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**CONSTITUTIONAL JUSTICE:
FUNCTIONS AND RELATIONSHIP WITH
THE OTHER PUBLIC AUTHORITIES**

*National report prepared for the XVth Congress
of the Conference of European Constitutional Courts by
The Constitutional Court of the Republic of Latvia*

I. THE CONSTITUTIONAL COURT'S RELATIONSHIP TO PARLIAMENT AND GOVERNMENT

- 1. The role of Parliament (as the case may be, of the Government) in the procedure for appointing judges to the Constitutional Court. Once appointed, can judges of the Constitutional Court be revoked by that same authority? What could be the grounds/ reasons for such revocation?**

The Parliament (*Saeima*) confirms Constitutional Court justices. Three Constitutional Court justices shall be confirmed following a proposal by not less than ten members of the Parliament, two - following a proposal by the Cabinet of Ministers and two more following a proposal by the Supreme Court plenary session. The Supreme Court plenary session shall select candidates for the position of a Constitutional Court justice from among the judges of the Republic of Latvia¹.

Parliament does not have the right to dismiss a Constitutional Court justice.

Removal or dismissal of a Constitutional Court justice from office can be implemented only in cases established by law and according to a stipulated procedure.

Pursuant to the Constitutional Court Law:

- (1) If a Constitutional Court justice is unable to continue to work due to his or her state of health, he or she shall be removed from office with a Constitutional Court decision. For this decision to be taken an absolute majority vote of all the court members shall be necessary.
- (2) A Constitutional Court justice shall lose his or her office, if he or she is convicted of a criminal offence and the judgment has come into legal effect.
- (3) If a Constitutional Court justice has breached the restrictions established by law (restrictions for obtaining of income and combining of offices, as well as other restrictions), allowed a dishonourable offence that is incompatible with the status of a judge or systematically does not fulfil his or her official duties and a disciplinary sanction has been imposed on him or her regarding it, he or she may be discharged from office with a Constitutional Court decision. For this decision to be taken an absolute majority vote of all the court members shall be necessary².

- 2. To what extent is the Constitutional Court financially autonomous - in the setting up and administration of its own expenditure budget?**

Budget of the Constitutional Court is included into the State budget as a separate chapter.

¹ Constitutional Court Law, Article 4

² Constitutional Court Law, Article 10 and 34

Pursuant to Article 66 of the Constitution (*Satversme*), annually, before the commencement of each financial year, the Parliament shall determine the State Revenues and Expenditures Budget, the draft of which shall be submitted to the Parliament by the Cabinet of Ministers.

The procedures for the formulation, approval and implementation of the State budget and responsibilities in the budget process are determined by the Law On Budget and Financial Management.

The Cabinet of Ministers determines the procedures, by which the Constitutional Court shall plan, implement, supervise and account for state budget programme (sub-programme) results and the indicators thereof, as well as provide reports regarding them³.

Budget elaboration and request:

The Constitutional Court develops state budgetary requests within the scope of the maximum permitted amount of State budget expenditures⁴. The Law on Budget and Financial Management provides that the budgetary request of the Constitutional Court shall not be amended, up to the submission of the draft budget law to the Cabinet, without the consent of the submitter of the request. Consequently, the Minister of Finance does not have the right to introduce amendments into the budgetary request of the Constitutional Court. The Cabinet of Minister, however, does have the right to introduce such amendments without co-ordinating them with the Court.

At present, the Constitutional Court examines a case on compliance of this provision with the Constitution.

Budget administration:

The right to reallocate appropriations among programmes, sub-programmes and expenditure codes [to the Constitutional Court] have been conferred to the Minister of Finance within the framework of the appropriation specified in the annual State Budget Law informing the Parliament thereof⁵.

It should also be noted that in the judgment of 18 January 2010 in the case No. 2009-11-01, the Constitutional Court has indicated the following:

“The principle of distribution of power prohibits the executive power to decide upon issues, which directly influence the actions of judiciary and the functioning of courts, i.e., the issues of funding, the number of judges, the necessary staff, its competence requirements, remuneration and other issues. This is exactly the reason why the

³ Law on Budget and Financial Management, Section 5 (10)

⁴ Law on Budget and Financial Management, Section 18 (1.1)

⁵ Law on Budget and Financial Management, Section 9 (13) 1st indent

legislator has to give the possibility to the judiciary or an independent institution, which represents the judiciary, to provide its opinion on issues, which affect functioning of courts, but the taking of decisions concerning them fall within the competence of the legislator. The legislator has the right to disagree with the opinion of the judiciary, however, the legislator has to consider it and treat it with respect and due understanding⁶.”

3. Is it customary or possible that Parliament amends the Law on the Organization and Functioning of the Constitutional Court, yet without any consultation with the Court itself?

The Parliament as the legislator has the exclusive right to introduce amendments into the Constitutional Court Law. The Constitutional Court Law has been adopted on 5 June 1996. The Law came into force on 28 June 1996. Since then, the Law has been amended several times, namely, the legislator has introduced amendments into the Constitutional Court Law eight times⁷.

Usually, when introducing amendments into the Constitutional Court Law, the Parliament consults the Court. It should also be indicated that in the judgment of 18 January 2010 in the case No. 2009-11-01 the Constitutional Court has indicated that it follows from the principle of separation of powers that the legislator has the duty to let “the judiciary or an independent institution, which represents the judiciary, to express its opinion on issues, which affect the functioning of courts, but the taking of decisions concerning them fall within the competence of the legislator. The legislator has the right to disagree with the opinion of the judiciary, however, the legislator has to listen to it and to treat it with respect and due understanding⁸.”

4. Is the Constitutional Court vested with review powers as to the constitutionality of Regulations/ Standing Orders of Parliament and, respectively, Government?

Jurisdiction of the Constitutional Court has been established in the Constitution and the Constitutional Court Law.

Pursuant to Article 16 of the Constitutional Court Law, the Constitutional Court shall adjudicate matters regarding:

- 1) compliance of laws with the Constitution;
- 2) compliance of international agreements signed or entered into by Latvia (also until the confirmation of the relevant agreements in the Parliament) with the Constitution;

⁶ Judgment of 18 January 2010 in the case No. 2009-11-01, Para 24 // <http://www.satv.tiesa.gov.lv/?lang=2&mid=19>

⁷ 11.09.1997., 30.11.2000., 19.06.2003., 15.01.2004., 06.03.2008., 12.12.2008., 01.12.2009., 10.12.2009.

⁸ Judgment of 18 January 2010 in the case No. 2009-11-01, Para 24 // <http://www.satv.tiesa.gov.lv/?lang=2&mid=19>

- 3) compliance of other regulatory enactments or parts thereof with the norms (acts) of a higher legal force;
- 4) compliance of other acts of the Parliament, the Cabinet of Ministers, the President, the Speaker of the Parliament and the Prime Minister, except for administrative acts, with law;
- 5) compliance with law of such an order with which a Minister authorised by the Cabinet has suspended a decision taken by a local government council (parish council); and,
- 6) compliance of Latvian national legal norms with those international agreements entered into by Latvia that is not in conflict with the Constitution.

5. Constitutionality review: specify types / categories of legal acts in regard of which such review is conducted.

The Constitutional Court reviews compliance of external normative acts with the norms (acts) of a higher legal force. The Constitutional Court does not review compliance of administrative acts or court decision with the Constitution. Jurisdiction of the Constitutional Court is thoroughly described in Article 16 of the Constitutional Court Law, pursuant to which the Constitutional Court shall adjudicate matters regarding:

- 1) compliance of laws with the Constitution;
- 2) compliance of international agreements signed or entered into by Latvia (also until the confirmation of the relevant agreements in the Parliament) with the Constitution;
- 3) compliance of other regulatory enactments or parts thereof with the norms (acts) of a higher legal force;
- 4) compliance of other acts of the Parliament, the Cabinet of Ministers, the President, the Speaker of the Parliament and the Prime Minister, except for administrative acts, with law;
- 5) compliance with law of such an order with which a Minister authorised by the Cabinet has suspended a decision taken by a local government council (parish council); and,
- 6) compliance of Latvian national legal norms with those international agreements entered into by Latvia that is not in conflict with the Constitution.

6. a) Parliament and Government, as the case may be, will proceed without delay to amending the law (or another act declared unconstitutional) in order to bring such into accord with the Constitution, following the constitutional court's decision. If so, what is the term established in that sense? Is there also any special procedure? If not, specify alternatives. Give examples.

Parliament and Government (Cabinet of Ministers) usually enforce decisions of the Constitutional Court. Moreover, it is often the case that the legislator eliminates mistakes before the Constitutional Court adopts a decision. Namely, after a particular

case is initiated, the legislator, having established deficiencies in regulatory framework that serves as the grounds for submitting an application to the Constitutional Court, eliminates them by amending the contested norm.

Normative acts do not envisage a special procedure for execution of judgements of the Constitutional Court. None of Latvian institutions monitor execution of judgments of the Constitutional Court. The way and procedure for execution of the judgments depend on a particular judgment and circumstances of the matter.

As to the term of execution of the judgements, one can distinguish between two cases.

The first – when the Constitutional Court recognizes a contested norm or act as null and void; however, it does not establish the term to solve the situation. In this case the legislator must act in accordance with a particular situation. It is infrequent when the legislator fails to execute a judgment as soon as possible.

The other case – when the Constitutional Court recognizes a contested norm or act as null and void as from a certain date in future. Pursuant to Article 32 (3) of the Constitutional Court Law, the Court may establish another date when contested norms recognized as non-constitutional lose force. The Court usually gives the legislator time to solve the situation if immediate repealing of the norm would cause a worse or inadmissible situation. Usually the legislator is given the term of 6 months to prevent all deficiencies established.

6. b) Parliament can invalidate the constitutional court's decision: specify conditions.

Parliament cannot invalidate the Constitutional Court's decision under any conditions.

Pursuant to Article 31 (13) of the Constitutional Court Law, the Constitutional Court Judgment is final and not subject to appeal.

7. Are there any institutionalized cooperation mechanisms between the Constitutional Court and other bodies? If so, what is the nature of these contacts / what functions and powers shall be exerted on both sides?

The Constitutional Court is a constitutional institution (body) which belongs to the judicial power.

The Constitutional Court can exercise constitutional review, namely, it can carry out its function of safeguarding the respect for the Constitution and protecting human rights if it is genuinely independent from branches of power and institutions, functioning of which it controls. Such an independence of the Constitutional Court is ensured by observance of the principle of separation of powers. The Constitutional

Court cooperates with other institutions in accordance with procedure provisions that follow from the principle of separation of powers. Normative acts do not establish special collaboration mechanisms.

President of the Constitutional Court is a member of the Judicial Council [*Tieslietu padome*] – a collegiate institution that would participate in elaboration of the policy of strategy of the judicial system, as well as improvement of functioning of it.

II. RESOLUTION OF ORGANIC LITIGATIONS BY THE CONSTITUTIONAL COURT

1. What are the characteristic traits of the contents of organic litigations (legal disputes of a constitutional nature between public authorities)?

The Constitutional Court has also implemented organic litigation. However, taking into account competence of the Constitutional Court, such issues can be solved by litigation only in the case if a contested norm (act) is related with (or impacts) mutual relations of institutions or bodies.

For instance, when assessing compliance of Cabinet of Ministers regulations with legal norms of a higher legal force, the Constitutional Court has established several times that, when passing the contested provision, the Cabinet of Ministers has not observed the limits of the authorization established in the Law, namely, it has dealt with the issue *ultra vires*⁹.

For instance, in the case on constitutionality of five norms of the Prosecutor's Office Law¹⁰, the Constitutional Court indicated the following: [...] from the content of the claim follows that the Administrative District Court requests not so much to assess the conformity of the contested norms of the Office of the Prosecutor with the legal norms of higher legal force as to receive an answer to legal issues, one of which is related with the status of prosecutor's office and its place in the national constitutional system.

There are cases where upon contesting a norm, local governments have also requested to establish either a particular regulatory framework restricts their competence or not.

In the case on constitutionality of certain functions of the National Radio and Television Council, the Court established that, first of all, it has to verify compliance of the status of the Council itself with the Constitution¹¹.

In the judgments in cases on reduction of remuneration of judges, the Constitutional Court has assessed relations of the legislator and the judicial power in the context of the principle of separation of powers in order to establish the extent, to which the principle of separation of powers and that of independence of judges restricts freedom of action (margin of appreciation) of the legislator when adopting decisions directly related with the judicial power and its functioning¹².

⁹ Judgment of 9 October 2007 in the case No. 2007-04-03; Judgment of 21 November 2005 in the case No. 2005-03-0306.

¹⁰ Judgment of 20 December 2006 in the case No. 2006-12-01, Para 5.

¹¹ Judgment of 16 October 2006 in the case No. 2006-05-01

¹² Judgment of 18 January 2010 in the case No. 2009-11-01 and of the 22 June 2010 in the case No. 2009-111-01

2. Specify whether the Constitutional Court is competent to resolve such litigation.

The Constitutional Court Law does not explicitly establish jurisdiction of the Constitutional Court to perform organic litigation. However, adjudication of such matters related to mutual relations of institutions of bodies can be commissioned to the Constitutional Court, which has already been the case.

Jurisdiction of the Constitutional Court differs from that of other courts. The special role of the Court can especially be seen in cases of organic litigation and in cases where disputes between the legislator, the executive power and the judicial power are reviewed when assessing constitutionality of a contested norm. When settling such disputes, the Constitutional Court cannot act solely as a part of the branch of the judicial power. It has the duty to act as the supreme supervisor of constitutionality, as an institution that has the final say when interpreting the Constitution or ensuring its supremacy.

3. Which public authorities may be involved in such disputes?

Involvement of institutions in a particular dispute depends on the content of a contested norm. For instance, in the case where a local government contested public transport procedure established by Parliament, it was Parliament that submitted a reply to the Constitutional Court.

4. Legal acts, facts or actions which may give rise to such litigations: do they relate only to disputes on competence, or do they also involve cases when a public authority challenges the constitutionality of an act issued by another public authority? Whether your constitutional court has adjudicated upon such disputes; please give examples.

Organic litigation is resolved only in the frameworks of a case where the Court assesses compliance of a contested norm (act) with a legal norm of a higher legal force. Therefore, if a particular contested norm is related with competence of any institution, it is being assessed in the frameworks of a particular case.

5. Who is entitled to submit proceedings before the Constitutional Court for the adjudication of such disputes?

Pursuant to Article 17 of the Constitutional Court Law, the rights to submit an application regarding initiation of a matter is held by:

- 1) the President;
- 2) the Parliament (*Saeima*);
- 3) not less than twenty deputies of the Parliament;

- 4) the Cabinet of Ministers;
- 5) the Prosecutor General;
- 6) the Council of the State Audit Office;
- 7) a local government council (parish council);
- 8) the Ombudsman, if the authority or official, who has issued the disputed act, has not rectified the established deficiencies within the time period specified by the Ombudsman;
- 9) a court, on adjudicating a civil matter, criminal matter or administrative matter;
- 10) the Land Register Office judge in performing an entry of immovable property or associated corroboration of rights thereof in the Land Register; or
- 11) a person in the case of the fundamental rights being infringed upon as defined in the Constitution.

6. What procedure is applicable for the adjudication of such dispute?

If the Constitutional Court has to resolve organic litigation, the Court applies the same procedure as for assessment of compliance of any contested norm (act) with a legal norm of a higher force.

7. What choices are there open for the Constitutional Court in making its decision (judgment). Examples.

The Constitutional Court can recognize a contested norm as null and void. The Court can also provide interpretation of a particular legal norm.

Pursuant to Article 32 (2) of the Constitutional Court Law, the Constitutional Court judgement and the interpretation of the relevant legal norm provided therein shall be obligatory for all State and local government institutions (also courts) and officials, as well as natural and legal persons.

8. Ways and means for implementing the Constitutional Court's decision: actions taken by the public authorities concerned afterwards. Examples.

Normative acts do not provide for any special procedure for implementing the Constitutional Court's decisions. None of Latvian institutions monitor execution of judgments of the Constitutional Court. The way and procedure for execution of the judgments depend on a particular judgment and circumstances of the matter.

III. ENFORCEMENT OF CONSTITUTIONAL COURT'S DECISIONS

1. The Constitutional Court's decisions are:

- a) final;
- b) subject to appeal; if so, please specify which legal entities/subjects are entitled to lodge appeal, the deadlines and procedure;
- c) binding *erga omnes*;
- d) binding *inter partes litigantes*.

Pursuant to Article 31 (13) of the Constitutional Court Law, decisions of the Constitutional Court are final and not subject to appeal.

Decisions of the Constitutional Court are binding *erga omnes*.

Pursuant to Article 32 (2) of the Constitutional Court Law, the Constitutional Court judgement and the interpretation of the relevant legal norm provided therein shall be obligatory for all State and local government institutions (also courts) and officials, as well as natural and legal persons.

Pursuant to Article 29 (2) 1st indent of the Constitutional Court Law, interpretation of the legal norm provided in the Constitutional Court decision regarding termination of the judicial proceedings shall be obligatory for all State and local government institutions (also courts) and officials, as well as natural and legal persons.

2. As from publication of the decision in the Official Gazette/Journal, the legal text declared unconstitutional shall be:

- a) repealed;
- b) suspended until when the act/text declared unconstitutional has been accorded with the provisions of the Constitution;
- c) suspended until when the legislature has invalidated the decision rendered by the Constitutional Court;
- d) other instances.

Pursuant to Article 32 (3) of the Constitutional Court Law, a legal norm (act) that the Constitutional Court has declared as incompatible with the norm of a higher legal force, shall be regarded as not in effect from the day of publication of the Constitutional Court judgment, if the Constitutional Court has not determined otherwise. Consequently, the basic condition that is applied to the majority of judgements is that a contested norm loses its force as on the date of publishing a decision.

The legislator has granted to the Constitutional Court discretion to decide the date as of which the contested provision, which has been declared incompatible with a legal norm with a higher legal force, becomes invalid. To declare the contested provision

invalid from another day, not the moment when the judgement is published, the Constitutional Court has to substantiate its opinion.

The Constitutional Court, to the extent possible, should also see to it that the situation, which could develop starting with the moment when the contested provisions become invalid, should not breach the fundamental rights of the applicants and other persons guaranteed in the Constitution and would not cause significant harm to the interests of the state or society¹³.

The Constitutional Court usually exercises the above mentioned freedom of action (discretion) according to one of the following procedures:

1) The Constitutional Court recognizes a contested norm as non-compliant with a legal norm of a higher legal force and declares it as null and void as from a certain date in future, which is about 6 months. Namely, the court gives the legislator time to solve the situation if immediate repealing of the norm would cause a worse or inadmissible situation.

For instance, in the judgment of 9 May 2008 in the case No. 2007-24-01, the Constitutional Court has indicated the following: „When establishing the date, from which the contested provision would become invalid, the Court has taken into consideration the fact that the legislator, in order to prevent the violation of the right to a fair court, must examine several possible solutions and establish, which of them would be the most appropriate for the situation of Latvia. Consequently, the legislator needs time to improve the normative regulation”.

2) The Constitutional Court recognizes a contested norm as non-compliant with a legal norm of a higher legal power and declares it as null and void as from the date of coming into force of the contested norm (act).

For instance, in the judgment of 8 February 2007 in the case No. 2006-09-03 the Constitutional Court has indicated the following:

„If the part of Garkalne Pagasts Land Use Plan for 2004 – 2016, which envisages constructing buildings on the flood zones of the Big Baltezers Lake, is not declared as null and void from the moment of the norm taking effect, then the activities of the local authority Council, which have been carried out as the result of incorrect interpretation of Section 37, Paragraph 1, Item 4 of the Protection Zone Law up to the time of the announcement of the Judgment – would be legalized. To reach the aim of the above norm – to protect the flood zones from operative actions as much as possible – the contested act on the construction of buildings on the flood zones shall be declared as null and void as of the moment of it taking effect.”

¹³Judgment of 16 December 2005 in the case No. 2005-12-0103, Para 25, and Judgment of 21 December 2009 in the case No. 2009-43-01 35, Para 1.

3) The Constitutional Court recognizes a contested norm as non-compliant with a legal norm of a higher legal force and declares it as null and void as from the date of publishing the judgment of the Constitutional Court; however, as to the applicant or a particular circle of persons – as from the date when a particular norm has come into effect or applied. This procedure is applied by the Constitutional Court in order to prevent infringement of the rights of a person in the most effective way possible.

For instance, in the judgment of 4 January 2007 in the case No. 2006-13-0103, the Constitutional Court indicated the following:

„The Constitutional Court holds that the rights of those military persons, who during the period from the day of the Military Persons’ Term of Service Pension Law taking effect till the day of Regulations No. 272 taking effect – i.e. August 19, 2000 – decided to continue their military service, relying on the fact that term of service pensions for that time shall be calculated from the whole amount of remuneration, have to be ensured. To ensure the protection of the rights of these persons and give them the possibility to receive adequately calculated service pensions, the contested norms shall be declared as null and void as from the moment of their issuance regarding those retired military persons to whom – when calculating term of service pensions the time till the moment of Regulations 272 taking effect, calculation of the term of service pensions for this time is taken into consideration.”

However, if the Constitutional Court has declared any international agreement signed or entered into by Latvia as non-compliant with the Constitution, the Cabinet of Ministers has the duty to provide for amendments to this agreement without delay, the denunciation of this agreement, the suspension of its operation or the revocation of accession¹⁴.

3. Once the Constitutional Court has passed a judgment of unconstitutionality, in what way is it binding for the referring court of law and for other courts?

Pursuant to Article 32 (2) of the Constitutional Court Law, the Constitutional Court judgement and the interpretation of the relevant legal norm provided therein shall be obligatory for all State and local government institutions (also courts) and officials, as well as natural and legal persons.

4. Is it customary that the legislature fulfills, within specified deadlines, the constitutional obligation to eliminate any unconstitutional aspects as may have been found- as a result of *a posteriori* and/or *a priori* review?

Parliament and Government (Cabinet of Ministers) usually enforce decisions of the Constitutional Court. Moreover, it is often the case that the legislator eliminates

¹⁴ Article 32 (4) of the Constitutional Court Law.

mistakes before the Constitutional Court adopts a decision. Namely, after a particular case is initiated, the legislator, having established deficiencies in regulatory framework that serves as the grounds for submitting an application to the Constitutional Court, eliminates them by amending the contested norm.

Normative acts do not envisage a special procedure for execution of judgements of the Constitutional Court. None of Latvian institutions monitor execution of judgments of the Constitutional Court. The way and procedure for execution of the judgments depend on a particular judgment and circumstances of the matter.

5. What happens if the legislature has failed to eliminate unconstitutional flaws within the deadline set by the Constitution and/or legislation? Give examples.

Usually, the legislator manages to eliminate unconstitutional flaws. If the legislator would fail to eliminate them, a person could exercise his or her rights, for instance, by directly applying the Constitution and the interpretation included in the judgment of the Constitutional Court.

6. Is legislature allowed to pass again, through another normative act, the same legislative solution which has been declared unconstitutional? Also state the arguments.

It is impermissible in a democratic state that the legislator, when adopting a new norm, would deliberately avoid implementing a decision of the Constitutional Court. It cannot be excluded that the legislator, when adopting a new norm, can make a mistake and again adopt a non-constitutional norm. However, not only the ruling of the judgment but also interpretation of a contested norm established in the judgment is binding on the legislator.

7. Does the Constitutional Court have a possibility to commission other state agencies with the enforcement of its decisions and/or to stipulate the manner in which they are enforced in a specific case?

Normative acts do not envisage a special procedure for execution of judgements of the Constitutional Court. None of Latvian institutions monitor execution of judgments of the Constitutional Court.