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*"Separation of Powers and Independence of the Constitutional Court of the
Republic of Latvia"*

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**[1] Role of the Principle of Separation of Powers in Independence of the
Court and the Judges. The Latvian View.**

The principle of separation of powers plays a substantial role in a democratic state because it not only restricts discretion of the state power but also facilitates ensuring rights and freedoms of persons. This principle functions as a balance between branches of power by giving a possibility to one branch of power to restrict other branches of power in accordance with the authority conferred by the Constitution. Regardless the precise definition of authority of each branch of power established in the Constitution, a democratic state cannot be imagined without an institution that exercises constitutional review disregarding the fact whether it belongs to the judicial power or does not fall under the system of division of power. According to Article 85 of the Constitution of the Republic of Latvia, this function in Latvia is exercised by the Constitutional Court, an institution belonging to the judicial power.

The Constitutional Court can exercise constitutional review, namely, it can carry out its function of safeguarding the respect for the constitution and protecting human rights if it is genuinely independent from branches of power and institutions, the activities of which it controls. Such an independence of the Constitutional Court is ensured by observance of the principle of separation of powers. Effectiveness of ensuring of the basic task of the Constitutional Court, which is constitutional review, depends on the degree of independence of the court from other branches of power.

The answer to the question – how independent is, in fact, the Constitutional Court – is not given by norms included in the Constitution. The fact whether a genuine democracy prevails in the State and whether rights and freedoms of persons are protected in an efficient manner, depends on the actual cooperation (mutual relations) between branches of power and constitutional organs.

In a democratic state the principle of the separation of power not only divides the branches of the state power, but also contains the requirement of their reciprocal cooperation, since the shared aim of all branches of power is the strengthening of democracy in the interests of the nation¹.

Only in such a state, in which the principle of the division of power guarantees the balance between the branches of state power and reciprocal control, preventing the tendencies of any branch to domineer, by promoting the moderation of power and thus ensuring a truly independent judiciary, the independence of judges can be ensured².

The aim of the division of power is to maintain the guarantees of person's freedom, preclude the replacement of the model of state governed by the rule of law with an authoritarian regime or an autocracy of a single person. In a state governed by the rule of law the principle of the division of power guarantees the balance and reciprocal control between the branches of state power. This exactly gives the judges the possibility to fulfil their duties in a proper way³.

Functioning, effectiveness and independence of the Constitutional Court is influenced by actual relations of the Court with the legislator and the executive power, these relations being regulated, at different degrees of concretization, in normative acts. These relations are related with appointment of justices, election of the President of the Constitutional Court, financial independence of the Court (development and administration of the budget), elaboration, adoption and amendment of normative acts regulating functioning of the Constitutional Court, competence of the Constitutional Court when assessing normative acts adopted by the legislator and the executive power.

¹ Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 8.1 http://www.satv.tiesa.gov.lv/upload/judg_2009_11.htm

² Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 7.3

³ Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 7.3

[2] Independence of the Court and the Judges. Interpretation in the Constitutional Court's Judgments

In several its judgments, the Constitutional Court has analysed the requirement of independence of both, the court and a judge by clarifying the constitutional grounds and the content of the requirement, establishing aims and meaning of it, and assessing possible risks in relation to independence of the court and a judge.

The Constitutional Court related the requirement of independence of the court and a judge not only with the principle of separation of powers but also the principle of the rule of law and the right to a fair court.

The Constitutional Court has indicated that anyone with regard to whom justice is administered is interested in ensuring the independence of judges. This independence guarantees the safeguarding of the rule of law in the interests of the society and the state⁴.

The independence of the court and the judges is not an end in itself, but only a means for ensuring and strengthening democracy and the rule of law, as well as a mandatory pre-condition for realising the rights to a fair trial⁵.

When interpreting the principle of independence of judges, the Constitutional Court has indicated by referring to international documents, that, first, the requirement set in the international documents for the independence of judges falls within the content of the right to a fair court⁶. Second, there are a number of documents developed by international institutions, which have been adopted so that the member states in their laws and practice would follow the principles they contain⁷. Even though these documents should be perceived only as guidelines, they impose

⁴ Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 7.2

⁵ Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 7

⁶ Article 6 of The European Convention for the Protection of Human Rights and Fundamental Freedoms provides that everybody "is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law." Article 14 of the UN International Covenant on Civil and Political Rights contains a similar wording.

⁷ The United Nations Basic Principles on the Independence of the Judiciary
The Council of Europe Committee of Ministers Recommendation No. R (94) 12 to Member States On Independence, Efficiency and Role of Judges of 13 October,
The Consultative Council of European Judges Opinion No 1 on standards concerning the independence of the judiciary and the irremovability of judges,
European Charter on the Status of Judges, Council of Judges, 8–10 July 1998,
Universal Charter of the Judge adopted by the Central Council of the International Association of Judges in 1999,
Judges' Charter in Europe adopted by the European Association of Judges on March 20, 1998.

strict moral and political duties for the states and must be used as a means for clarifying the content of the criterion of judges' independence⁸.

When substantiating the content of independence, the Constitutional Court has made a research of and referred to case-law, constitutions and laws of other states⁹.

[3] Institutional Independence of the Constitutional Court

The Constitutional Court, when analysing the constitutional grounds, aims and significance of the independence of the judge, already indicated that it is impossible to ensure the necessary independence of the judge, unless the judiciary itself as a whole is not free from unjustified influence or the political pressure exerted by the executive power or the legislator¹⁰. Independence of the Constitutional Court and its justices depends on relations of the Court with the executive power and the legislator.

[3.1] Constitutional Court's Financial and Administrative Autonomy

Independence of the Court is related with the resources needed to ensure the functioning of the judiciary. This includes:

- 1) providing to the judges an appropriate personal security and remuneration;
 - 2) setting an adequate number of judges, appropriate for the number of cases to be examined;
- ensuring to the courts the necessary staff support and technical means¹¹.

The Constitutional Court has indicated that a reasonable compromise must be found between the guarantees of the judiciary and the budget possibilities. To ensure such balance, it is necessary to ensure collaboration between branches of the state power, namely the legislator, prior to taking decisions on the functioning of courts – both on issues linked to the budget, as well as other issues related to the

⁸ Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 7.1

⁹ Constitutional Court of the Czech Republic, Constitutional Court of the Republic of Lithuania Supreme Court of Canada, US Supreme Court, Constitutional Tribunal of the Republic of Poland, Constitutional Court of the Republic of Slovenia;

United States Constitution, Constitution of Greece, Constitution of Poland

¹⁰ Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 8

¹¹ Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 8.1

realisation of the functions of the courts, must give a possibility to the judiciary or an independent institution representing the judiciary to express their opinion on issues affecting the functioning of courts¹². The same principle can be applied to collaboration between the legislator and the Constitutional Court.

Amendments of 3 June 2010 into the Law “On Judicial Power” found a Judicial Council [Latvian -*Tieslietu padome*], which is a collegiate institution of the judicial power that participates in elaboration of the policy and strategy of the judicial system, as well as improvement of organization of functioning of the judicial system. Supposedly, it would give a feasible contribution into strengthening of the judicial power, including independence of the Constitutional Court.

The requirement of independence of a judge included in the Constitution, the requirement that a court shall be funded from the State budget included in Section 37 of the Constitutional Court Law and Section 117 of the Law “On Judicial Power” and the reference that the State shall guarantee independence of courts included in Section 10 of the Law “On Judicial Power” serve as the basis for the Constitutional Court’s financial and administrative autonomy. Moreover, abiding by the principle of the division of power included in the Constitution and the requirement of the independence of judges, as well as other internationally recognised requirements, the legislator in Section 117 of the Law “On Judicial Power” has provided that the state, by envisaging an appropriate funding, guarantees an effective legal protection of a person in a competent and independent court. Therefore only such funding of the judiciary, which ensures the fulfilment of these duties, complies with the Constitution¹³.

The Constitutional Court has indicated in the judgment of 18 January 2010 that the principle of separation of power prohibits the executive power to decide upon issues, which directly influence the actions of judiciary and the functioning of courts, i.e., the issues of funding, the number of judges, the necessary staff, its competence requirements, remuneration and other issues. The budget is a means for implementing the policy of the state and decisions concerning the state budget can be taken only and solely by the legislator. Consequently, the right to decide on issues related with

¹² Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 8.1; Judgement of 22 June 2010 by the Constitutional Court in Case No. 2009-111-01, Para 29.1, http://www.satv.tiesa.gov.lv/upload/judg_2009-111-01.htm

¹³ Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 8.1

budget of courts and other issues that influence functioning of courts even if this right is not absolute, is granted to the legislator¹⁴.

Disregarding the fact that the Law “On State Budget” is adopted by the legislator and the Constitutional Court’s budget constitutes a separate section of the State budget, up to now, unfortunately, the normative regulation permits the Cabinet of Ministers (the executive power) to introduce amendments into budgetary request of the Constitutional Court without reason and consent of the Court, i.e. to decide on budget of the judicial power, including on that of the Constitutional Court.

Moreover, no such collaboration and mutual respect between branches of the State power that follows from the principle of separation of powers and independence of judiciary has yet been achieved because the legislation did not provide for any procedure, according to which the legislator, before taking any decision regarding functioning of courts, would give the possibility to the judicial power or an independent institution representing the judicial power to express its opinion on issues that influence functioning of courts. Although observance of such procedure follows from the principle of separation of powers and that of the independence of courts included in the Constitution, neither the legislator, nor the executive power has yet observed and ensured observance of such procedure.

On 1 August of this year, amendments to the Law “On Judicial Power” came into force. Section 89.¹¹ Indent 1 of the Law provides that the Judicial Council shall provide opinion on budgetary request of courts. There is no doubt that this norm would not eliminate all deficiencies of the legislation, however, this should necessarily be regarded as a positive step towards facilitation of cooperation of branches of the State power.

National economic problems have negative effects for the judiciary, and lately even more than for others. During the last two years, the workload of the Constitutional Court has increased at a considerable rate¹⁵. Researches made on these trends show the number of applications in the future would not decrease. Consequently, it is necessary to find solutions for the problem. It does not surprise

¹⁴ Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 24

¹⁵In 2007, like in previous years, the Constitutional Court received 355 applications, 127 of which were transferred to Court panels, and 26 cases were initiated.

In 2008, 300 applications were received, 134 of them were transferred to Court panels, and 48 cases were initiated, whilst in 2009, 4030 applications were received, 475 of them were transferred to Court panels, and 117 cases were initiated.

This means that workload of the Court has increased threefold.

anyone that the increasing workload of ordinary courts makes them form accumulations of cases. As to the Constitutional Court, cases are not accumulated not only because this would cause infringement of the right to a fair court, but also because the law establishes strict terms for examination of cases. In order to avoid loss of high quality due to the increasing workload, the Constitutional Court is now trying to find solutions.

One of possible solutions is increase of the number of employees of the Constitutional Court and maybe this should be also applied to the number of justices. The Constitutional Court has the power to select, appoint and dismiss staff – both the academic auxiliary staff and the non-judicial officials of the Constitutional Court. However, this requires additional resources, allocation of which depends on the legislator and the executive power. Former endeavours to persuade other branches of the State power on possible risks in case if the Court would no more be able to ensure fulfilment of its functions due to lack of financial resources, have been unsuccessful.

Probably, the course of solving of this problem would show the level of independence of the Constitutional Court and judiciary. The budget of the Constitutional Court as one of determining factors of its independence is still perhaps the most significant problem.

[3.2] Constitutional Court's Regulatory Autonomy

The ability of the Constitutional Court to control its own procedures is seen as a crucial element of judicial independence. The Constitutional Court enjoys broad discretion in this respect.

Court's regulatory autonomy, although indirectly, is influenced by the fact that the President of the Constitutional Court who chairs the Constitutional Court sittings, organizes the work of the court, represents the Constitutional Court and has the right to give orders to Constitutional Court judges in organizational matters associated with fulfilling of the duties of office, is elected, by secret ballot, from among the Constitutional Court judges.

[3.2.1] The ability of the Constitutional Court to control its own procedures

According to Section 26 of the Constitutional Court Law procedures for adjudicating matters shall be determined by the Constitutional Court Law and The

Rules of Procedure of the Constitutional Court. Section 14 of the Law accordingly provides that the structure and work organisation of the Constitutional Court shall be defined by The Rules of Procedure of the Constitutional Court that are adopted with an absolute majority vote of all court members.

That means the system of constitutional review allows for the organizational autonomy of the Constitutional Court on the basis of the Constitution and the Constitutional Court Law. In that way the Constitutional Court is authorized to follow its own rules related to matters of procedure.

Moreover – Section 26 of the Constitutional Court Law permits the Constitutional Court to decide on other procedural issues not regulated by the Law and The Rules of Procedure.

There is no doubt that The Rules of Procedure and decisions of the Constitutional Court must be consistent with the Constitution and the Constitutional Court Law.

The Constitutional Court Law establishes strict terms for adjudication of a case. Disregarding this fact that the term of preparation of a case was prolonged by two months according to recent amendments in the Constitutional Court Law, the average term of examination of a case at the Constitutional Court constitutes nine (9) months. In order to be able to organize work of the Court effectively and thus to ensure the possibility for justices to take a rest provided by law, the legislator: (1) has authorized the Constitutional Court to extend the period of preparation of a cases for adjudication whenever this is needed due to objective reasons (particularly complicated case) and (2) has granted a Constitutional Court a discretion to plan an adjudication of a case, that is, the legislator has established a rather long period from an assignments sitting till a court sitting (3 months), as well as, has not established a term for summoning an assignment sitting (after a case has been prepared) to decide on adjudication in a court sitting.

<i>An application submitted</i>	<i>A case initiated</i>	<i>A case prepared</i>	<i>Assignment sitting</i>	<i>Court sitting</i>	<i>Judgment</i>
A panel decides on initiation of a case	A judge prepares a case			A court prepares a judgment	
1 month	Not more than 5 months (it is possible to extend by 2 months)	Is not established	Not more than 3 months	30 days	

[3.2.2] Right of the Constitutional Court to broaden the claim

In the examination of a case the Constitutional Court is bound by the limits of the claim, i.e., it has to verify the compatibility of the contested provisions with the provisions of higher legal force, taking into consideration the argumentation of the applicants and the motives and considerations reflected in the applications.

The Court does not have the right to initiate a case on its own initiative, nether it has the right to broaden the claim of the applicant. However, under some circumstances the Constitutional Court abiding by the principle of procedural economy has decided to broaden the claim.

For instance, in the “Judges remuneration freeze” case, while this case was being prepared and adjudicated, the contested provisions were amended applying the reduction of remuneration not only to the year 2009, but also to the years 2010, 2011 and 2012.

The Constitutional Court indicated in the judgment that since the “freeze” equally applies both to 2009 and to 2010, 2011 and 2012, the new wording of the contested provisions, to the extent they prolong the period for “freeze” the salaries, essentially maintain the situation of the judges set by the contested provisions for several more years. Therefore, abiding by the principle of procedural economy, the Constitutional Court has the grounds to broaden the claim and attribute its conclusions also to new amendments insofar as they in the same way as the contested provisions define the procedure for calculating the judges’ salary also in 2010, 2011 and 2012¹⁶.

¹⁶ Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 27

[3.2.3] Right of the Constitutional Court to Decide on Termination of Judicial Proceedings

Section 29 of the Constitutional Court Law enumerates cases when the Constitutional Court has the right to decide to terminate judicial proceedings. Judicial proceedings may be terminated, for example, if the disputed legal norm (act) has ceased to be in force; if a legal norm (act), the compliance of which is being disputed, has ceased to be in force, if a judgment has been pronounced in another case regarding the same subject matter of a claim, and other cases. The list of such cases is left open by thus ensuring independence of the Court when deciding on termination of judicial proceedings. Moreover, the legislator has conferred the right to the Court to decide on termination of judicial proceedings, rather than established it as a duty. Consequently, in cases when it is necessary, according to the Court, to precede adjudication and adopt a judgment in order to eliminate infringement caused to a person, the Court does not terminate proceedings.

[4] Independence of the Individual Justices

The independence of judges is connected with a number of guarantees: guaranteed tenure of the judge (the procedure for appointing or approving judges, the qualification necessary for the appointment, guarantees of irremovability, conditions for promotion and transfer to another position, conditions for suspending and terminating the mandate), the immunity of the judge, financial security (social and material guarantees), the institutional (administrative) independence of a judge and the actual independence of the judiciary from the political influence of the executive power or the legislator. Guarantees of independence of a Constitutional Court justice are similar with those given to other judges. These guarantees are included in the Constitution, follow from the principles included in the Constitution, are established in the Law “On Judicial Power” and the Constitutional Court Law. The Constitutional Court has indicated that all these guarantees are closely interlinked, and, if even one of them is disproportionately restricted, then the principle of the independence of judges is breached and thus the fulfilment of the basic court functions and ensuring human rights and freedoms come under threat¹⁷.

¹⁷ Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 8.2

[4.1] System of Appointment of Justices and Qualification Requirements and Restrictions

Taking into account jurisdiction of the Constitutional Court, the composition of justices presents a balance of all branches of power because, according to Section 4 of the Constitutional Court Law, the legislator proposes three justices, the executive power proposes two and the judicial power proposes two more judges for confirmation of them to the position of justices.

Unlike many other states where exists an unwritten tradition that the party that proposes a candidate for the position of a judge consults with the President of the Constitutional Court and other professions of the field, there is no such tradition in Latvia. Taking into account the fact that judgments of the court are collegiate, it is undisputable that this is the Court itself that can prognosticate, in the most precise manner, its need for specialists of a particular field in order to ensure the highest quality result possible. A positive step into this direction is the fact that one of the functions attributed to the recently founded Judicial Council is hearing of candidates for the position of a Constitutional Court justice and provision of an opinion to the Parliament that confirms these candidates.

Taking into consideration the status of the judge and the fact that he fulfils the function of the administration of justice, the legislator has not only the right, but also the duty to set with regard to him or her as the implementer of the judiciary special requirements as to the competence, qualification and experience, as well as restrictions aimed at ensuring the independence of the judge¹⁸. Requirements of experience and education for candidates for the position of the Constitutional Court justice established in the Law are higher than those of ordinary judges¹⁹. Moreover,

¹⁸ Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 9

¹⁹ Constitutional Court Law

Section 4. Confirmation of a Constitutional Court judge

[...]

(2) Such 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 Parliament (*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 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.

these requirements have recently been increased. Restrictions for justices of the Constitutional Court are the same as those of ordinary judges²⁰.

[4.2] Tenure of Justice

It has been established in the Constitution that justices of the Constitutional Court shall be confirmed for the term established by law. The Constitutional Court Law provides that the term of office of a Constitutional Court justice shall be ten years. It is established in the Law that one and the same person cannot hold the position of a justice for longer than ten consecutive years.

The restricted term of office of justices can, however, influence independence of judges in case if after the term of office the justice has to plan his or her future carrier. The Latvian labour market is comparatively small, whereas normative acts provide for a range of restrictions for State officials (Constitutional Court justices included) after the expiration of the term of office, whilst a justice of the Constitutional Court is not provided with any compensation after leaving the position. Under such circumstances, at the final stage of the term of office, a state official starts looking for another employment, which, in turn, can cause the risk of adopting not objective decisions and can affect independence of the justice. There is no doubt that it is easier for a professional and high quality justice to be independent in such case.

[4.3] Financial Security of Justices

²⁰ Law „On Judicial Power”

Section 55. Persons who may not become candidates for a judge

A candidate for a judge may not be a person:

1) who has been previously convicted of committing a crime (irrespective of whether the conviction has been extinguished or set aside);

2) who has previously committed a crime, but has been released from serving the sentence in connection with the expiration of a limitation period, amnesty, or clemency;

3) who has been subjected to criminal liability, but the criminal matter against whom has been terminated on the basis of non-rehabilitativeness;

4) against whom a criminal matter has been initiated and against whom an investigation is being conducted;

5) who are or have been employed in staff positions or as supernumeraries of the State Security Committee of the Union of Soviet Socialist Republics (USSR) or the Latvian Soviet Socialist Republic, the Ministry of Defence of the USSR, or the state security service, army intelligence service or counter-intelligence service of Russia or another state, or as an agent, resident or safehouse keeper of the aforementioned institutions; or

6) who are or have been participants (members) of organizations, which are prohibited by the laws of the Republic of Latvia, decisions of the Supreme Council, or adjudications of a court, after the prohibition of such organizations.

In 2010, the Constitutional Court has twice assessed the issue of financial independence of justices in cases on remuneration of judges. At the end of the year 2010, the Court plans adopting one more decision. Arguments included in the judgments can be attributed to justices of the Constitutional Court because remuneration of the justices of the Constitutional Court, though having been established in the Constitutional Court Law, has been included into the common system of remuneration of judges.

An adequate remuneration is one of the elements in judges' financial security. Judges need the financial security as a guarantee against external influence and for maintaining their qualification. The financial security of a judge, which includes setting a commensurate remuneration, namely, remuneration, social guarantees, including pensions, for judges, serves as a guarantee of a proper administration of justice and as a ground for setting high requirements to a judge, and allows maintaining confidence in his or her competence, independence and fairness. Thus, the financial security is an integral element of judges' independence²¹.

The Constitutional Court has indicated in its judgment that the state has the obligation to set such remuneration for judges that would be commensurate with the status, functions and responsibility of a judge. The safeguarding of judges' remuneration is one of the guarantees of judges' independence²².

In 2003 the legislator developed a system of remuneration for judges, which was capable of guaranteeing the financial security of judges to the extent needed to protect the independence of judges²³. The system is pegged to the average monthly gross salary of the employees in the state. Thus, the system of judges' remuneration in Latvia has been developed so as to the extent possible avoid the need to amend it²⁴.

Such a system, typical of the majority of modern democratic states, does not provide that the legislator should introduce a special mechanism for reviewing the judges' remuneration in a case, when its real value diminishes. The amount of the judges' salary reflects the remuneration trends within the state. In the period of economic growth, when the average salary in the state increases, the judges' remuneration also increases and thus the real value of their remuneration is preserved.

²¹ Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 11.1

²² Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 8.2

²³ Judgement of 22 June 2010 by the Constitutional Court in Case No. 2009-111-01, Para 19.3

²⁴ Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 17.1

Under the conditions of economic recession, when the average salary in the state decreases, in the framework of this system the judges' remuneration also decreases.

Such a system complies with the balance of the branches of power and ensures that the judiciary has no need to discuss with the executive power or the legislator the amount of judges' salary, which could cause threats to the independence of the judiciary. At the same time this system is flexible – it ensures adjustment of the amount of a judge's salary to the average remuneration for work in the state.

To allow the judges to fulfil their functions effectively, complying with the requirements of independence and competence, as well as with the set restrictions, the legislator, taking into account the requirements defined by international organisations, has envisaged to them remuneration not only in the form of concrete salaries, but also as social and security guarantees, etc. Thus, the prohibition of decrease applies not only to judges' remuneration. The requirement to safeguard the judges' remuneration and other guarantees follows from the principle of the independence of courts and judges, which has the purpose to protect judges from any kind of influence: the impact of the legislator, the executive power, institutions and officials, various organisations, business entities, legal and natural persons²⁵.

As it follows from the Constitutional Court's judgments, the purpose of judges' remuneration is both to ensure the independence and to partially compensate for the restrictions set in the law. Moreover, it should be taken into account that a judge, who is independent, but lacks adequate qualification, is unable to ensure the right to a fair trial, precise interpretation of the laws and the protection of constitutional values. Thus, the requirement to ensure an appropriate remuneration to a judge is linked not only with the principle of the independence of a judge, but also with the qualification and competence requirements set for and the restrictions imposed upon a judge²⁶.

Taking into account the fact that that the question whether, at what extent and under what circumstances it is possible to reduce remuneration of judges is still an urgent one, the Constitutional Court has drawn attention to conditions that follow from the Constitution and that should be taken into account when deciding on the cut of salary of judges. First of all, Article 83 of the Constitution contains prohibition to decrease the remuneration set for the judges during their term in office and protects

²⁵ Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 10.2

²⁶ Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 9

the actual value of judges' remuneration, ordering to retain it. Second, the prohibition to decrease the judges' remuneration during the term in office (mandate) does not mean that any actions of the legislator, which, could, possibly, have a negative impact upon the judges' remuneration, are absolutely prohibited, namely, a temporary decrease of judges' remuneration is admissible in the presence of serious, socially justifiable reasons and if it is decreased in compliance with the principles enshrined in the Constitution²⁷.

[4.4.] Immunity of a Justice and Disciplinary Independence

According to Section 35 of the Constitutional Court Law, commencement of criminal prosecution against a Constitutional Court judge, his or her imprisonment, detention, forcible conveyance and subjection to a search shall not be permissible without the agreement of the Constitutional Court.

Disciplinary proceedings in relation to a Constitutional Court judge can be initiated with a Constitutional Court decision only in the cases provided for by law. If disciplinary proceedings against a justice are initiated, the Constitutional Court shall have the right to suspend the term of office of the judge.

If a Constitutional Court judge is unable to continue to work due to his or her state of health, he or she shall be removed from office with a Constitutional Court decision.

If a Constitutional Court judge has breached the restrictions established by law, allowed a dishonorable offence that is incompatible with the status of a judge or systematically does not fulfill his or her official duties and a disciplinary sanction has been imposed on him or her regarding it, he or she may be discharged from office with a Constitutional Court decision.

These statutory requirements ensure independence of judges and also establish a rather effective procedure, according to which the Constitutional Court can react to possible improper actions of a judge.

[5.] Jurisdiction of the Constitutional Court

The principle of the separation of power includes the control of the judiciary over the legislator and the executive power. Not a single legal provision or an action

²⁷ Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 10.2, 10.3, 11.2, 11.4

of the executive power can stay outside the control of the judiciary, if it infringes the interests of any person²⁸. The judiciary as a whole and the Constitutional Court as part of it has to ensure as complete control of two other branches of power as possible²⁹.

Jurisdiction of the Constitutional Court differs from jurisdiction of other courts. It has been established in Article 85 of the Constitution and the Constitutional Court Law. The Constitutional Court decides on normative acts adopted by the legislator and the executive power.

The particular role of the Constitutional Court can be precisely established in cases wherein, when assessing compliance of a contested norm with the norm of a higher force, disputes on competence and other disputes with the legislator, the executive power or the judicial power are assessed indirectly. When deciding such disputes, the Constitutional Court does not and cannot function as only a part of the judiciary, whilst it acts as the highest constitutional supervisor, as an institution that has the final say when interpreting the Constitution and ensuring its supremacy.

There have been several comments on the fact whether, when assessing constitutionality of certain norms, judges of the Constitutional Court come to a conflict of interests. The Constitutional Court has already assessed norms regarding the cut of pensions. Judges to whom these norms did apply also participated in adjudication. The Constitutional Court has also assessed the issue regarding the cut of salaries of judges, namely, norms that are directly related with justices of the Constitutional Court.

When examining the Case No. 2009-11-01, the Constitutional Court assessed and substantiated the rights of the Constitutional Court³⁰. It has been indicated in the judgment that the Constitutional Court as part of the judiciary has to ensure as complete control of two other branches of power as possible. The Constitutional Court, assessing the compliance of a law with the Constitution, implements the principle of supremeness, thus ensuring constitutional fairness. Neither the Constitution nor the Constitutional Court Law grant to the Constitutional Court the right to refuse to examine the compliance of a law or another legal provision with the Constitution, likewise, do not give the rights to anybody to prohibit

²⁸ Judgement of 9 July, 1999 by the Constitutional Court in the case No. 04-03(99) para. 1 of the Concluding Part, <http://www.satv.tiesa.gov.lv/upload/04-03-99E.rtf>

²⁹ Judgement of 22 February, 2002 by the Constitutional Court in the case No. 2001-06-03 para. 1.2. of the Concluding Part, <http://www.satv.tiesa.gov.lv/upload/2001-06-03E.rtf>

³⁰ Judgment of 18 January 2010 of the Constitutional Court in the case No. 2009-11-01, Para 5

the Court from fulfilling its functions or to restrict the Court in the fulfilment of its functions. Thus the Constitutional Court has the jurisdiction to examine the constitutionality of a decision adopted by another branch of power even in those cases when such decisions affect the judiciary.

Conclusions

In each state, a constitutional court is a part of the constitutional system, and the court plays a substantial role in solving of constitutional problems. Of course, it cannot solve any problem; however, it is in the interests of the State to ensure existence of an independent and strong constitutional court. Disregarding the fact that it would be necessary to improve and supplement norms that regulate mutual relations of branches of the State power, judgments of the Constitutional Court plays a substantial role to improve the situation (not only to form understanding but also to regulate such collaboration, ensuring of the principle of separation of powers and independence of the judiciary), provided that the Court has analysed, in these judgments, issues related with the principle of separation of powers, collaboration of branches of the State power and independence of judges³¹. Likewise, a great importance is also attributed to amendments to the Law “On Judicial Power” envisaging establishment of the Judicial Council. Its status enables the Council to become a substantial negotiations partner to the legislator, the executive power, when strengthening democracy and the rule of law in the State.

³¹ Judgment of 18 January 2010 of the Constitutional Court in the case No. 2009-11-01 and Judgment of 22 June 2010 in the case No. 2009-111-01