. It is because Constitutional Courts safeguard system of constitutional order and values, principles of law, human rights. The Constitutional Court of the Republic of Latvia (thereinafter – the Constitutional Court), undoubtedly, guarantees the existence of the values of statehood and constitutionalism<sup>1</sup> in Latvia, seeing to it that the constitutional institutions act and the state powers is exercised in compliance not only with the letter of the Satversme of the Republic of Latvia (hereinafter – the Satversme)<sup>2</sup>, but also its spirit. Reaching of these aims is ensured not only by the juridical nature of the rulings by the Constitutional Court. It is determined also by the great authority of the Constitutional Court or the fact that its rulings are respected on all levels. As one of the Justices of the Constitutional Court noted, during the

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<sup>1</sup> See T. Koopmans, *Court and Political Institutions*, UK 2005, c. 245; C. Grimm, *The Achievement of Constitutionalism and its Prospects in a Changed World*, [in:] P. Dobner, M. Loughlin (eds.), *The twilight of constitutionalism?*, Oxford 2010, c. 3–22.

<sup>2</sup> Latvijas Republikas Satversme: LR likums. Latvijas Vēstnesis, Nr 43, 1.06.1993.

years of its existence there had been not a single instance when any bearer of the public power had refused to implement a ruling by the Constitutional Court<sup>3</sup>.

The effectiveness of the constitutional court is one of the most important gauges for the system of constitutional control. The more effective the constitutional court, the greater its impact in the state. The effectiveness of the Constitutional Court varies. To a large extent it depends upon the cases to be heard before the Constitutional Court and the quality of judgements. As noted in one of the most recent monographic studies in constitutional law<sup>4</sup>, in order to speak about effective system of constitutional control, three requirements should be assessed. First of all, there should be cases to hear, since the constitutional court can speak or express its opinion only “through” its rulings. Secondly, judges must deal with disputes (cases), including in the rulings arguments (substantiations) that need proving, creating judicature. Thirdly, those who apply legal norms must, in doing this, abide by the interpretation of legal norms provided by the constitutional court. Or, future disputes must be solved in compliance with the case law of the constitutional court. The author holds that the Constitutional Court has all the noted standards of effectiveness and thus, it can be said that Latvia has an effective system of constitutional control.

In Latvia the most important subject of constitutionalism is a person, the protection of whose fundamental rights is the task of the Constitutional Court. One might even say that the basic task of the Constitutional Court is to protect the fundamental rights of a person (in broader understanding). Not all countries allow persons to apply directly to the constitutional court<sup>5</sup>. In Latvia persons have been given the possibility to submit a constitutional complaint to the Constitutional Court, if their fundamental rights have been violated by a legal norm, which is incompatible with the fundamental rights enshrined in the Satversme. The constitutional complaint has influenced and determined the high authority of the Constitutional Court in Latvia and, finally, also the high effectiveness of the whole constitutional system. Therefore the article mainly focuses upon the analysis of constitutional complaint, predominantly due to three considerations. Firstly, the constitutional complaint is the application, which activates the whole proceedings of the Constitutional Court. Statistics is an evident proof to this: as of 26 November 2013 only natural persons alone have submitted 8525 applications<sup>6</sup>.

<sup>3</sup> U. Ķiniš, *Role of the Constitutional Court of the Republic of Latvia against the backdrop of economic recession*, “Constitutional Law Review” V, c. 196, [http://constcourt.ge/files/Journal\\_2012\\_eng.pdf](http://constcourt.ge/files/Journal_2012_eng.pdf)

<sup>4</sup> M. Rosenfeld, A. Sajo (eds.), *Comparative Constitutional Law*, Oxford 2012, c. 825.

<sup>5</sup> See: Study on Individual Access to Constitutional Justice, <http://www.venice.coe.int/webforms/documents/CDL-AD%282010%29039rev.aspx>, 2013.12.02.

<sup>6</sup> Statistics. Available at the Constitutional Court. Not published.

To compare: members of the Saeima (Parliament) have submitted 69 applications, but the Cabinet of Ministers – 2 applications. Secondly, in a democratic state ruled by the law modern constitutional law is a judge-made law<sup>7</sup>. One can agree that written text of the constitution is being translated into norms and rules. And it's been done by the Constitutional Courts in those countries where such a courts exists. Besides of that, by realizing its functions, Constitutional Courts explains procedural norms. Practice of the Constitutional Court of Latvia proves that, by applying Constitutional Court Law norms, it construes the procedure of the same court. And it means that in order for a person's application to succeed and a case would be initiated, it is important to know and to be able to apply all elements of the content of application, including the constitutional complaint, since the protection of fundamental rights can be effective only if the Constitutional Court initiates a case. Unfortunately, statistical data show that the number of rejected applications remains high. Thus, for example, as regards 8525 applications by natural persons, only 409 cases have been initiated. This means that only 4.8% of the submitted constitutional complaints have been successful or have complied with the Constitutional Court Law<sup>8</sup>. Thirdly, without denying the importance of other legal remedies, the constitutional complaint is the culmination in the protection of fundamental human rights.

## **Constitutional Court as the youngest Constitutional institution**

The principle of separation of power is one of the values, which found the Latvian state. It is “incontestable constitutional principle, which has to be respected as such”<sup>9</sup>. To reach the aim of this fundamental principle, separate functions of power are passed over different constitutional institutions. In Latvia the competence of the state is divided among institutions, which are mentioned in the Satversme. And these institutions are: the totality of Latvian citizens, the Saeima (parliament), the State President, the Cabinet of Ministers (executive), the State Control, the courts and the Constitutional Court. Satversme includes

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<sup>7</sup> L. Garlicki, *Judicial Law-making (The Strasbourg court on applicability of the European Convention), New Millenium Constitutionalism: Paradigms of reality and challenges*, Yerevan 2013, c. 387.

<sup>8</sup> Statistics. Available at the Constitutional Court. Not published.

<sup>9</sup> On Compliance of Section 162 (4) and Section 19 (5) of the Law “On Budget and Financial Management” with Article 1, Article 83 and Article 87 of the Satversme of the Republic of Latvia: Decision of the Constitutional court on June 8, 2012 on termination of a case No 2011-18-01, para 17.2, Latvijas Vēstnesis Nr 91 (4694), 12.06.2012.

an exhaustive list of constitutional institutions (bodies) that implement public power<sup>10</sup>.

It should be mentioned, that the Latvia's constitutional system is formed by the Satversme of 15 February 1922<sup>11</sup>. Satversme was renewed in full amount on 6 July 1993<sup>12</sup>. Currently the Satversme is one of the oldest constitutions that are in force in Europe. The fact that Latvia after restoration of independence at the beginning of the 1990s did not draft a new constitution, but renewed the Satversme, can be treated as unique example how to return into legal reality law after so long period of time. In the meantime, it stresses the corner point of the today's Latvian state: restoration of the independence of the Republic of Latvia in 1990s was based upon the doctrine of the continuity of the state<sup>13</sup>. The Constitutional Court has explained, that "[t]his is the official opinion of the Republic of Latvia on the issue that the Republic of Latvia that was founded on November 18, 1918, despite the aggression and occupation by the USSR that took place in 1940, has continued its uninterrupted existence"<sup>14</sup>.

Till 1996, there were no regulations of the Constitutional Court in Satversme. And it seems logic, because till 1940, June 17 (occupation of Latvia) similarly to the majority of European states, the idea of constitutional control was not recognized. In those times idea (concept) that some institution could "stand above" the parliament was not acceptable in Latvia. In accordance with the dogma of parliamentary supremacy, dominant at the time, the parliament was granted the role of the dominant institution of state power. Therefore the view prevailed that

<sup>10</sup> On Compliance of Section 19 (5) of the Law on Budget and Financial Management, Section 44 (2) of the Law on the State Audit Office and Section 19 (2) of the Ombudsman Law with Article 1, Article 83 and Article 87 of the Satversme of the Republic of Latvia: Judgment of the Constitutional Court on 25 November, 2010 in case No. 2010-06-01, para 11, [http://www.satv.tiesa.gov.lv/upload/judg\\_2010-06-01.htm](http://www.satv.tiesa.gov.lv/upload/judg_2010-06-01.htm), 2013.11.11.

<sup>11</sup> Latvijas Republikas Satversme: LR likums. Valdības Vēstnesis, Nr 141, 30.06.1922.

<sup>12</sup> Latvijas Republikas 5.Saeimas pirmās sēdes 1993.gada 6.jūlijā stenogramma, [http://saeima.lv/steno/st\\_93/060793.html](http://saeima.lv/steno/st_93/060793.html), 2013.11.11.

<sup>13</sup> J. Pleps, *Satversmes iztulkošana*, Rīga 2012, 11. lpp.

<sup>14</sup> On Compliance of the Law "On Authorization to the Cabinet of Ministers to Sign the Draft Agreement between the Republic of Latvia and the Russian Federation on the State Border between Latvia and Russia Initialed on August 7, 1997" and the Words "Observing the Principle of Inviolability of Borders Adopted by the Organization of Security and Cooperation in Europe" of Article 1 of the Law "On the Republic of Latvia and the Russian Federation Treaty on the State Border of Latvia and Russia" with the Preamble and Article 9 of the Declaration of May 4, 1990 of The Supreme Council of the Republic of Latvia "On Restoration of Independence of the Republic of Latvia" and Compliance of the Treaty of March 27, 2007 of the Republic of Latvia and the Russian Federation of the State Border of Latvia and Russia with Article 3 of the Satversme (Constitution) of the Republic of Latvia: Judgment of the Constitutional Court on 29 November, 2007 in case No. 2007-10-0102, para. 64.2, [http://www.satv.tiesa.gov.lv/upload/judg\\_2007\\_10\\_0102.htm](http://www.satv.tiesa.gov.lv/upload/judg_2007_10_0102.htm), 2013.11.10.

the law, which was in force, “shall be enforced without hesitation and doubt [...] neither private persons, nor public institutions shall have any legal right to doubt or contest the power of law [...]”<sup>15</sup>. Just after more than 50 years, after collapse of USSR, discussions of establishment of the special Constitutional Court as the guardian of the Satversme become real.

Article 85 of Satversme – the legitimate base of the Constitutional Court – was passed by parliament on 5 June 1996<sup>16</sup>. In the same data parliament passed Constitutional Court Law<sup>17</sup>. Satversme as a fundamental law is very laconic and short. By drawing up legal base of the Constitutional Court, the legislator had to take into account this particularity of Satversme. Therefore in the Article 85 just minimum of constitutional regulation of Constitutional Court is included. Article 85 of Satversme provides that “in Latvia, there shall be a Constitutional Court, which, within its jurisdiction as provided for by law, shall review cases concerning the compliance of laws with the Constitution, as well as other matters regarding which jurisdiction is conferred upon it by law. The Constitutional Court shall have the right to declare laws or other enactments or parts thereof invalid. The *Saeima* shall confirm the appointment of judges to the Constitutional Court for the term provided for by law with a majority of the votes of not less than fifty-one members of the *Saeima*”<sup>18</sup>.

Constitutional regulation of the Constitutional Court (in the first sentence of Article 85) legitimates Constitutional Court and founds the basic rule of the competence of the Constitutional Court, which will be analysed in the special chapter. The second sentence grants to the Constitutional Court exclusive competence to declare invalid laws and other enactments and parts thereof which can be done only in one procedural form – by adopting judgments<sup>19</sup>. Judgments of the Constitutional Court are universally binding (*erga omnes*), final (cannot be appealed), public, directly applicable, unsurpassable<sup>20</sup>. In the third sentence of the Article 85 formation of the corps of the Constitutional Court just as far as it differs from the procedure for appointment to the office judges of (general) court system (Article 84 of the Satversme<sup>21</sup>), is included. Other important rules of formation

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<sup>15</sup> K. Dišlers, *Ievads administratīvo tiesību zinātnē*, Rīga 2002, 223. lpp.

<sup>16</sup> Grozījums Latvijas Republikas Satversmē: LR likums. Latvijas Vēstnesis Nr 100/101 (585/586), 12.06.1996.

<sup>17</sup> Satversmes tiesas likums: LR likums. Latvijas Vēstnesis Nr 103 (588), 14.06.1996.

<sup>18</sup> The Constitution of the Republic of Latvia, <http://www.saeima.lv/en/legislation/constitution/>, 2013.10.12.

<sup>19</sup> *Latvijas Republikas Satversmes komentāri. VI nodaļa. Tiesa. VII nodaļa. Valsts kontrole*, Rīga 2013, 152. lpp.

<sup>20</sup> *Latvijas Republikas Satversmes komentāri. VI nodaļa. Tiesa. VII nodaļa. Valsts kontrole*, Rīga 2013, 140. lpp.

<sup>21</sup> Article 84 of the Satversme provides „Judicial appointments shall be confirmed by the *Saeima* and they shall be irrevocable. The *Saeima* may remove judges from office against

of corps of the court are regulated in Constitutional Court Law, such as number of justices (7), requirements for the candidates<sup>22</sup>, term of the office (10 years), procedure of proposing of candidates. Essential changes were done in the Article 85 just recently: Saeima in September of 2013 passed law amending Article 85 of the Satversme, ensuring that the justices of the Constitutional Court will be appointed in open procedure and not in secret ballot procedure as it was before<sup>23</sup>.

## Competence of the Constitutional Court

Constitutional Court in Latvia is an institution, which safeguards the Satversme, by ensuring the rule (priority) of the constitutional law – the Satversme – and constitutional justice<sup>24</sup>. The essence of administering justice at the Constitutional Court is to solve special or specific disputes regarding the compatibility of legal provisions with the provisions of higher legal force. In the competence of the Constitutional Court are not other issues except evaluation of the disputes about legal norms or norm control.

The constitutional legislator has included in Article 85 of the Satversme only one aspect of the competence of the Constitutional Court: to control the

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their will only in the cases provided for by law, based upon a decision of the Judicial Disciplinary Board or a judgment of the Court in a criminal case. The age of retirement from office for judges may be determined by law”. The Constitution of the Republic of Latvia, <http://saeima.lv/en/legislation/constitution/>, 2013.10.12.

<sup>22</sup> Constitutional Court Law (Article 4, part 2) provides that such a person may be confirmed as a judge of the Constitutional Court who 1) is a citizen of the Republic of Latvia; 2) has an impeccable reputation; 3) has reached 40 years of age, on the day when the proposal regarding the confirmation as a judge of the Constitutional Court was submitted to the Presidium of the Saeima; 4) has acquired a higher professional or academic education (except the first level professional education) in legal science and also a master’s degree (including a higher legal education, which in regard to rights is equal to a master’s degree) or a doctorate; and, 5) has at least 10 years of service in a legal specialty or in a judicial specialty in scientific educational work at a scientific or higher educational establishment after acquiring a higher professional or academic education (except the first level professional education) in legal science. Constitutional Court Law available in English <http://www.satv.tiesa.gov.lv/?lang=2&mid=9>, 2013.09.11.

<sup>23</sup> Latvijas Republikas 11.Saeimas rudens sesijas trešā sēde 2013.gada 19.septembrī, <http://titania.saeima.lv/LIVS11/saeimalivs11.nsf/0/33C8958D941E8283C2257BF30039AEAD?OpenDocument>, 2013.11.10; Grozījums Latvijas Republikas Satversmē: LR likums. Latvijas Vēstnesis Nr 194 (5000), 04.10.2013.

<sup>24</sup> On Compliance of the second sentence of Paragraph 7 and Paragraph 17 of the Transitional Provisions of the Law “On Judicial Power” (in the wording of 14 November, 2008 of the Law) to Articles 1, 83 and 107 of the Satversme of the Republic of Latvia: Judgment of the Constitutional Court on January 18, 2010 in case No 2009-11-01, para 5, [http://www.satv.tiesa.gov.lv/upload/judg\\_2009\\_11.htm](http://www.satv.tiesa.gov.lv/upload/judg_2009_11.htm), 2013.11.10.

compatibility of laws with the Satversme. The Constitutional Court, explaining the meaning of the concept “law”, has pointed out that “a law is a legal act adopted according to the procedure set out in the Satversme”<sup>25</sup>. This means that all laws that are adopted according to the procedure set out in the Satversme and in the hierarchy of legal acts are below the Satversme (principle of vertical control) may be reviewed by the Constitutional Court. It should be explained as well, that the term Satversme in today’s constitutional law covers not just Satversme passed on February 15, 1922. Concept “Satversme” covers all those provisions that determine the constitutional regulation of the state. Decisive role in forming this doctrine was played by the same Constitutional Court. It explained that “constitutional regulation of the state of Latvia is basically collected in the Satversme, however, the legal provisions of 27 May 1920 Declaration on the State of Latvia<sup>26</sup>, the Declaration of Independence [of May 4, 1990]<sup>27</sup> and the Constitutional Law [of August 21, 1991]<sup>28</sup> still retain their legal force, to the extent these have not been replaced by the Satversme provisions”<sup>29</sup>. An opinion can be found, that the Act of the National Council of 18 November 1918 on the Proclamation of the Republic of Latvia is an act of constitutional rank that is in force alongside the Satversme<sup>30</sup>. Alongside the aforementioned, the Constitutional Court has deemed as acts or provisions of constitutional rank also such that have been adopted in

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<sup>25</sup> On Compliance of Sub-programme 23.00.00 of the Law “On the State Budget 2011” with Article 1 of the Satversme of the Republic of Latvia: Judgement of the Constitutional Court on 3 February, 2012 in case 2011-11-01, para 11.1, [http://www.satv.tiesa.gov.lv/upload/2011-11-01%20PR%20par%20spriedumu\\_ENG.pdf](http://www.satv.tiesa.gov.lv/upload/2011-11-01%20PR%20par%20spriedumu_ENG.pdf), 2013.30.11.

<sup>26</sup> Deklarācija par Latvijas valsti: Latvijas Satversmes Sapulces 1920. gada 27. maija deklarācija. Likumu un valdības rīkojumu krājums, Nr 4, Nr. 182, 1920.

<sup>27</sup> Par Latvijas Republikas neatkarības atjaunošanu: Latvijas PSR Augstākās padomes 1990. gada 4. maija deklarācija. Ziņotājs, Nr 20, 17.05.1990.

<sup>28</sup> Par Latvijas Republikas valstisko statusu: 1991. gada 21. augusta Latvijas Republikas Konstitucionālais likums. Ziņotājs Nr 42, 24.10.1991.

<sup>29</sup> On Compliance of the Law “On Authorization to the Cabinet of Ministers to Sign the Draft Agreement between the Republic of Latvia and the Russian Federation on the State Border between Latvia and Russia Initialed on August 7, 1997” and the Words “Observing the Principle of Inviolability of Borders Adopted by the Organization of Security and Cooperation in Europe” of Article 1 of the Law “On the Republic of Latvia and the Russian Federation Treaty on the State Border of Latvia and Russia” with the Preamble and Article 9 of the Declaration of May 4, 1990 of The Supreme Council of the Republic of Latvia “On Restoration of Independence of the Republic of Latvia” and Compliance of the Treaty of March 27, 2007 of the Republic of Latvia and the Russian Federation of the State Border of Latvia and Russia with Article 3 of the Satversme of the Republic of Latvia: Judgment of the Constitutional Court on November 19, 2007 in case No 2007-10-0102, para 62, [http://www.satv.tiesa.gov.lv/upload/judg\\_2007\\_10\\_0102.htm](http://www.satv.tiesa.gov.lv/upload/judg_2007_10_0102.htm), 2013.09.10.

<sup>30</sup> Latvijas pilsoņiem! Likumu un rīkojumu krājums Nr 1, 15.07.1919; J. Pleps, *Robežlīgums ar Krievijas Federāciju: Satversme un Satversmes tiesa. Robežlīgums: Spriedums. Materiāli. Komentāri*, Rīga 2009, 603. lpp.

cases set out in the Satversme (Article 68<sup>31</sup>), i.e., delegating the competences to international institutions<sup>32</sup>. Also general principles of law are an indispensable part of the Satversme. The Constitutional Court in its practice has recognized general principles of law as the source of law, using Article 1 of the Satversme, confirming that “from article 1 of the Satversme, which provides that Latvia is an independent democratic republic, a number of principles of a state ruled by law follow, including the principle of the division of power and the principle of legitimacy”<sup>33</sup>. Thus it can be concluded that Satversme covers several legal acts and norms, ensuring broader constitutional protection of the constitutional order and values.

Alongside one category of cases defined in Article 85 of the Satversme other cases to be examined by the Constitutional Court are defined in the Constitutional Court Law. As it is set out in the Constitutional Court Law (Article 16) the Constitutional Court adjudicates matters also regarding compliance of international agreements signed or entered into by Latvia (also until the confirmation of the

<sup>31</sup> Article 68 of Satversmes provides that all international agreements, which settle matters that may be decided by the legislative process, shall require ratification by the *Saeima*. Upon entering into international agreements, Latvia, with the purpose of strengthening democracy, may delegate a part of its State institution competencies to international institutions. The *Saeima* may ratify international agreements in which a part of State institution competencies are delegated to international institutions in sittings in which at least two-thirds of the members of the *Saeima* participate, and a two-thirds majority vote of the members present is necessary for ratification. Membership of Latvia in the European Union shall be decided by a national referendum, which is proposed by the *Saeima*. Substantial changes in the terms regarding the membership of Latvia in the European Union shall be decided by a national referendum if such referendum is requested by at least one-half of the members of the *Saeima*. The Constitution of the Republic of Latvia, <http://www.saeima.lv/en/legislation/constitution/>, 2013.09.10.

<sup>32</sup> On Compliance of the Law “On Authorization to the Cabinet of Ministers to Sign the Draft Agreement between the Republic of Latvia and the Russian Federation on the State Border between Latvia and Russia Initialed on August 7, 1997” and the Words “Observing the Principle of Inviolability of Borders Adopted by the Organization of Security and Cooperation in Europe” of Article 1 of the Law “On the Republic of Latvia and the Russian Federation Treaty on the State Border of Latvia and Russia” with the Preamble and Article 9 of the Declaration of May 4, 1990 of The Supreme Council of the Republic of Latvia “On Restoration of Independence of the Republic of Latvia” and Compliance of the Treaty of March 27, 2007 of the Republic of Latvia and the Russian Federation of the State Border of Latvia and Russia with Article 3 of the Satversme of the Republic of Latvia: Judgement of the Constitutional Court on November 19, 2007 in case No 2007-10-0102, Para 56.3, [http://www.satv.tiesa.gov.lv/upload/judg\\_2007\\_10\\_0102.htm](http://www.satv.tiesa.gov.lv/upload/judg_2007_10_0102.htm), 2013.10.10.

<sup>33</sup> On the Compliance of the Cabinet of Ministers February 27, 2001 Regulations No. 92 „Procedure for Stating the Amount of Sugar-Beet Supply for Sugar-Beet Growers” with Article 91 of the Satversme (Constitution): Judgement of the Constitutional Court on January 21, 2002 in case No 2001-09-01, <http://www.satv.tiesa.gov.lv/?lang=2&mid=19>, 2013.10.11; compare: D. Iljanova, *Vispārējo tiesību principu nozīme un piemērošana*, Rīga 2005, 60. lpp.

relevant agreements in the *Saeima*) with the Constitution; compliance of other regulatory enactments or parts thereof with the norms (acts) of a higher legal force; compliance of other acts of the *Saeima*, the Cabinet of Ministers, the President of the Republic of Latvia, the Speaker of the *Saeima* and the Prime Minister, except for administrative acts, with law; compliance with law of such an order with which a Minister authorized by the Cabinet has suspended a decision taken by a local government council; and compliance of Latvian national legal norms with those international agreements entered into by Latvia that are not in conflict with the Constitution.

From the aforementioned it can be concluded that the Constitutional Court can realize so called *a posteriori* norm control and also *a priori* norm control. *A priori* control can be exercised only in one case – assessing the constitutionality of international treaties before their ratification. And thus far there has been only one case, when the mechanism of *a priori* control was put into practice, examining an international treaty, determining the border between Latvia – Russia<sup>34</sup>, which at the moment when the application was submitted had not yet been ratified according to the legal procedure.

In examining cases, the Constitutional Court has developed so-called comprehensive principle of the jurisdiction of the Constitutional Court, according to which no legal norm may remain outside the attention of the Constitutional Court<sup>35</sup>. The *Satversme* safeguards the competence of the Constitutional Court defined in the *Satversme*, thus prohibiting the legislator to restrict competence of the Constitutional Court, for example, defining, which specific laws may not

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<sup>34</sup> On Compliance of the Law “On Authorization to the Cabinet of Ministers to Sign the Draft Agreement between the Republic of Latvia and the Russian Federation on the State Border between Latvia and Russia Initialed on August 7, 1997” and the Words “Observing the Principle of Inviolability of Borders Adopted by the Organization of Security and Cooperation in Europe” of Article 1 of the Law “On the Republic of Latvia and the Russian Federation Treaty on the State Border of Latvia and Russia” with the Preamble and Article 9 of the Declaration of May 4, 1990 of The Supreme Council of the Republic of Latvia “On Restoration of Independence of the Republic of Latvia” and Compliance of the Treaty of March 27, 2007 of the Republic of Latvia and the Russian Federation of the State Border of Latvia and Russia with Article 3 of the *Satversme* of the Republic of Latvia: Judgement of the Constitutional Court on November 19, 2007 in case No 2007-10-0102, [http://www.satv.tiesa.gov.lv/upload/judg\\_2007\\_10\\_0102.htm](http://www.satv.tiesa.gov.lv/upload/judg_2007_10_0102.htm), 2013.10.10.

<sup>35</sup> On Conformity of the State Stock Company – the Real Estate Agency Regulations „On the Procedure by which Free Apartments in Dwelling Houses under the Management of the Real Estate Agency shall Be Rented” with Articles 2, 10 and 11 of the Law „On Housing Support Granted by the State and Local Governments», Article 40 of the Law „On the Rent of Dwelling Space” and Item 4 of the Transitional Provisions of the Law „On the Privatization of State and Local Governments Apartment Houses»: Judgement of the Constitutional Court on July 9, 1999 in case No 04-03 (99), para 1, <http://www.satv.tiesa.gov.lv/?lang=2&mid=19>, 2013.11.11.

be reviewed by the Constitutional Court. And these findings have served as the basis for the examination by the Constitutional Court the legality of its own legal regulation, i.e., the compliance of the norms of the Constitutional Court Law with the Satversme<sup>36</sup>. The Court has also had to examine the compatibility with the Satversme of such legal norms, which indirectly apply to the Justices of the Constitutional Court<sup>37</sup>, since „[n]either the Satversme, nor the Constitutional Court Law grant the right to the Constitutional Court to refuse to assess the compatibility of a law or other legal provision with the Satversme [...]”<sup>38</sup>. Likewise, the Constitutional Court has examined the legality of the state budget law<sup>39</sup>.

### **Persons who can submit applications before the Constitutional Court**

The Constitutional Court has no right to initiate proceedings on its own initiative, excluding its *ex officio* right to start a constitutional court procedure. Article 85 of the Satversme does not define the range of subjects entitled to submit an application to the Constitutional Court, therefore all subjects, who have the right to submit an application, are indicated in Article 17 of the Constitutional Court Law.

<sup>36</sup> On the Conformity of Article 192 (the fourth part) of the Constitutional Court Law with Articles 91 and 92 of the Republic of Latvia Satversme (Constitution): Judgement of the Constitutional Court on November 26, 2002 in case No 2002-09-01, <http://www.satv.tiesa.gov.lv/?lang=2&mid=19>, 2013-12-02; On Compliance of the Words “for an Unlimited Term” of Part 1 of Section 7 of the Constitutional Court Law with Article 83, Part 1 of Article 91 and Part 1 of Article 101 of the Satversme (Constitution) of the Republic of Latvia: Judgement of the Constitutional Court on October 18, 2007 in case No 2007-03-01, [http://www.satv.tiesa.gov.lv/upload/judg\\_2007-03-01.htm](http://www.satv.tiesa.gov.lv/upload/judg_2007-03-01.htm), 2013.11.10.

<sup>37</sup> On Compliance of the second sentence of Paragraph 7 and Paragraph 17 of the Transitional Provisions of the Law “On Judicial Power” (in the wording of 14 November, 2008 of the Law) to Articles 1, 83 and 107 of the Satversme of the Republic of Latvia: Judgement of the Constitutional Court on January 18, 2010 in case No 2009-11-01, [http://www.satv.tiesa.gov.lv/upload/judg\\_2009\\_11.htm](http://www.satv.tiesa.gov.lv/upload/judg_2009_11.htm), 2013.10.10.

<sup>38</sup> On Compliance of the second sentence of Paragraph 7 and Paragraph 17 of the Transitional Provisions of the Law “On Judicial Power” (in the wording of 14 November, 2008 of the Law) to Articles 1, 83 and 107 of the Satversme of the Republic of Latvia: Judgement of the Constitutional Court on January 18, 2010 in case No 2009-11-01, para 5, [http://www.satv.tiesa.gov.lv/upload/judg\\_2009\\_11.htm](http://www.satv.tiesa.gov.lv/upload/judg_2009_11.htm), 2013.10.11.

<sup>39</sup> On Compliance of Sub-programme 23.00.00 of the Law “On the State Budget 2011” with Article 1 of the Satversme of the Republic of Latvia: Judgement of the Constitutional Court on 3 February 2012, in case 2011-11-01, para 11.1, [http://www.satv.tiesa.gov.lv/upload/2011-11-1%20PR%20par%20spriedumu\\_ENG.pdf](http://www.satv.tiesa.gov.lv/upload/2011-11-1%20PR%20par%20spriedumu_ENG.pdf), 2013.30.11.

The President of the Saeima, the Saeima as a collegiate institution, at least 20 members of the Saeima, the Cabinet of Ministers, the Prosecutor General, the Council of the State Audit Office, as well as two subjects, who have to abide by specific restrictions, – the Judicial Council (it can submit an application just in those questions, which are in the competence of the Judicial Council) and the Ombudsman (it can submit an application if the authority, who has issued the disputed act, has not rectified the established deficiencies within the time period specified by the Ombudsman) can submit so called abstract applications. The aim of this kind of application is to safeguard public interests<sup>40</sup>. And application by subjects of abstract constitutional control is “to be regarded as an important tool for the protection of the state and public interests”<sup>41</sup>. As is typical of countries of European constitutional control, the abstract application is rather frequently used by the members of the Saeima opposition. In general, the most active subjects of abstract constitutional control have been members of the Saeima, who have submitted 69 applications<sup>42</sup>. The Council of the State Audit Office has submitted 4 petitions, but the President of the State has submitted only 1 application to Constitutional Court. Thus far, no application has been submitted by the Judicial Council, the subject, which has been granted the right to apply to the Constitutional Court most recently. Local government councils can submit an application only if an act being disputed infringes upon the rights of the relevant local government. Also just relevant council has the right to submit a request regarding the initiation of a case regarding compliance of such an order with law, with which a minister authorized by the Cabinet has suspended a decision taken by the local government council. Until the end of 2013 the total number of applications submitted by local government councils was 36<sup>43</sup>.

The subjects of concrete control, which in the countries with the European model of constitutional control, are courts (in Latvia – also the judges of the Land Registry Offices), have the right to contest the compliance of a law with the Satversme, if during adjudication of a concrete case doubts arise about the compatibility of the applied provision (in administrative procedure) or the provision

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<sup>40</sup> On Compliance of Article 10 (5) (6) of the Law on the Rights of Patients, insofar as It Fails to Establish the Right of the State Audit Office to Request Necessary Information regarding a Patient for the Performance of the Functions Specified by the Law with Article 1, Article 8, and Article 88 of the Satversme of the Republic of Latvia: Judgement of the Constitutional Court on March 14, 2011 in case No 2010-51-01, para 10.2, [http://www.satv.tiesa.gov.lv/upload/Judgment\\_2010-51-01\\_ENG.htm](http://www.satv.tiesa.gov.lv/upload/Judgment_2010-51-01_ENG.htm), 2013.09.10.

<sup>41</sup> On Compliance of Section 162 (4) and Section 19 (5) of the Law „On Budget and Financial Management“ with Article 1, Article 83 and Article 87 of the Satversme of the Republic of Latvia: Decision of the Constitutional court on June 8, 2012 on termination of a case No 2011-18-01, para 16.2, *Latvijas Vēstnesis* Nr 91 (4694), 12.06.2012.

<sup>42</sup> Statistics. Available at the Constitutional Court. Not published.

<sup>43</sup> *Ibidem*.

that should be applied with the Satversme. Thus, the application submitted by a court can be only concrete – related to the adjudication of a concrete case and if the constitutionality of a legal provision is a precondition for adjudicating a concrete case<sup>44</sup>. Till now courts has submitted 70 petitions<sup>45</sup>.

## **Constitutional complaint as an important legal remedy in Latvia Content of the constitutional complaint: recent developments**

Protection of human rights – as one of the most important guarantees of state ruled by law – establishes the obligation of the state to ensure efficient protection of anybody whose rights have been violated<sup>46</sup>. Constitutional Court has explained that in cases, when a legal norm, which is not in conformity with the legal norm of higher legal force, violates the fundamental rights, the Constitutional Court is the institution where the person shall defend his/her rights and lawful interests. As it has been recognized by the Constitutional Court: the right to a fair trial that are established in Article 92 of the Satversme incorporates also the right to submit a constitutional complaint to the Constitutional Court<sup>47</sup>. But – it should be stressed once more: person is not able challenge to the Constitutional Court individual act (administrative act or court decision). The object of the constitutional complaint can be just general norm, which up to the view of the person violated his/her fundamental human rights.

As it is very common for states where persons can stand before the Constitutional Court, persons are very active. From among 513 initiated cases,

<sup>44</sup> Par likuma „Par nodokļiem un nodevām“ (1997. gada 4. decembra redakcijā) 30. panta otrās daļas vārdu „ja šie darījumi nav deklarēti šā panta pirmajā daļā noteiktajā kārtībā, – 15 procentu apmērā no šo darījumu kopsummas, ja šajā pantā nav noteikts citādi“ atbilstību Latvijas Republikas Satversmes 1. Pantam: Satversmes tiesas 2010. gada 13. oktobra lēmums par tiesvedības izbeigšanu lietā Nr. 2010-09-01, Latvijas Vēstnesis, 164 (4356), 15.10.2010, para 12.

<sup>45</sup> Statistics. Available at the Constitutional Court. Not published.

<sup>46</sup> 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: Judgment of the Constitutional Court on December 5, 2001 in case No 2001-07-0103, para 1, <http://www.satv.tiesa.gov.lv/?lang=2&mid=19, 2013.09.10>.

<sup>47</sup> On the Conformity of Article 19<sup>2</sup> (the fourth part) of the Constitutional Court Law with Articles 91 and 92 of the Republic of Latvia Satversme (Constitution): Judgement of the Constitutional Court on November 26, 2002 in case No.2002-09-01, para 1, <http://www.satv.tiesa.gov.lv/?lang=2&mid=19, 2013.10.11>.

356 cases have been initiated at the Constitutional Court having regard to constitutional complaints submitted by natural and legal persons<sup>48</sup>. Increase by leaps in the number of application was observed during the period described as “economic crisis” in Latvia<sup>49</sup>. In the middle of 2008 and 2009 Latvia experienced the fastest decrease of economic activity in the European Union. Therefore the state budget of Latvia was consolidated in the course of next years and payments from the state budget were decreased. One can agree with justice U. Ķiniš that in year 2008 new challenges were brought before the Constitutional Court and this year marks new period of development of the evaluation of Constitutional Court<sup>50</sup>. Thus, for example, in 2009 Constitutional Court received more than 4000 constitutional complaints<sup>51</sup>. Not all of them were successful and many of them were about the same problem or the request was the same. But in the period from 2008 to 2011 the Constitutional Court has made twenty-one judgments, pertaining to issues that arose under the impact of the economic crisis<sup>52</sup>. The analysis of the Constitutional Court judgments shows that only in approximately 25% of cases the Constitutional Court has recognized that the contested provisions were incompatible with the Satversme<sup>53</sup>. Thus the Constitutional Court demonstrated balanced approach deciding so called crises cases, respecting public interests and necessity to keep solvency of the state. In the meantime those decisions in solving crises cases encouraged persons to trust to the Constitutional Court more than before.

Constitutional complaint is “special” petition, because person has to follow to the special demands or requirement. And as it was noted before, it is very important to know the content of each of this rule, which has been developed in the case law of the Constitutional Court. Ignoring novelties of the case -law, petition will be rejected and case will not be initiated.

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<sup>48</sup> Statistics. Available at the Constitutional Court. Not published.

<sup>49</sup> On Compliance of Para 14, 16 and 17 of the Transitional Provisions of the Law „On Long Service Pensions of Military Persons” with Article 1, Article 91 and Article 109 of the Satversme of the Republic of Latvia: Judgement of the Constitutional Court on March 15, 2010 in the case No. 2009-88-01, para 9, [http://www.satv.tiesa.gov.lv/upload/spriedums\\_2009-88-01.htm](http://www.satv.tiesa.gov.lv/upload/spriedums_2009-88-01.htm), 2013.10.07.

<sup>50</sup> U. Ķiniš, *Role of the Constitutional Court of the Republic of Latvia against the backdrop of economic recession*, „Constitutional Law Review” V, c. 193, [http://constcourt.ge/files/Journal\\_2012\\_eng.pdf](http://constcourt.ge/files/Journal_2012_eng.pdf)

<sup>51</sup> Statistics. Available at the Constitutional Court. Not published.

<sup>52</sup> D. Amoliņa, U. Ķiniš, *Konstitucionālā kontrole valsts finanšu jautājumos Satversmes tiesas praksē*, Jurista vārds, Nr 8 (759), 26.02.2013.

<sup>53</sup> A. Rodiņa, J. Pleps, D. Amoliņa, *Public law and the economic crisis: Republic of Latvia*, <http://www.eplopublications.eu/component/virtuemart/digital-downloads/european-review-of-public-law2013-04-16-16-53-17/2013-issues/rodia-a-pleps-j-amolia-d-public-law-and-the-economic-crisis-republic-of-latvia-erpl251872013-detail.html>, 2013.12.12.

## Violation of the fundamental human rights: constitutional complaint versus *actio popularis*

In difference to other subjects a person may not contest at the Constitutional Court the compliance of a law to any of the Satversme provisions, but only with the fundamental human rights<sup>54</sup>. Or persons can stand before the Constitutional Court just in cases his/her fundamental rights are violated with the norm, which does not comply with the fundamental human rights, included in Satversme. *Actio popularis* is not allowed. Therefore as it is accepted in the case law of the Constitutional Court the notion “violates” has been incorporated into the Constitutional Court Law to dissociate the constitutional complaint from the petition for general benefit<sup>55</sup>.

Violation of the fundamental human rights is a “cornerstone” of the whole constitutional complaint. If a person cannot prove that his/her fundamental rights are violated, then he/she has no *locus standi* at the Constitutional Court. To prove violation, person has to substantiate that: the contested norm applies to such rights of the person who submits complaint, which fall within the scope of fundamental rights defined by the Satversme and that a direct infringement of the applicant’s fundamental rights exists<sup>56</sup>.

It has been recognized by the Constitutional Court, that a constitutional complaint may be submitted in cases, when, firstly, the violation of fundamental rights is direct, concrete, the contested norms affects the applicant himself and, secondly, infringes at the moment of submitting the application, i.e., the violation of a fundamental right already exists or in the presence of a totality of circumstances requiring that the case is heard right now<sup>57</sup>. Respectively, in the practice there are some cases which have been initiated where violation of fundamental rights was

<sup>54</sup> See more: A. Rodiņa, *Konstitucionālās sūdzības teorija un prakse Latvijā*, Rīga 2009, 20.–25.lpp.

<sup>55</sup> On Compliance of Items 4, 5, 6, 7, 8 and the First Sentence of Item 9 of the Saeima Presidium February 28, 2000 Regulations „On the Procedure of Compensating Expenses Occurred to the Deputies while Exercising their Authority” with Article 91 of the Republic of Latvia Satversme: Judgment of the Constitutional Court on February 22, 2002 in case No 2001-06-03, para 2.4, <http://www.satv.tiesa.gov.lv/?lang=2&mid=19>, 2013.08.10.

<sup>56</sup> On Compliance of Section 86 (3) of the Law “On Judicial Power” with Article 102 of the Satversme of the Republic of Latvia: Judgement of the Constitutional Court on 10 May 2013 in case no. 2012-16-01, para 16.3, [http://www.satv.tiesa.gov.lv/upload/Spridums\\_2012-16-01\\_ENG.pdf](http://www.satv.tiesa.gov.lv/upload/Spridums_2012-16-01_ENG.pdf), 2013.09.10.

<sup>57</sup> On Compliance of Section 179 (1) of the Credit Institutions Law with Article 105 of the Satversme of the Republic of Latvia and Section 179 (2) of the Credit Institutions Law with the first sentence of Article 92 of the Satversme of the Republic of Latvia: Judgment of the Constitutional Court on March 1, 2013, in case No. 2012-07-01, para 12, [http://www.satv.tiesa.gov.lv/upload/2012-07-01\\_Krajbanka\\_ENG.pdf](http://www.satv.tiesa.gov.lv/upload/2012-07-01_Krajbanka_ENG.pdf), 2013.12.01.

to be expected in the future or potential<sup>58</sup>. A potential violation or a violation, which is expected in the future, means that a well-founded and credible possibility exists that the application of the contested norm might cause adverse consequences for the person submitting the constitutional complaint<sup>59</sup>. Or the Constitutional Court Law requires the contested act (norm) to infringe upon the applicant's fundamental rights; however, it does not require that it should have happened in all cases, applying this act to the applicant. A person may submit a constitutional complaint regarding an unfavourable legal norm, which directly and immediately pertains to this person, but has not yet been applied to him<sup>60</sup>.

In accordance with the theory of fundamental rights, in Latvia also the legal persons of private law are recognised as subjects of fundamental rights, which grants to these persons the right to submit a constitutional complaint. However, only if this norm has infringed upon the fundamental rights of the legal person itself, not the fundamental rights of its members or owners.

A special procedure for proving the infringement has been established for the case if a legal person of private law, to be more specific, for example, an association, contests before the Constitutional Court the compliance of a norm with the right to live in a benevolent environment, enshrined in the Satversme<sup>61</sup>. Usually non-governmental institutions are submitting constitutional complaints challenging planning documents developed by the local government councils. As those planning documents are approved in the form of normative act, persons can challenge such a regulation to the Constitutional Court<sup>62</sup>. But legal person or non-

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<sup>58</sup> On Compliance of Section 13 (1) (2) of the Insolvency Law insofar as It Applies to Persons Who have Started Working as an Insolvency Procedure Administrator Pursuant to the Requirement of Section 13 of the Law „On Insolvency of Enterprises and Companies” regarding Higher Education in Economy, Management or Finance, and Para 7 of Transitional Provisions of the Insolvency Law with Article 1, Article 91 and Article 106 of the Satversme of the Republic of Latvia: Judgment of the Constitutional Court on November 22, 2011 in case No. 2011-04-01, para 9, [http://www.satv.tiesa.gov.lv/upload/judg\\_2011\\_04\\_01.pdf](http://www.satv.tiesa.gov.lv/upload/judg_2011_04_01.pdf), 2013.13.10.

<sup>59</sup> On Compliance of the First Part of Section 13 of the Law on Management of Residential Housing with Article 91 and Article 106 of the Satversme of the Republic of Latvia: Judgment of the Constitutional Court on February 18, 2010 in case No 2009-74-01, para 12.1, [http://www.satv.tiesa.gov.lv/upload/judg\\_2009-74.htm](http://www.satv.tiesa.gov.lv/upload/judg_2009-74.htm), 2013.13.10.

<sup>60</sup> On Compliance of Section 86 (3) of the Law “On Judicial Power” with Article 102 of the Satversme of the Republic of Latvia: Judgment of the Constitutional Court on 10 May 2013 in case no. 2012-16-01, para 22, [http://www.satv.tiesa.gov.lv/upload/Spridums\\_2012-16-01\\_ENG.pdf](http://www.satv.tiesa.gov.lv/upload/Spridums_2012-16-01_ENG.pdf), 2013.13.10.

<sup>61</sup> Article 115 of the Constitution provides: “The State shall protect the right of everyone to live in a benevolent environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment.”

<sup>62</sup> S. Meiere, *Ilgspējīgas attīstības princips Satversmes tiesas praksē. Politika un tiesības. Tiesību un juridiskās prakses ilgspējīga attīstība*, Rīga 2012, c. 34.

governmental organization has to prove also violation of its fundamental rights, as the Constitutional Court Law does not allow submitting *actio popularis*. In order to establish whether the contested legal act infringes the rights of the legal person to a benevolent environment Constitutional Court is using special test<sup>63</sup>. The first, the aims of activities of the legal person, which could be defined in its statutes, are assessed. It means that in the statutes there should be founded the aim of such non-governmental organization: protection of the environment. The second, legal person should be established in accordance with all requirements of legal acts. The third, in order to balance the necessity for realization of substantial economic interests and the rights of a person to live in a benevolent environment, one has to *inter alia* verify whether person who challenges legal regulation has participated in drafting and adoption of the contested act, for instance, a land use plan, as far as legal acts provide for such possibility and it has been possible to implement it in practice. This doctrine or special test was developed mainly based to international document – Aarhus Convention of 25 June 1998 on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters which was ratified by Latvian parliament on 18 April 2002 and also to the special character and content of the environmental law<sup>64</sup>. But not all judges of the Constitutional Court are in the same opinion of the *locus standi* of such a legal persons and the system of testing their violated rights to live in the benevolent environment<sup>65</sup>. But – in the meantime there are some cases where legal personas has used this doctrine developed by the Constitutional Court, thus giving a possibility to stand before the Constitutional Court also so called interested persons.

## Principle of subsidiarity

In Latvia constitutional complaint is a subsidiary legal mean. That means that first of all person has to use other legal means before submitting constitutional complaint to the Constitutional Court.

<sup>63</sup> On Compliance of the Part of Riga Land Use Plan 2006–2018 Covering the Territory of the Freeport of Riga with Article 115 of the Satversme [Constitution] of the Republic of Latvia: Judgment of the Constitutional Court on 17 January 2008 in case No. 2007-11-03, para 13, [http://www.satv.tiesa.gov.lv/upload/judg\\_2007\\_11\\_03.htm](http://www.satv.tiesa.gov.lv/upload/judg_2007_11_03.htm), 2013.08.10.

<sup>64</sup> *Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības*, Rīga 2013, 734. lpp.

<sup>65</sup> Dissenting opinion of the Constitutional Court Justices Kaspars Balodis and Viktors Skudra in the Case No. 2007-11-03 On Compliance of the Part of Riga Land Use Plan 2006–2018 Covering the Territory of the Freeport of Riga with Article 115 of the Satversme [Constitution] of the Republic of Latvia, [http://www.satv.tiesa.gov.lv/upload/opinion\\_2007-11-03.htm](http://www.satv.tiesa.gov.lv/upload/opinion_2007-11-03.htm), 2013.13.10.

To understand the content of the principle of subsidiarity, person has to follow some basic principles.

The first, principle of subsidiarity means that person has to use all national legal remedies or those, which are founded, by the state in Latvia. The second, all legal remedies shall be used till the end. Or person has to receive the last non-appealable decision. The third, in the recent case law has been explained that it is necessary to exhaust real and effective options to protect violated fundamental rights. Or principle of subsidiary is not demanding to apply any theoretically feasible legal remedies that are somehow related with the situation of the applicants<sup>66</sup>. And this finding seems only logical, since the requirement to use the general legal remedies cannot be perceived and applied automatically. Or, in assessing the application, the special circumstances of each case must be taken into consideration. This has been the reason why the Constitutional Court quite recently has explained the concept “real and effective options”, stating that first of all it must be assessed, whether a real possibility exists to achieve, by using the concrete legal remedy, such substantive result, which would prevent the possible violation of fundamental rights. If an imperative norm has been worded clearly, the applicant is in a situation, typical of the scope of the norm, and no doubts exist regarding the application of the norm in the specific case, the Constitutional Court Law does not require exhausting the formally existing possibilities for appealing against an administrative act, if the application of these obviously would not lead to a decision favourable for the person. The Constitutional Court has likewise noted that the obligation to exhaust real and effective possibilities for defending the violated fundamental rights applies to such legal remedies, which are procedurally accessible to the person<sup>67</sup>.

To ensure, *inter alia*, effective protection of fundamental rights, the Constitutional Court Law envisages the so-called legal exceptions to the principle of subsidiarity encoded into the law. I.e., if the person can prove that adjudication of a constitutional complaint (application) is of a general interest or protection of rights with general remedies for protection of rights cannot avert substantial harm for the applicant, the Constitutional Court may decide to adjudicate the complaint (application) prior to all general remedies for protection of rights being used.

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<sup>66</sup> On Compliance of Section 59.5 of the Credit Institution Law with Article 1 and Article 105 of the Satversme of the Republic of Latvia: Judgment of the Constitutional Court on 19 October 2011, in case No. 2010-71-01, para 14, [http://www.satv.tiesa.gov.lv/upload/Judgment%202010-71-01-parex\\_ENG.pdf](http://www.satv.tiesa.gov.lv/upload/Judgment%202010-71-01-parex_ENG.pdf), 2013.13.10.

<sup>67</sup> On Compliance of the first part of Section 257 of the Latvian Administrative Violations Code with Article 105 of the Satversme of the Republic of Latvia: Judgment of the Constitutional Court on 24 October 2013, in case No. 2012-23-01, <http://www.satv.tiesa.gov.lv/?lang=2&mid=19>

## Time limit

To protect interests of the second party, to solve the dispute in a reasonable term, and to ensure legal order in the state<sup>68</sup>, person has to observe term limitation to submit a constitutional complaint. It's been recognized, the more the person tolerates violation of his/her rights, the less interested the person is in the protection of constitutional rights<sup>69</sup>. Because of above-mentioned reasons, constitutional complaint may be submitted to the Constitutional Court within six months after coming into effect of the decision of the last authority. If it is not possible to protect the fundamental rights established in the Constitution by applying general legal remedies, it shall be possible to submit a constitutional complaint within six months from the date of infringement of the fundamental rights.

Calculation of the term is not complicated if there are other legal remedies. Observation of the term limit is more complicated if there are no other legal means. In the practice this issue was not clear, but by deciding some actual cases, Constitutional Court gave guidelines for calculation of the term in such situations. Constitutional Court explained, that "in those cases, when the possible violation of fundamental rights arises already at the moment when the legal norm comes into effect or at the moment, when the person for the first time comes into a situation, in which the concrete legal norm could be applied to him, the term of six months, defined by the second sentence of Section 19<sup>2</sup>(4) of the Constitutional Court Law, starts at the same moment. If a person does not abide by this term, the person loses the right to apply to the Constitutional Court"<sup>70</sup>. But in the meantime Constitutional Court also noted, that a person has the right to submit an application to the Constitutional Court also in case, if he could prove that during

<sup>68</sup> On the Conformity of Article 19<sup>2</sup> (the fourth part) of the Constitutional Court Law with Articles 91 and 92 of the Republic of Latvia Satversme (Constitution): Judgement of the Constitutional Court on November 26, 2002 in case No.2002-09-01, para 1, <http://www.satv.tiesa.gov.lv/?lang=2&mid=19>, 2013.13.10.

<sup>69</sup> On Compliance of Section 86 (3) of the Law "On Judicial Power" with Article 102 of the Satversme of the Republic of Latvia: Judgement of the Constitutional Court on 10 May 2013 in case no. 2012-16-01, para 22.3, [http://www.satv.tiesa.gov.lv/upload/Spridedums\\_2012-16-01\\_ENG.pdf](http://www.satv.tiesa.gov.lv/upload/Spridedums_2012-16-01_ENG.pdf), 2013.13.10.

<sup>70</sup> On the Compliance of the third part of Section 567 of the Civil Procedure Law, insofar as it does not envisage covering the remuneration for the duties of office performed by a sworn bailiff from the state budget resources, when the enforcer of the debt is exempt from paying the costs of enforcing the judgement, with Article 107 of the Satversme of the Republic of Latvia and the compliance of Paragraph 8, 9, 10, 11 and 12 of the Cabinet of Ministers Regulation of 30 August 2011 No. 670 "Regulation on the amount of expenditure necessary for performing enforcement activities and the procedure for paying it" with Article 64 and Article 105 of the Satversme of the Republic of Latvia: Judgement of the Constitutional Court on June 27, 2013 in case no. 2012-22-0103, para 12.1, <http://www.satv.tiesa.gov.lv/?lang=2&mid=19>

the last six months prior to submitting the application objective changes to the legal or actual circumstances could be identified, because of which the person feels a violation following from the concrete legal norm<sup>71</sup>. This allows concluding that on the basis of the meaning and essence of the constitutional complaint as a measure for protecting subjective fundamental rights, the calculation of the term has to be connected with a person's feelings and the ability to prove that the violation of the fundamental rights occurred at a moment, which is understandable by the same applicant.

### **Constitutional Complaint as a real instrument for protection of the violated fundamental human rights: decisions *ex tunc***

Article 85 of the Satversme does not define the moment when the legal provision becomes invalid. In accordance with the third part of Section 32 of the Constitutional Court Law a legal provision (act), which has been declared by the Constitutional Court as non-compliant with a norm of a higher legal force, shall be regarded as not in effect from the day of publication of the Constitutional Court judgment, unless the Constitutional Court has determined otherwise<sup>72</sup>. The other possibility for a Constitutional Court is to judge that the contested provisions may become invalid also from the day it was adopted (*ex tunc*) or on another day (*ex tunc*) or the date may set in the future (*ex nunc*)<sup>73</sup>.

The Constitutional Court has declared that the law not only authorizes the Constitutional Court, but also places responsibility upon it, so that its judgments in the social reality would ensure legal stability, clarity and peace<sup>74</sup>. To reach those aims, Constitutional Court observes sever principles to decide on the moment when the legal norm loses its legal force. And those principles are: the principle of justice, the principle of legality, the principle of separation of power and the principle – trust in law<sup>75</sup>. Or the Constitutional Court must, to the extent

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<sup>71</sup> Ibid. para 12.3.

<sup>72</sup> About practice in another countries see: P.V. Zoltan, B. Karoly, *III. Enforcement of the Constitutional Court decisions (Romania)*, „Constitutional Law Review” V, p. 250-265, [http://constcourt.ge/files/Journal\\_2012\\_eng.pdf](http://constcourt.ge/files/Journal_2012_eng.pdf)

<sup>73</sup> For a comparative aspects see A. R. Brewer – Carías, *Constitutional courts as positive legislators: a comparative law study*, Cambridge 2011, c. 94–115.

<sup>74</sup> On Compliance of the second sentence of Paragraph 7 and Paragraph 17 of the Transitional Provisions of the Law “On Judicial Power” (in the wording of 14 November, 2008 of the Law) to Articles 1, 83 and 107 of the Satversme of the Republic of Latvia: Judgment of the Constitutional Court on January 18, 2010 in case No 2009-11-01, para 30, [http://www.satv.tiesa.gov.lv/upload/judg\\_2009\\_11.htm](http://www.satv.tiesa.gov.lv/upload/judg_2009_11.htm), 2013.13.10.

<sup>75</sup> On Conformity of the Joint Interpretation by the Ministry of Finance (No. 047/475 Certified on April 30, 1993) and by the Ministry of Economic Reforms (No. 34–1.1.–187, Certified

possible, provide that the situation, which might develop after the moment, when the contested norms are recognized invalid, until the moment when the legislator has adopted new norms, would not cause infringements to persons' fundamental rights guaranteed by the Satversme, and would not cause significant harm to the interests of the State and society<sup>76</sup>.

Retroactive (*ex tunc*) decisions should be regarded as an exception<sup>77</sup>. But the retroactive force of the decisions is of special importance in deciding cases, which have been initiated by submitted constitutional complaints. And it is because that decision *ex tunc* might be the only possibility to safeguard a person's fundamental rights. Therefore the Constitutional Court quite frequently, upon declaring a contested provision incompatible with the Satversme and invalid, sets a special condition that with regard to the applicant the provision becomes invalid as of the day of its adoption<sup>78</sup>. For example, in several "economic crises cases" in 2008–2011 Constitutional Court decided that unconstitutional norm should lose its legal force from the moment of its adoption<sup>79</sup>. To stress the importance of the Constitutional Court in the system of protection of fundamental rights, it should be explained, that based on decisions *ex tunc* Constitutional Court also decides on execution of its judgments. For example in one of pension cases, Constitutional Court ruled: as the disputed legal norms were recognized as null and void from

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on May 4, 1993) "On Revaluation of Fixed Assets by Enterprise and Entrepreneur Company Accountancy" and Interpretation by the Ministry of Economy No.3–31.1–231 of December 28, 1993 "On the Procedure of Application of the Joint Interpretation by the Ministry of Finance and the Ministry of Economic Reforms "On Revaluation of Fixed Assets by Enterprise and Entrepreneur Company Accountancy" with the law "On the Procedure of Privatization of Objects (Enterprises) of the State and Municipal Property" as well as other laws: Judgment of the Constitutional Court on March 11, 1998 in case No.04–05(97), para 5, <http://www.satv.tiesa.gov.lv/?lang=2&mid=19>, 2013.13.10.

<sup>76</sup> On Compliance of Section 43 6 (3), (5), (7) and (8) of Road Traffic Law with Article 92 of the Satversme of the Republic of Latvia: Judgment of the Constitutional Court on 28 March, 2013 in case No 2012-15-01, para 19, [http://www.satv.tiesa.gov.lv/upload/spriedums\\_2012-15-01\\_ENG.pdf](http://www.satv.tiesa.gov.lv/upload/spriedums_2012-15-01_ENG.pdf), 2013.13.10.

<sup>77</sup> A. Rodiņa, *Konstitucionālās sūdzības teorija un prakse Latvijā*, Rīga 2009, 146.lpp.

<sup>78</sup> On the Compliance of the Cabinet of Ministers November 11, 2005 Regulations No. 17 "Amendments to the Law «On Coercive Expropriation of Real Estate for State or Public Needs»" and June 9, 2005 Law "Amendments to the Law «On Coercive Expropriation of Real Estate for State or Public Needs»" with Articles 1 and 105 of the Republic of Latvia Satversme: Judgment of the Constitutional Court on December 16, 2005 in case No 2005-12-0103, <http://www.satv.tiesa.gov.lv/?lang=2&mid=19>, 2013.09.10.

<sup>79</sup> On Compliance of Para 8 of the Transitional Provisions of the Law on Long Service Pensions for Public Prosecutors with Article 1, Article 91 and Article 109 of the Satversme of the Republic of Latvia: Judgement of the Constitutional Court on 21 April, 2010 in case No. 2009-86-01, para 17, [http://www.satv.tiesa.gov.lv/upload/judg\\_2009-86-01.htm](http://www.satv.tiesa.gov.lv/upload/judg_2009-86-01.htm), 2013.10.11; other examples see Rodiņa A., *Republic of Latvia* (Chronicles of Constitutional Law in 2010), "European Review of Public Law" Vol. 23, 4/2011, Winter, c. 1318–1321.

the moment of its adoption, the state had the duty to disburse the deducted part of the pensions<sup>80</sup>. Immediately after judgement of the Constitutional Court came into force the legislator started disbursement of the unlawfully deducted pensions, demonstrating respect towards the judgements of the Court and their enforcement.

Constitutional Court can also decide that the contested legal norm can lose its legal force from the day violation of the fundamental rights occurred. For example, in a case where Civil Procedure Law norms insofar as these norms did not provide that a court or a judge shall decide on full or partial exemption of a person from security fee for a cassation complaint was evaluated, Constitutional Court recognized unconstitutional legal regulations as invalid in relation to the applicant as from 24 October 2007 or the moment when his fundamental rights were violated<sup>81</sup>.

During 16 years of the operation of the Constitutional Court it has initiated and reviewed 513 cases. But not the amount of cases shows the importance of the Constitutional Court. The author has to agree with ex chairmen of the Constitutional Court professor A. Endziņš, that in the agenda of the Constitutional Court there are not important cases and less important cases, because the result of a case is important for every applicant<sup>82</sup>. Every case that is adjudicated at the Constitutional Court plays important role in development of effective democracy and state ruled by law.

## **ABSTRACT**

The Constitutional Court in Latvia safeguards the Satversme (Constitution) ensuring priority of the constitutional regulation. Justice at the Constitutional Court is administrated by solving disputes regarding compatibility of legal provisions with the provisions of higher legal force, which can be realized in *a posteriori* and also *a priori* form. As it is not allowed to initiate case *ex officio*, procedure at the Constitutional Court can be started by receiving application either from so called abstract persons, courts, local government

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<sup>80</sup> On the compliance of Article 2, Paragraph One of the Law “On State Pension and State Allowance Disbursement in the Period from 2009 to 2012” with Articles 1 and 109 of the Constitution of the Republic of Latvia and on the compliance of Article 3, Paragraph One of the above Law with Articles 1, 91, 105 and 109 of the Constitution of the Republic of Latvia: Judgment of the Constitutional Court on 21 December, 2009 in case No. 2009-43-01, <http://www.satv.tiesa.gov.lv/upload/Judgment%202009-43.htm>, 2013.12.12.

<sup>81</sup> On Compliance of the First and the Fourth Part of Section 458 of the Civil Procedure Law with Article 91 and Article 92 of the Satversme (Constitution) of the Republic of Latvia: Judgment of the Constitutional Court on 20 November, 2008 in case No. 2008-07-01, [http://www.satv.tiesa.gov.lv/upload/judg\\_2008-07-01mf37.htm](http://www.satv.tiesa.gov.lv/upload/judg_2008-07-01mf37.htm), 2013.10.10.

<sup>82</sup> A. Endziņš, *Satversmes tiesai nav mazsvarīgu lietu*, “Jurista vārds” Nr 50 (355), 28.12.2004.

councils and also persons who can submit constitutional complaints if a legal norm violates fundamental human rights of a submitter. Constitutional complaint cannot be abstract: person has to prove violation of fundamental human rights, principle of subsidiarity and term.

*Родня Анига*

### **КОНСТИТУЦИОННЫЙ СУД ЛАТВИЙСКОЙ РЕСПУБЛИКИ: КОНСТИТУЦИОННОЕ РЕГУЛИРОВАНИЕ, КОМПЕТЕНЦИЯ, СОДЕРЖАНИЕ ЗАЯВЛЕНИЙ**

Конституционный суд Латвийской Республики, защищая Конституцию (Satversme) гарантирует приоритет конституционного регулирования. Правосудие в Конституционном суде осуществляется, разрешая споры о соответствии правовых норм с нормами высшей юридической силы в форме *a posteriori* и *a priori*.

Конституционный суд не имеет права возбуждать дела по собственной инициативе, поэтому, процесс в суде может быть возбуждён по заявлению так называемых абстрактных персон – конституционных органов, судов, Думы, самоуправления, а также лиц, которые могут подать конституционную жалобу о нарушении прав человека правовыми нормами. В конституционной жалобе необходимо обосновать ущемление определенных основных прав заявителя, а также надо соблюдать принцип subsidiarity и срок подачи заявлений.

**КЛЮЧЕВЫЕ СЛОВА:** *Конституционный суд, конституция, компетенция, конституционная жалоба, основные права человека*

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