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Questionnaire

Reply by the Constitutional Court of Latvia

A. Court Description (a short presentation of the Court)

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CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Introduction

The idea that Latvia needed an institution for realising constitutional control appeared in the 1930s, when the Member of the *Saeima* (Parliament) *Pauls Šūmanis* mentioned it in his article "Eight Years of the *Satversme* (Constitution) of Latvia". He pointed out that separation of powers "shall be ensured only if there is an independent court chamber which may control whether the decisions of the parliament and executive institutions comply with the *Satversme*, as well as repeal the decisions when the necessity arises". Upholding the idea, on 8 May 1934 the Member of the *Saeima* *Hermanis Štegmanis* submitted the motion to supplement the *Satversme* with Article 861, envisaging the creation of a specific State Court, granting it the mandate to examine compliance of the acts, passed by the State President and the Cabinet of Ministers, with the *Satversme*. Unfortunately, this motion did not receive the required 2/3 majority vote.

At the time, when democracy was restored in Latvia, the necessity to establish the Constitutional Court was not questioned. Item 6 in the Declaration of 4 May 1990 "On the Renewal of the Independence of the Republic of Latvia" envisaged "during the transition period, to consider possibility to implement those constitutional and other legislative acts of the Latvian SSR, which are in effect in Latvia at the moment of adopting this decision, insofar as they do not contradict Articles 1, 2, 3 and 6 of the Republic of Latvia *Satversme*. Conflicts in the implementation of legislative acts shall be resolved by the Constitutional Court of the Republic of Latvia".

In December of 1992 the Law "On the Judicial Power", passed by the Supreme Council, envisaged creation of the Constitutional Supervision Chamber at the Supreme Court. However, this norm was never implemented.

In July of 1993 the 5th *Saeima* commenced its activities. The government, established by it, began elaborating the Constitutional Court Draft Law with the aim of creating an independent institution - the Constitutional Court. In February of 1994 the Cabinet of Ministers approved it and in March the draft law was submitted to the *Saeima*. The elaboration of the draft law was started by the 5th *Saeima* and

was continued by the 6th *Saeima*; the *Saeima* Legal Affairs Committee improved it; likewise, amendments to the *Satversme* of the Republic of Latvia were drafted. Both draft laws were passed only in June 1996.

Article 85 of the *Satversme* of the Republic of Latvia in the wording adopted on 11 June 1996 is still in effect. It reads as follows: "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 appointment of judges to the Constitutional Court shall be confirmed by the *Saeima* for the term provided for by law, by secret ballot with a majority of the votes of not less than fifty-one members of the *Saeima*".

The above Article is incorporated into Chapter VI of the *Satversme* under the title "Courts". Thus, the Constitutional Court is an institution of the judicial power, even though it is not included in the legal system of general jurisdiction.

I. Basic texts

- Article 85 of the *Satversme* (Constitution of the Republic of Latvia).
- Constitutional Court Law adopted by the *Saeima* on 5 June 1996 (Amendments by Laws adopted by the *Saeima* on 11 September 1997, 30 November 2000, 19 June 2003, 15 January 2004, 18 October 2007, 6 March 2008, 12 December 2008, 1 December 2009, 10 December 2009, 16 December 2010 and 19 May 2011).
- Rules of Procedure of the Constitutional Court of the Republic of Latvia passed at the plenary session of the Justices of the Constitutional Court on 30 January 2001.

II. Powers

According to the Law, the Constitutional Court reviews cases concerning:

- 1) compliance of laws with the Constitution;
- 2) compliance of international agreements signed or entered into by Latvia (even before the *Saeima* has confirmed the agreement) with the Constitution;
- 3) compliance of other normative acts or parts thereof 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 Speaker of the *Saeima* and the Prime Minister with the law;
- 5) compliance with the law of Regulations by which a minister, authorized by the Cabinet of Ministers, has suspended binding regulations issued by a local government council;
- 6) compliance of the national legal norms with the international agreements entered into by Latvia, which are not in conflict with the Constitution.

The following have the right to submit an application to initiate a case:

1. Regarding compliance of laws and international agreements signed or entered into by Latvia with the Constitution, compliance of other normative acts or parts thereof with the legal norms (acts) of higher legal force, as well as compliance of national legal norms of Latvia with the international agreements entered into by Latvia, which are not in conflict with the Constitution:

- 1) the President;
- 2) the *Saeima*;
- 3) not less than twenty deputies of the *Saeima*;
- 4) the Cabinet;
- 5) the Prosecutor General;
- 6) the Council of the State Audit Office;
- 7) a local government council;

- 8) the Ombudsman, if the authority or official, who has issued the disputed act, has not rectified the established deficiencies within the time period specified by the Ombudsman;
- 9) a court, on adjudicating a civil matter, criminal matter or administrative matter;
- 10) the Land Register Office judge in performing an entry of immovable property or associated corroboration of rights thereof in the Land Register
- 11) a person in the case of the fundamental rights being infringed upon as defined in the Constitution; or
- 12) the Judicial Council in the frameworks of jurisdiction established by law.

2. Regarding the compliance of other acts (with an exception of administrative acts) of the *Saeima*, the President, the Speaker of the *Saeima* and the Prime Minister with the Constitution and other laws:

- 1) the President;
- 2) the *Saeima*;
- 3) not less than twenty deputies of the *Saeima*;
- 4) the Cabinet; and
- 5) the Judicial Council in the frameworks of jurisdiction established by law.

3. Regarding compliance with the law of an order, by which a minister, duly authorized by the Cabinet of Ministers, has rescinded the binding regulations, issued by a local government council, - the relevant local government.

The application of a person, whose fundamental rights established by the Constitution have been violated, is called the constitutional claim. There are special provisions regarding submission of the constitutional claim. The Law provides that 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 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 in the absence of other means. A constitutional claim may be submitted to the Constitutional Court within six months from the date of the decision of the last institution becoming effective. 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 (application) to the Constitutional Court within six months from the date of infringement of the fundamental rights. If the review of the constitutional claim is of general significance 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 decide to review the claim (application) before all the other legal means have been exhausted.

III. Composition and organisation

1. Composition

The Constitutional Court of the Republic of Latvia consists of seven justices approved by the Parliament for a term of ten years. Three justices of the Constitutional Court are approved upon the proposal of not less than ten members of the *Saeima*, two upon the proposal of the Cabinet of Ministers, and two justices of the Constitutional Court upon the proposal of the Plenary Session of the Supreme Court. The Plenary Session of the Supreme Court may select candidates for the office of a justice of the Constitutional Court only among judges of the Republic of Latvia.

The justices of the Constitutional Court must meet the following requirements laid down by the law: a person is a citizen of the Republic of Latvia; has an impeccable reputation; has reached 40 years of age, on the day when the proposal regarding the confirmation as a justice of the Constitutional Court was submitted to the Presidium of the *Saeima*; 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, has at least 10 years of service in a legal speciality or in a judicial speciality 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. According to the Law, lists of nominees for the office of justices of the Constitutional Court shall be published in the newspaper "*Latvijas Vēstnesis*" (official gazette) not later than five days after their submission to the *Saeima* Presidium.

A justice of the Constitutional Court after approval by the *Saeima* takes up his/her duties of office after swearing the oath before the President of the State. If a judge of another court, who has already sworn the oath, is chosen as a justice of the Constitutional Court, he/she shall not swear the oath again, and shall take up the duties of his/her office immediately after the approval has been given.

There are restrictions on work and political activities of the justices of the Constitutional Court, i.e. justices may not fill another office or have other paid employment except in a teaching, scientific and creative capacity. A justice must not be a Member of Parliament or a local government council. The office of a justice of the Constitutional Court is incompatible with membership in a political organisation (party) or association. A justice of the Constitutional Court may be a member of other public organisations or associations: however, he/she must not use this right in such a way as to harm their dignity and reputation as a justice, the independence of the Court, and impartiality.

The Constitutional Court and justices act independently in fulfilling their duties and are bound only by law. Direct or indirect interference with the actions of the Constitutional Court in relation to the activity of the justice is not permissible. The Constitutional Court judge is inviolable: a justice of the Constitutional Court may not be arrested or prosecuted on criminal charges without the consent of the Constitutional Court, and he/she may be detained, forcibly held and subjected to a search only with the consent of the Constitutional Court.

A justice of the Constitutional Court may be subject to disciplinary proceedings for an administrative violation, failure to perform his/her duties, inappropriate conduct, etc. The Constitutional Court adopts decisions in disciplinary cases by a majority vote.

If the Constitutional Court has agreed to the prosecution of a justice of the Constitutional Court on criminal charges, the authority of this justice shall be suspended until the time the decision in the relevant case comes into legal effect or the relevant criminal charges are dismissed. If a justice of the Constitutional Court is subject to disciplinary proceedings because he/she has committed an act incompatible with the status of a justice, the Constitutional Court may suspend the authority of this justice until the completion of the investigation, but not for longer than one month.

A justice of the Constitutional Court may be released from office by the decision of

the Constitutional Court, if he/she is unable to continue working because of reasons of health. A justice of the Constitutional Court is removed from office, if he/she is convicted of a crime and the judgment has come into legal effect. A justice of the Constitutional Court may be released from office by the Constitutional Court decision, if he/she has broken restrictions concerning other paid employment and participation in public affairs, has committed a shameful act, which is incompatible with the status of a judge, or regularly fails to perform his/her duties of office and has been charged with disciplinary liability in this regard.

2. Procedure

According to Section 26 (1) of the Constitutional Court Law "[t]he procedure for reviewing cases is provided for by this Law and the Rules of Procedure of the Constitutional Court. Envisaging of procedural terms and procedural sanctions - fines shall be carried out in accordance with the rules of the Civil Procedure. Other procedural issues, not regulated in the Constitutional Court Law and the Rules of Procedure of the Constitutional Court, shall be determined by the Constitutional Court".

The application must be submitted to the Constitutional Court in written form. The Panel, consisting of three justices, examines the application and takes the decision to initiate a case or refuse to initiate it. The Panel is elected for a year by an absolute majority vote by full membership of the Court.

The Panel reviews cases in closed sessions, with only the members of the Panel participating. If it is necessary the members of the Panel may invite the applicant, the employees of the Constitutional Court or other persons to attend the session. When reviewing the applications the Panel has the right to refuse initiating a case, if:

- 1) the case is not within the jurisdiction of the Constitutional Court;
 - 2) the applicant is not entitled to submit the application;
 - 3) the application does not comply with the requirements of Articles 18 or 19-19.3 of the Constitutional Court Law;
 - 4) an application is submitted regarding a claim that has already been adjudicated;
- or
- 5) legal substantiation or the facts included in the application has not essentially changed compared to previous application, in respect of which the Panel has already adopted a decision.

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 claim.

The Panel adopts the decision to initiate the case or to refuse initiating it within a month of receiving the submitted application. In complicated cases the Constitutional Court may adopt the decision to extend this term to two months. After the case is initiated, the Chairperson of the Constitutional Court shall ask one of the justices to prepare it for adjudication.

The case shall be prepared not later than within five months. In especially complicated cases the Constitutional Court in the body of three justices at the assignment sitting may adopt a decision to extend this term, but not more than by two months.

The preparation of the case shall be completed by a decision of the Chairperson of the Constitutional Court to forward the case for review, appointing the body of the Court session and setting the time and place for assignment sitting.

The Constitutional Court in its full membership shall adjudicate matters regarding

- 1) compliance of laws with the Constitution;
- 2) compliance of other acts of the *Saeima*, the Cabinet, the President, the Speaker of the *Saeima* and the Prime Minister, except for administrative acts, with

the law;

- 3) compliance of Latvian national legal norms with those international agreements entered into by Latvia that are not in conflict with the Constitution
- 4) compliance of regulatory enactments of the Cabinet with the Constitution;
- 5) compliance of international agreements signed or entered into by Latvia (also until the confirmation of the relevant agreements in the *Saeima*) with the Constitution; and
- 6) compliance of other normative acts or parts thereof with the Constitution.

Other cases are reviewed by three judges of the Constitutional Court.

If the entire Constitutional Court reviews a case, it includes all the justices of the Constitutional Court, who are not excused from participating in the Court session because of ill-health or other justified reasons. In this case, there must be at least five justices of the Constitutional Court.

The session shall be chaired by the President of the Constitutional Court or his/her deputy. If a case is reviewed by three justices of the Constitutional Court, the participating judges are selected by the President of the Constitutional Court, and these justices shall elect the Chairperson of the session from among themselves.

No justice of the Constitutional Court may refuse to take part in a Court session.

There are oral Court proceedings and Court proceedings in writing. 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. The decision to hold Court proceedings in writing is adopted at the preparatory meeting by the Court.

Oral sessions of the Constitutional Court shall be open except in cases when this is contrary to the interests of protecting state secrets, commercial secrets, as well as protecting the inviolability of the private life of a person.

The parties to the case - the applicant as well as the institution or official who issued the contested act - may perform procedural actions at the Constitutional Court himself/herself or be represented by his/her respective representative. The parties to the case may employ the assistance of a sworn advocate, but they are not obliged to do so.

Following a session of the Constitutional Court, the justices meet to reach a decision. The decision is reached by a majority vote in the name of the Republic of Latvia. The justices may vote only "for or against". In the case of a tied vote, the Court reaches a decision that the disputed legal norm (act) complies with the legal norm of higher rank.

The judgment shall be reached not later than 30 days after the Constitutional Court session. The President of the Court signs the judgment. A justice, who has voted against the opinion given in the judgment, shall present his/her individual opinion in writing, which is attached to the case file, but is not announced at the Court session.

The decision of the Constitutional Court is published in the official gazette "*Latvijas Vēstnesis*" not later than five days after its pronouncement. The Constitutional Court publishes the collection of decisions of the Constitutional Court, which comprises all decisions in full, including the dissenting opinions of justices.

IV. Nature and effects of decisions

The decision of the Constitutional Court is final. It comes into effect at the time of its pronouncement. A decision of the Constitutional Court is binding on all State and municipal institutions, offices and officials, including the courts, also natural and legal persons.

Any legal norm (act), which the Constitutional Court has proclaimed 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.

If the Constitutional Court finds any international agreement signed or entered into by Latvia to be incompatible with the Constitution, the Cabinet of Ministers is immediately obliged to see to it that the agreement is amended, denounced or suspended or the accession to that agreement is withdrawn.

B. Social Integration

1. Challenges of social integration in a globalised world

1.1. What challenges has your Court encountered in the past, for example in the field of asylum law, taxation law or social security law?

In recent years the greatest challenge in the field of social rights was the cases that had to be examined during the period of economic recession, when the State's limited financial possibilities had to be balanced with public interests, meeting the commitments that the State had taken on *vis-à-vis* society and each individual. The cases concerning decrease of pensions are the most important.

(Judgment No. 2009-43-01, 21.12.2009., in the CODICES database: LAT-2009-3-005)

Under the circumstances of economic recession, when assessing compliance of a contested provision with the Constitution and the general legal principles, the Constitutional Court has introduced "socially responsible solution" as a criterion. Namely, the Constitutional Court assesses whether the solution selected by the legislator is socially responsible. According to the Constitutional Court, a socially responsible solution is such solution that results in balancing of legal interests of certain persons with interests of the entire society. Therefore measures selected by the legislator to ensure a lenient transition period are assessed in conjunction with the necessity to ensure balance between economic possibilities of the state and welfare of the entire society. A socially responsible solution under the current conditions can be based not only on establishment of a lenient transitional period to a new legal regulatory framework but also on the fact that, along with amendments into normative acts, a person is ensured the possibility to exercise those rights that the State has already granted based on financial possibilities of the state.

As from 2009 to 2011, all cases on the rights to social security were related with the economic crisis, namely, norms adopted under circumstances of economic crisis were contested. Consequently, the Constitutional Court assessed actions taken by the state under circumstances when income into the state budget has reduced and it was necessary to reduce expenses from the basic budget and the social budget, provided that actions taken by the legislator are urgent, co-ordinated and successful.

The Constitutional Court recognized that the minimum amount of social security guaranteed to a person is impacted by economic situation of the state and resources available¹. The Court has also indicated that, disregarding the economic situation of the state, the legislator is bound by the fundamental rights of persons enshrined in the Constitution². In certain cases, economic crisis may reach a level, when the legislator has to be granted margin of appreciation in introducing changes even if the measures apply to the fundamental rights established in the Constitution. Under the conditions of limited financial resources, the state has the right to amend provisions regarding disbursement of pensions with the purpose to ensure a fair social security system.³

The Constitutional Court had concluded that, as the economic situation deteriorates, the situation when the state was no more able to guarantee the same amount of social security as it had been in the period of economic growth of the

¹ 2009-08-01 para 15

² 2009-43-01 para 24

³ 2009-43-01 para 29.2

state may occur. Otherwise, the ability of the state to implement the right to social security and guarantee sustainability of the social system would be threatened⁴. However, the economic situation of the state or the necessity to reduce budget deficit at the absence of other legitimate aims cannot serve as a general justification for the state abandoning the rights of persons previously granted⁵. The Constitutional Court has concluded that measures for overcoming crisis should be performed based on a proper assessment thereof and observing the principles of a law-governed state⁶. In several “crisis judgments”, social solidarity under circumstances of economic crisis is mentioned, which means that every citizen should undertake proportional responsibility to eliminate consequences of the crisis⁷.

1.2. How were issues of social integration or conflict transformed into legal issues?

Decisions of the state and the legislator regarding implementation of the social rights usually have a substantial political dimension, namely, decisions in this field are usually adopted based on political rather than legal considerations, provided that the first depend on the view of the legislator on principles of providing state social services, economic situation of the state and the need of the society or a part of it for state aid or support. Moreover, it should be taken into account that, in the field of social rights, the borderline between legal and political considerations is difficult to be established, and the Constitutional Court has to refrain from assessing political issues because they primarily fall within the competence of a democratically legitimized legislator.

Considering the jurisdiction of the Constitutional Court (the Constitutional Court reviews cases on compliance of national legal norms or acts with the Constitution or international treaties concluded by Latvia or legal norms of a higher legal force), the Court reviews social integration (social rights) issues only in the framework of a particular case when solving issues regarding compliance of a contested provision with a legal provision of a higher legal force.

The Constitution directly establishes many social rights and includes an authorization to the legislator to concretize this right in a special law.

Thus, at the moment when the legislator transforms its political ideas into legal provisions, the issue turns into a legal issue, subject to the control by the Constitutional Court.

At the same time it must be taken into consideration that in the field of implementation of social rights, the legislator can apply equally strict requirements as those applied to its duty not to interfere within persons' implementation of civil and political rights. However, political decisions are also restricted in the Constitution; therefore the margin of appreciation of the legislator when adopting decisions in the field of social rights should comply with norms and principles of the Constitution.

1.3. Is there a trend towards an increase in cases on legal issues relating to social integration? If so, what were the dominant questions before your Court in the past and what are they in present?

⁴ 2009-08-01 para 22.3

⁵ 2009-44-01 para 21

⁶ 2009-86-01 para 10

⁷ 2009-11-01 para 10.3

The number of cases on legal issues relating to social integration is almost constant, compared to the number of cases concerning other issues. The Constitutional Court has always had a comparatively large number of cases related to social issues. The majority of these are social security linked cases. The number of social cases increased during the period of economic recession, when a large number of cases concerning pensions, remuneration and benefits was examined.

2. International standards for social integration

2.1. What are the international influences on the Constitution regarding issues of social integration/social issues?

The Constitutional Court has repeatedly underlined in its judgements not only the possibility, but also the necessity of applying international provisions in order to clarify the content of the fundamental rights defined by the Constitution (*inter alia*, social rights). The State's obligation to take into consideration international commitments follows from Article 89 of the Constitution, laws and international treaties binding upon Latvia. As the Constitutional Court has repeatedly noted in its judgements, this Article shows that the legislator had the aim to establish harmony between the human rights defined in the Constitution and the provisions of international law⁸.

2.2. Does your Court apply specific provisions on social integration that have an international source or background?

The international human rights provisions (also in the field of social rights) and the practice of their application on the level of constitutional law serve also as a means of interpretation to define the content and scope of fundamental rights (also social rights) and the principle of a low-governed state, insofar this does not lead to decreasing or restricting the fundamental rights defined by the Constitution⁹. The Constitution, essentially, cannot envisage that the fundamental rights are ensured to a lesser extent or a smaller scope of protection than envisaged by any of the international acts on human rights. A different conclusion would be contrary to the idea of a judicial state, embedded in Article 1 of the Constitution, since recognition of human rights and fundamental freedoms as the supreme value for the State is one of the forms of manifestation of a judicial state¹⁰.

2.3. Does your Court directly apply international instruments in the field of social integration?

Yes, the Court applies international instruments in the field of social integration. The most frequently applied document is International Covenant on Economic,

⁸ CODICES: LAT-2005-2-005, 13.05.2005., 2004-18-0106, Para 5; LAT-2008-2-002, 17.01.2008., 2007-11-03, Para 10.

⁹ CODICES: LAT-2005-2-005, 13.05.2005., 2004-18-0106, Para 5; LAT-2008-2-002, 17.01.2008., 2007-11-03, Para 11.

¹⁰ Decision of the Constitutional Court of the Republic of Latvia in case No. 2005-02-0106 (14.09.2005), Para 10. <http://www.satv.tiesa.gov.lv/?lang=2&mid=19>

Social and Cultural Rights (adopted 16.12.1966, in force in Latvia from 14.07.1992.). Comparatively less frequently the Constitutional Court has referred to the Charter of Fundamental Rights of the European Union. For example, in 2010 the Court in one of its judgements referred to the Charter of Fundamental Rights of the EU while interpreting the right to social security (Article 35 of the Charter).

The Constitutional Court, within its competence defined in law, may have to examine cases directly related, for example, to, the Charter of Fundamental Rights of the European Union, International Covenant on Economic, Social and Cultural Rights or other international instruments in the field of social integration¹¹. The Constitutional Court has assessed the compliance of the contested provisions with European level international documents in a number of cases, for example, compatibility with European Convention on the Legal Status of Children Born Out of Wedlock¹².

2.4. Does your Court implicitly take account of international instruments or expressly refer to them in the application of constitutional law?

Both.

2.5. Has your Court ever encountered conflicts between the standards applicable on the national and on the international level? If so, how were these conflicts solved?

No. The Constitution is short and concise, its language and means of expression – laconic. International documents are used in construing the provisions of the Constitution. The national and international regulation referred to (standards) cannot come into conflict.

3. Constitutional instruments enhancing/dealing with/for social integration

3.1. What kind of constitutional law does your Court apply in cases of social integration – e.g. fundamental rights, principles of the Constitution (“social state”), “objective law”, *Staatszielbestimmungen*, ...?

The Constitution clearly establishes many social rights. The provisions of the Constitution are directly applied.

There are many principles applied in cases of social integration. One of the most important in this field is the principle of the socially responsible state. Compliance with the principle of a socially responsible state shall be applied as a benchmark when investigating whether measures selected by the legislator are regarded as proportional for reaching of the legitimate aim. The Constitutional Court has also indicated in its case-law that the duty of the state to form a sustainable and

¹¹ The Constitutional Court, *inter alia*, adjudicates cases regarding:

- 1) compliance of international agreements signed or entered into by Latvia with the Constitution (Section 16.2 of the Constitutional Court Law);
- 2) compliance of other legal acts or parts thereof with the norms (acts) of higher legal force (Section 16.3 of the Constitutional Court Law); the CC also examines cases of compliance of contested norms with the provisions of the Convention;
- 3) compliance of Latvian legal norms with those international agreements entered into by Latvia (Section 16.6 of the Constitutional Court Law).

¹² CODICES: LAT-2004-3-007, 11.10.2004., 2004-02-0106

balanced policy to ensure welfare of the society follows from the principle of a socially responsible state.

Latvia ensures the social state principle also through the establishment of social fundamental rights and through the prohibition of unequal treatment on any conditions, *inter alia*, on the basis of economic or social conditions. Social fundamental rights included in the Fundamental Human Rights' Chapter of the Constitution of the Republic of Latvia serve as a guideline for interpretation of principle of the social state, and they, in some way, frame this principle.

As the Court has revealed in its judgments, the socially responsible state tries to implement social justice in legislature, administration and court adjudication as extensively as it is possible, within its limits of financial resources provides a reasonable state support to those in need with a view to diminish the most strident social difference and to ensure for every layer of society an adequate living standard.

The content of the principle of a socially responsible state is considerably broader than that of any particular social right.

When assessing compliance of a legal norm with the principles following from the basic constitutional values enshrined in the Constitution, it is necessary to take into account the fact that manifestation of these principles may differ in different fields of law.

3.2. In cases where there is access of individuals to the Constitutional Court: to what extent can the various types of constitutional law provisions be invoked by individuals?

In accordance with the Constitutional Court Law, everybody, whose fundamental right has been violated, has the right to turn the Constitutional Court, by submitting a constitutional complaint.

When complaining about infringement upon any fundamental right, *inter alia*, restrictions to social rights, a person may directly refer to the constitutional or international provisions.

3.3. Does your Court have direct competence to deal with social groups in conflict (possibly mediated by individuals as claimants/applicants)?

No.

3.4. How does your Court settle social conflicts, when such cases are brought before it (e.g. by annulling legal provisions or by not applying them when they contradict the principle of equality and non-discrimination)?

The Constitutional Court is the constitutional control body of the Republic of Latvia. First of all, it implements control over the compliance of adopted laws with the Constitution. Article 85 of the Constitution grants exclusive jurisdiction to the Constitutional Court to recognise laws and other enactments or parts thereof as null and void, if non-conformity of the contested provision to the Constitution is found

Constitutional Court opinions expressed this way are generally binding and it is the legislator's duty to take them into account. The legislator must avoid their prior errors to which the Constitutional Court has drawn attention, thereby improving also the quality of normative regulation.

Exclusion of the contested provision from normative regulation can lead to various consequences. It can improve the legal regulation, but also a situation can form,

which is even worse than the previous regulation (contested provision), because there is no regulation whatsoever. Therefore, the Constitutional Court in its judgments carefully evaluates the consequences, which can be caused by the annulment of the provision.

The court in its practice has applied various methods to solving such situations: (1) when annulling a provision, the court points to the regulation applicable in legal relations:

- by directly applying a legal provision of a higher legal effect (CODICES: LAT-2003-3-012, 06.11.2003, 2003-10-01);

- by applying the anti-constitutional provision until amendments are made, all the while bearing in mind the Constitution (CODICES: LAT-2006-3-005, 23.11.2006, 2006-03-0106) and the opinions voiced in the judgment (CODICES: LAT-2007-3-002, 11.04.2007, 2006-28-01);

- by applying a previously existing regulation;

(2) the court sets a date, by which the provision continues being effective, thus giving

time for the legislator to adopt regulation conformant to the Constitution;

(3) the court sets a date, on which the provision is to become null and void, if a certain condition is not met (what are known as conditional judgments) (CODICES: LAT-2003-3-011, 29.10.2003, 2003-05-01).

3.5. Can your Court act preventively to avoid social conflict, e.g. by providing a specific interpretation, which has to be applied by all state bodies?

The Constitutional Court influences application and interpretation of norms through its case-law. It has been established in the Constitutional Court Law that both, a judgment and interpretation of a legal provision established by the Constitutional Court shall be binding on any institution and person. Consequently, judgments of the Court must be taken into account when applying or interpreting legal norms in the field of social rights. This is the only way in which the Constitutional Court can attempt to prevent social conflicts, i.e., by construing provisions and elaborating definite criteria, linked with social norms, that both the representatives of all powers and an individual must meet.

For example, in one of the “cases of economic recession period” the Constitutional Court has indicated that the state does not only have the right but also the duty to commensurate its liabilities in the field of social rights with its economic possibilities. Otherwise, fulfilment of other duties of the state might be hampered, implementation of other social rights included. For instance, in judgments on annulment of pension indexation, the Constitutional Court has indicated that the state is committed to ensure sustainability of the pension system by guaranteeing that the right to social security would be ensured in the following generations, too. The duty to develop a sustainable social security system lays in the basis of the right to social security and also follows from the principle of a socially responsible state.

Hence, the Court not only balances the particular interests in the concrete judgement, but also points to the legislator ways for reaching the optimum solution in the field of social rights.

The Constitutional Court has also defined these limits by establishing three important requirements to the legislator in the field of social rights.

First, the legislator cannot refuse ensuring effective implementation of the social rights – they are included in the Constitution, and the legislator has to observe and respect them.

Second, social rights, though being dependant on financial possibilities of the state, must be ensured at least at the minimum level.

Third, when implementing the social rights, it is necessary to observe the general legal principles forming the basis for legal relations between a person and the state. State support should not be as high as interested persons would want it to be; however, when establishing the amount of an allowance, the legislator is committed to observing the above mentioned legal principles.

The Constitutional Court has indicated that, disregarding economic situation of the state and even under circumstances of a rapid economic recession, the state has to fulfil certain basic duties that it does not have the right to reject. One of such basic duties is guaranteeing of the right to social security at least at the minimum level, and the aim of this right is to ensure, as far as possible, dignified existence of persons (Judgment No. 2009-43-01, 21.12.2009., in the CODICES database: LAT-2009-3-005).

3.6. Has your Court ever encountered difficulties in applying these tools?

No.

3.7. Are there limitations in the access to your Court (for example only by State powers), which prevent it from settling social conflicts?

The same general restrictions regarding access to court exist with regard to dealing with issues of social rights as the ones that apply to dealing with any legal issue at the Constitutional Court, i.e., the term for submitting the application, exhaustion of general legal remedies, formal requirements as regards the content of the application, etc.

4. The role of constitutional justice in social integration.

4.1. Does your Constitution enable your Court to act effectively in settling or avoiding social conflict?

The Constitution defines the jurisdiction of the Constitutional Court, which allows the Court to deal with social conflicts with sufficient efficiency.

The Constitutional Court plays an important role in defining of the content of the social rights and interpreting the provisions (see answer to the question No. 3.5.). At the same time, the special nature of the social rights establishes also the limits of judicial control in the field of social rights. According to the Constitutional Court, when implementing the social rights, the legislator enjoys a broad margin of appreciation insofar as it is reasonably related with economic situation of the state. However, the margin of appreciation is not unlimited. The judicial power is committed to assess whether the legislator has observed the limits of its margin of appreciation.

4.2. Does your Court *de facto* act as 'social mediator', or/and has such a role been attributed to it?

Yes. When examining concrete cases, the Court may be regarded as "social mediator".

In some cases persons, who are dealing with legal issues or disputes in connection with social rights before other institutions, use the Constitutional Court as a “supplementary remedy” in solving the conflict. I.e., the person either refers to particular adjudicated cases or adjudicated legal issues, or notes that he or she is going to exercise the right to turn to the Constitutional Court for solving the issue. Thus, the Constitutional Court is indirectly used in solving social disputes also outside legal proceedings.

4.3. Have there been cases, when social actors, political parties could not find any agreement, they would ‘send’ the issue to your Court which had to find a ‘legal’ solution, which normally should have been found in the political arena?

Yes. There have been cases like these. It was very pronounced during the time of recession when the government and the legislator needed to decrease (at least in short-term – until the concrete cases are adjudicated at the Constitutional Court) budget resources. The legislator, possibly, being aware of the anti-constitutionality of its actions and also that the affected persons would turn to the Constitutional Court for the protection of their rights, decreased pensions and benefits (restricted social rights), thus gaining “time” and “resources”.