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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**DRAFT AMENDMENTS
TO THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA**

VARIANT 2

(January-February 2000)

To introduce the following Amendments to the Constitutional Court Law (the bulletin of the Saeima and the Cabinet of Ministers No.14, 1996; No.20, 1997):

1 Wording of Amendments drafted in September 1999 remains in force.

Article 1 Wording of the 1996 Law remains unchanged.

2 Article 4 To substitute words "five years" in the second part of Article 4 with words "ten years".

3 Article 7 Wording of Amendments drafted in September 1999 remains in force.

4 Article 11 Wording of Amendments drafted in September 1999 remains in force.

5 Article 16 To express Clauses 4 – 6 of Article **16** in the following wording:

"4) compliance of normative acts of the Cabinet of Ministers with the Constitution and other laws, as well as compliance of normative acts issued by institutions or officials subordinated to the Cabinet of Ministers with the Constitution, other laws and regulations of the Cabinet of Ministers;

5) compliance of acts of the President of the State, Chairperson of the Saeima, the Cabinet of Ministers and the Prime Minister with the Constitution and other laws in cases of argument about the competence of the above persons or institutions ;

6) compliance of normative acts issued by institutions or officials confirmed, appointed or elected by the Saeima with the Constitution and other laws."

6 Article 17

To delete Clause 4 of the first Part;

To regard former Clauses 5 and 6 of the first Part of the Article as Clauses 4 and 5 correspondingly;

To supplement the first Part with new Clauses 6-10 in the following wording:

" 6) the Dome (Council) of municipality;

7) the State Human Rights Bureau;

8) a court, when reviewing an administrative, civil or criminal case;

9) a judge of the Land Registry, when entering real estate- or thus confirming property rights on it – in the Land Book;

10) the 1st. variant: a person whose fundamental constitutional rights have been violated ;

the 2nd. variant: a person whose fundamental rights established by the Constitution have been violated."

To express the second, third and fourth Parts in the following wording:

(2) The following shall have the right to submit an application to initiate a case regarding compliance of normative acts of the Cabinet of Ministers with the Constitution and other laws, as well as compliance of normative acts issued by institutions or officials subordinated to the Cabinet of Ministers with the Constitution, other laws and regulations of the Cabinet of Ministers (Article 16, Clause 4):

- 1) the President of the State;
- 2) the Saeima;
- 3) not less than 20 members of the Saeima;
- 4) Prosecutor General;
- 5) the Dome (Council) of a municipality;
- 6) the Council of the State Control;
- 7) the State Human Rights Bureau;
- 8) a court when reviewing an administrative, civil or criminal case;
- 9) a judge of the Land Registry when entering real estate – or thus confirming property rights on it- in the Land Book;
- 10) the 1st.variant – a person, whose fundamental constitutional rights have been violated ;
the 2nd.variant – a person, whose fundamental rights established by the Constitution have been violated.

(3) The following shall have the right to submit an application to initiate a case regarding compliance of acts of the President of the State, the Saeima Chairperson, the Cabinet of Ministers and the Prime Minister with the Satversme and other laws in cases when competence of the officials or institutions is questioned (Article 16, Clause 5):

- 1) the President of the State;
- 2) the Saeima;
- 3) not less than twenty members of the Saeima;
- 4) the Cabinet of Ministers;

(4) The right to submit an application to initiate a case regarding compliance of normative acts issued by other institutions or officials confirmed, appointed or elected by the Saeima with the Constitution and other laws (Article 16, Clause 6) shall belong to:

- 1) the Saeima;
- 2) not less than twenty members of the Saeima;
- 3) Prosecutor General;
- 4) the Dome (Council) of municipalities;
- 5) the Council of the State Control;
- 6) the State Human Rights Bureau;
- 7) a court, when reviewing an administrative, civil or criminal case;
- 8) a judge of the Land Registry, when entering real estate- or thus confirming property rights on it- in the Land Book;
- 9) the 1st. variant – a person whose fundamental constitutional rights have been violated;
the 2nd. variant – a person whose fundamental rights established by the Constitution have been violated.

To delete Clause 2 of the fifth Part;

To regard former Clauses 3 and 4 of the fifth Part as Clauses 2 and 3 correspondingly;

To supplement the fifth Part with new Clauses 4-7 in the following wording:

” 4) the State Human Rights Bureau;
5) a court when reviewing an administrative, civil or criminal case;
6) a judge of the Land Registry when entering real estate – or thus confirming property rights on it – in the Land Book;
7) the 1st. variant- a person, whose fundamental constitutional rights have been violated;
the 2nd. variant- a person, whose fundamental rights established by the Constitution have been violated.”

To delete Clause 4 of the seventh Part;

To regard former Clause 5 of the seventh Part as Clause 4 correspondingly;

To supplement the seventh Part with new Clauses 5 – 9 in the following wording:

” 5) the Dome (Concil) of municipalities;
6) the State Human Rights Bureau;
7) a court, when reviewing an administrative, civil or criminal case;
8) a judge of the Land Registry, when entering real estate – or thus confirming the property rights on it- in the Land Book;
9) the 1st. variant – a person, whose fundamental constitutional rights have been violated;
the 2nd. variant – a person, whose fundamental rights established by the Constitution have been violated.

Article 18. -

7 Consider the motion expressed in the fourth Part of Article **20** Clause 4

Article 19.

8 To express the title and the first Part of Article **19** in the following wording:

” **An application by the Dome (Council) of a municipality**

(1) The application by the Dome (Council) of a municipality in accordance with the first Part, Clause 6, the second Part, Clause 5, the fourth Part, Clause 5 and the seventh Part, Clause 5 of Article 17 may be submitted only if the debatable act violates the rights of the respective municipality.

9 To supplement the text with Articles 19¹ and 19² in the following wording:

”Article 19¹. Application by a court and a judge of the Land Registry

(1) The application shall be submitted if:

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

(2) The application shall be expressed in the form of a motivated decision. The decision is adopted and signed by the court, which is reviewing the respective civil, criminal or administrative case or by the judge of the Land Registry, entering real estate or confirming the right to it in the Land Book.

(3) Documents, substantiating the decision of the court or the judge of the Land Registry, shall be added to it. If necessary, the respective civil, criminal or administrative case is added to the decision as well.

(4) Contesting of several acts in the decision of the court or the judge of the Land Registry is admissible if during the review of a civil, criminal or administrative case or a request to confirm property rights it is necessary to apply all the acts.

Article 19². Constitutional Claim (application)

(1) Any person who holds that...

the 1st. variant- his/her fundamental constitutional rights have been violated,...

the 2nd. variant- 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 force, may submit a claim (an application) to the Constitutional Court.

(2) 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.).

(3) 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.

(4) Submitting of the constitutional claim does not suspend the execution of the court decision, with an exception of cases when the Constitutional Court has decided otherwise.

(5) Besides, the contents of the constitutional claim (application) mentioned in the first Part of Article 18 of this Law, shall be supplemented with substantiation that:

- 1) the 1st. variant: the fundamental constitutional rights of the applicant have been violated;
the 2nd.variant: the fundamental rights of the applicant established by the Constitution have been violated;
- 2) all the ordinary legal remedies have been exhausted or there are no other legal remedies.

(6) One shall add to the constitutional claim:

- 1) explanations and documents, which are necessary to size up the conditions of the case;
- 2) documents, confirming the fact that all ordinary legal remedies have been exhausted.

10 To express Article **20** in the following wording:

”Article 20. Initiating a case or refusal to initiate a case

- (1) The Panel, consisting of three judges, investigates the application and takes the decision to initiate a case or refuses to initiate it;
- (2) The Panel is elected for a year by an absolute majority vote of the entire total of the judges;
- (3) Rules of Procedure of the Constitutional Court determine the procedure of appointing the Panels to review a case as well as the procedure of substituting a judge, who is unable to attend the session of the Panel because of health or other justified reasons;
- (4) When reviewing the applications the Panel experiences the right of refusing to initiate 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 19-19² of this Law.
 - 4) the application on an already reviewed claim has been submitted.
- (5) When reviewing the constitutional claim, the Panel may refuse to initiate a case if the legal justification of the claim is evidently insufficient to satisfy the appeal.
- (6) The Panel adopts the decision to initiate a 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.
- (7) The decision of the Panel on initiating a case or refusing to initiate a case is allowing of no appeal.
- (8) If a decision to initiate a case has been adopted, then within three days of adopting the decision:
 - 1) a copy of the decision shall be forwarded to the participants in the case;
 - 2) a copy of the application shall be forwarded to the institution or official who issued the disputable act;

- 3) the institution or official who issued the disputable act is requested to submit a written reply describing the true circumstances and legal justification of the case by the date set by the judge of the Constitutional Court;
 - 4) information on initiating the case, naming the Panel which has initiated the case and the applicant, as well as the subject of the case is forwarded for publication in the newspaper "Latvijas Vēstnesis".
- (9) If a decision to refuse to initiate a case is adopted, the copy of the decision shall be forwarded to the applicant within three days of its adoption, but in cases when the application has been submitted by not less than one third of the Saeima deputies- to their authorized representative.

11 To delete Article 21.

12 Article 22.

To express the text of Article 22 in the following wording:

- (1) When the case has been initiated, the Chairperson of the Constitutional Court authorizes one of the judges to prepare the case for review.
- (2) When preparing the case for review, the judge if it is necessary:
 - 1) requests the applicant or the institution or official, who has issued the disputable act, as well as any other state or municipal institution to submit additional explanations and documents;
 - 2) takes a decision on which persons to invite and requests them to submit their viewpoint;
 - 3) takes a decision on the necessity of investigation by experts.
- (3) If the judge has taken a decision on it, any person, hearing whose viewpoint can advance objective and versatile review of the case, may be regarded as an invited person.
- (4) The viewpoint of the invited person, conclusion of the expert, the requested explanations and other documents shall be submitted on the date determined by the judge.
- (5) The judge takes a decision on requests expressed by the participants in the case. If the judge partially or completely rejects the request, he/she takes a decision on it. The copy of the decision is forwarded to the participant who has expressed the request. The decision on partial or complete rejection of the request is final and may not be appealed.
- (6) To encourage objective, versatile and quick process of review two or more cases may be combined into one case, as well as one case may be divided into two or more cases.
- (7) The case shall be prepared within not more than three months. In especially complicated cases the Constitutional Court in the body of three judges at the organizational session may adopt a decision to extend this term but not more than by two months.

- (8) The judge completes the preparation of the case by a decision. If he/she is of the viewpoint that the case may be reviewed in a written process, he/she includes it in the decision;
- (9) 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 and setting the time and place of the organizational session;
- (10) At the organizational session the judges take a decision on:
- 1) holding the Court proceedings in writing, if the judge, who has prepared the case for review, expresses a motion on it;
 - 2) the time and place of the Court session;
 - 3) other issues connected with the review of the case at the Court session.
- (11) The Court session shall be set down not earlier than 15 days and not later than three months after the adoption of the decision on the time and place of the Court session.
- (12) If the case is reviewed at the Court session with the participants in the case taking part, then not later than 15 days before the session:
- 1) participants in the case shall be notified of the time and place of the session;
 - 2) notice of the time and place of the session shall be forwarded for publication in the newspaper "Latvija Vēstnesis";
- (13) If the decision on the Court proceedings in writing has been adopted, the participants in the case shall be notified about it.

13 Article 23:

To supplement the second part with the fifth sentence in the following wording:

"In cases, when not less than twenty members of the Saeima have submitted the application, it is not forbidden to perform procedural actions even if the term of authority of one or several deputies has expired;"

After the second Part to supplement with the new third Part in the following wording:

" (3) If the conformity with the legal norm of higher legal force, adopted or issued by an official or institution, which does not exist any more and which has no legal successor is challenged, the institution or official, who is authorized to declare the disputable act null and void or change it, shall be regarded as the participant in the case.

To regard the former third Part as the fourth Part.

14 Article 25

Amendments drafted in September 1999 remain in force.

15 To express the text of Article **26** in the following wording:

” (1) The procedure for reviewing cases is provided by this Law and the Rules of Procedure of the Constitutional Court. Issues not regulated in the Law and the Rules shall be determined by the Constitutional Court.

(2) The participants in the case (with an exception of the representatives of legal persons), who do not know the language of the proceedings have the right of making use of the services of an interpreter. Expenses for the services of the interpreter are covered by the participant himself/herself.”

16 To express the text of Article **27** in the following wording:

” (1) 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.

(2) Persons, present at the Court session may make written notes and audio records, while seated in their places. During the Court session video recording, photographing as well as audio recording outside the places envisaged for the public may be accomplished only with the agreement of the Chairperson of the Court session and so as not to intrude upon the Court process.

(3) The Constitutional Court adopts the decision about reviewing the case at a closed session. The case shall be reviewed at a closed session observing all the provisions for proceedings. The Court decision shall be announced publicly in all events.

17 To express the text of Article **28** in the following wording:

- (1) Decisions during the Court session are taken by the majority of vote of the body of the judges reviewing the case, discussing the issues either in the conference chamber or the Court hall. If the decision is taken in the conference chamber, then only the judges shall be present in the above chamber. Viewpoints expressed during voting shall not be made public. If the decision has been taken in the conference chamber, the Chairperson of the Court session announces it after returning to the Court hall
- (2) The session of the Constitutional Court is opened by the Chairperson of the Court session. He/she shall announce the members of the Court, participants in the case and other persons involved in the case and check their identity and authorizations.
- (3) If a participant in the case or another person involved in it has not appeared, the Chairperson of the Court session ascertains if the person has been duly notified about the Court session and whether the reasons of his/her non-appearance are known.
- (4) If a participant, who has been duly notified about the Court session, has not appeared, the judges shall take a decision on beginning or suspending the review of the case. If an invited person, a witness, an expert or interpreter has not appeared at Court, the

Chairperson of the Court session discusses the possibility of reviewing the case without the presence of a witness, an expert and an interpreter with the participants. After listening to the viewpoint of the participants, the Court takes a decision to start or to suspend the review of the case.

- (5) The review of the case in essence begins with the report of the judge.
- (6) After the report, participants in the case describe the true circumstances of the case and the legal justification. The applicant is given the floor the first.
- (7) Afterwards, if necessary, the floor is given to the invited persons, viewpoints of the experts are heard and witnesses are questioned.
- (8) Next follow Court debate and remarks.
- (9) The session of the Constitutional Court ends with the announcement by the Chairperson of the Court session of the time the Decision will be announced.
- (10) The process of the Constitutional Court session shall be recorded on audiotape, and a stenographic report shall be prepared from it. The stenographic report shall be attached to the Court record. The Chairperson of the Court session and the secretary shall sign the Court record.

18 To supplement with Articles **28¹** and **28²** in the following wording:

” Article 28¹. Court proceedings in writing

- (1) In cases, when the documents attached to the case suffice, it is possible to hold Court proceedings in writing, without the participants in case attending the Court session. The decision to hold Court proceedings in writing is taken under the procedure determined in the tenth Part of Article 22 of this Law.
- (2) Court proceedings in writing shall be held and the Decision shall be reached in the conference chamber.

Article 28². Procedural sanctions

- (1) In cases determined by this Article, the Court may apply the following sanctions:
 - 1) warning;
 - 2) turning out of the Court hall;
 - 3) fine.
- (2) Warning is expressed to a person who does not observe the rules of behavior and intrudes upon the process of review.
- (3) Turning out of the Court hall may be applied in cases, when the person, who has been warned, is repeatedly called to order. Persons present, who are not participants in the case or other persons involved in the case are turned out by the Chairperson of the Court session. If a representative of the participant in the case – an institution or official-has been turned out of the Court hall, the institution or official he/she represents is notified about it.
- (4) The Court may impose fine in the following cases and in the sum of:
 - 1) if the participant in the case, an invited person, an expert, witness or interpreter does not appear at the Court session because of reasons the Court considers to be unjustified – with the fine up to one hundred lats;
 - 2) if the participants in the case or other persons involved in the case, who have been warned, are repeatedly called to order during the Court session – with the fine up to one hundred fifty lats.

- (5) A copy of the Court decision (excerpt from the Court record) on imposing of the fine is forwarded to the person who has been fined.
- (6) Within 10 days after receiving the copy of the decision, the person who has been fined may ask the Constitutional Court to reduce the sum of the fine or to exempt him/her from the fine altogether.
- (7) The fine is collected under the procedure envisaged by the Law on proceedings.

19 To express the text of Article **29** in the following wording:

- (1) Proceedings in the case may be closed before the final decision is announced by a decision of the Constitutional Court:
 - 1) upon a written request of the applicant;
 - 2) if the disputed legal norm (act) is no longer in effect;
 - 3) if the legal norm (act) compliance with which has been challenged is no longer in effect.
- (2) The Constitutional Court with its decision closes proceedings in a case before the final decision is announced if:
 - 1) the Constitutional Court finds that the decision on initiating the case does not comply with the provisions of Article 20;
 - 2) a decision on the same issue has been declared in another case.
- (3) Changes in the body of an elected institution or replacement of an official after the application has been submitted does not serve as a sufficient reason to refuse initiating a case or to close proceedings.
- (4) If the decision to close proceedings has been adopted, within three days the copy of it shall be forwarded to the participants in the case and the newspaper "Latvijas Vēstnesis" to be published.

20 In Article **30**:

To supplement the first part with the second sentence in the following wording:

" During the voting only those judges who are in the body of the Court shall be in the conference hall."

To express the fourth and the fifth Parts in the following wording:

" (4) The Decision shall be reached not later than 30 days after the Constitutional Court session. Not later than three days after reaching the Decision it shall be forwarded to the participants in the case.

(5) The Chairperson of the Court session signs the Decision."

21 Article **31** - wording of Amendments drafted in September 1999 remains in force.

22 In Article **32**:

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To substitute the wording of the third Part: " ...as of the date of announcing the verdict of the Constitutional Court" with "...as of the date of publication of the Constitutional Court Decision.

The fifth part - wording of the 1996 Law remains unchanged.

23 To express the first Part of Article 33 in the following wording:

" (1) The Decision of the Constitutional Court shall be published in the newspaper "Latvijas Vēstnesis" and in the gazette "Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs" not later than within five days of being reached.

24 In Transitional Provisions:

To delete Provisions No.1, 2 and 5.

To regard former Provisions No.2 and 3 as No.1 and 2 correspondingly.