

Constitutional Court and Protection of Fundamental Human Rights. Example of the Republic of Latvia

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[Abstract] *In the article the author highlights the constitutional status of the Constitutional Court and its importance in the protection of fundamental human rights in the Republic of Latvia. By taking into consideration theory, as well as the most recent court practice, the author provides analysis of very common elements of the constitutional complaint – application which can be submitted to the Constitutional Court by a person: violation, principle of subsidiarity and also the term. The efficiency and importance of the constitutional complaint within the system of legal remedies is explained on the basis of judgements by the Constitutional Court.*

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Introduction

Rule of law (*etat de droit*) is a central component in the contemporary democratic state. It comprises several elements and still there are debates among scholars about its definition.¹ Despite diversity of opinions on legal definitions, the main aim of *etat de droit* is to provide society with stable rules, by which people can live, and to protect individuals from arbitrary rules, as well as to ensure observance of the fundamental human rights.² It means that democratic state governed by the rule of

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1 See more : Sampford Ch. Retrospectivity and the Rule of Law. Oxford : Oxford University Press, 2—6. p. 64.

law is demanding adequate system of protection of fundamental human rights, if those rights are violated. In many European countries this task – protection of fundamental rights – is performed also by the Constitutional Court as one of legal remedies.

Within a couple of years after the Republic of Latvia (thereinafter – Latvia) regained its independence on 4 May 1990, in 1996 the Constitutional Court of the Republic of Latvia (thereinafter – the Constitutional Court) was established also in this Baltic country. The Constitutional Court in Latvia is one of legal remedies, which can be used by the person if his/her fundamental rights are violated.³ The official doctrine of the constitutional law in Latvia points out that a private person's right to stand before the Constitutional Court follows from the right to a fair trial "as central to the rule of law"⁴ that is established in Article 92 of the Constitution of the Republic of Latvia or Satversme⁵ (thereinafter – Satversme) and guarantees the right to have the case heard in a court.⁶ This right to stand before the Constitutional Court was not granted to a person immediately after establishment of the Constitutional Court in 1996.⁷ The constitutional complaint procedure, which grants the right to a person to apply to the Court, in Latvia was introduced on 1 July 2001. It took some time to understand the mechanism (content) of the constitutional complaint, to accept and to implement it. However, today it is obvious : persons are the most active subjects who by insuring protection of their violated fundamental human rights ensure also protection of the fundamental value of the state – human rights.⁸ To compare : as the right of individual application forms the cornerstone of the European Convention on Human Rights, which allows to bring a case before the international court – the European Court of Human Rights⁹, constitutional complain procedure is a cornerstone for genuine exercise of fundamental human rights established in Satversme.

2 Lautenbach G. The Concept of the Rule of Law and the European Court of Human Rights. Oxford : Oxford University Press, 2013, p. 21.-22.

3 On the Conformity of Article 2 of the Law "On Compensation for Damages, Suffered as a Result of the Unlawful or Groundless Action of Investigator, Prosecutor or Judge" and Item 3, Subitem 1 of the Cabinet of Ministers August 31, 1998 Regulations No.327 "On the Procedure for Submitting and Considering Applications, Passing Decisions, Reinstating Employment and Social Guarantees and Payment of Compensation for Damages" with Articles 91 and 92 of the Satversme : Judgment of the Constitutional Court on December 5, 2001 in case No 2001-07-0103, para 1, [http : //www.satv.tiesa.gov.lv/?lang=2&mid=19](http://www.satv.tiesa.gov.lv/?lang=2&mid=19)

4 Lautenbach G. The Concept pf the Rule of Law and the European Court of Human Rights. Oxford : Oxford University Press, 2013, p.125.

5 "Satversme" is a very specific word in the Latvian language, and its original meaning highlights the necessity to cover or to contain everybody. In Latvian language the Constitution of Latvia is called "Satversme".

6 On the Conformity of Article 19² (the fourth part) of the Constitutional Court Law with Articles 91 and 92 of the Republic of Latvia Satversme (Constitution) : Judgement of the Constitutional Court on November 26, 2002 in case No.2002-09-01, para 1, [http : //www.satv.tiesa.gov.lv/?lang=2&mid=19](http://www.satv.tiesa.gov.lv/?lang=2&mid=19)

7 Constitutional Court Law. [http : //www.satv.tiesa.gov.lv/?lang=2&mid=9](http://www.satv.tiesa.gov.lv/?lang=2&mid=9)

8 On Compliance of the Law "On Lisbon Agreement Amending the Treaty on European Union and the Treaty Establishing the European Community" with Article 101 of the Satversme of the Republic of Latvia : Judgment of the Constitutional Court on 7 April, 2009 in case No 2008-35-01, para 10.4. [http : //www.satv.tiesa.gov.lv/wp-content/uploads/2008/09/2008-35-01_Spriedums_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2008/09/2008-35-01_Spriedums_ENG.pdf)

1. Constitutional status and competence of the Constitutional Court

Each country has its own constitution which is drafted in the name of the people for the purpose of establishing and controlling the powers of the governing institutions of the state.¹⁰ The constitutional regulation of the Latvian state is still governed by the Satversme of the Republic of Latvia of 15 February 1922.¹¹ Following the restoration of Latvia's statehood on 4 May 1990¹², the Satversme was reinstated in full and came into force in full amount on 6 July 1993, when the 5th Saeima (Parliament) convened for its first sitting. Latvia's constitution is among the oldest of those in force in Europe¹³, and, even though adopted more than 95 years ago, can be considered to be one of the most democratic and deepest as to its content.

Today's constitutionalism is based upon the premise that every state institution is bound by the rules of the constitution or higher law. Principle *etat de droit* demands realization of the principle that everything should comply with the norms of higher legal force. Judicial review as the power of courts to control constitutionality of legislation can ensure realization of this principle : moreover, in the twenty-first century courts are functioning as the central guardian of the constitution.¹⁴

After the collapse of the USSR, in many new democracies or new countries, which appeared on the world map in the Eastern and Central Europe, Constitutional courts as guardians of the constitution were established.¹⁵ It has been noted that establishment of the Constitutional Court was like a proof of the democratic character of the country.¹⁶ Latvia also followed the example of other countries and decided to establish a specific Constitutional Court, which had not existed before. On 5 June 1996 the Satversme was amended and also the Constitutional Court Law was passed.¹⁷ Establishment of the

9 De Vylder H., Haeck Y. The Duty of Cooperation of the Respondent State During the Proceedings Before the European Court of Human Rights. In book : Human Rights and Civil Liberties in the 21st Century. Ed. Haeck Y., Brems E. Dordrecht, Heidelberg, New York, London : Springer, 2014, p. 64. ; Gerards J. The European Court of Human Rights and the national courts : giving shape to the notion of "shared responsibility". In book : Implementation of the European Convention on Human Rights and of the judgments of the ECtHR in national case-law. Eds. Gerards J., Fleuren J. Cambridge, Antwerp, Portland : Intersentia, 2014, p.15-16.

10 Loughlin M. What is Constitutionalisation? In book : The Twilight of Constitutionalism? Eds. Dobner P., Loughlin M. Oxford : Oxford University Press, 2010, p. 47.

11 The Constitution of the Republic of Latvia. <http://saeima.lv/en/legislation/constitution/>

12 Declaration of the Supreme Soviet of the Latvian SSR "On the Renewal of the Independence of the Republic of Latvia" on May 4, 1990. <http://www.humanrights.lv/doc/latlik/neatkdek.htm>

13 Galligan D.J., Versteeg M. Theoretical Perspectives on the Social and Political Foundations of Constitutions. In book : Social and Political Foundations of Constitutions. Eds. Galligan D.J., Versteeg M. Cambridge : Cambridge University Press, 2013, p. 3.-6.

14 De Visser M. Constitutional Review in Europe. A Comparative Analysis. Oxford and Portland, Oregon : Hart Publishing, 2014, p. 55.

15 See more : Schwartz H. The Struggle for Constitutional Justice in Post-Communist Europe. Chicago and London : The University of Chicago Press, 2000, p. 5-21.

16 De Visser M. Constitutional Review in Europe. A Comparative Analysis. Oxford and Portland, Oregon : Hart Publishing, 2014, p. 62.

17 Grozījums Latvijas Republikas Satversmē : LR likums. Latvijas Vēstnesis Nr. 100/101 (585/586), 12.06.1996. ; Satversmes tiesas likums : LR likums. Latvijas Vēstnesis Nr. 103 (588), 14.06.1996.

Constitutional Court belongs to the third wave of institutionalization of constitutional adjudication after the 2nd World War.¹⁸ Justice of the Hungarian Constitutional Court L. Solyom holds that the Latvian Constitutional Court belongs to the third generation of constitutional courts.¹⁹

Similarly to other European countries, the constitutional status and regulation on the Constitutional Court is included in the constitution. But constitutional regulation of the Constitutional Court is very narrow: it is included in one Article of the Satversme – in Article 85²⁰. Therefore the Satversme just indicates the competence of the Constitutional Court by giving an authorization to specify it 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 invalid. The Constitutional Court Law further defines the persons, who can stand before the Constitutional Court and regulates the procedure of submitting an application, and adjudicating cases.

Exercising of state power in Latvia is based upon “incontestable constitutional principle, which has to be respected as such”²¹ – the principle of the division of power. It manifests itself “as the division of the state power into legislative, executive and judicial power, exercised by independent and autonomous institutions. This principle guarantees a balance and reciprocal control among the institutions and facilitates moderation of power.”²² Complying with this principle, the Constitutional Court as a constitutional institution belongs to the judicial power and realizes functions by administering justice, ensuring control over the two other branches of power.²³ The aim of the Constitutional Court is to fulfil an exclusive function – to safeguard the constitution, by ensuring the rule (priority) of the constitutional law – the Satversme – and constitutional justice.²⁴ That is to say, the Constitutional Court is

18 Ferejohn J., Pasquino P. Constitutional Adjudication, Italian Style. *In book*: Comparative Constitutional Design. Ed. Ginsburg T. Cambridge: Cambridge University Press, 2012, p. 298.

19 Solyom L. The Rise and Decline of Constitutional Culture in Hungary. *In book*: Constitutional Crisis in the European Constitutional Area. Theory, Law and Politics in Hungary and Romania. Eds. Von Bogdandy A., Sonnabend P. Oxford, Portland, Oregon: Hart Publishing, 2015, p. 6.

20 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.” The Constitution of the Republic of Latvia. <http://www.saeima.lv/en/legislation/constitution/>

21 On terminating court proceedings in case No. 2001-18-01: Ruling of the Constitutional Court of the Republic of Latvia on 08.06.2012, para 17.2. <http://likumi.lv/ta/id/248963-par-tiesvedibas-izbeigsanu-lieta-nr-2011-18-01>

22 On Compliance of the Sixth, Seventh, Eighth and Ninth part of Section 46 of Radio and Television Law with Article 58 and Article 91 of the Satversme of the Republic of Latvia: Judgment of the Constitutional Court on 16 October 2006 in case No 2006-05-01, para 5. http://www.satv.tiesa.gov.lv/wp-content/uploads/2006/04/2006-05-01_Spriedums_ENG.pdf

23 On Compliance of Items 4, 5, 6, 7, 8 and the First Sentence of Item 9 of the Saeima Presidium February 28, 2000 Regulations “On the Procedure of Compensating Expenses Occurred to the Deputies while Exercising their Authority” with Article 91 of the Republic of Latvia Satversme: Judgment of the Constitutional Court on February 22, 2002 in case No 2001-06-03, para 1.2., <http://www.satv.tiesa.gov.lv/?lang=2&mid=19>

vested with the exclusive function – to protect the Satversme. Exclusive rights of the Constitutional Court do not mean that other constitutional institutions, especially courts, lose the duty to protect the constitution. However, in difference, for example, to other courts belonging to the general court system, the essence of administering justice at the Constitutional Court is to solve those special legal disputes, not to hear civil law disputes, criminal cases, as well as cases that follow from administrative legal relationships.²⁵ To conclude : the Constitutional Court of Latvia belongs to the European model (sometimes called also continental, Austrian or Kelsenian²⁶) of constitutional control as constitutional adjudication is vested in the hands of one centralized institution – the Constitutional Court.

Constitutional courts nowadays have several typical competencies or functions : ensuring conformity of legislation with the constitution, protection of fundamental human rights, resolving institutional disputes, ensuring the integrity of political office and processes.²⁷ For example, the German Federal Constitutional Court is empowered to decide on federal government institutional conflicts, perform abstract and concrete norm control, and federal – provincial conflicts, realize electoral supervision, impeachment procedure, review constitutional complaints and perform other competencies as provided by law.²⁸ The Constitutional Tribunal in Poland, besides hearing cases about conformity of legal acts, decides on constitutionality of political parties, disputes between central constitutional state authorities, capacity of the State President to hold the office.²⁹ The Latvian Constitutional Court is authorized to review cases regarding compliance of legal enactments. To be precise, the Constitutional Court adjudicates matters regarding compliance of law and international agreements signed or entered into by Latvia (also until the confirmation of the relevant agreements in the Saeima) with the Satversme ; compliance of other regulatory enactments or parts thereof with the norms (acts) of a higher legal force ; compliance of other acts of the Saeima, the Cabinet of Ministers, the President of the Republic of Lat-

24 On Compliance of the second sentence of Paragraph 7 and Paragraph 17 of the Transitional Provisions of the Law “On Judicial Power” (in the wording of 14 November, 2008 of the Law) to Articles 1, 83 and 107 of the Satversme of the Republic of Latvia : Judgment of the Constitutional Court on January 18, 2010 in case No 2009-11-01, para 5, [http : //www.satv.tiesa.gov.lv/upload/judg_2009_11.htm](http://www.satv.tiesa.gov.lv/upload/judg_2009_11.htm)

25 On Compliance of the Words “Without Restriction on the Term of Office” of Section 7(4) of Constitutional Court Law with Article 83, the First Sentence of Article 91 and Part 1 of Article 101 of the Satversme of the Republic of Latvia : Judgment of the Constitutional Court on 18 October 2007, in case No 2007-03-01, para 9. [http : //www.satv.tiesa.gov.lv/wp-content/uploads/2007/01/2007-03-01_Spriedums_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2007/01/2007-03-01_Spriedums_ENG.pdf) ; On Compliance of the Words “Within Two Years Calculated from the Day when They Have Found out about the Circumstances that Preclude Paternity” of Section 156(2) of the Civil Law with Article 92 and Article 96 of the Satversme of the Republic of Latvia and Article 4 of the European Convention of the Legal Status of Children Born out of Wedlock : Judgment of the Constitutional Court on 3 June 2009 in case No 2008-43-0106, para 12. [http : //www.satv.tiesa.gov.lv/wp-content/uploads/2008/11/2008-43-0106_Spriedums_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2008/11/2008-43-0106_Spriedums_ENG.pdf)

26 Heringa A.W. *Constitutions Compared. An Introduction to Comparative Constitutional Law*. Cambridge : Intersentia, 2016, p. 223.

27 De Visser M. *Constitutional Review in Europe. A Comparative Analysis*. Oxford and Portland, Oregon : Hart Publishing, 2014, p. 93.

28 McWhinney E. *Supreme Courts and Judicial Law-making : Constitutional Tribunals and Constitutional Review*. Dordrecht : Martinus Nijhoff Publishers, 1986, p. 10.-14.

29 Jamroz L. *The Constitutional Tribunal in Poland in the context of Constitutional Judiciary*. Bialystok : Temida 2, 2014, p. 124-140.

via, the Speaker of the Saeima and the Prime Minister, except for administrative acts, with law ; compliance with law of such an order with which a Minister authorized by the Cabinet has suspended a decision taken by a local government council ; and compliance of Latvian national legal norms with those international agreements entered into by Latvia that are not in conflict with the Satversme.³⁰

The Constitutional Court in Latvia is vested with comparatively narrow competence : to review (just) conformity of legal acts. Occasionally scholars have discussed theoretical and practical need to enlarge competence of the Constitutional Court, for example, providing competence to decide on constitutionality of political parties, review referendum and election cases. However, until now the conclusion is very clear : since the branch of administrative courts is very strong in Latvia, it is not necessary to open Constitutional Court to hear other cases.³¹

2. Aim of the constitutional complaint – to protect violated fundamental human rights

Constitutional review nowadays plays a key role in the protection of fundamental human rights.³² Competence and circle of persons, who are authorized to stand before the Constitutional Court, mean that protection of fundamental human rights also can be recognised as one of the functions of the Latvian Constitutional Court. Namely, some scholars hold that the Constitutional Court in Latvia belongs to the “German model” – which is open to ordinary citizens through constitutional complaint.³³

The legal definition of the constitutional complaint is included in the Constitutional Court Law, where Section 19², Part 1 provides : “[a] constitutional complaint (application) may be submitted to the Constitutional Court by any person who considers that their fundamental rights as defined in the Satversme infringe upon legal norms that do not comply with the norms of a higher legal force.”³⁴ In view of the competence of the Constitutional Court (see above), object of the constitutional complaint can be a general (normative) legal norm, which contradicts to the fundamental human rights set in the Satversme. A number of conclusions follow from this.

The first, constitutional complaint gives the right of a person to protect those fundamental human rights, which are included in the Satversme. The Satversme was supplemented with Chapter VIII “Fundamental Human Rights” in 1998³⁵, and right now the constitution contains a broad catalogue of civil and political rights (for example, equality before the law and the courts, prohibition of discrimination (Article 91), the right to fair trial (Article 92), the right to life (Article 93), the right to liberty and

30 Constitutional Court Law. <http://www.satv.tiesa.gov.lv/?lang=2&mid=9>

31 Rodiņa A. The Jurisdiction of the Constitutional Court. Theoretical Assessment. Possibilities of Expansion. *In book* : Konstitucionālās tiesas kompetence : robežas un paplašināšanas iespējas. Satversmes tiesas 2013. gada starptautiskās konferences materiālu krājums. Rīga : Latvijas Republikas Satversmes tiesa, 2014. p. 130.

32 Comella V.F. Constitutional Court and Democratic Values. New Haven&London : Yale University Press, 2009, p.29.

33 Ferejohn J., Pasquino P. Constitutional Adjudication, Italian Style. *In book* : Comparative Constitutional Design. Edd. Ginsburg T. Cambridge : Cambridge University Press, 2012, p. 295.

34 Constitutional Court Law. <http://www.satv.tiesa.gov.lv/?lang=2&mid=9>

35 See more : Rodiņa A. Republic of Latvia (Chronicles of Constitutional Law in 2010). *European Review of Public Law*. Vol.23, 4/2011, Winter, p.1295–1332.

security of person (Article 94), the right to private life (Article 96), the right to freedom of thought, conscience and religion (Article 99), the right to freedom of expression (Article 100), property rights (Article 105), and others).³⁶ Some of the fundamental rights are guaranteed just to the citizens of Latvia, for example, the right, as provided for by law, to participate in the work of the State and of local government, and to hold a position in the civil service (Article 101), voting rights (Article 8, 9). The Latvian constitutional legislator has determined also several cultural rights (for example, the right to education (Article 112), freedom of scientific research, artistic and other creative activity, protection of copyright and patent rights (Article 113)), and also guarantees to persons belonging to ethnic minorities the right to preserve and develop their language and their ethnic and cultural identity (Article 114). The Satversme contains also economic rights, for example, the right to freely choose employment and workplace (Article 106), social rights, as the right to social security (Article 109), medical assistance (Article 111) and solidarity rights : the right of everyone to live in a benevolent environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment (Article 115).

The second, a person cannot challenge at the Constitutional Court administrative acts and court decisions and judgements. This is the reason, why Latvian type of constitutional complaint cannot be considered as “appeal of final judicial ruling”.³⁷ This conclusion marks the difference between the Latvian type of constitutional complaint and that of Germany, Slovenia and other countries, where constitutionality of individual acts can be reviewed.³⁸

The third, as the aim of the constitutional complaint in Latvia is to protect the fundamental human rights only a person who can be the subject of the fundamental human rights, may be the subject of a constitutional complaint. In accordance with the theory of fundamental human rights recognized in Latvia, a natural person, as well as a legal person (for example, legal entity, enterprise, non-governmental organization) can have human rights. To put it more precisely : the subject of the constitutional complaint can be a legal person, which is based upon private autonomy (not public power) ; thus, a legal person of private law can turn to the Constitutional Court to protect a legal person’s violated fundamental rights.³⁹

In spite of direct access to the Constitutional Court the procedural rights of the individual are not unlimited. Special criteria always limit the rights of persons to submit a constitutional complaint.⁴⁰ This means that access to court is not absolute, but subjected to limitations.⁴¹ A person is bound by special locus standi requirements. First, there should be violation of the fundamental rights. Constitutional complaint, which is provided by the Constitutional Court Law, is separated from the so-called petition in general interest or *actio popularis*.⁴² In Latvia, similarly to other European countries – the Czech

36 See more : Kučs A. Protection of Fundamental Rights in the Constitution of the Republic of Latvia during the Interwar Period and after Restoration of Independence. Law (Journal of the University of Latvia), No 7, pp.58–60.

37 Sweet A.S. Constitutional Courts. *In book* : Comparative Constitutional Law. Ed. Rosenfeld M., Sajo A. Oxford : Oxford University Press, p.823.

38 De Visser M. Constitutional Review in Europe. A Comparative Analysis. Oxford and Portland, Oregon : Hart Publishing, 2014, p. 152. ; Study on Individual Access to Constitutional Justice. [http : //www.venice.coe.int/webforms/documents/CDL-AD%282010%29039rev.aspx](http://www.venice.coe.int/webforms/documents/CDL-AD%282010%29039rev.aspx)

Republic, Slovakia, Slovenia, Germany, Poland, and Spain⁴³, a person is prohibited from submitting an application to defend general interests; therefore constitutional complaint can be submitted only to protect violated fundamental human rights of the applicant.⁴⁴ Secondly, a person may use the Constitutional Court as the last national remedy for protection of rights. In other words – a person is bound by the principle of subsidiarity. The third conclusion, the constitutional complaint must be submitted within a set term.

Constitutional complaint is just one type of application which can be submitted to the Constitutional Court. Besides of a person, other subjects as well can submit applications to fight for human rights. This aim can be achieved with the help of the Ombudsman who has standing at the Court. However, the application of Ombudsman will not be in the interests of one person (whose rights have been violated). The Ombudsman by its application defends all society.⁴⁵ Likewise, subjects of so-called abstract control, like the President of the State, the Saeima as a collegiate institution, at least 20 members of the Saeima, the Cabinet of Ministers, the Prosecutor General, the Council of the State Audit Office, as well as the Judicial Council can protect fundamental human rights indirectly – ensuring the so-called public interests.⁴⁶ Courts (and the judges of the Land Registry Offices) have standing within concrete

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- 39 Rodiņa A. Konstitucionālās sūdzības teorija un prakse Latvijā. Rīga. 2009. 83.lpp.; On Compliance of Item 1.1 of the July 6, 1999 Cabinet of Ministers Regulations No.249 "Amendments to 6 October 1998 Regulations No.388 on the Procedure of Trade in Markets, Fairs, Street Markets and Travelling Shops" with the Second Part of Article 4 and Item 1 of the First Part of Article 32 of the Law "On Entrepreneur Activity" as well as with Article 91 of the Satversme of the Republic of Latvia, Paragraph 4 of "General Agreement on Tariffs and Trade" (GATT, 1947), Article 14 of the Law "The Structure of the Cabinet of Ministers" and the Second Part of Article 3 of the Law "On the Free Trade Agreement among the Republic of Latvia, the Republic of Estonia and the Republic of Lithuania on Trade with Agricultural Products: Judgment of the Constitutional Court on April 3, 2001 in case No. 2000-07-0409, para 1. <http://www.satv.tiesa.gov.lv/?lang=2&mid=19>
- 40 See, for example, about elements of constitutional complaint in comparative perspective in Mavčič A.M. Individual complaint as a domestic remedy to be exhausted or effective with the meaning of the ECHR. *In book*: Konstitucionālās tiesas kompetence: robežas un paplašināšanas iespējas. Satversmes tiesas 2013. gada starptautiskās konferences materiālu krājums. Rīga: Latvijas Republikas Satversmes tiesa, 2014, p.56-59.
- 41 Lautenbach G. The Concept of the Rule of Law and the European Court of Human Rights. Oxford: Oxford University Press, 2013, p. 137.
- 42 See more: Sadurski W. Rights Before Courts. A Study of Constitutional Courts in Postcommunist States of Central and Eastern Europe. The Netherlands: Springer, 2005, p.6.
- 43 Kokott J. and Kaspar M. Ensuring Constitutional Efficacy. *In book*: The Oxford handbook of comparative constitutional law. Ed. by Michel Rosenfeld and Andrés Sajó. Oxford: Oxford University Press, 2012, p. 811.
- 44 On Compliance of Items 4, 5, 6, 7, 8 and the First Sentence of Item 9 of the Saeima Presidium February 28, 2000 Regulations "On the Procedure of Compensating Expenses Occurred to the Deputies while Exercising their Authority" with Article 91 of the Republic of Latvia Satversme: Judgment of the Constitutional Court on February 22, 2002 in case No 2001-06-03, para 2.4. <http://www.satv.tiesa.gov.lv/?lang=2&mid=19>
- 45 See more: Rodiņa A. The ombudsman and the Saeima: Cooperation and conflicts, solutions to them for ensuring the quality of legal acts. *In book*: The Quality of legal acts and its importance in contemporary legal space. 4-5 October, 2012. Rīga: University of Latvia Press, 2012, p.384-396.

control procedure – if during adjudication of a concrete case doubts arise about the compatibility of the applied provision (in administrative procedure) or the provision that should be applied with the Satversme. Applications submitted by courts are one of the important remedies, because they give the opportunity to solve violation of the fundamental human rights during adjudication of a case and to apply a norm which does correspond to the Satversme.⁴⁷ Moreover, the right of the court to submit applications was established with the aim of giving priority to court applications over the constitutional complaint.

Although fundamental human rights can be protected indirectly, constitutional complaint can be regarded as the culmination of protection of fundamental rights. This is not only because a person can compete at the Constitutional Court with constitutional institutions and it makes people closer to the public power and constitution. It is mainly because the Constitutional Court with its judgments (all of them have *erga omnes* legal force) can really protect violated rights.

As it is very common for states where doors are open to a person, persons are very active. The Constitutional Court receives some hundreds of constitutional complaints annually. Statistics is an evident proof to this: from 1 July 2001 to the end of 2016, persons alone have submitted more than 9000 applications.⁴⁸ To compare, in the same period members of the Saeima have submitted 75 applications, but the Cabinet of Ministers – 2 applications, courts – 89, Ombudsmen – 26 applications. In total from among 601 initiated cases, 357 cases have been initiated at the Constitutional Court having regard to constitutional complaints submitted by natural persons and 70 – with respect to applications by legal persons.⁴⁹

3. Violation as an inseparable part of the constitutional complaint

A violation of fundamental human rights is a “cornerstone” of the whole constitutional complaint. If a person cannot prove that his/her fundamental rights are violated, then he/she has no locus standi at the Constitutional Court. To prove violation, a person has to substantiate that: the contested norm applies to such rights of the person who submits complaint, which fall within the scope of fundamental rights defined by the Satversme, and that a direct violation of the applicant’s fundamental rights exists.⁵⁰ It has been recognized by the Constitutional Court that constitutional complaint may be submitted when, first, the violation of fundamental rights is direct, concrete, the contested norms affect the

46 On Compliance of Section 60, Section 61 and Section 62 of the Law On Taxes and Fees with the First Sentence of Article 91, Article 92 and Article 105 of the Satversme of the Republic of Latvia: Judgement of the Constitutional Court of the Republic of Latvia on 15 November 2016 in case No 2015-25-01, para 9. <http://likumi.lv/ta/id/286612-par-likuma-par-nodokliem-un-nodevam-60-61-un-62-panta-atbilstibu-latvijas-republikas-satversmes-91-panta-pirmajam-teikumam>

47 See opinion on this in: Ferejohn J., Pasquino P. Constitutional Adjudication, Italian Style. *In book*: Comparative Constitutional Design. Ed. Ginsburg T. Cambridge: Cambridge University Press, 2012, p. 315.

48 Statistics. Available at the Constitutional Court. Not published.

49 Satversmes tiesas lietas: statistika. Jurista vārds, 06.12.2016., Nr. 49 (952).

50 On Compliance of Section 86 (3) of the Law “On Judicial Power” with Article 102 of the Satversme of the Republic of Latvia: Judgment of the Constitutional Court on 10 May 2013 in case No. 2012-16-01, para 16.3. http://www.satv.tiesa.gov.lv/upload/Spriedums_2012-16-01_ENG.pdf

applicant himself and, secondly, infringe at the moment of submitting the application, i.e., the violation of a fundamental right already exists, or in the presence of a totality of circumstances requiring that the case is heard right now.⁵¹ Respectively, in practice there are some cases, which have been initiated, where violation of fundamental rights was to be expected in the future or was potential.⁵² A potential violation or a violation, which is expected in the future, means that a well-founded and credible possibility exists that the application of the contested norm might cause adverse consequences for the person submitting the constitutional complaint.⁵³ Namely, the Constitutional Court Law requires the contested act (norm) to infringe upon the applicant's fundamental rights; however, it does not require that it should have happened in all cases, applying this act to the applicant. A person may submit a constitutional complaint regarding an unfavourable legal norm, which directly and immediately pertains to this person, but has not yet been applied to him.⁵⁴

4. Constitutional complaint as a subsidiary remedy

Section 19², Part 2 of the Constitutional Court Law provides that a person has the right to submit a constitutional complaint “only if all the options have been used to protect the specified rights with general remedies for protection of rights (a complaint to the higher authority or higher official, a complaint or statement of claim to a general jurisdiction court, etc.) or if such do not exist”.⁵⁵ In other words: a person submitting a constitutional complaint to the Constitutional Court must abide by the principle of subsidiarity. This principle is one of common features of the constitutional complaint and it is applied also at the European Court of Human Rights.⁵⁶ It means that the constitutional complaint must be used as the last from national legal remedies. Before turning to the Constitutional Court a

51 On Compliance of Para1 of Section 44 (1) of the Civil Procedure Law (in the wording of 29 November 2012) with Article 1, Article 91, Article 92 and Article 105 of the Satversme of the Republic of Latvia: Judgment of the Constitutional Court on April 29, 2015, in case No. 2014-31-01, para 7. <http://www.satv.tiesa.gov.lv/?lang=2&mid=19>; On Compliance of Section 179 (1) of the Credit Institutions Law with Article 105 of the Satversme of the Republic of Latvia and Section 179 (2) of the Credit Institutions Law with the first sentence of Article 92 of the Satversme of the Republic of Latvia: Judgment of the Constitutional Court on March 1, 2013, in case No. 2012-07-01, para 12, http://www.satv.tiesa.gov.lv/upload/2012-07-01_Krajbanka_ENG.pdf

52 On Compliance of Section 13 (1) (2) of the Insolvency Law insofar as It Applies to Persons Who have Started Working as an Insolvency Procedure Administrator Pursuant to the Requirement of Section 13 of the Law “On Insolvency of Enterprises and Companies” regarding Higher Education in Economy, Management or Finance, and Para 7 of Transitional Provisions of the Insolvency Law with Article 1, Article 91 and Article 106 of the Satversme of the Republic of Latvia: Judgment of the Constitutional Court on November 22, 2011 in case No. 2011-04-01, para 9, http://www.satv.tiesa.gov.lv/upload/judg_2011_04_01.pdf

53 On Compliance of the First Part of Section 13 of the Law on Management of Residential Housing with Article 91 and Article 106 of the Satversme of the Republic of Latvia: Judgment of the Constitutional Court on February 18, 2010 in case No 2009-74-01, para 12.1, http://www.satv.tiesa.gov.lv/upload/judg_2009-74.htm

54 On Compliance of Section 86 (3) of the Law “On Judicial Power” with Article 102 of the Satversme of the Republic of Latvia: Judgment of the Constitutional Court on 10 May 2013 in case No. 2012-16 – 01, para 22, http://www.satv.tiesa.gov.lv/upload/Spriedums_2012-16-01_ENG.pdf

55 Constitutional Court Law. <http://www.satv.tiesa.gov.lv/?lang=2&mid=9>

person has to exhaust all national legal remedies : up to the last non–appealable decision. But the requirements of the principle of subsidiarity should be applied flexibly and without excessive formalism, and it cannot be applied automatically, since always the particular circumstances of each case should be taken into consideration.⁵⁷ This has been the reason why the Constitutional Court quite recently has explained the concept “real and effective options”, stating that first of all it must be assessed, whether a real possibility exists to achieve, by using the concrete legal remedy, such substantive result, which would prevent the possible violation of fundamental rights. If an imperative norm has been worded clearly, the applicant is in a situation, typical of the scope of the norm, and no doubts exist regarding the application of the norm in the specific case, the Constitutional Court Law does not require exhausting the formally existing possibilities for appealing against an administrative act, if the application of these obviously would not lead to a decision favourable for the person. The Constitutional Court has likewise noted that the obligation to exhaust real and effective possibilities for defending the violated fundamental rights applies to such legal remedies, which are procedurally accessible to the person.⁵⁸

To ensure effective protection of fundamental rights, the Constitutional Court Law provides also legal exceptions to the principle of subsidiarity. If the person can prove that adjudication of a constitutional complaint (application) is of a general interest or protection of rights with general remedies for protection of rights cannot avert substantial harm for the applicant, the Constitutional Court may decide to adjudicate the complaint (application) prior to all general remedies for protection of rights being used.

5. Term for submitting a constitutional complaint

The term for submitting a constitutional complaint is a typical element of a constitutional complaint.⁵⁹ This term is set to ensure that the case is resolved within a reasonable period of time, the certainty of the other party that the solution of a conflict will not be later re–examined, and, finally, – if a person tolerates the violation of his or her fundamental rights, he or she is less interested in the protection of his or her fundamental rights.⁶⁰ Arguments for the term are similar to those established at the European Court of Human Rights to justify the limitation of the term for applying to that

56 Gerards J. The European Court of Human Rights and the national courts : giving shape to the notion of “shared responsibility”. *In book* : Implementation of the European Convention on Human Rights and of the judgments of the ECtHR in national case–law. Eds. Gerards J., Fleuren J. Cambridge, Antwerp, Portland : Intersentia, 2014, p.17.

57 On Compliance of the first part of Section 257 of the Latvian Administrative Violations Code with Article 105 of the Satversme of the Republic of Latvia : Judgement of the Constitutional Court on October 24, 2013 in case No 2012–23–01, para 14. [http : //www.satv.tiesa.gov.lv/?lang=2&mid=19](http://www.satv.tiesa.gov.lv/?lang=2&mid=19)

58 On Compliance of the first part of Section 257 of the Latvian Administrative Violations Code with Article 105 of the Satversme of the Republic of Latvia : Judgment of the Constitutional Court on 24 October 2013, in case No. 2012–23–01, [http : //www.satv.tiesa.gov.lv/?lang=2&mid=19](http://www.satv.tiesa.gov.lv/?lang=2&mid=19)

59 Rodiņa A. *Konstitucionālās sūdzības teorija un prakse Latvijā*. Rīga : Latvijas Vēstnesis, 2009, 199. lpp.

60 On the Conformity of Article 19² (the fourth part) of the Constitutional Court Law with Articles 91 and 92 of the Republic of Latvia Satversme (Constitution) : Judgement of the Constitutional Court on November 26, 2002 in case No. 2002–09–01, para 1, [http : //www.satv.tiesa.gov.lv/?lang=2&mid=19](http://www.satv.tiesa.gov.lv/?lang=2&mid=19)

court.⁶¹

The starting point for calculating the term for submitting a constitutional complaint to the Constitutional Court has been defined by taking into consideration, whether other legal remedies exist and can be used for the protection of the fundamental rights that have been violated. If other legal remedies can be used and the person has used them, then a constitutional complaint may be submitted within six months after the ruling of the final institution has entered into force. In case fundamental rights established in the Satversme cannot be defended by general legal remedies, then a constitutional complaint may be submitted to the Constitutional Court within six months from the moment when the violation upon fundamental rights occurred. In practice an issue has been encountered : it was not clear how to determine the moment of violation, but by adjudicating in some actual cases the Constitutional Court provided guidelines for calculation of the term in such situations.⁶² In compliance with the case law of the Constitutional Court, the term of 6 months, if no other legal remedies exist, must be calculated as of the moment of violation, which may be : 1) the moment when the legal norm enters into force ; 2) the moment, when a person for the first time gets into a situation, when the contested norm can be applied to him or her ; 3) moment (which does not coincide with the two previous ones), when the person felt the violation. The moment when the violation is felt or detected is the most appropriate point for counting the term, as this clearly demonstrates the nature and character of the constitutional complaint as a legal remedy for protecting subjective rights. However, statements regarding the moment of violation must never be and may not be voluntary, this must be proven. The moment when the violation arises always must be substantiated and understandable.

6. The Constitutional Court as a real "weapon" against the state

In theory the role of constitutional review in protection of individual rights ranges from an enthusiastically positive response to an unqualifiedly negative.⁶³ To understand reality and efficiency of constitutional complaint procedure in Latvia, it is important to clarify the rights of the Constitutional Court to determine "the destiny" of an unconstitutional legal norm. Constitutional adjudication at the Constitutional Court can be concluded in two ways : the Court can pass a judgement or in specific cases, for example, if the legal norm, which is challenged at the Constitutional Court, has lost its legal force, it can pass a decision to terminate legal proceedings.⁶⁴ Although two ways of ending the procedure ex-

61 Theory and practice of the European Convention on Human Rights. Eds. Van Dijk P., Van Hoof F., Van Rijn A., Zwaak L. Antwerpen ; Oxford : Intersentia, 2006. p. 162.

62 On the Compliance of the third part of Section 567 of the Civil Procedure Law, insofar as it does not envisage covering the remuneration for the duties of office performed by a sworn bailiff from the state budget resources, when the enforcer of the debt is exempt from paying the costs of enforcing the judgement, with Article 107 of the Satversme of the Republic of Latvia and the compliance of Paragraph 8, 9, 10, 11 and 12 of the Cabinet of Ministers Regulation of 30 August 2011 No. 670 "Regulation on the amount of expenditure necessary for performing enforcement activities and the procedure for paying it" with Article 64 and Article 105 of the Satversme of the Republic of Latvia : Judgement of the Constitutional Court on June 27, 2013 in case No. 2012-22-0103. [http : //www.satv.tiesa.gov.lv/?lang=2&mid=19](http://www.satv.tiesa.gov.lv/?lang=2&mid=19)

63 Sadurski W. Rights before courts. A study of Constitutional Courts in Post communist States of Central and Eastern Europe. The Netherlands : Springer, 2005, p.109.

ist, a legal norm can be declared as being inconsistent with the Satversme by a judgement, not a decision.

In accordance with the third part of Section 32 of the Constitutional Court Law a legal provision, which has been declared by the Constitutional Court as non-compliant with a norm of a higher legal force, must be regarded as being not in effect from the day of publication of the Constitutional Court judgment (*ex nunc*), unless the Constitutional Court has determined otherwise. The other possibility for a Constitutional Court is to decide that the contested provision may become invalid also from the day it was adopted (*ex tunc*) or on another day (*ex tunc*), or the date may set in the future (*pro futuro*).

Undoubtedly, retroactive (*ex tunc*) force of judgment should be regarded as an exception in order to preserve legal certainty.⁶⁵ However, the retroactive force of the judgment is of special importance in deciding cases, which have been initiated by submitted constitutional complaints. This is because the decision *ex tunc* might be the only possibility to safeguard a person's fundamental rights. Case law studies show that the contested legal act as a whole is declared invalid *ex tunc* – from the moment of adoption, if it is established that it had been adopted *ultra vires*. For example, the Constitutional Court, in examining a case regarding the constitutionality of a binding regulation of the City Council of Riga (capital city), established that in adopting the legal norms the authorization granted in Section 43 of the Law on Local-governments had been exceeded and that the Riga City Council had acted *ultra vires*.⁶⁶ The contested legal norms regulated the same issue (exceeding the appropriate level of noise), which was already regulated by appropriate sections of the Latvian Administrative Violations Code – law of higher legal force.⁶⁷ Since the legal norms had been adopted *ultra vires*, they were, in accordance with the case law of the Constitutional Court, recognized as being incompatible with Article 105 of the Satversme and invalid as of the moment of adoption.⁶⁸ Also in another case where Regulation No. 141 “Requirements Regarding Prevention of Money Laundering and Financing of Terrorism in Buying and Selling Foreign Currency Cash” of the Bank of Latvia was evaluated, it was decided to recognize it as being *ultra vires* and incompatible with Article 1 and Article 64, as well as the first sentence of Article 91 of the Satversme as of the moment of adoption.⁶⁹

Constitutional Court quite frequently, upon declaring a contested provision as being incompatible with the Satversme and invalid, sets a special condition that with regard to the applicant the provision

64 Rodiņa A. The Constitutional Court as the guardian of the Constitutional order of the Republic of Latvia : Some important decisions in 2013. *European Review of Public Law* Vol.26, No 4, Winter 2014, p.1627.-1668.

65 Heringa A.W. *Constitutions Compared. An Introduction to Comparative Constitutional Law.* Cambridge : Intersentia, 2016, p.223. ; Onževs M. Par neīsta atpakaļejoša spēka izpratni Latvijas tiesu nolēmumos. *Jurista vārds*, Nr. 12 (763), 26.03.2013.

66 Abramavičius A. *Ultra vires doktrīna Lietuvas Republikas Konstitucionālās tiesas jurisprudencē. In book : Ultra vires doktrīna konstitucionālo tiesu praksē. Lietas ierosināšana Satversmes tiesā.* Rīga : TNA, 2008, 57.lpp.

67 On Compliance of Para 4.1 and Para 15 of the Binding Regulations of 19 June 2007 of the Riga City Council "Public Order Regulations in Riga" with the first and the third sentence of Article 105 of the Satversme : Judgement of the Constitutional Court on 12 December, 2014 in case No. 2013-21-03, para 12, [http : //www.satv.tiesa.gov.lv/?lang=2&mid=19](http://www.satv.tiesa.gov.lv/?lang=2&mid=19)

68 *Ibid*, para 13.

becomes invalid *ex tunc*.⁷⁰ It is of particular importance, in view of the fact that a person is not contesting an individual act (court decision, administrative act), but a regulatory (normative) legal act, which, essentially, applies to an unlimited circle of subjects. At the same time, these *ex tunc* rulings place a special emphasis on the theory of the so-called active defender of rights.⁷¹ It means that only that person, who does not passively observe, but acts: turns to the Constitutional Court by submitting a constitutional complaint, may truly hope to protect fundamental rights at the Constitutional Court. These are those active subjects, who may hope to prevent, indeed, a real violation of fundamental rights with the help of the Constitutional Court. Therefore quite often Constitutional Court by deciding on the date, as of which the contested norm (act) becomes invalid, takes into consideration that its task is to prevent the violation of applicants' fundamental rights to the extent possible. The implementation of the aforementioned principles is vividly illustrated in case No. 2014-09-01, which was about compliance with Article 92 of the Satversme of Section 495(1) of the Civil Procedure Law, which provided that the arbitration court itself decided on the jurisdiction of the arbitration court over a dispute, even in those cases where one of the parties contested the existence or validity of an arbitration agreement. In this case the Constitutional Court established that the contested regulation, indeed, was incompatible with the Satversme.⁷² However, most importantly, the Constitutional Court not only recognized the contested norm as being incompatible with Article 92 of the Satversme, but provided that solely with respect to the submitter of the constitutional complaint (a concrete limited liability company) the norm became invalid *ex tunc* – from the moment when the violation of the fundamental rights of the person who submitted the constitutional complaint occurred. The *ex tunc* decision was decisive for the subject of the constitutional complaint, since it gave the possibility to repeatedly solve the dispute, by applying legal norms that were compatible with the Satversme, thus eliminating the violation. In another case Section 432 of the Road Traffic Law, insofar it did not provide for the right to contest and appeal against a report-notification to a vehicle owner, who had not been the driver of the vehicle at the moment when parking rules were violated, was recognized as being incompatible with Article 92 of the Satversme. It means that legal norm lost its legal force from the moment the judgement was published. However, with respect of applicant (physical person) it was decided that those legal norms

69 On Compliance of Para 19 and Para 20 of the Bank of Latvia Regulation No. 141 of 15 September 2014 " Requirements Regarding Prevention of Money Laundering and Financing of Terrorism in Buying and Selling Foreign Currency Cash" with Article 1 and Article 64, as well as the First Sentence in Article 91 of the Satversme of the Republic of Latvia : Judgment of the Constitutional Court on 2 March 2016, in case No 2015-11-03, file : ///C : /Users/Anita/Downloads/2015-11-03_Spriedums_ENG.pdf

70 On the Compliance of the Cabinet of Ministers November 11, 2005 Regulations No. 17 "Amendments to the Law "On Coercive Expropriation of Real Estate for State or Public Needs"" and June 9, 2005 Law "Amendments to the Law "On Coercive Expropriation of Real Estate for State or Public Needs"" with Articles 1 and 105 of the Republic of Latvia Satversme : Judgment of the Constitutional Court on December 16, 2005 in case No 2005-12-0103. [http : //www.satv.tiesa.gov.lv/?lang=2&mid=19](http://www.satv.tiesa.gov.lv/?lang=2&mid=19)

71 Rodiņa A. Aktīvā pamattiesību aizsargātāja koncepts konstitucionālā tiesvedībā. 2015. Gada zinātniskā konference. Tēzes. Rīga : Rīgas Stradiņa Universitāte, 2015, 373. lpp.

72 On Compliance of Section 495(1) of the Civil Procedure Law with the first sentence in Article 92 of the Satversme of the Republic of Latvia : Judgment of the Constitutional Court on 28 November 2014, in case No 2014-09-01, para 21. [http : //www.satv.tiesa.gov.lv/wp-content/uploads/2014/03/2014-09-01_Spriedums_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2014/03/2014-09-01_Spriedums_ENG.pdf)

were not invalid as of the moment when the applicant's fundamental rights were violated (*ex tunc*), because decision *ex tunc* was the only efficient possibility to protect the applicants fundamental human rights.⁷³ To put it more precisely : the applicant, on the basis of the judgement by the Constitutional Court, was able to ask to review her case once again, this time by applying norms that ignored neither the values of the state, nor fundamental human rights.

Conclusion

It is a challenge for every state to ensure in practice respect of constitution, values and principles, as well as protection of fundamental human rights.⁷⁴ Judicial review and constitutional courts as a key element of the twentieth century's legal heritage⁷⁵ can help achieve aims of *etat de droit*. Constitutional complaint does not exist in all three Baltic States. A person does not have direct access or standing before the Constitutional Court in Lithuania ; the Estonian Supreme Court (Constitutional Review Department) has no competence to review constitutional complaints. However, it is true that also persons can guard the constitution by submitting constitutional complaints.⁷⁶ Latvia is an example of this. Jurisprudence of the Constitutional Court proves : active persons (who apply to the Constitutional Court) can expect that their claim is satisfied or the violated fundamental rights are protected. Simultaneously, by protecting individual rights the Constitutional Court reaches the objective aim of the constitutional review – to protect constitutional order and values in the country.

73 On Compliance of Section of 43.2 of Road Traffic Law, Insofar it Affects the Rights of the Vehicle Owner in Administrative Violations Record-keeping, with Article 92 of the Satversme of the Republic of Latvia : Judgement of the Constitutional Court on 24 April 2014, in case No. 2013-12-01. [http : //www.satv.tiesa.gov.lv/wp-content/uploads/2013/07/2013-12-01_Spriedums_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2013/07/2013-12-01_Spriedums_ENG.pdf)

74 De Visser M. Constitutional Review in Europe. A Comparative Analysis. Oxford and Portland, Oregon : Hart Publishing, 2014, p. 1.

75 Elliot M. The Constitutional Foundations of Judicial Review. Oxford, Portland : Hart Publishing, 2001, p. 247.

76 De Visser M. Constitutional Review in Europe. A Comparative Analysis. Oxford and Portland, Oregon : Hart Publishing, 2014, p. 153.