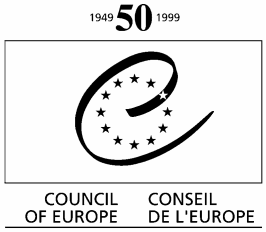

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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

DRAFT AMENDMENTS TO THE LAW ON THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Comments by Mr Rune Lavin (Member, Sweden)

COMMENTS ON DRAFT AMENDMENTS TO THE LAW ON THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Amendment 4

Article 11

(2) Under Article 4, judges of the Constitutional Court shall be confirmed by the Saeima following recommendations from different institutions. In addition, according to the currently valid Article 11, a new judge shall be recommended by the same institution that recommended the judge whose authority of office has terminated. The problem that may arise here is that the relevant institution could fail to provide any recommendation regarding a new judge. If the intention behind the proposed amendment is to enable the Saeima to confirm judges of its own accord, without any preceding recommendation, the result may be a dislocation in the distribution of power. The right to confirm judges will be concentrated in the Saeima. This may in due course lead to a situation where the Saeima no longer feels it incumbent upon itself to adhere to submitted recommendations.

(3) The proposed rule has been constructed in such a way that the extension becomes obligatory. An express proviso to the effect that the judge must consent to the extension of his/her term of office should be incorporated in the rule.

(4) It would seem that the proposed rule is to apply independently of whether a new judge has been confirmed and taken the oath. If a new judge has already commenced his/her service in the Court, the rule would result in a situation where the Court would, during a period of transition, consist of a larger number of judges than the seven prescribed in Article 3.

Amendment 5

Article 17

As a result of the proposal, additional subjects will be given the right to submit an application to initiate a case in the Constitutional Court. As the State Human Rights Bureau is an equivalent of the Ombudsman institute that exists in other countries, it seems natural to extend the proposed right to submit an application to initiate a case to this Bureau.

The other proposals extend the right to submit such an application to a large number of organs/agents of certain kinds (courts, the Domes of the municipalities, and individuals). In consequence, this right must be connected to special circumstances in each individual case which confer the status of party-in-interest on this particular subject.

The way the proposal has been drafted, all Domes of municipalities in Latvia would be entitled to submit an application to initiate a case. New legislation hardly ever affects a single municipality, though; in one way or another, all the municipalities in a country will be involved. The question is whether a Dome is to be entitled to initiate an abstract review of a norm before the relevant piece of legislation is applied to the municipality in an actual case. If the application takes place in a court of law, the municipality concerned should, by virtue of being a party, be in a position to insist that the court refer the matter in hand to the Constitutional Court for review. As the law now stands, it would appear that the municipalities are entitled to call for an abstract

review of a norm in certain cases, under Articles 17 and 19. However, the proposed rule in Article 19 (Amendment 7) seems to restrict the right of municipalities to submit an application to initiate a case to a norm review. The question that remains to be answered is: What kind of norm review are municipalities intended to be able to initiate?

Where courts of law are concerned, the proposed rules in Article 19-1 (2) (Amendment 7) demand that the relevant court holds that the norm to be applied to the case does not comply with the legal norm of higher force. This demand may be too far-reaching in some cases, in that it presupposes that the court has declared its opinion on the matter. It should be enough for the court to make it clear that a certain constitutional issue has arisen and that this issue is relevant to the case under consideration. It would seem superfluous to subject the court´s attitude to the case to review.

If any court of law is to enjoy a general right to submit an application to initiate a case, the question arises whether there is any need for the Plenum of the Supreme Court to remain among the items listed in Article 17. If the intention is that the Supreme Court shall implement abstract norm reviews, the listing should be retained; otherwise it may be omitted.

Amendment 6

Article 18

(5) In consequence of the proposed rule, no application regarding a claim already reviewed by the Constitutional Court may be submitted. The question whether a new application refers to a matter which the Court has already settled can be a difficult one to answer. An applicant will usually have a very small chance of being able to assess whether a certain question has already been reviewed by the Court, unless the applicant is merely repeating, without any substantial modification, an application made before. Therefore, it should be incumbent on the Court itself to deal with questions concerning res judicata. Incidentally, such a rule is proposed in Amendment 12, Article 12 (2) 2.

Amendment 8

Article 20

(1) and (2) It is hardly advisable for a single judge to investigate whether the highest organs of State listed under (1) are capable of applying fundamental rules contained in the law in an appropriate manner. If a case were to arise in which it would seem proper to dismiss an application on the grounds that a court or an individual lacked the required competence, a decision to dismiss it should be announced by the Court in its entirety. If an application does not comply with the stipulations set forth in Article 18, the legal consequence should not be an immediate rejection. Instead, the applicant should be offered the opportunity to complement his/her application. In any case, all possible steps should be taken to avoid a situation where one of the highest organs of State would, under Article 21, be compelled to appeal to the Court against a decision made by a single judge.

(3-6) A court of law and an individual should also be given an opportunity to complement a defective application before the application is dismissed. If the right to submit an application is to be extended to courts and individuals, there will be reason to consider whether the Court ought

not to issue a special leave to appeal in each individual case, which would mean that the Court investigates whether there are material grounds for allowing the case to go ahead. The new rules proposed in Article 20 merely oblige the Court to examine whether the formal conditions regarding the submission of an application have been met.

Article 21

As was suggested above, it seems improper for one of the highest organs of State to find itself obliged to appeal to the Court as such against a single judge´s decision to dismiss an application.

Amendment 11

Article 28-1

With reference to the proposed rules regarding written procedure, it may be pointed out that Article 6 of the European Convention on Human Rights prescribes that with regard to civil rights and obligations as well as any criminal charge, court proceedings shall normally take place orally.

Amendment 13

The reason why the Court´s decision should be signed by the Chairperson and the Secretary only is not clear. As the participating judges share a joint responsibility for the outcome, the most natural thing would be for them all to sign. Particularly in a case where there was disagreement within the Court, this should be confirmed by means of the members´ own signatures.