

COMMENTS ON THE DRAFT LAW ON THE CONSTITUTIONAL COURT OF LATVIA (CDL(1994)020)

by
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I. General Remarks

- a) It is proposed to insert into the text of the Draft also "impartiality principle" consists:
- a, in the right for justice to reject his participation in the proceedings if the requirement of the law are met
 - b, the rights for parties to object against the participation of the justice grounds on impartiality principle

If this suggestion will be accepted it is necessary to supplement the text of the Draft by following provisions:

- aa) to define the reasons which excludes the participation of the justice in the proceedings to respect impartiality principle (the list of reasons cannot be exhaustive)
- bb) to define the moment when the parties can present their objection concerning the impartiality of justice (Justices)
- cc) to define organ (either plenary session or three justices tribunal) who take the final decision concerning the impartiality of the justice.
- b) The Draft by its provision of Article 5. par 2. excludes personnel continuity in the practice of Constitutional Court. It is guaranteed only partly through the application of par. 3 Article 5. The problem is whether the purpose of the protection of constitutionality in Latvia needs to maintain the personnel (and in the same time professional) continuity in the practice of Constitutional Court.

II. Specific remarks to concrete articles

Article 1. The Constitutional Court of the Republic of Latvia

It is proposed to formulate expressly the purpose (raison d'etre) of the creation of Constitutional Court - for example: "Constitutional Court ... protect the constitutionality, protect the integrity of constitutional principles etc."

Article 6. Resignation Prior to the Expiry of Mandate

(1) It seems more appropriate to send written resignation to this state organ (parliament) who according to article 4. has approved (elected) the justices of Constitutional Court. The cabinet proposes only the candidates and has no direct relations with justices after their approval by the Parliament.

Article 7. Revocation for tenure

Par.1 It is proposed precise the term during which the justice is unable to continue his work due to his condition of health (f.e. more than twelve months)

Article 8. Approval of a New Justice

Article 8 deals only with the competence of the Parliament. What about competences of the Cabinet as regards as the candidates? Are they the same conditions for approval of justice as in article 4? If they are the same it is useful to precise the wording of the article 8 in this sense.

Article 18. Petition Acceptance

In the text of the Draft it is possible to identify the exact time limit for doing concrete measures before the Constitutional Court of Latvia. It is, therefore, proposed to insert into par 2. article 5. time limit also for writing reply of the party/parties: "with description of the actual circumstances of the case and the legal grounds."

Article 18. - Article 20. Preparation of the Case for Trial

Article 18 deals "inter alia" with the nomination of the "rapporteur" for the "admissibility stage" of proceedings before Constitutional Court of Latvia. Article 20. par 1. says also about the nomination of justice/justices: "to prepare the case for trial". It seems reasonable (to respect the needs the processual economy as well) to nominate the same rapporteur also for preparation the case for trial.

Article 26. Person Authorized for the Procedure

It is suggestion for next discussion if the proceedings before Constitutional Court does not require mandatory presence of the legal counsel of the party/parties.

Article 29. Effectiveness and content of the decision

It is proposed to insert (after par. 3) new provision obliging the legislative powers to conform the laws or other kinds of legal regulations with the Constitution, International Treaties, law within the fixed time limit.

Article 48. Internal Legal Regulations of the Constitutional Court

It is proposed that Constitutional Court will elaborate its own internal legal regulations and not any other state organ.