

CONSTITUTIONAL COURT AS A GUARDIAN OF THE LATVIAN LEGAL SYSTEM

Abstract

In the article, the author explains the foundation and the constitutional regulation of the Latvian Constitutional Court marking its place within the principle of the separation of powers. The appointment of the justices and some novelties along with problems encountered in the justice selection procedure is provided in other chapter of the article. By describing the competence of the Constitutional Court, it is pointed out that it is very narrow as the Constitutional Court adjudicates only cases about conformity of legal enactments with the norms of higher hierarchy. The author analyses also the circle of persons who can stand before the Court. Special emphasis is given to the constitutional complaint – a petition which can be submitted to the Constitutional Court by an individual and which marks also dialogue between the Latvian Constitutional Court and the European Court of Human Rights. At the end, the author explains the legal force and real influence of judgments of the Constitutional Court, including rights of the Constitutional Court to determine a point in time when the anti-constitutional regulation becomes null and void. The author concludes that the Constitutional Court not only theoretically, but also in reality ensures a system for the constitutional order and values, as well as principles in the Republic of Latvia.

Keywords: Constitutional Court, justice, competence, locus standi requirements, judgment.

1. Introduction

In today's democracies protection of the constitution is in the hands of judges. Judicial review is considered as a power of courts to control constitutionality of legislation. As such, it plays an important role in the state (De Visser, 2014, p. 55). In other words, judicial review of the constitutionality of a law "presents an exciting and perplexing encounter between legislator and judge" (Cappelletti, 1971, p. 1). The doctrine (Weinrib, 2016, p. 148) even assumes that constitutional supremacy, constitutional rights and judicial review have found a modern constitutional state.

* Dr. iur, Associate Professor of the Law Faculty, University of Latvia, Latvia, e-mail: anita.rodina@lu.lv

In the Republic of Latvia, like in several other countries, the exclusive function – to safeguard the constitution (Judgment of the CC in case No. 2009-11-01, para. 5), or to ensure existence of a legal system that complies with the Constitution of 15 February 1922 (*Satversme*), and to provide its opinion regarding constitutionally important issues (Judgment of the CC in case No. 2008-35-01, para. 11.2) – is in the hands of the Constitutional Court of the Republic of Latvia (hereinafter – the Constitutional Court or CC).

The Constitutional Court as the youngest constitutional institution commenced its activities on 9 December 1996, and passed its first judgment on 7 May 1997 (Judgment of the CC in case No. 04-01(97)). The establishment of the Constitutional Court is to be considered as a significant addition to the parliamentary order of Latvia and also to the development of the rule of law. The Constitutional Court, in performing its function, has expedited the transformation of the Latvian legal system from Soviet law (Ziemeļe, 2017). The Constitutional Court continues to create and consolidate the Latvian legal system also today. The judgments of the Constitutional Court have become a reflection of the concise text of the Constitution (*Satversme*) of 15 February 1922. Moreover, it has also formulated the values, upon which the constitutional identity of the State is founded, by stating that “Latvia is based on such fundamental values that, among the rest, include basic rights and fundamental freedoms, democracy, sovereignty of the State and people, separation of powers and rule of law” (Judgment of the CC in case No. 2008-35-01, para. 17). In other words, the rulings by the Constitutional Court are of principal importance in the functioning of the legal system, as well as in the protection of the constitutional order. Prof. A. Endziņš, the first President of the Constitutional Court, has provided the most accurate description of the Constitutional Court’s significance and role in Latvia, by stating that the Constitutional Court is a force that the legislator must consider and respect (Discussion, 2016, p. 234).

2. Foundation of the Constitutional Court and Its Constitutional Regulation

In the beginning of nineties, in many newly established democracies, which appeared on the world map in the Eastern and Central Europe, Constitutional Courts as guardians of the constitution were created (Prochazka, 2002, pp. 33-73; Schwartz, 2000, pp. 5-21). It was a time when constitutional review spread within the new democracies. Latvia was not an exception. The first legal act of constitutional level, envisaging the establishment of a constitutional court in Latvia, was the declaration of the Supreme Council of the LSSR which was adopted on 4 May 1990 under the title “On the Restoration of the Independence of the Republic of Latvia”. The second sentence in paragraph 6 thereof provided that in cases of “[d]isputes over the issues regarding the application of a legal act shall be resolved by the Constitutional Court of the Republic of Latvia”. Subsequent to that, the law of 15 December 1992 governing judicial power envisaged that the Supreme Court shall be entrusted with the function of constitutional supervision. Quite soon the political and legal thought gave up the idea of entrusting the right of constitutional supervision (not

review) to the Supreme Court, starting to develop a concept of a special – Constitutional Court. In June 1996, the law amending the *Satversme* as well as the Law on Constitutional Court were passed. This is the reason why the Latvian Constitutional Court belongs to the “third generation” of constitutional courts (Solyom, 2015, p. 6).

The constitutional status and regulation on the Constitutional Court is included in one Article of the *Satversme* – in Article 85.¹ Constitutional regulation of the Court is very narrow, because it was necessary to retain the laconic style of the *Satversme*. Therefore, the *Satversme* just indicates the competence of the Constitutional Court by giving an authorization to its further specification in law; it regulates the legal status of Justices and the rights of the Constitutional Court to declare laws or other enactments or parts thereof null and void. Procedures laid down by law for adjudicating cases are determined by the Constitutional Court Law and the Rules of Procedure of the Constitutional Court.

The Constitutional Court in Latvia is a part of the judicial power. It fulfils its functions by administering justice, ensuring control over two other branches of power (Judgment of the CC in case No. 2001-06-03, para. 1.2). Unlike other courts belonging to the general court system, the Constitutional Court solves specific disputes pertaining to the compatibility of legal provisions with the provisions of higher legal force (Judgment of the CC in case No. 2011-11-01, para. 11.1). The Constitutional Court is not solving criminal cases, civil law disputes, nor the cases that follow from administrative legal relationships (Judgment of the CC in case No. 2007-03-01, para. 9; Judgment of the CC in case No. 2008-43-0106, para. 12).

The Latvian Constitutional Court is founded on the principles of the European model of constitutional review. It has the characteristics typical of the European model: centralisation, implementation of abstract and concrete constitutional review, possibility of repressive (*a posteriori*) form alongside with preventive (*a priori*) review, *erga omnes* power of its judgments.

3. Corps of Justices

The Constitutional Court is one of the smallest courts in Europe as it consists of seven justices. Justices are selected in a specific procedure and there are special requirements for candidates for the positions as an independent court is an essential guarantee of democracy and freedom in each country (Shetrete, 2011, p. 3). The requirements set for the candidates to the office of the Constitutional Court Justice in Latvia are similar to the ones set for constitutional court justices in other countries and to the Supreme Court Judges. A general requirement, which applies to the judges of general courts and to the Constitutional Court Justices, is that only Latvian citizen/national with impeccable reputation may become a judge. Candidates for the office of the Constitutional Court

¹ Article 85 of *Satversme* provides: “[i]n 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 Saeima shall confirm the appointment of judges to the Constitutional Court 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.”

Justice must have appropriate education in the legal science² and professional experience of ten years.³ Experience in appointing the Constitutional Court Justices in Latvia shows that persons with experience in academic work are very often appointed to this office. As of May 2021, all seven judges have background from the University of Latvia, Law Faculty and six of them are working at the same University (one is employed elsewhere in the academia). There is also age requirement: a person who has reached the age of 40 can become a Constitutional Court Justice.

In Latvia, all judges, including the Constitutional Court Justices, are appointed to the office by the *Saeima*. The decision of the *Saeima* is one of the main criteria for ensuring the independence of judges (Judgment of the CC in case No. 2004-04-01, para. 10). Even though the final decision on confirming a Constitutional Court Justice is taken by the *Saeima*, three constitutional institutions have the right to propose candidates to the office: three candidates can be proposed by at least ten Members of the *Saeima*; two – by the Cabinet of Ministers; two – by representatives of the judicial power – by the Plenary Session of the Supreme Court, which may select candidates among the judges of the Republic of Latvia.

Unlike a judge in the general court system, which is appointed to the office by general ballot of the *Saeima* (on the basis of Article 24 of the *Satversme*, decision being adopted by the majority vote of Members present), for the Justice of the Constitutional Court to be appointed, at least 51 Members of the *Saeima* have to vote for the candidate. Said number is quite a challenging tool as, for example, at the end of 2020 none of the five candidates could get 51-vote-support from *Saeima* members (13th *Saeima* autumn session on 21 December 2020). After confirmation, a Constitutional Court Justice takes the judge's oath (solemn affirmation), which is accepted by the President and then he/she can start fulfilling his or her duties. An interesting situation of taking an oath occurred due to the Covid 19 restrictions which were introduced in Latvia at the beginning of 2020. On April 20, 2021 the oath was given in remote procedure via Zoom platform (see *Lyportals*, 2021).

The Constitutional Court Justices are appointed to the office for “the term stipulated in the law” (Article 85 of the *Satversme*) – ten years. It must be specified that normative regulation in Latvia is not very explicit and accurate in prohibiting a person to be reappointed to the office of the Constitutional Court judge as it is in other countries (European Commission for Democracy Through Law (Venice Commission), 1997, pp. 13-15). The doctrine of Latvia has witnessed contrary opinions in this regard (Neimanis, 2021, pp. 21-23; Priekulis, 2021, pp. 13-20). In the commentaries of the Article 85 (Rodiņa & Spale, 2013, pp. 151-152) of the Constitution, it was explained, regardless of revising the provision (Article 7(3) of the Constitutional Court Law) “[o]ne and the same person may not hold the position of a Constitutional Court judge for longer than ten consecutive years”, the person should be appointed as Constitutional Court justice only once in a lifetime. In spite

² Person who has acquired a higher professional or academic education (except the first level professional education) in legal science and also a master's degree (including a higher legal education, which in regard to rights is equal to a master's degree) or a doctorate may be a judge at the Constitutional Court.

³ Ten years of service in a legal speciality or in a judicial speciality in scientific educational work at a scientific or higher educational establishment after acquiring a higher professional or academic education (except the first level professional education) in legal science.

of that, a person who had been a justice for entire ten years was nominated as the candidate (not appointed) at the end of 2020 (*Latvijas Republikas Saeima Juridiska Komisija*, 2020).² Interestingly, in none of the institutions which are responsible for the appointment of the Justices there was a debate on this issue.

4. Competence of the Constitutional Court

Constitutional courts currently have several core competencies or functions such as ensuring the conformity of national legislation with the constitution, ensuring the integrity of political office and processes, the protection of fundamental human rights, and resolving institutional disputes, (De Visser, 2014, p. 93). In spite of different classifications of the functions of the constitutional courts in the doctrine, the main aim of the Constitutional Court is to safeguard the priority of constitutional provisions – or to protect the *Satversme*, by reviewing cases in accordance with the law (Judgment of the CC in case No. 2009-11-01, para. 5). The competence of the Constitutional Court is included in the *Satversme* (Article 85), as well as in the Law on Constitutional Court (Section 16). The Constitutional Court in Latvia reviews: 1) the conformity of national laws with the *Satversme*; 2) the conformity of international treaties signed or entered into by the Republic of Latvia with the *Satversme* as well as their conformity until the confirmation of the relevant treaties in the *Saeima* with the *Satversme*; 3) the conformity of other pieces of legislation or parts thereof with the norms of higher hierarchy; 4) the conformity of other acts of the *Saeima*, the Cabinet, the President, the Speaker of the *Saeima* and the Prime Minister, except for administrative acts, with national law; 5) the conformity of an order by which an authorized Minister has suspended a decision taken by a local government council with the law; 6) the conformity of national legal norms with those international treaties which entered into by the Republic of Latvia as long as they are not in conflict with the *Satversme*.

The competence of the Latvian Constitutional Court is very narrow, as it adjudicates only cases about the conformity of legal enactments with the norms of higher hierarchy. In Europe, this is a very typical function of the constitutional courts, expressing the main idea of the “father” of the European model – Hans Kelsen (Kelsen, 2002, p. 72). However, at the same time this narrow competence from time to time causes debates about both practical and theoretical needs to extend the competence of the Constitutional Court, for instance, by providing the competence to decide on constitutionality of political parties, review referendum and election cases. However, thus far the conclusion has been crystal clear: since the branch of administrative courts is very strong in Latvia, the Constitutional Court should not necessarily be open to other cases (Rodiņa, 2014, p. 130).

In Latvia, similarly to other constitutional courts, the repressive (*a posteriori*) constitutional control or the control of laws which have been adopted in a specific legislative process is realized. Besides *a posteriori* review, with regard of international treaties which are signed, but not ratified yet, *a priori* review can be realized. Until 2021 *a priori* review has been realized only in two cases. One was about the constitutionality of the border treaty between Latvia and Russia (Decision of the 3rd Panel of the CC on April 26, 2007) and another case (Decision of the Assignment Meeting of the CC of the Republic of Latvia

on August 3, 2020) was about constitutionality of the Convention on Preventing and Combating Violence against Women and Domestic Violence of the Council of Europe (so-called Istanbul convention).

5. Eligibility for Submission of an Application to the Constitutional Court

In order to initiate a proceeding before the Constitutional Court, a person who submits an application should meet all requirements set out in the Law on Constitutional Court. The Constitutional Court has no right to launch a proceeding on its own initiative, excluding its *ex officio* right in the stage of submitting an application.

As it is common in the constitutional courts in Europe, standing is allowed for subjects of abstract review. In this procedure, abstract compliance of the legal provision with the Constitution is conducted, given that its enforcement is not connected to safeguarding the subjective rights of a concrete person or to adjudication of other dispute at the court (Dorf, 2008, pp. 3-4). The subjects of abstract constitutional review in Latvia are the President of the State, the Cabinet of Ministers, the *Saeima* as a collegiate institution, minimum 20 members of the *Saeima*, the Prosecutor General, and the Council of the State Audit Office. Members of the *Saeima* are the most active submitters of applications regarding abstract review. Since the establishment of the Constitutional Court (in 1996) until the mid of 2021, in total they have submitted 86 applications to the Constitutional Court, whereas the Cabinet of Ministers (executive) has submitted two, the President one application, the Prosecutor General five applications, and the Council of the State Audit Office has submitted four applications. The Council for the Judiciary and the Ombudsman are also subjects of abstract control. While the Council of Judiciary has applied to the Court once, the Ombudsman has submitted 38 applications so far. They both are subject to specific procedural restrictions.

The Ombudsman always plays a significant role in the protection of fundamental rights in every legal system. The Ombudsman, by submitting an application, will not act in the interests of one person (whose rights have been violated), because by submitting an application it defends society as a whole (Rodiņa, 2012, pp. 384-396). But before applying to the Constitutional Court, the Ombudsman first of all has to try to settle the dispute with the institution that has passed the legal regulation. The Ombudsman can submit an application if the competent authority or official, who has issued the disputed act, has failed to rectify the established deficiencies within the time frame determined by the Ombudsman. If those procedural requirements are not observed, a case will not be initiated, as “dialogue” with an institution is a precondition for applying to the Court.

The Council for the Judiciary can submit an application in the framework of its jurisdiction established by law, i.e. regarding the given issues, which fall under the mandate of the Council for the Judiciary. Taking into consideration the fact that the Council for the Judiciary is an institution, which participates in the development of the policies and strategies governing the judicial system, as well as in the improvement of the organisation of the performance of the judicial system, its application will always be connected with the judicial system and judges.

Also, courts can apply to the Constitutional Court.⁴ Applications by courts within the European model of constitutional adjudication are known as applications of concrete control (Sweet, 2012, p. 823). In accordance with Section 19¹ of the Constitutional Court Law, an application to the Constitutional Court can be submitted by the court, which adjudicates a civil case or criminal case, the court, which adjudicates an administrative case, as well as by the judge, in performing an entry of immovable property or connected corroboration of rights in the Land Register. In Latvia all courts – first instance courts, appellate courts and also the Supreme Court or Cassation Court can submit an application to challenge a legal norm that has to be applied in a concrete case under examination (Judgment of the CC in case No. 2008-10-01, para. 8). As the judgment by the Constitutional Court and also the interpretation of the legal norm provided in the decision on terminating legal proceedings has *erga omnes* effect, the court will have to resolve a case by taking into consideration the ruling by the Constitutional Court.

A local government council has the right to submit two types of application. When it comes to the first type of application, it is relevant that only a council may submit a request pertaining to the initiation of a case on the compliance of a specific order with the national law where the authorised minister has suspended a decision taken by the local government council. The Law on Local Governments (Section 49) gives an authorisation to the Minister for Environmental Protection and Regional Development, by issuing an order, to suspend the operation of an unlawful binding regulation or other regulatory act or specific paragraphs of such act issued by a city or municipality council. If the order to suspend an unlawful regulation is passed, then the chairperson of the city or municipality council must convene, within two weeks after receipt of an order, an extraordinary meeting of the council to decide on the order. If the council fails to take a decision to revoke the relevant binding regulations or other regulatory acts or specific paragraphs thereof, it must submit an application to the Constitutional Court with regard to the revocation of the order of the Minister within a time period of three months. In this case only the relevant council or the council whose decision is suspended, may apply to the Constitutional Court. No other subject can challenge an order of a minister except local government council, because the aim of this kind of application is to solve a dispute between the council and the minister about the constitutionality of a national legal act.

As for the second type of application, local government council can apply to the Constitutional Court to challenge a normative act if an act being disputed violates the rights of the relevant local government (Decision of the CC in case No. 2007-21-01; Judgment of the CC in case No. 2016-23-03, para. 14). In 2020, the Constitutional Court received 21 applications by local governments challenging norms included in the Law on Administrative Territories and Settlements which reduced the number of administrative territories in Latvia. As many local governments were not satisfied with the outcome of the reform, they applied to the Constitutional Court challenging regulation of the above-mentioned reform law (Judgment of the CC in case No. 2020-37-0106).

⁴ Courts have submitted 161 applications altogether. Courts have become more active in the last years. For example, in 2012 and 2014 courts applied to the Constitutional Court 8 times (every year), but in 2020 courts submitted 33 applications and in 2021 (until May) - 17 applications.

6. Individual before the Constitutional Court

Individuals or persons are entitled to lodge a specific type of application with the Constitutional Court – the constitutional complaint.

In accordance with the Article 92 of the *Satversme*, every person is entitled to defend his/her rights and lawful interests before a fair court. In those cases, where a legal norm, which is not in compliance with the legal norm of higher hierarchy, infringes the fundamental rights, defined in the *Satversme*, the Constitutional Court is that institution of the judicial power where a person may defend his/her rights and lawful interests. In other words, Article 92 of the *Satversme* incorporates also the right to file a constitutional complaint to the Constitutional Court (Judgment of the CC in case No. 2002-09-01, para. 1). It means that the right to lodge an application with the Court by a person is protected by the *Satversme*, precisely by its Article 92.

The legal definition of the constitutional complaint is contained in the Law on Constitutional Court, where Article 19²(1) states: “[a] constitutional complaint (application) may be submitted to the Constitutional Court by any person who considers that their fundamental rights as defined in the Constitution are infringed upon by legal norms that do not comply with the norms of a higher legal force”. The Latvian type of the constitutional complaint contains the same features common for this type of application in other countries. Firstly, it is an application which gives the right of a person to apply to the Constitutional Court directly, without using any mediator. Secondly, it is a tool to protect fundamental rights established in the *Satversme*. Thirdly, the constitutional complaint is tied to other procedural limitations, because special criteria always limit the rights of persons to file a constitutional complaint (see more European Commission for Democracy Through Law (Venice Commission), 2010, pp. 32-35). This means that access to court in the case of a constitutional complaint is not absolute, but is subject to several limitations (Lautenbach, 2013, p. 137). In other words, an individual is bound by special *locus standi* requirements.

Firstly, there should be an infringement on the fundamental rights. In Latvia, *actio popularis* does not exist (Judgment of the CC in case No. 2001-06-03, para. 2.4.; Dissenting opinion in case No. 2003-04-01). Accordingly, a person can submit a constitutional complaint to protect fundamental rights that had been breached, not public or inconcrete public interests (Osipova, 2016, pp. 12-15). In the theory, it is recognized that an infringement upon the fundamental human rights is “cornerstone” of constitutional complaint in Latvia (Rodiņa, 2009, p. 154). If a person cannot prove that his/her fundamental rights are violated, then he/she has no *locus standi* to file a complaint to the Constitutional Court (Judgment of the CC in case No. 2001-06-03, para. 2.4.).

Secondly, an individual may use the Constitutional Court as the last national legal remedy. The constitutional complaint is a subsidiary legal measure, which means that an individual must exhaust other legal measures before filing a constitutional complaint to the Constitutional Court. In other words: the subsidiarity is one of the admissibility criteria which is incorporated in the Section 19²(2) of the Law on Constitutional Court, providing that a person has the right to file a constitutional complaint only if all the options have been exhausted to protect the specified rights with general remedies for protection of rights

or if such do not exist. The legal instruments, which can serve as general legal remedies and eliminate an infringement upon rights, can be, for example, a complaint to a higher authority or to a higher official, a complaint or statement of claim to a general jurisdiction court, and others if they are provided by the normative acts.

The subsidiarity is a well-known principle in Europe. It also leads to interaction between national courts and European Court of Human Rights (hereinafter: ECtHR). The principle of subsidiarity constitutes the foundation of the protection system at ECtHR. The applicant is obliged to exhaust domestic legal remedies because the primary role of protecting the fundamental rights lies on the contracting states (Senden, 2011, p. 22). It means that principle of subsidiarity implemented in the ECtHR requires using the Constitutional Court before applying to the ECtHR, if the Constitutional Court can be used as a legal remedy (ECtHR, *Markus v. Latvia*, para. 49; ECtHR, *Ternovskis v. Latvia*, para. 53).

It is known that the competences of the Constitutional Courts in different countries differ. Therefore, the role of the Constitutional Court as a legal remedy before the ECtHR varies and it mainly depends on the competence of each country's constitutional court. For that reason, the Latvian Constitutional Court cannot be recognized as being a legal remedy, if the problem, essentially, is the application of the particular legal norm or incorrect application thereof. It was explained in the case *Elberte v. Latvia*; the procedure of an individual constitutional complaint cannot serve as an effective remedy if the alleged violation resulted only from the erroneous application or interpretation of a legal provision which, in its content, is not unconstitutional (ECtHR, *Elberte v. Latvia*, para. 80). In case *Nagla v. Latvia*, ECtHR pointed out that in cases related to the interpretation or application of a legal provision, or an alleged legislative gap, the Constitutional Court could not be regarded as being an effective legal remedy (ECtHR, *Nagla v. Latvia*, para. 48).

Although the Constitutional Court has been recognized as an effective legal measure in cases submitted to the ECtHR in which a person could use it before applying before ECtHR. For example, in line with Article 35, para. 1 of the Convention, which requires the exhaustion of remedies which are effective and adequate, or more specifically capable of directly redressing the raised complaints, the Constitutional Court was identified as a remedy, which had not been used in case *Grišankova et Grišankovs v. Latvia*. The ECtHR found that before the applicant contested a provision of Latvian legal framework as being contrary to the Convention, and the right relied on was among those guaranteed by the Latvian Constitution, the proceedings, in general, should have been brought before the Constitutional Court, prior to being brought before the ECtHR (ECtHR, *Grišankova et Grišankovs v. Latvia*). In this case, the applicants could submit application to the Constitutional Court to challenge the legal regulation of the Law on Education. As this duty was not fulfilled, the ECtHR declared the application inadmissible. Also, in case *Gubenko v. Latvia*, the Constitutional Court was recognized as being an effective legal remedy that had not been exhausted (ECtHR, *Gubenko v. Latvia*, para. 25). The same was in the case *Zirnīte v. Latvia* where ECtHR found that the applicant's arguments concerning the "quality of law" did fall within the competence of the Constitutional Court which had not been used before the application to the ECtHR (ECtHR, *Zirnīte v. Latvia*, para. 70).

Thirdly, a constitutional complaint shall be filed within a set time period. The time period for filing a constitutional complaint is a typical component of a constitutional complaint (Rodina, 2009, p. 199). It is set to ensure that the case is resolved within a reasonable time, it protects the certainty of the other party that the solution of a conflict will not be later re-examined and, finally, the fact that a person tolerates the infringement of his/ her fundamental rights proves that he/she is less interested in the protection of his or her own fundamental rights (Judgment of the CC in case No. 2002-09-01, para. 1). The setting of the term for submitting a constitutional complaint is very closely linked to the implementation of the principle of subsidiarity. Therefore, the starting point for calculating the time period for filing a constitutional complaint to the Constitutional Court depends on the possibility to use legal remedies for the protection of the fundamental rights. Firstly, if other legal remedies can be used and the person has used them, then a constitutional complaint may be filed within six months after the ruling of the final institution has come into force. Secondly, if the fundamental rights established in the *Satversme* cannot be defended by general legal remedies, then a constitutional complaint may be filed to the Constitutional Court within six months from the period when the breach of fundamental rights took place (the second sentence of Article 19²(4) of the Law on Constitutional Court).

7. Legal Force of the Judgments and Role of the Constitutional Court in the Legal System

Constitutional adjudication at the Constitutional Court can be concluded in two ways: the Constitutional Court can pass a judgment or under specific circumstances (specified in the Article 29 of the Law on Constitutional Court), until the pronouncement of the judgment, the Constitutional Court can pass a decision to terminate legal proceedings.

In accordance with the law a legal norm can be declared as not being consistent with the *Satversme* by a judgment, nor by a decision. A Constitutional Court's judgment has *erga omnes* effect: both the judgment and the interpretation of a legal provision included in it are mandatory to all persons and institutions. A judgment by the Constitutional Court is final. It means that it can be appealed against and re-examined neither by any state institution nor by any international institution. Likewise, the Constitutional Court itself is not entitled to re-examine its own judgment. Nevertheless, a judgment made in a concrete case cannot include the changes that might happen after it has entered into force. If the circumstances of the case change substantially, the claim cannot be considered as having been adjudicated (Judgment of the CC in case No. 2002-20-0103). In other words, the claim cannot be adjudicated eternally because the Constitutional Court always examines and reviews a case in the particular moment in time, in particular circumstances and the judgment cannot predict future changes. This means that the constitutionality of a legal norm that has been already reviewed can be re-examined if the actual social reality and the context of legal relationships has changed (Judgment of the CC in case No. 2016-06-01, para. 17.2).

The competence to declare invalid the laws and other legal acts and parts thereof is included in the second sentence of Article 85 of the *Satversme*. But the *Satversme* does

not regulate the point when the norm, which is declared unconstitutional, loses its legal effect. It is regulated by the Law on Constitutional Court. According to its Section 32(3), a legal provision, which has been declared by the Constitutional Court as non-compliant with a norm of higher hierarchy shall be regarded as not being in effect from the day of the publication of the Constitutional Court's judgment (*ex nunc*). This is the so-called general presumption and the most frequently used tool in the practice of the Constitutional Court, and it provides an opportunity to reach a fair balance between two values: legal certainty and legality. In the meantime the Law on Constitutional Court has granted to the Constitutional Court a broad discretion to determine the moment when a legal norm, which is not compatible with the *Satversme*, becomes invalid. The Constitutional Court, by substantiating its opinion, can rule that the unconstitutional legal norm becomes invalid from the day it was adopted (*ex tunc*) or on another day (*ex tunc*), or the date may be set in the future (*pro futuro*). When it has to decide on the date when the legal norm loses its legal force, the Constitutional Court considers several principles: the principle of justice, the principle of legality, the principle of separation of power, legal expectations and legal certainty (Judgment of the CC in case No. 04-05(97), para. 5; Judgment of the CC in case No. 2016-12-01, para. 15). That approach is attributable to the fact that the Law on Constitutional Court does not only authorize the Constitutional Court, but also places responsibility upon it that its judgments in the social reality will ensure legal stability, peace and clarity (Judgment of the CC in case No. 2009-11-01, para. 30).

Doubtlessly, retroactive (*ex tunc*) decisions should be considered as an exception to preserving legal certainty (Heringa, 2016, p. 223). The retroactive invalidation of a legal norm may affect third parties and public interests. Therefore, retroactive effect is applied and should be applied in exceptional cases. Case law studies show that the contested legal norm is declared invalid *ex tunc* – from the moment of adoption, if it had been adopted *ultra vires* or in case of significant procedural violations (Judgment of the CC in case No. 2007-11-03, para. 29). At the same time, the Constitutional Court has recognized that it could deviate from this presumption if significant circumstances were established that would substantiate the need to deviate from the existing practice (Judgment of the CC in case No. 2016-23-03, para. 18).

The retroactive decisions are of particular importance in cases which have been initiated based on filed constitutional complaints. That can be explained by the fact that the *ex tunc* decision might be the only possibility to protect individual's fundamental rights. The Constitutional Court, rather often, upon declaring a contested provision as being non compatible with the *Satversme* and invalid, sets a special condition according to which such a provision in relation to the applicant becomes invalid *ex tunc* (Judgment of the CC in case No. 2020-21-01, para. 16). It is noteworthy that a person is not contesting an individual act (a court decision, an administrative act), but a regulatory (normative) legal act, which substantially applies to an unlimited circle of subjects. At the same time, these *ex tunc* decisions attach special importance to the theory of the so-called active defender of rights (Rodiņa, 2015, p. 373). According to it, only an individual who does not passively observe, but acts and turns to the Constitutional Court by submitting a constitutional complaint, may truly hope to protect fundamental rights before the Constitutional

Court. In some cases, the Constitutional Court has decided to protect also rights of those persons who have started to use other legal remedies (application to institution or court), declaring norm invalid *ex tunc* with respect of those persons as well (Judgment of the CC in case No. 2020-31-01, para. 23.2.). Therefore, in deciding *ex tunc* and recognizing an unconstitutional legal norm as being invalid retroactively, the Constitutional Court, in particular, highlights the main purpose of the constitutional complaint – to provide not only theoretical but also practical protection of the fundamental rights of a person who has suffered an infringement, as the Constitutional Court has the duty, within its mandate, to ensure effective protection and restoration of fundamental rights of the affected individuals (Judgment of the CC in case No. 2009-43-01, para. 35.3).

The Constitutional Court in some cases has applied the temporal effect *pro futuro*, which means that the norm declared as inconsistent with the *Satversme* continues to be applied for a certain period. The Constitutional Court has concluded on a number of occasions that an immediate revoking of the contested provision would be even less compatible with the *Satversme* compared to leaving the contested provision in force for some definite time period. Effect *pro futuro* is usually applied if it is necessary to give time to the legislator to regulate the situation or to amend unconstitutional legal norm, to avoid legal vacuum (Judgment of the CC in case No. 2020-34-03, para. 15).

The authority of the Constitutional Court to veto legislation as unconstitutional is only one dimension of its powers. Practice shows that references to the judgments of the Constitutional Court are included not only in [other] court rulings, but also in legislation and political documents. Most importantly, the parliament and the government draft law to comply with the relevant case law or to anticipate the direction of future disputes. Case No. 2017-17-01, reviewed by the Constitutional Court in 2018, marked a significant development in this respect. In this case a legal norm, in the drafting of which the findings contained in the Constitutional Court's judgment had been ignored, was recognized as not being compatible with the law. In the judgment the Constitutional Court explained that the legislator's obligation is always to examine also those arguments that have been expressed in the procedure of adopting the legal norm regarding its possible incompatibility with legal norms of higher hierarchy or the judicature of the Constitutional Court (Judgment of the CC in case No. 2017-17-01, para. 22.3). In this particular case, the Constitutional Court had to conclude that from the materials of the procedure for adopting the legal norm under review it was impossible to gain assurance that, *inter alia*, the *Saeima* had substantiated that the intended solution was compatible with the case law of the Constitutional Court (Judgment of the CC in case No. 2017-17-01, para. 22.3). Thus, the Court arrived at the conclusion that the contested norms could not be considered as being norms adopted in due procedure and, therefore, were incompatible with legal norms of higher hierarchy.

The protection of fundamental human rights has added a new dimension to the constitutional justice in Latvia. Individuals are the most active petitioners who have submitted to the Constitutional Court more than twelve thousand applications. Not all of them have been successful but the procedure has been initiated in 517 cases. It is obvious in Latvia that persons via constitutional complaint delegate to the constitutional Justices policy issues that could have been dealt with in other institutions (parliament, government,

etc.) and, by doing so, they contribute to the development of the law and the whole legal system (Sweet, 2000, pp. 140-141). Thanks to the constitutional complaints submitted by persons, several legal issues, essential for a democratic state governed by the rule of law, have developed in Latvia. For example, the mechanism of legal aid provided for by the state was developed and implemented thanks to the judgments by the Constitutional Court. Likewise, the legal regulation of a person's incapacity was improved owing to the judgment of the Constitutional Court. Thanks to individual petitions, in accordance with international commitments, the mechanism for expropriating property, and the right to a fair trial have been improved. The findings consolidated in the case law of the Constitutional Court have helped to improve the process of legislation, realization of social rights etc.

The impact of judicial politics depends not only on links between the Court and political officials, but also between the Court and the society (Glick, 1988, p. 326). The real aim of the Constitutional Court can be reached if there is recognition from both the public power and the society. This premise is defended also by the Constitutional Court, who has noted that "[t]he judicial power must enjoy public trust in order to perform its duties successfully" (Judgment of the CC in case No. 2015-06-01, para. 16.2). In Latvia, the Constitutional Court enjoys a high level of trust of the society. More precisely, the Constitutional Court enjoys the highest public trust in comparison with other courts - 51% of respondents trust it (CC of the Republic of Latvia, 2020). Having in mind high societal support, the Constitutional Court can work to ensure a system for the constitutional order and values, principles of law, human rights.

References

- Cappelletti, M. 1971. *Judicial Review in the Contemporary World*. New York: The Bobbs-Merrill Company.
- De Visser, M. 2014. *Constitutional Review in Europe. A Comparative Analysis*. Oxford/Portland, Oregon: Hart Publishing.
- Discussion between the President of the Constitutional Court Mr Aldis Laviņš and the Former Presidents of the Constitutional Court Mr Aivars Endziņš, Mr Gunārs Kūtris, and Mrs Aija Branta About the Constitutional Court Through the Times. In: *Judicial Activism of a Constitutional Court in a Democratic State*. Proceedings of the 2016 Conference of the Constitutional Court of the Republic of Latvia. Riga: Constitutional Court of the Republic of Latvia, 2016, pp. 234-254.
- Dorf, M.C. 2008. Abstract and Concrete Review. In: Tushnet, M. & Amar, V. (eds.), *Global Perspective on Constitutional Law*. USA: Oxford University Press, pp. 3-14.
- Glick, H.R. 1988. *Courts, Politics and Justice*. New York: McGraw-Hill Book Company.
- Heringa, A.W. 2016. *Constitutions Compared. An Introduction to Comparative Constitutional Law*. Cambridge: Intersentia.
- Kelsen, H. 2002. *Introduction to the Problems of Legal Theory*. Oxford: Clarendon Press.
- Lautenbach, G. 2013. *The Concept of the Rule of Law and the European Court of Human Rights*. Oxford: Oxford University Press.

- Neimanis, J. 2021. Tiesneša atkārtotas apstiprināšanas aizliegums Satversmes tiesā. *Jurista Vārds*, 4(1166), pp. 21-23.
- Osipova, S. 2016. Tiesiska valsts vai "tiesnešu valsts". *Jurista Vārds*, 27(930), pp. 12-15.
- Prochazka, R. 2002. *Mission Accomplished. On Founding Constitutional Adjudication in Central Europe*. Budapest/New York: Central European University Press.
- Priekulis, J. 2021. Par tiesībām atkārtoti ieņemt Satversmes tiesas tiesneša amatu. *Jurista Vārds*, 4(1166), pp. 13-20.
- Rodiņa, A. & Spale, A. 2015. Satversmes 85. panta komentārs. In: *Latvijas Republikas Satversmes komentāri. VI nodaļa. Tiesa. VII nodaļa. Valsts kontrole. Autoru kolektīvs prof. R.Baloža zinātniskā vadībā*. Rīga: Latvijas Vēstnesis, pp. 119-152.
- Rodiņa, A. 2015. Aktīvā pamattiesību aizsargātāja koncepts konstitucionālā tiesvedībā. In: *2015. gada zinātniskā konference. Tēzes*. Rīga: Rīgas Stradiņa Universitāte, pp. 373-373.
- Rodiņa, A. 2014. The Jurisdiction of the Constitutional Court. Theoretical Assessment. Possibilities of Expansion. In: *Konstitucionālās tiesas kompetence: robežas un paplašināšanas iespējas. Satversmes tiesas 2013. gada starptautiskās konferences materiālu krājums*. Rīga: Latvijas Republikas Satversmes tiesa, pp. 112-139.
- Rodiņa, A. 2012. The Ombudsman and the Saeima: Cooperation and Conflicts, Solutions to Them for Ensuring the Quality of Legal Acts. In: *The Quality of Legal Acts and Its Importance in Contemporary Legal Space. 4-5 October, 2012*. Rīga: University of Latvia Press, pp. 384-396.
- Rodiņa, A. 2009. *Konstitucionālās sūdzības teorija un prakse Latvijā*. Rīga: Latvijas Vēstnesis.
- Schwartz, H. 2000. *The Struggle for Constitutional Justice in Post-Communist Europe*. Chicago/London: The University of Chicago Press.
- Senden, H. 2011. *Interpretation of Fundamental Rights in a Multilevel Legal System*. Cambridge: Intersentia.
- Shetreet, S. 2011. Judicial Independence and Accountability: Core Values in Liberal Democracies. In: *Judiciaries in Comparative Perspective*. Cambridge: Cambridge University Press, pp. 3-25.
- Solyom, L. 2015. The Rise and Decline of Constitutional Culture in Hungary. In: Von Bogdandy, A. & Sonnevend, P. (eds.), *Constitutional Crisis in the European Constitutional Area. Theory, Law and Politics in Hungary and Romania*. Oxford/Portland: Hart Publishing, pp. 1-31.
- Sweet, A. S. 2000. *Governing with Judges. Constitutional Politics in Europe*. Oxford: Oxford University Press.
- Sweet, A. S. 2012. Constitutional Courts. In: Rosenfeld, M. & Sajó, A. (eds.), *The Oxford Handbook of Comparative Constitutional Law*. Oxford, pp. 816-830.
- Weinrib, J. 2016. *Dimensions of Dignity. The Theory and Practice of Modern Constitutional Law*. Cambridge: Cambridge University Press.
- Ziemele, I. 2017. *Role of the Constitutional Courts in Upholding and Applying the Constitutional Principles: the Case of Latvia. Paper Presented at the XVIIth Congress of the Conference of European Constitutional Courts Batumi, 29 June 2017*. Available at: <http://www.satv.tiesa.gov.lv/en/articles/role-of-the-constitutional-courts-in-upholding-and-applying-the-constitutional-principles-the-case-of-latvia/>, (7. 5. 2021).

Legal Sources

- The Constitution of the Republic of Latvia of 15 February 1922. Available at: <http://saeima.lv/en/legislation/constitution/>, (5. 5. 2021).
- Amendments in the Satversme. Latvijas Vēstnesis No. 100/101 (585/586), 12. 6. 1996.
- Declaration of the Supreme Soviet of the Latvian SSR “On the Renewal of the Independence of the Republic of Latvia” on May 4, 1990. Available at: <https://www.uta.edu/cpsees/latind.htm>, (1. 5. 2021).
- Constitutional Court Law of 5 June 1996. Available at: <http://www.satv.tiesa.gov.lv/?lang=2&mid=9>, (1. 5. 2021).
- Law “On Judicial Power” of 15 December 1992. Available at: <http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN018383.pdf>, (5. 5. 2021).
- Law on Local Governments of 19 May 1994. Available at: <https://likumi.lv/doc.php?id=57255>, (5. 5. 2021).

Case law

- Judgment of the Constitutional Court of the Republic of Latvia on 15 January 2021 in case No. 2020-21-01. Available at: http://www.satv.tiesa.gov.lv/wp-content/uploads/2005/05/2005-12-0103_Spriedums_ENG.pdf, (1. 5. 2021).
- Judgment of the Constitutional Court of the Republic of Latvia on 12 March 2021 in case No. 2020-37-0106. Available at: https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/07/2020-37-0106_spriedums-1.pdf#search=2020-37-0106, (1. 5. 2021).
- Judgment of the Constitutional Court of the Republic of Latvia on 8 April 2021 in case No. 2020-34-03. Available at: https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/07/2020-34-03_spriedums.pdf#search=2020-34-03, (1. 5. 2021).
- Judgment of the Constitutional Court of the Republic of Latvia on 6 April 2021 in case No. 2020-31-01. Available at: https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/06/2020-31-01_Spriedums.pdf#search=2020-31-01, (1. 5. 2021).
- Judgment of the Constitutional Court of the Republic of Latvia on 12 April 2018 in case No. 2017-17-01. Latvijas Vēstnesis, No 74, (13. 4. 2018).
- Judgment of the Constitutional Court of the Republic of Latvia on 10 February 2017 in case No. 2016-06-01. Available at: http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/04/2016-06-01_Judgment_ENG.pdf, (1. 5. 2021).
- Judgment of the Constitutional Court of the Republic of Latvia on 18 May 2017 in case No. 2016-12-01. Available at: http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/07/2016-12-01_Spriedums.pdf (3. 5. 2021).
- Judgment of the Constitutional Court of the Republic of Latvia on 29 June 2017 in case No. 2016-23-03. Available at: http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/10/2016-23-03_Spriedums.pdf, (1. 5. 2021).

- Judgment of the Constitutional Court of the Republic of Latvia on 12 November 2015 in case No. 2015-06-01. Available at: http://www.satv.tiesa.gov.lv/wp-content/uploads/2015/01/2015-06-01_Spriedums_ENG.pdf, (1. 5. 2021).
- Judgment of the Constitutional Court of the Republic of Latvia on 3 February 2012 in case No. 2011-11-01. Available at: http://www.satv.tiesa.gov.lv/wp-content/uploads/2011/05/2011-11-01_Spriedums_ENG.pdf, (3. 5. 2021).
- Judgment of the Constitutional Court of the Republic of Latvia on 18 January 2010 in case No. 2009-11-01. Available at: http://www.satv.tiesa.gov.lv/wp-content/uploads/2009/05/2009-11-01_Spriedums_ENG.pdf, (1. 5. 2021).
- Judgment of the Constitutional Court of the Republic of Latvia on 7 April 2009 in case No. 2008-35-01. Available at: http://www.satv.tiesa.gov.lv/wp-content/uploads/2008/09/2008-35-01_Spriedums_ENG.pdf, (1. 5. 2021).
- Judgment of the Constitutional Court of the Republic of Latvia on 3 June 2009 in case No. 2008-43-0106. Available at: http://www.satv.tiesa.gov.lv/wp-content/uploads/2008/11/2008-43-0106_Spriedums_ENG.pdf, (5. 5. 2021).
- Judgment of the Constitutional Court of the Republic of Latvia on 21 December 2009 in case No. 2009-43-01. Available at: http://www.satv.tiesa.gov.lv/wp-content/uploads/2009/07/2009-43-01_Spriedums_ENG.pdf, (5. 5. 2021).
- Judgment of the Constitutional Court of the Republic of Latvia on 17 January 2008 in case No. 2007-11-03. Available at: http://www.satv.tiesa.gov.lv/wp-content/uploads/2007/05/2007-11-03_Spriedums_ENG.pdf, (1. 5. 2021).
- Judgment of the Constitutional Court of the Republic of Latvia on 9 September 2008 in case No. 2008-10-01. Available at: <http://www.satv.tiesa.gov.lv/en>, (1. 5. 2021).
- Judgment of the Constitutional Court of the Republic of Latvia on 18 October 2007 in case No. 2007-03-01. Available at: http://www.satv.tiesa.gov.lv/wp-content/uploads/2007/01/2007-03-01_Spriedums_ENG.pdf, (1. 5. 2021).
- Judgment of the Constitutional Court of the Republic of Latvia on 5 November 2004 in case No. 2004-04-01. Available at: http://www.satv.tiesa.gov.lv/wp-content/uploads/2004/04/2004-04-01_Spriedums_ENG.pdf, (2. 5. 2021).
- Judgment of the Constitutional Court of the Republic of Latvia on 23 April 2003 in case No. 2002-20-0103. Available at: http://www.satv.tiesa.gov.lv/wp-content/uploads/2002/10/2002-20-0103_Spriedums_ENG.pdf, (3. 5. 2021).
- Judgment of the Constitutional Court of the Republic of Latvia on 22 February 2002 in case No. 2001-06-03. Available at: http://www.satv.tiesa.gov.lv/wp-content/uploads/2001/07/2001-06-03_Spriedums_ENG.pdf, (3. 5. 2021).
- Judgment of the Constitutional Court of the Republic of Latvia on 26 November 2002 in case No. 2002-09-01. Available at: http://www.satv.tiesa.gov.lv/wp-content/uploads/2002/06/2002-09-01_Spriedums_ENG.pdf, (5. 5. 2021).
- Judgment of the Constitutional Court of the Republic of Latvia on 11 March 1998 in case No. 04-05(97). Available at: http://www.satv.tiesa.gov.lv/wp-content/uploads/1997/12/04-0597_Spriedums_ENG.pdf, (5. 5. 2021).
- Judgment of the Constitutional Court of the Republic of Latvia on 7 May 1997 in case No. 04-01(97). Available at: <http://www.satv.tiesa.gov.lv/wp-content/>

- uploads/1997/03/04-0197_Spriedums_ENG.pdf, (1. 5. 2021).
- Decision of the Constitutional Court of the Republic of Latvia of 16 April 2008 on terminating legal proceedings in case No. 2007-21-01. Latvijas Vēstnesis, No. 62 (3846), 22. 4. 2008.
- Decision of the 3rd Panel of the Constitutional Court on April 26 2007 to initiate a case. Available at: http://www.satv.tiesa.gov.lv/wp-content/uploads/2007/04/2007-10-0102_Lemums_ierosinasana.pdf, (1. 5. 2021).
- Decision of the Assignment Meeting of the Constitutional Court of the Republic of Latvia on August 3 2020 to initiate a case. Available at: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2020/08/2020-39-02_Lemums_par_ierosinasanu-3.pdf#search=, (1. 5. 2021).
- Dissenting opinion of the Constitutional Court of the Republic of Latvia Justice Andrejs Lepse in case No. 2003-04-01. Available at: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2016/02/2003-04-01_Atseviskas_domas.pdf#search=2003-04-01, (4. 5. 2021).
- Judgment of the ECtHR in case *Markus v. Latvia* (Application no. 17483/10) 11 June 2020. Available at: <http://hudoc.echr.coe.int/eng?i=001-202748>, (6. 5. 2021).
- Judgment of the ECtHR in case *Ternovskis v. Latvia* (Application no. 33637/02) 29 April 2014. Available at: <http://hudoc.echr.coe.int/eng?i=001-142670>, (6. 5. 2021).
- Judgment of the ECtHR in case *Elberte v. Latvia* (Application No. 61243/08) 13 January 2015. Available at: <http://hudoc.echr.coe.int/eng?i=001-150234>, (6. 5. 2021).
- Judgment of the ECtHR in case *Nagla v. Latvia* (Application No. 73469/10) 16 July 2013. Available at: <http://hudoc.echr.coe.int/eng?i=001-122374>, (6. 5. 2021).
- Judgment of the ECtHR in case *Zirnīte v. Latvia* (Application no. 69019/11) 11 June 2020. Available at: <http://hudoc.echr.coe.int/eng?i=001-202752>, (6. 5. 2021).
- Decision of the ECtHR in case *Grišankova et Grišankovs v. Latvia* (Application No. 36117/02) 3 February 2003. Available at: <http://hudoc.echr.coe.int/eng?i=001-23704>, (6. 5. 2021).
- Decision of the ECtHR in *Gubenko v. Latvia* (Application No. 6674/06) on 3 November 2015. Available at: <http://hudoc.echr.coe.int/eng?i=001-159065>, (6. 5. 2021).

Other Materials

- Constitutional Court of the Republic of Latvia. 2020. *Research: Half of Latvia Inhabitants Trusts to the Constitutional Court*. Available at: <https://www.satv.tiesa.gov.lv/press-release/petijums-satversmes-tiesai-uzticas-puse-latvijas-iedzivotaju/>, (1. 5. 2021).
- European Commission for Democracy Through Law (Venice Commission). 1997. *The Composition of Constitutional Courts*, CDL-STD (1997) 020. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-STD\(1997\)020-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-STD(1997)020-e), (1. 5. 2021).
- European Commission for Democracy Through Law (Venice Commission). 2010. *Study on Individual Access to Constitutional Justice*, CDL-AD(2010)039rev. Available at: [http://www.venice.coe.int/WebForms/documents/default.aspx?pdffile=CDL-AD\(2010\)039rev-e](http://www.venice.coe.int/WebForms/documents/default.aspx?pdffile=CDL-AD(2010)039rev-e), (1. 5. 2021).

- Forty-third (remote extraordinary) sitting of the 13th Saeima autumn session of the Republic of Latvia on 21 December 2020. Available at: <https://www.saeima.lv/lv/transcripts/view/2176>, (1. 5. 2021).
- Latvijas Republikas Saeima Juridiska Komisija. 2020. Text of the draft decision: On approval of a justice of the Constitutional Court. Nr. 121.9/3-16-13/20. Available at: https://titania.saeima.lv/LIVS13/saeimalivs_imp.nsf/0/D2C8717CB92BA9A7C225860F00321943?OpenDocument, (1. 5. 2021).
- Lvportals. 2021. Dr. Anita Rodiņa starts to fulfil duties of the Constitutional Court judge. Available at: <https://lvportals.lv/dienaskartiba/327240-satversmes-tiesas-tiesnesa-amata-stajas-dr-iur-anita-rodina-2021>, (7. 5. 2021).

Dr Anita Rodiņa

Vanredni profesor Pravnog fakulteta Univerziteta u Letoniji, Letonija

e-mail: anita.rodina@lu.lv

USTAVNI SUD KAO ČUVAR PRAVNOG SISTEMA LETONIJE

Sažetak

U radu autorka objašnjava osnivanje i ustavno regulisanje Ustavnog suda Letonije, opredeljujući njegovo mesto u kontekstu načela podele vlasti. Imenovanje sudija i određene novine, te problemi do kojih dolazi u procesu izbora sudija predstavljaju se u drugom delu rada. Prilikom prikaza nadležnosti Ustavnog suda, autorka ukazuje na to da je ona veoma usko postavljena, budući da Ustavni sud postupa samo u predmetima u vezi sa usklađenošću pravnih akata sa višim aktima. Autorka potom analizira krug lica koja imaju ovlašćenja da učestvuju u postupku pred sudom. Posebna pažnja je posvećena ustavnoj žalbi – pravnom sredstvu koje Ustavnom sudu podnose pojedinci i koje takođe predstavlja mehanizam dijaloga između Ustavnog suda i Evropskog suda za ljudska prava. Konačno, autorka ukazuje na pravnu snagu i stvarni uticaj presuda Ustavnog suda, uključujući i ovlašćenje Ustavnog suda da opredeli trenutak od koga akt koji nije u skladu sa ustavom postaje ništav. Autorka zaključuje da Ustavni sud ne samo pravnoteorijski već i praktično obezbeđuje sistem ustavnog poretka, vrednosti i načela u Republici Letoniji.

Ključne reči: Ustavni sud, sudije, nadležnost, uslovi za *locus standi*, presuda.

Article history:

Received: 25 August 2021

Accepted: 17 January 2022