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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

Description of the Constitutional Court of **Latvia** as well as précis published in the Bulletin on Constitutional Case-Law

Latvia
Constitutional Court

Introduction

The idea that there may be a need to establish a Constitutional Court in Latvia was expressed from the platform of the Parliament - *(Saeima)* - as early as 8 May 1934, just a week before the coup that was followed by the dissolution of the Parliament. Then the deputy of the Baltic Germans faction, Stegmanis, submitted a motion, the aim of which was to advance and strengthen the judicial power of the State. He suggested that the Parliament should supplement the fundamental law of the State - the *Satversme* (Constitution) with Article 86, providing for the formation of the State Court. The main obligation of the State Court according to this proposal would be to verify compliance of laws and regulations passed by the Cabinet of Ministers, as well as acts of the President of the State and the Cabinet of Ministers, with the Constitution and other laws. Unfortunately, the *Saeima* rejected €tegman's motion: - it did not receive the necessary two-thirds of votes.

Many years later "*perestroika*" - proclaimed by Michael Gorbachov - commenced in the Soviet Union. A certain process of democratisation of the State took place. The Constitutional Supervision Committee of the USSR was established. It was a signal that similar institutions were a must for the republics. The Supreme Soviet of the Latvian SSR, then in power, formed a special committee, which by 16 March 1990 had elaborated the draft law on the Constitutional Court of the Latvian SSR. Article 10 of the draft law laid down that "the Constitutional Court of the Latvian SSR shall review cases on violation of rights and freedoms of the citizens of the Latvian SSR guaranteed by the Constitution of the Latvian SSR, resulting from adoption of normative acts issued by State institutions of the Latvian SSR if the laws of the Latvian SSR do not provide another procedure for such a review."

The Declaration on the Renewal of the Independence of the Republic of Latvia of 4 May 1990 swept away Soviet Latvia and its draft laws. Yet the idea of the need for a Constitutional Court was retained in Article 6.2 of the above Declaration. Unfortunately, the process of elaborating a new draft law was delayed because of the great amount of other tasks that required attention. By 28 March 1993 the future Minister of Justice Egils Levits had drawn up a programme of the most important assignments for the legislature up to the end of the year. The project envisaged passing the law on the Constitutional Court and establishing the Court, even though the Law on Judicial Power - adopted on 15 December 1992 - had vested the Supreme Court of the Republic of Latvia with constitutional supervisory jurisdiction. The competence of the Constitutional Court was outlined. At that time it was pointed out that the Constitutional Court should also review constitutional complaints submitted by individuals to initiate a case on the compliance with the Constitution of Regulations that violate the rights of a citizen and an individual. It was envisaged that any person would have a right to submit an application to the Constitutional Court on the compliance of certain administrative acts with the rights of the person and the citizen. This could be done only after the person had exhausted all applicable remedies.

General courts reviewing certain cases are among the State institutions having the right to submit an application to the Constitutional Court on compliance of laws with the Constitution.

At the beginning of 1994, on the basis of the above ideas, the Ministry of Justice prepared the draft law on the Constitutional Court as well as the draft law on Amendments and Supplements to the Law on Judicial Power. The above amendments and supplements were adopted by the

5th *Saeima* on 15 June 1994, but discussion on adoption of the Draft Project on the Constitutional Court dragged on even though the *Saeima* Legal Committee had done its work. The Legal Committee came to the conclusion that amendments to the Constitution of the Republic were necessary and submitted an adequate draft project.

The Legal Committee of the 6th *Saeima* revised the above draft projects and submitted them to the Parliament in January 1996.

On 5 June 1996, the Parliament drew up amendments to Article 85 of the Constitution, establishing:

> "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."

At the same time, overcoming hindrances of a political character, the Constitutional Court Law was passed and took effect on 28 June 1996. Among those who had the right of submitting an application to initiate a case at the Constitutional Court, physical persons and general courts were not mentioned.

At the moment draft Amendments to the Law on the Constitutional Court are being passed by the Parliament in the second reading. The Amendments introduce several changes to the procedure of constitutional review and extend the scope of subjects that have the right to apply to the Constitutional Court to include courts of general jurisdiction in connection with a case heard by them and persons whose fundamental constitutional rights have been violated through application of a normative act.

I. Basic Texts

- Article 85 of the Constitution of the Republic of Latvia.

- Constitutional Court Law adopted by the *Saeima* on 5 June 1996.

- Rules of Procedure of the Constitutional Court of the Republic of Latvia passed at the plenary session of the judges of the Constitutional Court on 21 April 1997.

II. Powers

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

- the compliance of laws with the Constitution;
- the compliance with the Constitution of international agreements signed or entered into by Latvia;
- the compliance of resolutions of the *Saeima* with the Constitution and other laws;
- the compliance with the Constitution and other laws of acts of the Cabinet of Ministers, as well as compliance with the Constitution, other laws and regulations of the Cabinet of Ministers, of normative acts issued by institutions or officials subordinate to the Cabinet of Ministers;
- the compliance of acts of the President of the State, the Chairperson of the *Saeima* and the Prime Minister with the Constitution and other laws;

- the compliance with the Constitution and other laws of other normative acts issued by institutions or officials confirmed, appointed or elected by the *Saeima*;
- the compliance with the Constitution, other laws and regulations of the Cabinet of Ministers, of binding regulations and other normative acts issued by the Municipal Council *(Dome)*;
- the compliance with the law of regulations by which the minister authorised by the Cabinet of Ministers has rescinded binding regulations issued by the Municipal Council *(Dome)* with the law;
- the compliance of the national legal norms of Latvia with the international agreements entered into by Latvia, which are not contrary to the Constitution.

According to the Law the following have the right to submit an application:

- the President of the State;
- not less than twenty members of the Parliament;
- the Cabinet of Ministers;
- the Plenum of the Supreme Court;
- the Prosecutor General;
- the Council of the State Control;
- the Parliament;
- the Municipal Council *(Dome)*;
- the State Human Rights Bureau;
- ministers, duly authorised by law.

III. Composition and organisation

1. Composition

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

Constitutional Court judges must meet the following requirements laid down by the law: they must be citizens of the Republic of Latvia who have a university level legal education and at least five years' working experience in a legal profession, or in a scientific or educational field in a judicial speciality in a research or higher educational establishment. According to the Law, lists of nominees for the office of judges of the Constitutional Court shall be published in the newspaper *"Latvijas Vestnesis"* not later than five days after their submission to the *Saeima* Presidium.

A judge 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. In the event that a judge of another court, who has already sworn the oath, is chosen as a judge 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 judges of the Constitutional Court, i.e. judges may not fill another office or have other paid employment except in a teaching, scientific and creative capacity. A judge must not be a member of Parliament or the Municipal Council. The office of a judge of the Constitutional Court is incompatible with membership in a political organisation (party) or association. A judge 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 judge, the independence of the Court, and impartiality.

The Constitutional Court and judges 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 judge is not permissible. The Constitutional Court judge is inviolable: a judge of the Constitutional Court must not be arrested or prosecuted on criminal charges without the consent of the *Saeima*, and he/she may be detained, forcibly held and subjected to a search only with the consent of the Constitutional Court.

A judge of the Constitutional Court may be the subject of 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 Parliament has agreed to the prosecution of a judge of the Constitutional Court on criminal charges, the authority of this judge 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 judge of the Constitutional Court is the subject of disciplinary proceedings because he/she has committed an act incompatible with the status of a judge, the Constitutional Court may suspend the authority of this judge until the completion of the investigation, but not for longer than one month.

A judge of the Constitutional Court may be released from office by Parliament if he/she is unable to continue working because of health reasons, if she/he is convicted of a crime and the decision of the Court has come into legal effect, if she/he has committed an act incompatible with the status of a judge, etc.

2. Procedure

The procedures of the Constitutional Court may be divided into two groups: preparatory procedures and trial procedures. The procedure is laid down in the Constitutional Court Law and the Rules of Procedure of the Constitutional Court of the Republic of Latvia. A law on the procedures of the Constitutional Court should be adopted in future.

Preparatory procedures include such issues as submission of applications, opening a case or refusal to open a case, preparing a case for review, etc.

Sessions of the Constitutional Court are open, except in cases when this is contrary to the interest of protecting State secrets.

The plenary of the Constitutional Court reviews cases concerning:

- the compliance of laws with the Constitution;
- the compliance with the Constitution of international agreements signed or entered into by Latvia;
- the compliance of resolutions of the *Saeima* with the Constitution and other laws;
- the compliance with the Constitution and other laws of regulations and other normative acts of the Cabinet of Ministers;
- the compliance of acts of the President of the State, the Chairperson of the *Saeima* and the Prime Minister with the Constitution and other laws.

Other cases are reviewed by three judges of the Constitutional Court. If the entire Constitutional Court reviews a case, it includes all the judges 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 not be less than five judges of the Constitutional Court. The session shall be chaired by the Chairperson of the Constitutional Court or his/her deputy. If a case is reviewed by three judges of the Constitutional Court, the participating judges are selected by the

Chairperson of the Constitutional Court, and these judges shall elect the Chairperson of the session from among themselves. No judge of the Constitutional Court may refuse to take part in a Court session.

Following a session of the Constitutional Court, the judges meet to reach a decision. The decision is reached by a majority vote in the name of the Republic of Latvia. The judges 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 decision is to be announced not later than 15 days after the session of the Constitutional Court and is to be forwarded to the participants in the case not later than three days after the decision is announced. The decision is signed by all the judges participating in the session of the Constitutional Court. Any judge who voted against the decision may present his/her dissenting opinion in writing, which is attached to the case file, but is not read out at the Court session.

The decision of the Constitutional Court is published in the newspaper "*Latvijas Vestnesis"* not later than five days after its pronouncement. Once a year the Constitutional Court publishes a collection of decisions of the Constitutional Court, which includes all decisions in full including the dissenting opinions of judges.

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 which the Constitutional Court has found incompatible with a legal norm of higher rank is considered invalid as of the date of announcement of the decision 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 that the agreement is amended, denounced or suspended or the accession to that agreement is withdrawn.

Latvia

Identification: LAT-2000-1-001

a) Latvia / **b)** Constitutional Court / **c)** / **d)** 24.03.2000 / **e)** 04-07(99) / **f)** On the Conformity of the Resolution of the Cabinet of Ministers on Protection of Foreign Investments of Windau Ltd with the Constitution of the Republic of Latvia and laws of the Republic of Latvia / **g)** *Latvijas Vestnesis* (Official Gazette), 113/114, 29.03.2000 / **h)**.

Keywords of systematic thesaurus:

3.4 **General Principles** – Separation of powers.
3.12 **General Principles** – Legality.
4.6.2 **Institutions** – Executive bodies – Powers.
4.6.8 **Institutions** – Executive bodies – Relations with the courts.
4.7.1 **Institutions** – Courts and tribunals – Jurisdiction.
4.10.8.1 **Institutions** – Public finances – State assets – Privatisation.
5.1.1.4.2 **Fundamental Rights** – General questions – Entitlement to rights – Legal persons – Public law.
5.3.13.2 **Fundamental Rights** – Civil and political rights – Procedural safeguards and fair trial – Access to courts.

Keywords of the alphabetical index:

Electricity, privatisation / Power, electric, purchase.

Headnotes:

A decision settling a civil law dispute between legal entities can be made only by a court and not by the Cabinet of Ministers even if one of the parties to the dispute is a state-owned company involved in the process of privatisation under the supervision of the State Privatisation Agency.

Summary:

The case was initiated by 26 members of parliament who questioned the conformity of the Resolution of the Cabinet of Ministers on the Protection of Foreign Investments of Windau Ltd with the Constitution *(Satversme)* and various laws.

On 30 November 1999 the Cabinet of Ministers adopted a Resolution giving the State Privatisation Agency the task of ensuring that the State Stock Company Latvenergo signed a contract with Windau Ltd on purchasing surplus electrical power at double the average sales tariff.

In accordance with the Constitution and the Law on Judicial Power, civil law disputes shall be reviewed only by courts. In adopting the challenged Resolution, the Cabinet of Ministers in fact resolved a civil law dispute and acknowledged the subjective civil right of Windau Ltd. The challenged Resolution thus had the same legal effect as a court decision.

The concept of the democratic republic, laid down in Article 1 of the Constitution, obliges all state institutions to act in accordance with the principle of legality, the separation of powers and the guarantee of mutual checks and balances.

In a democratic state based on the rule of law the activities of the state administration must be in compliance with laws. The purpose of the system of checks and balances is to curb the tendency of each of the three branches of power to infringe or encroach upon the others and to guarantee the stability of the institutions of the state as well as the continuity of functioning of the state power.

The Cabinet of Ministers, in adopting the challenged Resolution, failed to observe the principle of the separation of powers and limited the right of Latvenergo to appeal to a court.

The Constitutional Court decided that Item 1 of the Cabinet of Ministers Resolution on Protection of Foreign Investment of Windau Ltd was not in compliance with Articles 1 and 86 of the Constitution or with the Law on Privatisation of State and Municipal Property and declared it null and void from the moment of its adoption.

Languages:

Latvian, English (translation by the Court).

Identification: LAT-1999-3-004

a) Latvia / **b)** Constitutional Court / **c)** / **d)** 01/10/1999 / **e)** 03-05(99) / **f)** Decision on the Conformity of the Resolution of the parliament on the Telecommunications Tariff Council with the Constitution of the Republic of Latvia and other laws / **g)** / **h)** *Latvijas Vestnesis* (Official Gazette), no. 325, 05/10/1999.

Keywords of the Systematic Thesaurus:

2.2.2 **Sources of Constitutional Law** - Hierarchy - Hierarchy as between national sources.
2.3.7 **Sources of Constitutional Law** - Techniques of interpretation - Literal interpretation.
2.3.9 **Sources of Constitutional Law** - Techniques of interpretation - Teleological interpretation.
3.4 **General Principles** - Separation of powers.
3.9 **General Principles** - Rule of law.
4.5.2 **Institutions** - Legislative bodies - Powers.
4.5.9 **Institutions** - Legislative bodies - Relations with the executive bodies.
4.6.7 **Institutions** - Executive bodies - Relations with the legislative bodies.

Keywords of the alphabetical index:

Resolution of the parliament / Telecommunications Tariff Council.

Headnotes:

Although the Latvian Constitution and laws do not provide strictly for the distribution of powers in Latvia, the parliament can give binding tasks to the Government. However, these tasks shall not contradict the law.

Summary:

The case was initiated by the Cabinet of Ministers who questioned the conformity of Articles 1 and 4 of the Resolution of the parliament *(Saeima)* on the Telecommunications Tariff Council of 29 April 1999 with the Constitution *(Satversme)* of the Republic of Latvia and other laws.

In the resolution, the parliament required the Cabinet of Ministers to dismiss the members of the Telecommunications Tariff Council and to establish a new Telecommunications Tariff Council (Article 1) and to oblige the newly established Telecommunications Tariff Council to revise decisions on tariffs adopted by the former Telecommunications Tariff Council (Article 4).

The principle of separation of powers manifests itself in the separation of state power into legislative, executive and judicial power, which are implemented by independent and autonomous institutions. This principle guarantees balance and mutual control.

In a democratic country, such as Latvia, the principle of the separation of powers exists but is not implemented in an ideal way. Generally, only the independence of judges from interference of the executive power is strictly protected.

The fact that the parliament through its resolution gave a task to the Cabinet of Ministers does not contradict the Constitution as long as relations of mutual control and balance and other principles of a state based on the rule of law are observed. In a democratic republic, parliament has to observe the Constitution and other laws, including those passed by the parliament itself.

The parliament is authorised to give binding tasks to the Cabinet of Ministers, as long as these tasks do not contradict the law.

The parliament may not limit the administrative activities of the Cabinet without a legal reason and through the resolution determine relations between the Cabinet of Ministers and the Tariff Council. According to the Constitution "the relations between State institutions shall be as provided by law". The Cabinet of Ministers shall discuss or resolve all issues which in compliance with the Constitution and law are within its competence. The Law on Telecommunications determines the right of the Cabinet of Ministers to establish the Tariff Council for a period of five years.

The Tariff Council shall observe the laws. An illegal act adopted by the Tariff Council may only be abrogated under the procedure established by law. The parliament may not require the Cabinet of Ministers to dissolve the Tariff Council and may not oblige the Tariff Council to revise an act issued by the Council.

The Law on Telecommunications does not envisage dissolution of the Tariff Council. The parliament was competent to determine the dissolution by adopting amendments to the law.

The Constitutional Court decided that Articles 1 and 4 of the Resolution of the parliament on the Telecommunications Tariff Council were not in compliance with Articles 1 and 57 of the Constitution and other laws and declared them to be null and void.

Languages:

Latvian, English (translation by the Court).

Identification: LAT-1999-2-003

a) Latvia / **b)** Constitutional Court / **c)** / **d)** 09/07/1999 / **e)** 04-03(99) / **f)** on the Conformity with the Law of the Regulations of the State Housing Agency on the procedure by which vacant apartments in dwelling houses shall be rented / **g)** *Latvijas Vestnesis* (Official Gazette), no. 229/230, 14/07/1999 / **h)** .

Keywords of the Systematic Thesaurus:

1.4.11.2 **Constitutional Justice** - The subject of review - Acts issued by decentralised bodies - Sectoral decentralisation.
3.4 **General Principles** - Separation of powers.
3.9 **General Principles** - Rule of law.
3.12 **General Principles** - Legality.
5.2.4.2 **Fundamental Rights** - Civil and political rights - Equality - Criteria of distinction.
5.3.11 **Fundamental Rights** - Economic, social and cultural rights - Right to housing.

Keywords of the alphabetical index:

Public property, housing, rental / Constitutional Court, jurisdiction / Normative act, definition.

Headnotes:

Only certain state bodies (Parliament, Government, municipalities) are authorised to pass generally binding acts. Institutions of the state administration (ministries, institutions subordinated to ministries) are not authorised to pass normative acts. Normative acts passed by such bodies are illegal and inapplicable.

The interests of the state in management of public property include straightforward and precise implementation of the laws regarding the rental of public housing. When adopting regulations on the procedure under which vacant apartments in residential buildings shall be let, the State Housing Agency set down criteria for receiving rental rights in state-owned apartment houses that were not in compliance with the existing laws. The regulations were not published and were not accessible to all persons. The constitutional principle that all people shall be equal before the law was thus violated.

Summary:

The case was initiated by the Prosecutor General, who questioned the conformity of the Regulations of the State Housing Agency on the procedure by which vacant apartments in residential buildings shall be let ("the Regulations") with the Law on State and Municipal Housing Support, the Law on the Rental of Housing and the Law on the Privatisation of State and Municipal Apartment Buildings. The Regulations set down quite different criteria for granting the right to rent vacant state apartments from these established by law.

The State Housing Agency ("the Agency") argued that due to the rental payment debts of previous tenants as well as need for substantial repairs to the apartments it is impossible to lodge people in the apartments according to the Law. The Agency thus set down regulations allowing such apartments to be let to people who can make them fit for occupation investing their own money.

The Agency challenged the competence of the Constitutional Court to examine the case; on two grounds. First, it argued that the Agency was not an institution subordinated to the Cabinet of Ministers within the meaning of the Constitutional Court Law and second, the Regulations were not a normative legal act but an internal directive.

According to the principle of separation of powers the judiciary shall be competent to review the acts of the legislative and executive powers. No legal norm or activity of the executive power shall remain outside the scope of judicial review. Courts of general jurisdiction are authorised to review civil and criminal cases as well as administrative cases. However they are not authorised to declare acts of a normative character null and void. The Constitutional Court, established in 1996, is therefore authorised to review cases concerning the compliance of laws and other acts with the Constitution and other laws.

To establish whether this case is within the competence of the Constitutional Court, it should be determined first whether the Agency is "an institution subordinated to the Cabinet of Ministers" and second whether the Regulations are a normative act.

As to the first point, the Court found that, in line with its functions, the Agency was established as a public law institution. Even though it is within the competence of the Agency to accomplish activities of a civil character and it was established as a company, it does not mean that the Agency is only a subject of private law.

According to the Latvian Constitution of 1922 the Cabinet of Ministers is the highest executive institution, through which the unity of the executive power is established in the state. The structure of the state administrative institutional system has been changed, separating the institutions subordinate to, supervised by and under the authority of ministries. Nevertheless, the sense of Article 58 of the Constitution has remained unchanged: state institutions exercising public power are united into one common system under the authority of the Cabinet of Ministers.

The Constitutional Court in Latvia is competent to review acts passed by institutions subordinate to or subject to the supervision of the executive. This includes normative acts adopted by institutions under the authority of the executive (i.e. under the authority of the Cabinet of Ministers).

The Constitutional Court Law determines that the Court shall review cases concerning the compliance of normative acts with the Constitution and laws. It is within the competence of the Constitutional Court to establish whether in cases of doubt a specific act is to be considered a normative act.

The regulations in question comprise characteristics typical of normative acts, including abstract instructions not confined to specific, single episodes, as well as mandatory directions, which include generally binding regulations. They are addressed to an abstract scope of persons and they regulate legal relations between a subject of public law on the one hand and an individual or other legal entity on

the other hand. Thus the Regulations satisfy the definition of a normative act. Moreover, the application of the regulations has caused legal effects: administrative acts passed on the basis of the regulations - decisions of the Board of the Agency - granted rental rights to concrete persons. However, the Regulations do not comply with the legal requirement that normative acts must be published in order to take legal effect; furthermore, the Agency was not authorised to pass internal normative acts.

On these grounds, the Court decided that the case was within its competence. It further found that in passing the regulations at issue, the Agency had violated its competence established by law and under its statute and acted without regard for authority. Regulations passed in this manner are illegal and inapplicable.

In the sector of housing rights, the social rights aspect is of great importance. The right to a dwelling place is an internationally recognised social right.

In Latvia rental issues are regulated not only by the Civil Code but also by special laws: the Law on State and Municipal Housing Support, the Law on the Rental of Housing and the Law on the Privatisation of State and Municipal Apartment Buildings.

These laws clearly set down the rules applicable to rental of apartments in public apartment buildings, in particular that such apartments may be rented only to vulnerable or needy persons, to tenants of denationalised apartment buildings and other groups in accordance with the Law. The interests of the state in the management of such property also include the straightforward and precise implementation of laws passed in the sector of rental of public apartments. If the state guarantees housing support by allowing for the rental of public apartments, then all such apartments shall be used in giving effect to this grant. Thus, even the content of the regulations does not comply with the law.

In passing the disputed regulations the Agency set down criteria for entitlement to rental rights in state-owned apartment buildings that were not in compliance with the laws. The regulations were not published and thus were not accessible to all interested persons. Contrary to the interests of the state the Agency subjectively chose persons with whom to sign rental agreements. In fact persons were divided into the following groups: "wealthy", "needy" and "important persons". Thus the constitutional principle that all people shall be equal before the law was violated. The regulations do not comply with the principle of the rule of law, which determines that actions of the state administration shall be based on the law.

When deciding on the date from which the disputed regulations could be declared null and void, it should be taken into consideration that by renting apartments to persons who were not entitled to them according to the law the Agency has essentially violated the legal rights of persons entitled to rent them according to the law.

The Court therefore held that the Regulations of the State Housing Agency on the procedure by which vacant apartments in residential buildings shall be let were not in compliance with the Law on the System of the Cabinet of Ministers, the Law on State and Municipal Housing Support, the Law on the Rental of Housing and the Law on the Privatisation of State and Municipal Apartment Buildings, and these regulations were null and void *ab initio*.

Languages:

Latvian.

Identification: LAT-1999-2-002

a) Latvia / **b)** Constitutional Court / **c)** / **d)** 06/07/1999 / **e)** 04-02 (99) / **f)** on the conformity of the Cabinet of Ministers Regulations On Governmental Agreements with the Information Accessibility Law / **g)** *Latvijas Vestnesis* (Official Gazette), no. 221/222, 07/07/1999 / **h)** .

Keywords of the Systematic Thesaurus:

2.1.1.4 **Sources of Constitutional Law** - Categories - Written rules - European Convention on Human Rights of 1950.

2.1.1.7 **Sources of Constitutional Law** - Categories - Written rules - International Covenant on Civil and Political Rights of 1966.
3.12 **General Principles** - Legality.
5.1.4 **Fundamental Rights** - General questions - Limits and restrictions.
5.2.14 **Fundamental Rights** - Civil and political rights - Freedom of expression.
5.2.17 **Fundamental Rights** - Civil and political rights - Right to information.
5.2.18 **Fundamental Rights** - Civil and political rights - Right to administrative transparency.

Keywords of the alphabetical index:

Governmental agreements, confidentiality.

Headnotes:

Governmental agreements are agreements between a governmental institution on the one hand and a civil servant or other employee on the other hand, including agreements on additional remuneration. According to the regulations issued by the executive, governmental agreements may be confidential.

The right to freedom of expression, which includes the right to receive information, is an integral component of human rights and fundamental freedoms. The above rights are guaranteed in Latvia in the Constitution as well as in applicable international documents on human rights. The disputed provision on the confidentiality of governmental agreements contradicts the principle that human rights can be restricted only by law and only if such restrictions are necessary in a democratic society in order to protect the rights of other people, the democratic system of the state and public safety, welfare and morality.

Summary:

The petitioner - a group of 20 members of the Parliament - disputed the conformity with the Information Accessibility Law (adopted on 29 October 1998) of Article 11 of the Regulations of the Cabinet of Ministers of 21 January 1997 on Governmental Agreements ("the Regulations"). The article at issue dealt with the confidentiality of governmental agreements.

In the application it is stressed that the purpose of the Information Accessibility Law is to ensure public access to information that is at the disposal of state administrative institutions. The Information Accessibility Law enumerates exhaustively the kinds of information that may be considered information of restricted accessibility and it does not provide for this status to be applied to governmental agreements. This status is only established under regulations issued by the executive.

In deciding on the conformity of the disputed provision with the Information Accessibility Law and other laws the Constitutional Court found that the right to freedom of expression, which includes the right to receive information, is guaranteed in fundamental laws of democratic states and in international human rights instruments. In accordance with Article 100 of the Constitution "everyone has the right to freedom of expression which includes the right to freely receive, keep and distribute information and to express their views". Under Article 116 of the Constitution the above rights may be subject to restrictions only in circumstances provided for by law and only in order to protect the rights of other people, the democratic system of the State and public safety, welfare and morality.

Even though Chapter 8 of the Constitution on fundamental human rights took effect only in 1998, i.e. later than the disputed provision, the advances in the legislation in the Republic of Latvia from the very first days of renewal of its national independence have clearly proved the will of the legislator and of the state to guarantee the recognised standards of international human rights and freedoms, including ensuring the right of an individual to receive information. On 4 May 1990, adopting the Declaration on the Renewal of the Independence of the Republic of Latvia, the Supreme Council guaranteed to take into account internationally recognised human rights in Latvia. On the same day, when passing the Declaration on the Accession to the International Legal Instruments Relating to Human Rights, Latvia confirmed its resolution to guarantee everyone's essential human rights, including the right to freedom of expression. The International Covenant on Civil and Political Rights has been in force in Latvia since 14 July 1992. The European Convention for the Protection of Human Rights and Fundamental Freedoms took effect in Latvia on 27 June 1997. Thus, even when it was passed, the disputed provision was in conflict with international standards on human rights in force in Latvia.

One of the features of a democratic state based on the rule of law is guaranteeing human rights and fundamental freedoms. Only in particular cases may the above rights and freedoms be restricted, and then only by law. The executive, when adopting the disputed provision, had to follow Article 1 of the Constitution (which states that Latvia is an independent and democratic Republic) and the Constitutional Law on the Rights and Duties of the Citizen and the Individual. The Law was passed in 1992 and remained in force till Chapter 8 of the Constitution took effect. The Law contained provisions on accessibility of information that were similar to those laid down later in the Constitution. Thus at the moment when it was passed the disputed provision was in conflict with other laws: with the Law on State Secrets and the Information Accessibility Law. These laws guarantee the accessibility of information while at the same time establishing restrictions. When the disputed provision was passed the Law on State Secrets was in force; the Information Accessibility Law was adopted later.

The disputed provision, allowing the parties to a governmental agreement to consider making it confidential, is in conflict with the right to receive information guaranteed in the Constitution. The right to receive information may be restricted only by law and only in particular cases. This human right may not be restricted simply by the decision of contracting parties.

An integral part of the functioning of the state administration in a democratic state is its transparency and access to information on the use of state budget funds. In their everyday activities administrative institutions have to consider and apply standards of human rights determined by the Constitution and other laws. According to the Constitution every person has the right to receive information on activities of the institutions of the state administration, to make certain that the institutions discharge effectively, honestly and justly the functions entrusted to them by society.

The Constitutional Court held that the disputed provision of the Cabinet of Ministers Regulations regarding confidentiality of governmental agreements was not in compliance with Articles 100 and 116 of the Constitution and was null and void from the moment of its adoption.

Languages:

Latvian, English (translation by the Court).

Identification: LAT-1999-1-001

a) Latvia / **b)** Constitutional Court / **c)** / **d)** 20/04/1999 / **e)** 04-01(99) / **f)** Conformity of regulations on the procedure for repayment in cash for former landed property in rural areas with the Constitution, the Law on land privatisation and the Law on the determination of the status of politically repressed persons / **g)** *Latvijas Vestnesis* (Official Gazette), 21/04/1999, no. 121 / **h)** .

Keywords of the Systematic Thesaurus:

2.1.2.2 **Sources of Constitutional Law** - Categories - Unwritten rules - General principles of law.
2.3.6 **Sources of Constitutional Law** - Techniques of interpretation - Historical interpretation.
2.3.8 **Sources of Constitutional Law** - Techniques of interpretation - Systematic interpretation.
2.3.9 **Sources of Constitutional Law** - Techniques of interpretation - Teleological interpretation.
3.22 **General Principles** - Equity.
5.2.32.1 **Fundamental Rights** - Civil and political rights - Right to property - Expropriation.
5.2.4 **Fundamental Rights** - Civil and political rights - Equality.

Keywords of the alphabetical index:

Injustice, past, compensation / Victim of political repression / Compensation certificates.

Headnotes:

The main purpose of the law is to ensure equity. In this case, the objective of the law is restitution of equitable property rights to persons who suffered repression under the communist and Nazi regimes. The regulations issued by the executive could not limit the time for granting restitution of property rights

because there are still persons who will be granted the status of politically repressed persons and all the guarantees mentioned in the law shall apply to them.

Summary:

The case was initiated by the State Human Rights Bureau, which requested the annulment of paragraph 29 of the Regulations of the Cabinet of Ministers concerning the procedure for the repayment in cash for compensation certificates (vouchers) for former landed property in rural areas claiming that it is not in conformity with the Constitution *(Satversme)* or with the Law on land privatisation in rural regions or the Law on the determination of the status of politically repressed persons who suffered under communist and Nazi regimes.

The Constitutional Court held that the issue of receiving compensation for vouchers in cash in this case refers to a certain group of persons, politically repressed persons. The relevant provision of the Law on the determination of the status of politically repressed persons is: "The state shall ensure restoration of politically repressed persons' rights in the area of civil, economic and social rights according to the law". Interpreting the law in its historical context, the Constitutional Court took into consideration the facts that made the legislator determine the obligation of the state to ensure restoration of politically repressed persons' rights.

Already in the Declaration of the Supreme Soviet on the renewal of the independence of the Republic of Latvia (1990) it was pointed out that events in 1940 should be classified as international crimes which resulted in the occupation of Latvia and the liquidation of its statehood.

The Parliament's Declaration on the occupation of Latvia (1996) stressed that "during the whole period of occupation, the USSR purposefully carried out genocide against the Latvian nation. The occupying regime annihilated innocent people, repeatedly organised mass deportations, inflicted cruel penalties on those who participated in armed struggle or otherwise struggled for restoration of independence of Latvia, and illegally and without compensation expropriated property".

In the Law on the determination of the status of politically repressed persons (1995) it was determined that the State should take responsibility for guaranteeing politically repressed persons' rights. The legislator had taken into consideration moral damage and damage to property committed by the communist and Nazi regimes.

When interpreting the Law on the determination of the status of politically repressed persons, the Constitutional Court referred to the following:

1. Article 1 of the Constitution, which provides that Latvia is an independent, democratic Republic. The principle of a State based on the rule of law and the principles of justice and confidence in the law result from this. Politically repressed persons trusted that no special date for being granted the status of a politically repressed person would be fixed. They believed that offence and injustice would be compensated in accordance with the law;

2. the Law on land privatisation in rural regions, which establishes that former landowners who had requested compensation or land before 31 December 1992 and have not been able to receive the land because of restrictions envisaged by law have the right to receive compensation in cash. The Law did not envisage a fixed term (date) for exercising the above right as regards the persons who have been granted the status of a politically repressed person;

3. the regulations issued by the Cabinet of Ministers on 16 February 1999 on the procedure for the payment of compensation for the vouchers granted to participants of the national resistance movement for the former landed property in rural districts, which determines that participants of the national resistance movement shall submit requests for receipt of compensation for land-related certificates (vouchers) before 30 June 1999, in contrast to politically repressed persons who according to the disputed norm had to do so before 30 September 1997.

Taking these texts into account, the Constitutional Court considered that the Law on the determination of the status of politically repressed persons has never been directed towards limiting the exercise of rights by politically repressed persons. Thus the disputed norm is at variance with the Law on the determination of the status of politically repressed persons. Determination by the Cabinet of Ministers of a fixed date for

politically repressed persons to submit requests for the receipt of compensation for vouchers could be justified during the transition period to the new economic routine. However, the date had to be reasonable and just. The fact that in accordance with the Law on privatisation certificates, vouchers as negotiable instruments must be used before 31 December 1999 cannot serve as a basis for considering that 30 September 1997 is a reasonable and just term for ceasing to accept requests from the politically repressed persons.

Before 30 September 1997 a number of politically repressed persons did not have the necessary documents which would certify that they belong to the above group, but this does not change the real status of a politically repressed person and cannot serve as a reason for limiting their rights.

The Constitutional Court held that the statement made by the claimant that the disputed norm is in conflict with Articles 91 and 105 of the Constitution and Article 1 of the Law on land privatisation in rural regions is unfounded. All former landowners or their heirs have the right to receive property compensation certificates (vouchers), but only some categories of the former landowners or their heirs (politically repressed persons) have been granted the additional advantage of receiving compensation for vouchers in cash.

The Constitutional Court decided to declare paragraph 29 of the 20 May 1997 Regulations no. 187 by the Cabinet of Ministers on the procedure for the repayment in cash for compensation certificates (vouchers) for former landed property in rural areas as regards persons mentioned in the second part of Article 12 of the Law on the land privatisation in rural regions, if they have the status of politically repressed persons, as contrary to Article 9 of the Law on the determination of the status of politically repressed persons who suffered during the communist and Nazi regimes and null and void from the moment of its adoption.

Languages:

Latvian, English (translation by the Court).

Identification: LAT-1998-3-007

a) Latvia / **b)** Constitutional Court / **c)** / **d)** 27/11/1998 / **e)** 01-05(98) / **f)** On Conformity of the Norm Established by the Second Part of Article 4 of the Law "On Maternity and Sickness Benefits" with Article 66 of the Constitution *(Satversme)* of the Republic of Latvia / **g)** *Latvijas Vestnesis* (Official Gazette), 01/12/1998, no. 355 / **h)** .

Keywords of the Systematic Thesaurus:

2.1.2.2 **Sources of Constitutional Law** - Categories - Unwritten rules - General principles of law.
3.11 **General Principles** - Vested and/or acquired rights.
5.3.12 **Fundamental Rights** - Economic, social and cultural rights - Right to social security.
4.9.2 **Institutions** - Public finances - Budget.

Keywords of the alphabetical index:

Social assistance / Insurance, social / Expense determined by normative acts, officials.

Headnotes:

Article 66.2 of the Constitution (*Satversme)* establishes that when passing a law or a resolution involving expenditure from the Treasury, the *Saeima* has to take into consideration the Basic Budget. If the *Saeima* passes a resolution involving expenditure not foreseen in the Budget, it should specify the sources of revenue with which to meet such expenditure.

Summary:

The case was initiated by the Cabinet of Ministers, questioning conformity of the norm (hereinafter- "the disputed norm") established by Article 4.2 of the Law on maternity and sickness benefits, expressed in a

new wording in Article 8 of the *Saeima* 19 June 1998 Law amending the law on maternity and sickness benefits, with Article 66 of the Constitution.

In the application it was submitted that the *Saeima*, when altering the Law on maternity and sickness benefits on 19 June 1998 and amending Article 4.1.2, enlarged the scope of persons entitled to receive maternity benefit, without envisaging funding for this. Thus, in the opinion of the applicant, the *Saeima* did not respect Article 66 of the Constitution,whichstipulates that if the *Saeima* passes a resolution involving expenditure not foreseen in the Budget, it should specify in this resolution the sources of revenue with which to meet such expenditure.

It was also stressed that by introducing the above norm and not envisaging extra funds, the 1998 Special Budget for Disability, Maternity and Sickness would be in deficit and would not cover expenses for services of social insurance.

Before these Amendments took place, the social insurance system was regulated by several laws and based on unified principles establishing that expenses and services from the social insurance funds should cover only those persons who are socially insured.

The Constitutional Court concluded that the special Budget for Disability, Maternity and Sickness is one of the 1998 confirmed Special Budgets of Social Insurance. This Budget was established on the basis of the Law on maternity and sickness benefits and the Law on State Social Insurance. In accordance with the above laws, revenues accrued in the Special Budget (resources of the Social Insurance) shall be utilised only for social insurance payments to socially insured persons.

On 19 June 1998 when adopting the disputed legal norm and anticipating that the above Budget shall also cover the payment of maternity benefits to persons who are not socially insured, but who are provided for by a socially insured person, the *Saeima* enlarged the scope of the Special Disability, Maternity and Sickness Budget.

The *Saeima* when passing the disputed legal norm was under an obligation to specify the sources of revenue with which to meet the expenditure. It could do so either by passing adequate amendments to the Law on the State Budget or by determining that the disputed norm shall take effect together with a respective Amendment to the existing Law on the Budget.

Thus, during the process of passing the disputed norm, the deputies of the *Saeima* as well as the officials of the Ministries of Welfare and Finance did not comply with the duties determined by normative acts, leading to a violation of the requirements of the second part of Article 66 of the Constitution.

When deciding on the time from which the disputed legal norm shall be declared null and void, it should be taken into consideration that in accordance with Article 89 of the-Constitution, the State acknowledges and protects the basic right of a person to social insurance. Besides, in compliance with the principle of trust in law, the persons who were not covered by social insurance trusted in legality and stability of the disputed legal norm (see Decision of the Constitutional Court no. 04-05 (97) of 11 March 1998, *Bulletin* 1998/1 [LAT-1998-1-002]).

The Constitutional Court decided to declare that the disputed norm was not in compliance with Article 66 of the Constitution and null and void from the moment of the Law on the State Budget for 1999 taking effect, if the State Budget for 1999 does not envisage resources for covering the payment of maternity benefits to the persons indicated in the disputed norm.

Languages:

Latvian, English (translation by the Court).

Identification: LAT-1998-3-006

a) Latvia / **b)** Constitutional Court / **c)** / **d)** 12/09/1998 / **e)** 04-06(98) / **f)** On Conformity of the Cabinet of Ministers' Regulations On the Procedure of Compensation for the Unrealised Forecast Real Estate Tax to Self-Governments with the Laws: the Structure of the Cabinet of Ministers and On the Equalisation of Self-Gov.Finances / **g)** *Latvijas Vestnesis* (Official Gazette), 11/12/1998, no. 367 / **h)** .

Keywords of the Systematic Thesaurus:

2.3.9 **Sources of Constitutional Law** - Techniques of interpretation - Teleological interpretation.
3.4 **General Principles** - Separation of powers.
4.6.3.2 **Institutions** - Executive bodies - Application of laws - Delegated rule-making powers.
4.6.9.1.1 **Institutions** - Executive bodies - Territorial administrative decentralisation - Principles - Local self-government.
4.9.7 **Institutions** - Public finances - Taxation.
4.9.2 **Institutions** - Public finances - Budget.

Keywords of the alphabetical index:

Tax / Finance, municipal / Fund, Municipal Finance Equalisation.

Headnotes:

The Cabinet of Ministers can only use delegated rule-making powers strictly in the limits provided by law.

Summary:

On 5 March 1998 the *Saeima* of the Republic of Latvia passed the Law on the equalisation of local government finances. Item 9 of the Transitional Provisions of the above law establishes that self-government bodies for whom, because of conditions independent from their activity, it is not possible to collect the real estate taxes anticipated in the forecast for 1998, shall submit to the Ministry of Finance a substantiated application for compensation for the unrealised forecast real estate tax.

Regulations by the Cabinet of Ministers determine the procedure for submitting and reviewing applications as well as the procedure of compensation for unrealised forecast real estate tax.

If necessary, the Cabinet of Ministers shall submit to the *Saeima* amendments to the Law on the State budget for 1998. On this basis, the Cabinet of Ministers on 4 August 1998 passed Regulation no. 294 on the procedure of compensation for unrealised forecast real estate tax (henceforth, "the disputed Regulation").

The application was submitted by Riga Dome (Council) petitioning to declare the disputed Regulation null and void, as it contradicted Article 14.1.2 of the Law on the Structure of the Cabinet of Ministers and the second part of the Law on the structure of the Cabinet of Ministers as well as Item 9 of the Transitional Provisions to the Law on the equalisation of local government finances.

The applicant pointed out that when passing the disputed Regulation, the Cabinet of Ministers exceeded its authority, determined in Article 14.1.2 of the Law on the structure of the Cabinet of Ministers.

The Cabinet of Ministers may only issue normative acts or regulations if the law specifically authorises it to do so. Besides, the authorisation shall formulate the main directions of the regulations' content. The applicant argued that the Law on the equalisation of local government finances only authorised the Cabinet of Ministers to determine procedural issues of compensation, not to elaborate different principles for compensating tax forecasts.

The application stressed that Item 9 of the Transitional Provisions envisages compensation to self-governments of the difference between the anticipated Real Estate Tax and the actual realisation of the forecast for 1998.

At the same time the disputed Regulation envisages compensating the difference between the initial forecast on Real Estate Tax and the specified forecast on Real Estate Tax, but not the difference between the planned Real Estate Tax revenues and its actual fulfillment.

The Constitutional Court concluded that the Law on the equalisation of local government finances determines the general principles and the procedure of equalising local government finances. In conformity with Article 2 of the Law, the self-government finance equalisation system shall create equal possibilities for self-government bodies to execute the functions established by law. At the same time, socio-economic differences of self-government bodies shall be taken into consideration. The system shall

encourage initiative and independence on the part of self-government bodies to create their own financial resources and to assure the protection of the financial activities of the self-government bodies.

This objective shall be taken into consideration when interpreting the norms of the above law. Besides, when interpreting the Transitional Provisions, it shall be taken into account that features of application of the law, included in the Provisions, have been determined considering socio-economic conditions in the sphere of assessment of Real Estate Tax.

In the disputed Regulation, the Cabinet of Ministers stressed that conditions independent of the activity of local government shall be non-taxable as regards the Real Estate Tax properties, that are determined in Article 1.2 of the Law "On Real Estate Tax". Thus, the Cabinet of Ministers, by interpreting the order of the legislator, expressed in Article 9 of the Transitional Provisions, in a narrow manner has not taken into consideration other normative acts regulating the collection of real estate tax.

Besides, the disputed Regulation does not envisage a procedure for reviewing substantiated applications, during which to detect and, when calculating the amount of compensation, take into consideration conditions independent from the activity of the self-government body, which do not permit to collect the real estate tax. Thus, the basic criterion for calculation of the real estate taxes anticipated in the forecast for 1998, and fixing compensation is not being taken into consideration.

Besides, when passing the disputed Regulation, the Cabinet of Ministers violated the authorisation stated in Article 9 of the Transitional Provisions of the Law on the equalisation of local government finances. It determined the procedure of compensating the difference between the initially calculated Real Estate Tax income anticipated in the forecast and the specified revenues anticipated in the tax forecast.

However, it has not established the procedure of granting compensation for the unrealised forecast real estate tax.

The *Saeima*, when on 26 November 1998 reviewing Amendments to the Law on the State Budget for 1998, submitted by the Cabinet of Ministers, and deciding on compensation for the unrealised forecast real estate tax to self-governments, did not back the wording suggested by the Cabinet of Ministers. It envisaged calculating the difference between the initial forecast of tax and the specified forecast to determine the compensation. Anticipating compensation for the unrealised forecast real estate tax in the sum of 4,5 million lats, which "was calculated to be the sum of unrealised real estate tax because of conditions independent from the activity of the self-government", the legislator once again affirmed the notion and objective of Article 9 of the Law on the equalisation of local government finances, i.e. to compensate unrealised forecast real estate tax because of conditions independent from the activity of the self-government body.

The Constitutional Court decided to declare the disputed Regulation as not being in compliance with Article 14.1.2 and 14.2 of the Law on the structure of the Cabinet of Ministers and Item 9 of the Transitional Provisions of the Law on the equalisation of local government finances and null and void from the moment of its adoption.

Languages:

Latvian, English (translation by the Court).

Identification: LAT-1998-2-005

a) Latvia / **b)** Constitutional Court / **c)** / **d)** 13/07/1998 / **e)** 03-04(98) / **f)** On Conformity of the Resolution of the *Saeima* of 30 April, 1998 on the Vote of Confidence for the Cabinet of Ministers with the Law "The Structure of the Cabinet of Ministers" and Rules of Procedure of the *Saeima* / **g)** *Latvijas Vestnesis* (Official Gazette), 14/07/1998, no. 208 / **h)** .

Keywords of the Systematic Thesaurus:

2.2.2.2 **Sources of Constitutional Law** - Hierarchy - Hierarchy as between national sources - The Constitution and other sources of domestic law.
4.5.2 **Institutions** - Legislative bodies - Powers.

4.5.9 **Institutions** - Legislative bodies - Relations with the executive bodies.
4.6.4 **Institutions** - Executive bodies - Composition.
4.6.12.2 **Institutions** - Executive bodies - Liability - Political.

Keywords of the alphabetical index:

Cabinet of Ministers / Procedure, Parliament / Procedural fault, importance / Vote of confidence.

Headnotes:

Not every violation of parliamentary procedure means that an act should be considered as having no legal force. To declare an act null and void due to a violation of parliamentary procedure, one should have a well- founded doubt that if the procedure had been observed, the *Saeima* would have adopted a different resolution.

Summary:

Only one issue was on the agenda of the 30 April 1998 extraordinary sitting of the *Saeima*: the draft Resolution on a vote of confidence in the Cabinet of Ministers.

The draft Resolution envisaged simultaneously giving a vote of confidence on the acting members of the Cabinet of Ministers and on the persons invited to take up office in the Cabinet of Ministers (henceforth - "the disputed act").

The case was initiated by 21 deputies of the *Saeima* who challenged the conformity of the disputed act with Articles 6 and 11 of the Law on "The Structure of the Cabinet of Ministers" and Articles 27 and 28 of the Rules of Procedure, petitioning the Court to declare the Resolution null and void from the moment of its adoption.

The application declared that in conformity with Article 6 of the Law on "The Structure of the Cabinet of Ministers", ministers who are subsequently appointed by the Prime Minister need a special *Saeima* resolution on the vote of confidence and not a resolution on a vote of confidence for the whole body of the Cabinet of Ministers.

The applicants stressed that, when adopting the disputed act, the deputies of the *Saeima* were restricted to expressing their attitude to the newly appointed members of the Cabinet of Ministers. Deputies who supported the continuation of the activities of the existing Cabinet of Ministers were denied the possibility of giving a no-confidence vote regarding the subsequently appointed ministers. In addition, the application pointed out that the Rules of Procedure do not provide the possibility for the Prime Minister to request the *Saeima* to give a vote of confidence in the acting government and Rules of Procedure determine all cases in which the *Saeima* is authorised to reach decisions on a vote of confidence or no- confidence in the Cabinet of Ministers or a separate member of it in detail.

The Constitutional Court held that Article 59 of the Constitution (*Satversme*) establishes, that "the Prime Minister and Ministers shall by necessity enjoy the confidence of the *Saeima* and shall be responsible to the *Saeima* for their actions. Should the *Saeima* express a vote of no-confidence in the Prime Minister, the whole Cabinet shall resign. Should the *Saeima* express a vote of no-confidence in any particular minister, that minister shall resign and the Prime Minister shall invite another person to take his place". Thus, the Article authorises the *Saeima* to reach decisions on issues connected with expressing confidence or no-confidence in the Cabinet of Ministers.

The Rules of Procedure do not prohibit reviewing cases not envisaged by the Rules of Procedure. In the same way, the Rules of Procedure do not prevent reviewing cases in compliance with parliamentary traditions, if they are not at variance with the Rules of Procedure.

However, one of the basic principles of parliamentary action requires that the essence of the procedure of reviewing cases be clearly understood. If there are no established traditions, then the *Saeima*, before it starts reviewing the particular case, shall establish the procedure of the review.

In compliance with Article 59 of the Constitution (*Satversme*), the *Saeima* is authorised to make a decision on giving a repeated vote of confidence in the Cabinet of Ministers, although, before it begins

considering the issue, it must determine the review procedure. As the verbatim report of 30 April 1998 extraordinary *Saeima* sitting proves, the *Saeima* did not take this fundamental principle into consideration.

The procedure for submitting a draft resolution on a vote of confidence in the Deputy Prime Minister, a Minister or a Minister of State subsequently invited or appointed by the Prime Minister is established by Article 28 of the Rules of Procedure.

This Article shall be interpreted taking into consideration the second sentence of Article 6 of the Law on "The Structure of the Cabinet of Ministers". Both these provisions refer to cases when a person is nominated subsequently to the office of a Minister, i.e., the *Saeima* has not given a vote of confidence in that person as envisaged by Article 27 of the Rules of Procedure, whereby a candidate to the office of Prime Minister invited by the President of the State, asks the *Saeima* to give a vote of confidence in the formed Cabinet of Ministers.

Article 6 of the Law on "The Structure of the Cabinet of Ministers" establishes that a person who is subsequently invited to become a Minister shall need "a special resolution on the vote of confidence". The term "a special resolution on a vote of confidence" has been used to separate the form and the point of the resolution from the "specific resolution" on a vote of confidence for the whole Cabinet of Ministers by the *Saeima*, envisaged in the first sentence of the Article.

The contents and the form of the above "special resolution" are clearly defined in Article 28 of the Rules of Procedure. In particular, where a person is subsequently invited to become a Minister, a draft resolution of the *Saeima* on a vote of confidence in that person is required. Such a resolution - as has been with good reason pointed out by the applicant - is one which has been adopted separately from any other resolution, including a resolution giving a repeated vote of confidence in the Cabinet of Ministers.

In compliance with Article 11 of the Law on "The Structure of the Cabinet of Ministers", persons nominated to the office of minister who have resigned shall begin to fulfil their obligations as ministers only after they have received a vote of confidence from the *Saeima*.

The disputed act should have been discussed by the *Saeima* and reviewed as two separate cases - first as a vote of confidence in persons who have not yet been submitted to a vote of confidence and then as a vote of confidence for the whole government.

By discussing and reviewing the disputed act as one case, the *Saeima* has taken into consideration neither Article 6 of the Law on "The Structure of the Cabinet of Ministers" nor Article 28 of the Rules of Procedure.

Even though the draft disputed act was not in compliance with Article 6 of the Law on "The Structure of the Cabinet of Ministers" and the requirements of Article 28 of the Rules of Procedure, the deputies had a possibility to eliminate the shortcomings of the draft.

Before voting the deputies already knew that they were going to give a vote of confidence not only in the whole body of the government but also in the persons nominated to take up office in the Cabinet of Ministers. Every deputy who wanted to oppose one or several persons invited to take up office in the Cabinet, had the right, under Article 133 set by the Rules of Procedure, to demand a separation of the motion, i.e. a separate vote for the particular person or persons. However, during the process of adoption of the disputed act, such a motion was not expressed.

The Constitutional Court decided to declare that the 30 April 1998 Resolution of the *Saeima* on a vote of confidence in the Cabinet of Ministers had been adopted not taking into consideration several procedural norms, included in Article 6 of the law "The Structure of the Cabinet of Ministers" and Article 28 of the Rules of Procedure. However, on its merits it is in compliance with Article 59 of the Constitution (*Satversme*).

Languages:

Latvian, English (translation by the Court).

Identification: LAT-1998-2-004

a) Latvia / **b)** Constitutional Court / **c)** / **d)** 10/06/1998 / **e)** 04-03(98) / **f)** On Conformity of the Cabinet of Ministers 1996 Resolution no. 148 and the Cabinet of Ministers 1997 Resolution no. 367 with the Law on the Determination of the Status of Politically Repressed Persons Suffered during the Communist and Nazi Regimes / **g)** *Latvijas Vestnesis* (Official Gazette), 11/06/1998, no. 172 / **h)** .

Keywords of the Systematic Thesaurus:

2.1.2.2 **Sources of Constitutional Law** - Categories - Unwritten rules - General principles of law.
3.3 **General Principles** - Democracy.
3.4 **General Principles** - Separation of powers.
3.9 **General Principles** - Rule of law.
3.10 **General Principles** - Certainty of the law.
3.10 **General Principles** - Certainty of the law.
3.11 **General Principles** - Vested and/or acquired rights.
5.2.32.4 **Fundamental Rights** - Civil and political rights - Right to property - Privatisation.

Keywords of the alphabetical index:

Compensation, politically repressed persons / Deportation, compensation / Time-limit for application, reduction / Compensation, amount, limitation.

Headnotes:

Any State governed by the rule of law acknowledges the principle of trust in law. The principle requires that State institutions shall be consistent in their activities as regards normative acts passed by them and that they shall take into account trust in law, which could arise on the basis of a specific normative act.

Summary:

The Latvian SSR Council of Ministers adopted on 29 August 1989 Resolution no. 190, certifying the procedure by which property was to be restituted or its value compensated to citizens whose administrative deportation from Latvian SSR had been recognised as unfounded. The first paragraph of the Resolution provided that an application for restitution of property or compensation of its value must be made not later than 3 years from the date on which the Resolution about unfounded deportation had been passed. On 12 April 1995 the *Saeima* passed a new law on the determination of the status of politically repressed persons who suffered during the Communist and Nazi Regimes. The very first sentence of Article 9 established that "the State shall ensure restoration of politically repressed persons' rights in the area of civil, economic and social rights according to law".

On 15 February 1996 the law on the State Budget for 1996 was passed.

The third paragraph of the Transitional Provisions of the Law states that from 1 March 1996, applications for compensation from persons residing in the territory of the Republic of Latvia shall no longer be accepted.

On 23 April 1996, the Cabinet of Ministers passed Resolution no. 148 on the procedure by which property is to be restituted or its value compensated to persons whose administrative deportation from the Latvian SSR is recognised as unfounded (henceforth Resolution no. 148).

The second paragraph of the Resolution establishes that persons whose administrative deportation from the Latvian SSR is recognised as unfounded and who reside in the territory of the Republic of Latvia (or their heirs) shall have the issue of restitution of or compensation for property reviewed if they submit an application to the Council *(Dome)* of the Municipality of the territory where the persons lived before deportation. In accordance with the third paragraph of Transitional Provisions of the law on the State budget for 1996, such a claim had to be made within three years of the date of passing the Resolution concerning unfounded deportation but not later than 1 March 1996.

On 4 November 1997, the Cabinet of Ministers introduced amendments to Resolution no. 148 by means of Resolution no. 367, which provided that persons whose administrative deportation from the Latvian SSR had been recognised as unfounded and who reside in the territory of the Republic of Latvia (or their heirs) shall have the issue of restitution of or compensation for property reviewed if they have received documents certifying the fact that their administrative deportation was unfounded only after 1 March 1996.

The application was submitted by 22 deputies of the *Saeima*, who challenged Resolutions no. 148 and no. 367, considering that they were not in compliance with the law of 1995 on the determination of the status of politically repressed persons who suffered during the communist and Nazi Regimes. Article 10.1 of the law establishes that the State and local government institutions and their officials shall, upon receiving applications from politically repressed persons as well as from other interested persons, eliminate the consequences resulting from restrictions of civil, economic and social rights caused by the totalitarian regimes, and compensate material losses, physical and material damage, caused by these regimes.

The applicants also point out that in paragraph 10 of Resolution no. 148, the Cabinet of Ministers has groundlessly reduced the amount of compensation that the State had undertaken to pay to politically repressed persons in cases where there was no possibility of restituting the property, establishing the maximum amount of compensation as 2,000 lats for buildings and 500 lats for other property. In addition, Resolutions no. 148 and no. 367 created a situation whereby politically repressed persons who had received the certificate of rehabilitation before 1 March 1996 but who had not been able to submit an application to receive compensation before that date, had been denied the possibility of receiving compensation at all.

The Constitutional Court concluded that Article 1 of the Constitution (*Satversme)* establishes that Latvia shall be an independent democratic Republic. In a democratic state the legislative power belongs to the nation and the legislator - the *Saeima*. The executive power - the Cabinet of Ministers - has the right to pass resolutions only in cases foreseen by the law. Such resolutions shall not be at variance with the Constitution (*Satversme*) and other laws. The above follows from the principles of the rule of law and the separation of powers, which are considered to be the basis of the existence of a State governed by the rule of law.

Politically repressed persons trusted the procedure established in 1988 by which property was restituted or its value compensated. These persons planned their future on the basis of the rights endowed by certain normative acts. Due to Resolutions no. 148 and 367, passed by the Cabinet of Ministers, a number of politically repressed persons were denied the right of retrieving illegally confiscated property or receiving compensation for it as provided by law. Thus, the principles of justice and trust in law were violated.

By establishing the date upon which applications would no longer be accepted, Resolutions no. 148 and 367 are at variance with the law on the determination of the status of politically repressed persons who suffered during the Communist and Nazi Regimes which does not establish time limits for granting the status of a politically repressed person and restoring of the rights of such persons.

Paragraph 3 of the Transitional Provisions of the law on the State budget for 1996 only held up the acceptance of applications mentioned in the Resolution for a while and even then only on issues of compensation, not establishing restrictions on accepting those applications when there was a possibility of returning the property.

Evaluating the principles of justice, the rule of law, separation of powers and trust in law and taking into consideration the fact that the normative acts in question worsened the situation of politically repressed persons and unlawfully denied them their rights, the Constitutional Court decided that the above Resolutions are to be declared null and void from the moment of their adoption.

Languages:

Latvian, English (translation by the Court).

Identification: LAT-1998-2-003

a) Latvia / **b)** Constitutional Court / **c)** / **d)** 30/04/1998 / **e)** 09-02(98) / **f)** On Conformity of Paragraph 2 of the Resolution of the Supreme Council of 15 September 1992 on the Procedure by which the Law on Eminent Domain Takes Effect with Article 1 First Protocol of the Law of the Convention for the Protection of Human Rights and Fundamental Freedoms / **g)** *Latvijas Vestnesis* (Official Gazette), 05/05/1998, no. 122 / **h)** .

Keywords of the Systematic Thesaurus:

2.1.1.4 **Sources of Constitutional Law** - Categories - Written rules - European Convention on Human Rights of 1950.
2.1.3.2.1 **Sources of Constitutional Law** - Categories - Case-law - International case-law - European Court of Human Rights.
2.2.1.5 **Sources of Constitutional Law** - Hierarchy - Hierarchy as between national and non-national sources - European Convention on Human Rights and other non-constitutional domestic legal instruments.
5.2.9.2 **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Access to courts.
3.17 **General Principles** - General interest.
3.15 **General Principles** - Proportionality.
3.16 **General Principles** - Weighing of interests.
5.1.1.2 **Fundamental Rights** - General questions - Basic principles - Equality and non-discrimination.
5.2.32.1 **Fundamental Rights** - Civil and political rights - Right to property - Expropriation.
5.2.32.2 **Fundamental Rights** - Civil and political rights - Right to property - Nationalisation.
5.2.32.4 **Fundamental Rights** - Civil and political rights - Right to property - Privatisation.

Keywords of the alphabetical index:

Real estate / *Land* ownership / Compensation, determination / State Land Service.

Headnotes:

The general principle of peaceful enjoyment of possessions is always to be considered in connection with the right of the State to limit the use of property in accordance with conditions envisaged by Article 1 Protocol 1 ECHR.

Summary:

On 19 December 1996, the Parliament (*Saeima)* passed the law "Amendment to the Supreme Council Resolution of 15 September 1992 on the procedure by which the Law of the Republic of Latvia on eminent domain takes effect", supplementing paragraph 2 with the second, third and fourth parts in the following wording:

"When expropriating real estate necessary for the State or public - needs for maintaining and operating specially protected natural objects, educational, cultural and scientific objects of State significance, State training farms, national sport centres, as well as objects of engineering and technical, energy and transportation infrastructure - according to which the ownership rights are renewed or shall be renewed in accordance with the law to former owners (or their heirs), the extent of compensation shall be determined in money by a procedure established by law, but shall be not more than the evaluation of the real estate in the Land Books or cadastral documents drawn up before 22 July 1940 in which the value of real estate is indicated. Coefficients for the recalculation of value of property according to prices in 1938-1940 (in pre-war lats) and present prices (in lats) shall be determined by the State Land Service.

The fourth part stresses that the procedure for expropriation of real estate established by this paragraph shall also be applied to owners who have acquired the real estate from the former land owner (or his/her heir) on the basis of an endowment contract."

Taking into consideration that Article 64 ECHR (henceforth "the Convention") envisages the possibility of making reservations to any particular provision of the Convention where any law then in force in its territory is not in conformity with the provision, the *Saeima* included the following reservation in Article 2 of the Law on the Convention: "Claims under Article 1 Protocol 1 ECHR shall not relate to the property reform that regulates restitution of property or paying compensation to former owners (or their heirs) whose property has been nationalised, confiscated, collectivised or otherwise unlawfully expropriated during the period of the annexation by the USSR or to the process of privatisation of agricultural enterprises, fishermen's collective bodies and State or municipal property."

The case was initiated by twenty deputies of the *Saeima* who asked that parts 2 and 4 of paragraph 2 of the Resolution be declared null and void from the day the Convention took effect in Latvia, i.e. from 27 June 1997.

The applicants pointed out that the procedure established by the second and fourth parts of paragraph 2 of the Resolution, when applied to persons mentioned there, makes them less equal before court than those whose property is expropriated in the public or State interest under general procedure, since the persons mentioned in paragraph 2 of the Resolution have no right or reason to protect their interests at the court as regards the amount of compensation for the expropriated property. Courts - in cases like this and according to the law - can only quite formally approve of the price, determined by the State Land Service.

They also pointed out that the second and fourth parts of paragraph 2 of the Resolution express the notion that evaluation of the property depends only on what basis or how the property has been obtained and on whether the property status of its owner has improved or become worse. The applicants are of the opinion that compensation for expropriated property should be reasonable and should not be determined merely on the basis of the manner of obtaining it. If for one and the same property two people are paid different sums of money just because the properties have been obtained differently, then that constitutes discrimination on the ground of property status.

The Constitutional Court concluded that the procedure for the evaluation and determination of compensation for immovable property, which is envisaged by the second part of paragraph 2 of the Resolution, has been determined taking into consideration State or public interests. The terms of the second part of paragraph 2 of the Resolution refer only to immovable properties that are necessary for State or public needs for the maintenance and operation of specially protected natural objects, educational, cultural and scientific objects of state significance, State training farms, national sport centres as well as objects of engineering and technical, energy and transportation infrastructure. Such a procedure is in conformity with the fundamental principle of denationalisation of property in the Republic of Latvia - "to denationalise the property or to compensate its value to the extent that has been indicated during nationalisation" and it has the objective - in the context of consequences of the policy of annexation by the USSR to re-establish social justice and to fairly balance interests of the individual and the society after completion of the property reform (conversion).

Although the amount of compensation is to be reasonably related to the value of the property to be expropriated, Article 1 Protocol 1 ECHR - as has repeatedly been shown in the practice of the European Court of Human Rights - does not envisage full compensation for the expropriated property, especially in cases when expropriation of property takes place for important public interests. The European Court of Human Rights has come to the conclusion that legitimate objectives of public interest, such as those pursued by measures of economic reform or measures designed to achieve greater social justice, may call for reimbursement of less than the full market value. Thus, the principle of fair balance not only establishes a certain boundary between an admissible and inadmissible expropriation of property but also invests the government with extensive rights when evaluating the property to be expropriated and determining the amount of compensation.

The second and fourth parts of paragraph 2 of the Resolution do not prevent the owner whose property is being expropriated in the public or State interest from appealing to a court to review the extent of compensation. The second part of paragraph 2 of the Resolution only establishes the maximum extent of compensation. Therefore the viewpoint of the applicants, that the above persons have been denied the right to protection by a court and equality before the court, is unfounded.

The Constitutional Court decided to declare the second and fourth part of Paragraph 2 of the Supreme Council Resolution of 15 September 1992 on the procedure by which the Law of the Republic of Latvia on eminent domain takes effect as being in compliance with Article 1 Protocol 1 ECHR.

Cross-references:

On the question of reimbursement for less than full market value, see:- Judgment *James and Others v. the United Kingdom*,of 21/02/1986, paragraph 54;

- Judgment *Lithgow and Others v. the United Kingdom,* of 08/07/1986, paragraph 121; précis in *Special Bulletin ECHR* [ECH-1986-S-002];

- D.J.Harris, M.O'Boyle, C.Warbrick: *Law of the European Convention on Human Rights*; London, Dublin, Edinburgh, 1995, pages 532-534.

Languages:

Latvian, English (translation by the Court).

Identification: LAT-1998-1-002

a) Latvia / **b)** Constitutional Court / **c)** / **d)** 11/03/1998 / **e)** 04-05(97) / **f)** On Conformity of the Joint Interpretation by the Ministry of Finance (no. 047/475 certified on 30 April 1993) and by the Ministry of Economic Reforms (no. 34-1.1-187, certified on 4 May 1993) On Revaluation of Fixed Assets by Enterprise and Entrepreneur Company Accountancy and Interpretation by the Ministry of Economy no. 3-31.1-231 of 28 December 1993 On the Procedure of Application of the Joint Interpretation by the Ministry of Finance and the Ministry of Economic Reforms On Revaluation of Fixed Assets by Enterprise and Entrepreneur Company Accountancy with the law On the Procedure of Privatisation of Objects (Enterprises) of the State and Municipal Property as well as other laws / **g)** *Latvijas Vestnesis* (Official Gazette), 12/03/1998, no. 66 / **h)** .

Keywords of the Systematic Thesaurus:

1.7.5 **Constitutional Justice** - Effects - Temporal effect.
2.1.2.2 **Sources of Constitutional Law** - Categories - Unwritten rules - General principles of law.
2.3.8 **Sources of Constitutional Law** - Techniques of interpretation - Systematic interpretation.
3.4 **General Principles** - Separation of powers.
3.10 **General Principles** - Certainty of the law.
3.12 **General Principles** - Legality.
4.6.3.2 **Institutions** - Executive bodies - Application of laws - Delegated rule-making powers.

Keywords of the alphabetical index:

Privatisation, procedure / Loan, interest free.

Headnotes:

The procedure for privatisation of State assets, and particularly provisions granting interest free loans in this process, have to be regulated by law.

Summary:

A Joint Interpretation by the Ministry of Finance and the Ministry of Economic Reforms and an Interpretation by the Ministry of Economy establish that the difference between the preceding value of fixed assets and the value established by the Privatisation Commission can be drawn up as an interest free loan and, if the privatisation project of an undertaking, the purchase and sale agreement or the agreement on lease buy-out of an undertaking envisages investment, that covers the above difference and if all the conditions have been observed on the term the lease buy-out envisages or - in case of purchase and sale agreement - in a year after the agreement has become effective, the institution which has signed the agreements adopts a decision to write the difference off.Article 1 of the Constitution *(Satversme)*, establishing that Latvia is an independent democratic Republic, was effective at the time when the Joint Interpretation was passed. On 6 July 1993 the complete Satversme became effective. In

compliance with Article 64 of the Satversme, legislative rights in the Republic of Latvia belong to the Saeima and to the people in accordance with the procedure envisaged by the Constitution.

The case was initiated by the Council of State Control which petitioned to declare the part of the Joint Interpretation by the Ministry of Finance and the Ministry of Economic Reforms referring to inclusion of investments into the buy-out payment during the process of privatisation and the Interpretation by the Ministry of Economy as null and void from the moment of their enactment. The petitioner considered that they are not in compliance with:

1. Article 9 of the law "On the Procedure of Privatisation of State-owned enterprises and Municipal Property";

2. Article 6 of the law "On Privatisation of the Objects of the State and Municipal Property";

3. Articles 8 and 20 of the law "On Lease and Lease Buy-out Payment of the State and Municipal Enterprises".

The applicant pointed out that the above laws provided no method of privatisation to make use of investments with an aim to reduce the buy-out payment of the object, and so these Interpretations had established a completely new dealing with State property during the process of privatisation concluding a loan agreement without interest and reduction of the purchase price because of investments or preservation of posts.

Evaluating the rights of the ministries to pass such normative acts, as well as their contents, the Constitutional Court considered that the principle of separation of powers should be taken into consideration.

In a democratic State, the legislative power belongs to the people and the legislator. Other State institutions only have the right to pass generally binding legally based normative acts in cases delegated by the law. Consequently, the principle of legality of management envisages that the government institution shall carry out its activities on the basis of existing laws.

To establish whose competence it is to regulate the process of privatisation, it is necessary to bear in mind that the issue is of utmost importance and therefore it is necessary to settle it through legislation. The Constitutional Court is of the opinion that the above issue falls within the competence of the legislator and that the Ministry of Finance, the Ministry of Economic Reform and the Ministry of Economy, when passing the normative acts in question, interfered in the area of legislation without any proper basis. Therefore, the above normative acts are *ultra vires* and unlawful.

While discussing the date from which the normative acts in question should be declared null and void, the Constitutional Court considered the following principles of law: the principle of justice, the principle of legality, the principle of the separation of powers and the principle of confidence in the law. When comparing the significance of the above principles, the elements which are essential to the principle of confidence in the law include: retrospective effect of the verdict on public and private interests; longevity of legal relations, established on the basis of the Joint Interpretation; possible changes in the legal status of the subjects to be privatised who trusted in legality of the normative acts in question.

The Constitutional Court declared the part of the Joint Interpretation referring to inclusion of investments into the buy-out payment during the process of privatisation as well as the Interpretation by the Ministry of Economy as not being in compliance with Article 64 of the Constitution and null and void from the moment of the pronouncement of the judgment.

Languages:

Latvian, English (translation by the Court).

Identification: LAT-1998-1-001

a) Latvia / **b)** Constitutional Court / **c)** / **d)** 23/02/1998 / **e)** 04-04(97) / **f)** On conformity of the Regulation of the Cabinet of Ministers no. 322 of 16 September 1997 on the Payment of Part of Property Tax Income into the Municipal Finance Equalisation Fund in 1997 with the Law On Budget and Financial Management / **g)** *Latvijas Vestnesis* (Official Gazette), 25/02/1998, no. 50 / **h)** .

Keywords of the Systematic Thesaurus:

3.4 **General Principles** - Separation of powers.
3.10 **General Principles** - Certainty of the law.
3.10 **General Principles** - Certainty of the law.
3.12 **General Principles** - Legality.
4.6.3.2 **Institutions** - Executive bodies - Application of laws - Delegated rule-making powers.
4.6.9 **Institutions** - Executive bodies - Territorial administrative decentralisation.
4.9.2 **Institutions** - Public finances - Budget.
4.9.7 **Institutions** - Public finances - Taxation.
4.9.2 **Institutions** - Public finances - Budget.

Keywords of the alphabetical index:

Finance, municipal, equalisation / Fund, Municipal Finance Equalisation / Justice, principle.

Headnotes:

The failure by the Cabinet of Ministers to promulgate in time regulations which stipulate the procedure for transfer of parts of the property tax they perceive into the Municipal Finance Equalisation Fund, does not give the municipalities the right to dispose of these funds.

Summary:

Article 41.1 of the law "On Budget and Financial Management" establishes that "municipalities have the right to independently draw up and confirm their budget", but Article 42.1 determines that "municipalities have the right to budget income, based on laws, to provide for regular and safe income, meeting the demands of macro-economic stability".

The amount of the budget income which the municipalities have the right to receive from the property tax is established by the laws "On Property Tax" and "On Equalisation of Municipal Finance in 1997".

The law "Amendments to the law On Property Tax" establishes that the procedure of transferring the property tax income into the city or *pagasts* municipality budget and into the Municipal Finance Equalisation Fund shall be determined by Regulation of the Cabinet of Ministers.

The case was initiated by Aizkraukle city Dome (Council) and a *pagast* Council petitioning to abrogate Regulation no. 322 "On the Payment of Part of Property Tax Income into the Municipal Finance Equalisation Fund in 1997", considering that the Regulations do not comply with Article 41.1 and Article 42.1 of the law "On Budget and Financial Management".

The applicants pointed out that by implementing the requirements of Regulation no. 322, which was passed on 16 September 1997 (three months before the end of the year), large sums of money were deducted from the budgets of the respective municipalities and transferred into the Municipal Finance Equalisation Fund, thus creating unforeseen financial difficulties for the above municipalities. They also pointed out that Regulation no. 322 gives the Minister of Finance the right to determine the part of property tax to be transferred into the Municipal Finance Equalisation Fund in the last quarter of the year.

The Constitutional Court concluded that Article 2.1.3 of the law "On Equalisation of Municipal Finances in 1997", passed on 19 December 1996, determined that the income of the Municipal Finance Equalisation Fund was to be constituted in part by payment of 31.85% of the property tax income.

Thus, the municipalities, when drawing up their budget for 1997, were not authorised to plan to include the whole income from the property tax into their budget. They had to foresee payment of 31.85% of property tax income into the Municipal Finance Equalisation Fund.

The fact that the Cabinet of Ministers delayed promulgation of the Regulation until 16 September 1997 did not give municipalities the right to consider that they would not have to transfer part of property tax income into the Municipal Finance Equalisation Fund.

According to the law "Amendments to the law On Property Tax" the Cabinet of Ministers had both the right and the obligation to establish the procedure, but it had no right to authorise any other institution to determine the procedure of payment, as the law did not envisage it.

The Constitutional Court decided that the Regulation of the Cabinet of Ministers no. 322 was in compliance with Article 41.1 and Article 42.1 and only paragraph 6 of Regulation no. 322 of the Cabinet of Ministers was at variance with Articles 14 (part 2) and 15 of the law "The Structure of the Cabinet of Ministers" and Article 5 (part 2) of the law "On Property Tax" and was declared null and void from the moment of its adoption.

Languages:

Latvian, English (translation by the Court).

Identification: LAT-1997-2-002

a) Latvia / **b)** Constitutional Court / **c)** / **d)** 11/07/1997 / **e)** 04-02(97) / **f)** On Conformity of paragraph 3 of Regulations of the Cabinet of Ministers no. 118 of 2 April 1997 "Amendments to Regulations no. 275 of the Cabinet of Ministers of 30 July 1996 on the Procedure for Submitting Declarations of Income by State Officials with Articles 23 and 24 of the law "On Corruption Prevention" / **g)** *Latvijas Vestnesis* (Official Gazette), 16/07/1997, no. 182 / **h)** .

Keywords of the Systematic Thesaurus:

2.2.2 **Sources of Constitutional Law** - Hierarchy - Hierarchy as between national sources.
4.6.2 **Institutions** - Executive bodies - Powers.

Keywords of the alphabetical index:

Corruption prevention / Income, declaration by State officials.

Headnotes:

According to the Law "On the Procedure of Proclaiming Laws and Other Acts by the *Saeima*, the President of the State and the Cabinet of Ministers and their Becoming Effective" if the collision between legal normative acts of different legal force has been established, then the normative act with a higher legal force is considered to be effective. Regulations of the Cabinet of Ministers must not infringe upon Laws enacted by the Parliament.

Summary:

The case was initiated by 36 deputies of the *Saeima* petitioning to annul paragraph 3 of Regulations no. 118 of the Cabinet of Ministers "On the Procedure for Submitting Declarations of Income for State Officials".

The Constitutional Court declared paragraph 3 of Regulations no. 118 as not being in compliance with Articles 23, 24 and 29 of the "Corruption Prevention Law" because according to the Law the contents of the State official declaration shall be mandatory for every State official and, when declaring the accruals of electronic funds, the demands for disclosure on State officials shall be identical. The Cabinet of Ministers, even when establishing the procedure for submitting declarations, is not authorised to change these demands. Besides, these Regulations of the Cabinet of Ministers also lead to the violation of the

principle of publicity which is protected by Article 29 of the "Corruption Prevention Law" which establishes that declarations of any State official shall be accessible to the public. The Law establishes that the journalists and representatives of any mass media have the right to get acquainted with declarations of any State official as well as to publish all the information included in the declarations, with the exception of the addresses of the officials. However, according to the procedure for submitting declarations issued by the Cabinet of Ministers, the information on accruals of electronic funds of the following shall not be accessible to the public for 1996 and three months of 1997. This concerns judges, prosecutors, sworn notaries, employees of police, the President of the Bank of Latvia and his assistant, civil servants or candidates, officials - elected, appointed or authorised by the *Saeima* and the Cabinet of Ministers - managers (directors) of state and municipal companies (enterprises) and their assistants, deputies of the city Dome, district or pagasts (a small rural district) Council (with the exception of chairpersons of the city and district Council), members of the municipal inspection committees, officials - elected, appointed or authorised by the city Dome, district and pagasts Council (with the exception of managing directors of the city Dome and district Council), officials of the State Revenue Service, members of other state and municipal collegiate institutions as well as officials, employed by state or municipal enterprises, servicemen of the National Armed Forces. Article 5.2 of the Corruption Prevention Law describes this group of officials as having rights to make decisions, to supervise, to control, to inquire, to inflict a penalty or to deal with state or municipal property or finances.

Languages:

Latvian, English (translation by the Court).

Identification: LAT-1997-2-001

a) Latvia / **b)** Constitutional Court / **c)** / **d)** 07/05/1997 / **e)** 04-01(97) / **f)** On conformity of Regulation no. 23 of 10 January 1997 of the Cabinet of Ministers "Amendments to the Law on Regulating Business Activity in the Energy Sector" (issued in compliance with Article 81 of the *Satversme* Constitution of the Republic of Latvia) and on conformity of Regulation no. 54 of 14 March 1995 of the Cabinet of Ministers "On Purchase Prices of Electrical Energy Generated in the Republic of Latvia" with the *Satversme* of the Republic of Latvia and with the Law "On Regulating Business Activity in the Energy Sector", as well as with other Laws / **g)** *Latvijas Vestnesis* (Official Gazette), 08/05/1997, no. 113 / **h)** .

Keywords of the Systematic Thesaurus:

1.4.10 **Constitutional Justice** - The subject of review - Rules issued by the executive.
2.1.2.2 **Sources of Constitutional Law** - Categories - Unwritten rules - General principles of law.
3.3 **General Principles** - Democracy.
3.4 **General Principles** - Separation of powers.
4.6.3.2 **Institutions** - Executive bodies - Application of laws - Delegated rule-making powers.

Keywords of the alphabetical index:

Business activity / Energy sector.

Headnotes:

According to the Constitution of the Republic of Latvia legislative power belongs to the *Saeima* (Parliament). This legislative power can also be delegated to the executive - the Cabinet of Ministers. Article 81 of the Constitution states that "in cases of urgent necessity between sessions, the Cabinet shall have the right to issue regulations which shall have the force of Law". These regulations shall not modify the following: the law of election to the *Saeima*, laws bearing on judicial constitution and procedure, budget rights, and laws passed by the *Saeima* then in power; they shall not refer to amnesty, the issue of Treasury notes, State taxes, customs duties, railway tariffs, loans and they shall be annulled if not presented to the *Saeima* within three days of the opening of the following session.

A Regulation by the Government adopted under these powers but rejected by the Parliament becomes unconstitutional even if the Parliament does not enact a new law on the matter. In this case, the laws in force prior to the Regulation become valid again.

Summary:

The case was initiated by 35 deputies of the *Saeima* who requested the annulment of Regulation no. 23 of the Cabinet of Ministers, claiming it had violated the restrictions of Article 81 of the *Satversme* that states that regulations may not change laws passed by the *Saeima* then in power.

The Constitutional Court declared Regulation no. 23 as not corresponding to Article 81 of the *Satversme* because the *Saeima* had completed its legislative function in its meeting at the end of 1996 when the Law "On Regulating Business Activity in the Energy Sector" was amended by the *Saeima* then in power, by rejecting the motion of the Cabinet of Ministers and deciding to leave the legal norms, passed by previous *Saeima* as valid. The assumption is that laws passed by the *Saeima* then in power - as used in Article 81 of the Constitution - should be understood broadly as a manifestation of any legislative function of the *Saeima*. The concept "laws passed by the *Saeima* then in power" of Article 81 includes not only the published text of the law passed by the *Saeima*, but also motions on perpetuating the previous standards in their former and still valid wording. These motions were considered and adopted in the third reading of the draft, even though they are not included in the published text of the law. Besides it was pointed out that Latvian legislative tradition, when publishing a law on amendments to an existing law, does not consider it necessary to indicate either that debate on an Article has taken place or that wording of the Article has remained unchanged. Article 81 of the Constitution should be interpreted in the light of Article 1 of the Constitution, which declares Latvia a democratic State, placing the principle of separation of powers at the basis of interpretation and resolving all doubts about the rights of the Cabinet of Ministers in favour of the *Saeima* as the main and ruling legislative institution.

Languages:

Latvian, English (translation by the Court).