THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

J U D G E M E N T
on Behalf of the Republic of Latvia
18 December 2013, Riga
in Case No. 2013-06-01

The Constitutional Court of the Republic of Latvia composed of: the Chairperson of the court hearing Gunārs Kūtris, Justices Kaspars Balodis, Aija Branta, Kristīne Krūma, Uldis Ķinis and Sanita Osipova,

having regard to the application by the Department of Administrative Cases of the Supreme Court Senate,

on the basis of Article 85 of the Satversme of the Republic of Latvia and Para 1 of Section 16, Para 9 of Section 17(1), as well as Section 19^1 and Section 28^1 of the Constitutional Court Law,

at a court hearing of 19 November 2013 examined in written procedure the case

"On Compliance of Para 2 of Section 23(5) and Section 23^1(1) of Law on National Referendums, Legislative Initiatives and European Citizens' Initiative with Article 1 of the Satversme of the Republic of Latvia."

The Facts

1. On 31 March 1994 the Saeima adopted Law on National Referendums, Legislative Initiatives, which entered into force on 4 May 1994.

The legislator amended this law a number of times. With the amendments of 20 September 2012 the title of the law was changed and currently it is Law on

National Referendums, Legislative Initiatives and European Citizens' Initiative (hereinafter – Law on National Referendums).

The law of 8 November 2012 "Amendments to Law on National Referendums, Legislative Initiatives and European Citizens' Initiative (hereinafter – amendments of 8 November 2012) Section 23 of Law on National Referendums was expressed in a new wording and supplemented with Section 23^1. These amendments entered into force on 11 December 2012.

Section 23(5) of Law on National Referendums provides:

"The Central Election Commission shall refuse the registration of the draft law or draft amendments to the Constitution if:

1) the initiative group does not comply with the requirements under paragraph 2 of this Article;

2) the draft law or draft amendments to the Constitution are not completely evolved by form or contents."

Section 23^1 (1) of Law on National Referendums provides:

"The Central Election Commission's decision to refuse the registration of the draft law or draft amendments to the Constitution may be appealed by the initiative group to the Administrative Cases Department of the Supreme Court Senate."

2. On 19 December 2012 the Constitutional Court adopted a decision on terminating judicial proceedings in case No. 2012-03-01 "On the Compliance of the first part of Section 11 and the first part of Section 25 of the Law "On National Referendums and Legislative Initiatives" with Article 1, 77 and 78 of the Satversme" (hereinafter – Decision in Case No. 2012-03-01), which had been initiated having regard to an application submitted by thirty members of the 11^{th} Saeima.

The Constitutional Court concluded that in Case No. 2012-03-01 the contested norms envisaged the right and obligation of the state institutions involved in the implementation of the electorate's legislative initiative to assess the compliance of the draft laws submitted by electorate with the Satversme of the Republic of Latvia (hereinafter – Satversme), as well as the international commitments of the State and that a mechanism for assessing the legality of decisions by the aforementioned sate institutions existed.

3. The Applicant – the Department of Administrative Cases of the Supreme Court Senate (hereinafter – the Applicant or the Senate) – has submitted to the Constitutional Court an application regarding the compliance of Para 2 of Section

23(5) and Section 23^1 (1) (hereinafter – the contested norms) with the principle of division of power enshrined in Article 1 of the Satversme.

It is noted in the application that the Senate was at the time reviewing case No. SA-1/2013, which had been initiated on the basis of application by Jānis Kuzins, Andris Tolmačovs, Aleksandrs Kuzmins and Žanna Kareļina requesting revoking of the decision by the Central Election Commission (hereinafter – CEC) of 1 November 2012 No. 6 and passing of a favourable administrative act. Upon submitting an application to the Constitutional Court, the legal proceedings in the case had been stayed. The Applicant also informed the Constitutional Court that on 16 April 2012 the legal proceedings in case No. SA-6/2013, which was initiated on the basis of an application by association "Latvia for Lat" requesting revoking of the decision by CEC of 18 March 2013 No. 14, had been suspended. On 15 July 2013 the legal proceedings had been suspended also in Case No.SA-8/2013, which had been initiated on the basis of the application by association "For lat, against euro", requesting revoking part of the decision of 14 May 2013 by CEC No. 19 and issuing of a favourable administrative act.

The Senate in case No. SA-1/2013, on its merits, recognizes the decision by CEC not to submit the draft law submitted by electorate for collection of signatures as being correct, however, it holds that the jurisdiction of CEC and the administrative court to stop the further progress of the draft law, on the basis of the evaluation of its content, should be verified. The Applicant holds that the issue of the CEC's jurisdiction to a certain extent has been solved by Decision in Case No. 2012-03-01, however, doubts, whether the concrete decision by CEC "falls within the jurisdiction recognised by the Constitutional Court". It is noted in the application and clarifications to it that the regulation, which obliged CEC and, following it, the administrative court to verify, whether the content of the draft law submitted by electorate, complied with the Satversme or international law provisions, was incompatible with the principle of division of state power enshrined in Article 1 of the Satversme and with the regulation of Satversme in general.

The Applicant notes that on 1 November 2012, when the decision No.6 by CEC was adopted, the contested norms had not yet entered into force. CEC itself had concluded that its jurisdiction to Asses a draft law submitted by electorate as to its content followed from Article 78 of the Satversme and the provisions, which defines the general jurisdiction of CEC in ensuring implementation of Law on National Referendums. The Applicant admits that in assessing the validity of an application submitted to it, Para 2 of Section 23(5) of Law on National Referendums should be applied, which "makes positive the jurisdiction, the existence of which was generally outlined in the decision of 19 December 2012 by the Constitutional Court on terminating legal proceedings in case No. 2012-03-01".

The Applicant's jurisdiction to examine the validity of a decision by CEC in full, in its turn, follows from Section 23^1 (1) of Law on National Referendums and the Administrative Procedure Law (hereinafter also – APL). If CEC refuses to register the draft law and submit it for collection of signatures, on the basis of legal arguments on its incompatibility with the Satversme, then the administrative court must examine this decision as to its content in full. Thus, the contested norms oblige the Senate to verify the compatibility of the draft law with the Satversme.

The jurisdiction of CEC to asses the content of a draft law and to refuse submitting the draft law for collection of signatures means a possibility to influence the advancement of a legislative initiative and denies the Saeima the possibility to discuss the draft law and assess its content, as well as, in case of dissenting opinion, to put it for final decision by national referendum. Thus, the possibilities of people's legal initiative are allegedly decreased.

The Applicant holds that the decision, by which CEC refuses to register and to submit for collection of signatures a draft law submitted by electorate, is not an administrative act, since it is adopted within the framework of legislative procedure, however, it must be admitted that *per se* it cannot be an obstacle, excluding the examination of a decision like that in court. The legislator has the right to transfer into the competence of an administrative courts also the examination of cases, which by their nature are not only or directly administratively procedural, however, in exceptional cases of this kind special attention must be paid to establishing, whether the judicial control does not exceed its admissible limits, which must comply with the principle of division of power, enshrined in Article 1 of the Satversme.

The Applicant holds that the right to assess the draft law as to its content and, depending on the assessment, to register it or refuse to register, is a very essential function. All subjects, who have this right, should be visible in the Satversme. Neither CEC, nor the court has been indicated in the Satversme as the performers of this function. Special substantiation is needed in order to recognise that the functions of the court comprise the assessment of a draft law submitted by the electorate as to its content. The Constitutional Court should be the one having an exclusive competence to make the final decision on legal issues of this level. Moreover, in view of the principle of the division of power, the administrative court should abstain from assessing the constitutionality of a draft law prior it has been adopted and has become a law.

4. The institution, which adopted the contested act, – the Saeima – notes in its written reply that the contested norms comply with Article 1 of the Satversme.

The Saeima notes that the contested norms do not comprise any regulation, which had not been envisaged by Law on National Referendums previously. The Saeima does not uphold the Applicant's opinion that the functions of CEC and the Senate, envisaged by the contested norms, "are not visible in the Satversme". The Saeima holds that in analysing the state order of Latvia, not only the legal text included in the articles of the Satversme, but also the actual practice should be taken into consideration, i.e., the way the text of the Satversme is interpreted and applied. The authorisation of CEC to verify, whether a draft law submitted by electorate can be considered fully elaborated, is a typical element of Latvia's state order, introduced by the Constitutional Assembly to implement Article 78 of the Satversme. Likewise, since 1922, when the Satversme entered into force, it has been self-evident within the state order of Latvia that the respective decision by CEC can be appealed against before the Senate. Law on the Central Election Commission and Law on National Referendums have retained the division of authorisation of CEC and the judicial power, envisaged in the Satversme, as regards verification, whether the draft law submitted by electorate complies with the requirements of Article 78 of the Satversme.

Para 2 of Section 23(5) provides normative specification on how to assess, whether a draft law is to be considered as being fully elaborated. The practice of CEC following the coming into force of the contested norms shows that CEC is able to apply Article 78 of the Satversme and the respective norms of Law on National Referendums. The Applicant's concern regarding politicization of CEC and inability to perform the functions defined by the law are ungrounded. The members of CEC in their activities must abide by the Satversme and regulatory enactments that regulate the operations of CEC. Moreover, even if CEC were to adopt an arbitrary decision without sufficient legal grounds, APL grants sufficiently extensive authorisation to court in order to ensure the compliance with the basic principles of a democratic and judicial state in this field of the State's operations.

The Saeima draws the attention of the Constitutional Court to the fact that also prior to the coming into force of the contested norms the decision by CEC, by which a draft law was recognised as being incompatible with the requirements of Article 78 of the Satversme, could be appealed against according to the general procedure established by the Administrative Procedure Law. By adding Section 23^1 to Law on National Referendums, the regulation was modified, indicating only one judicial instance, which verifies the validity of a decisions by CEC, as well by defining the procedural regulation of this verification, *inter alia* – the terms. The Saeima did not reallocate the jurisdiction between various courts and did not define new functions for the Senate. This regulation complies with the traditions of the state order of Latvia and the choice made by the members of the Constitutional Assembly. The contested

norms have made the control over the validity of a decision by CEC more effective, since it ensures persons' rights to receive the final court ruling on the respective issue within terms precisely defined in law, which are shorter compared to general terms for adjudicating cases. Moreover, the case is examined by a higher-level court. The decision in case No. 2012-03-01 allows concluding that the mechanism for controlling the validity of a decisions by CEC, envisaged by Section 23^1 of Law on National Referendums should be considered as being effective.

The Applicant's concerns regarding interference into the legislative procedure are ungrounded, since CEC does not adopt the decisions envisaged by the contested norms within the framework of legislative procedure. Pursuant to Article 65 of the Satversme the process of legislation begins only upon submitting a draft law to the Saeima. The process of legislation will be initiated only in case, if the draft law, signed by at least one tenth of electorate, is submitted for examination to the Saeima.

Likewise, the Saeima holds that the arguments put forward by the Applicant in the case under review already have been examined by the Constitutional Court within the framework of case No. 2012-03-01. The authorisation of CEC to decide, whether a draft law submitted by electorate is to be considered fully elaborated, was already accepted in the decision on terminating judicial proceedings in this case, and the safeguards of persons' rights protections were also assessed.

The Saeima, in its additional explanations, notes that the CEC's obligation to verify, whether the submitted draft law complies with the norms, principles and values included in the Satversme, first and foremost follows from Article 78 of the Satversme and Section 4 of Law on the Central Election Commission. The legislator has defined the legal grounds for CEC's refusal to register a draft law in Section 22(5) of Law on National Referendums.

5. The summoned person – the Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) – holds that the contested norms comply with Article 1 of the Satversme.

The Ombudsman notes: if the draft law is evidently inconsistent with the constitution, its further advancement is inadmissible. CEC is the institution, which is directly involved in the advancement of a draft law submitted by electorate and can verify whether the concrete project is fully elaborated and consistent with the Satversme.

The Ombudsman holds that the task of administrative courts is to verify the validity of decisions and orders adopted by state and municipal institutions and officials, on the basis of complaints submitted by persons concerned. However, this does not exclude the possibility of transferring also other cases for adjudication to

administrative courts. The Ombudsman holds that the function of assessing decisions adopted by CEC cannot be transferred to the Constitutional Court and that a situation, in which the Constitutional Court would have to assess a draft law submitted by electorate, but later – previously assessed legal provisions, which had come into force, would be inadmissible. Section 23^1 of Law on National Referendums ensures effective mechanism of rights protection and the Senate does not exceed its jurisdiction in verifying, whether a draft law submitted by the electorate complies with the requirements of legal technique, fits into Latvian legal system and complies with the norms of Satversme and the State's international commitments.

6. The summoned person – the Central Election Commission – notes that it adopts decisions in compliance with Law on the Central Election Commission and APL, following a special, self-elaborated procedure. The members of CEC asses the compliance of the submitted draft law with the Satversme according to their legal consciousness, by familiarising themselves with the arguments provided in the opinions of state institutions and experts. The members of CEC have agreed that the opinions of the Legal Bureau of the Saeima, the Ministry of Justice, the Law Faculty of the University of Latvia, as well as other institutions and experts will be requested, depending upon the field of the submitted draft and the possible influence upon the concluded international agreements.

CEC upholds the opinion expressed in the Saeima's written answer that CEC exercises its authorisation in compliance with the meaning and aim of the authorisation granted by the contested norm, but the possibility to appeal against the CEC's decision to the Senate ensures sufficient control by the judicial power over the validity and legality of the decisions adopted by CEC.

Until the amendments of 8 November 2012 came into force, CEC was verifying, whether the submitted draft law complied with the requirements of legal technique, whether its content was unambiguously clear, whether it was not inconsistent with legal enactments of higher legal force and whether it had been signed by at least 10 000 electors. During this period the decisions by CEC had been appealed against in accordance with the procedure set out by the Administrative Procedure Law.

7. The summoned person – Dr. iur. Aivars Endziņš – upholds the arguments provided in the Saeima's written reply and is of the opinion that the jurisdiction of CEC and the Senate, established by the contested norms, is not inconsistent with the principle of divisions of state power enshrined in Article 1 of the Satversme.

A. Endziņš notes that the requirement to assess, whether the draft law submitted by electorate is fully elaborated, follows from the Satversme. The Saeima has fulfilled this requirement by adopting the contested norms, which define the jurisdiction of CEC and the Senate to assess the draft laws submitted by electorate.

8. The summoned person – Dr. iur. Inese Nikuļceva – holds that the contested norms comply with Article 1 of the Satversme.

I. Nikuļceva notes that the content of the draft law, i.e., its usefulness and admissibility can be evaluated only by the Saeima or by the people. However, this political assessment should be differentiated from the legal assessment, whether the draft law can be considered as being fully elaborated in the meaning of Article 78 of the Satversme. The Senate's application to the Constitutional Court shows that problems arise in practice, when the political assessment of the draft law, which can be performed only by the Saeima and the people, must be differentiated from the legal assessment, which is performed by CEC and other institutions. If only the legislator could assess a draft law, then not only disproportional expenditure from the state budget would have to be envisaged, but also the meaning of direct democracy would be degraded, i.e., submitting only the most essential issues to people for deciding. The requirement that voters vote for anti-constitutional draft laws would be unacceptable from the ethical point of view.

The legislator has provided indications on how the term "fully elaborated" should be understood in Article 23 (5) of Law on National Referendums. In assessing, whether the draft law is fully evolved as to its form and content, the doctrine, the judicature and the criteria introduced in the institutional practice should be followed. *Inter alia*, also the guidelines included in the Decisions in Case No. 2012-03-01, further evolving the criteria elaborated by the Constitutional Court and improving them in the legal doctrine and the practice of CEC.

The legislative procedure comprises also the legislative initiative. However, the fact that an institution of public administration, i.e., CEC, performs certain tasks within the framework of legislative procedure does not mean violation of the principle of division of power. The division of power is not exercised according to a strict ideal type model. In elaborating draft regulatory enactments and in their advancement the institutions of public administration have not only the right, but also the obligation to assess the compliance of each draft with norms of higher legal force and general principles of law. Each party applying the law, in its turn, is obliged to abide by the hierarchy of legal norms in its work, to interpret the Satversme and to apply it directly, as well as to verify the compliance of each action or act with the Satversme.

In those cases, when it is difficult to provide a clear answer to the question, whether a draft law submitted by electorate is fully elaborated as to its content, for

example, if the opinions of the summoned experts and the institutions of public administration are opposite and equally split, then CEC should decide in favour for registering the draft law, thus allowing the electorate and the Saeima to decide on this draft law.

I. Nikuļceva notes that in accordance with the guidelines of the Council of Europe Commission for Democracy through Law (hereinafter – the Venice Commission) an effective system with the appeal against the decisions pertaining to the electorate's legislative initiative to court should be established. Thus, the possibility to verify in court the decision by CEC to refuse registering a draft law submitted by electorate is not a threat to democracy and the rule of law, but is an integral part of an effectively functioning direct democracy. The jurisdiction of the Constitutional Court, however, does not comprise the assessment of draft regulatory enactments.

Thus, the jurisdiction of the Senate, provided in Section 23^1 of Law on National Referendums, to review the decision by CEC to refuse to register a draft law submitted by electorate, does not violate the principle of division of power and is not inconsistent with the division of jurisdictions between the Constitutional Court and other courts.

9. The summoned persons – Andris Tolmačovs, Aleksandrs Kuzmins and Žanna Kareļina – note that the people must respect the same limits of discretion as have been set for the Saeima. However, the people themselves must decide, whether a draft law submitted by electorate complies with the values of a democratic and judicial state. No institution or an official has the right to stop electorate's legislative initiative because the draft law submitted by electorate might be inconsistent with the Satversme or Latvia's international commitments. Hence, the jurisdiction of CEC to assess, whether a draft law complies with the Satversme and Latvia's international commitments, should be interpreted narrowly, applying it only to those cases, when this incompatibility is evident, for example, when a draft law has been submitted, which envisages deciding on issues, which are not to be regulated by law at all, and it is obvious and clear without in-depth legal analysis. This is confirmed also by CEC in its decision of 1 November 2012 No.6 and the guidelines of the Decision in Case No. 2012-03-01.

The summoned persons also hold that it is of no importance, whether the legal norm is part of a law, which is in force, or only of a draft law submitted by electorate – the level of legal analysis, in verifying the compliance of the norms with the Satversme or Latvia's international commitments, should be the same.

It is also noted in the opinion by the summoned persons that the contested norms do not ensure the equality of legislators – the people and the Saeima, since the treatment of people is less favourable than that of the Saeima. I.e., the compliance of a draft law submitted by electorate with the Satversme or Latvia's international commitments is verified *ex ante*, moreover, it is not done by the Constitutional Court. This regulation is incompatible with the principle of democracy, enshrined in Article 1 of the Satversme, as well as the principle of the sovereignty of the people.

The Findings

10. The Applicant requests the Constitutional Court to assess the compliance of the contested norms with the principle of division of power enshrined in Article 1 of the Satversme. I.e., the applicant holds that the jurisdiction of CEC to assess, whether the submitted draft law is completely elaborated as to its content, as well as the jurisdiction of the Senate to examine complaints regarding decisions adopted by CEC, by which it has refused to register draft laws submitted by electorate only because they are not fully evolved as to their content, is incompatible with the principle of division of power.

10.1. The contested norms apply to the assessment of draft laws and draft amendments to the Satversme as to their form and content.

The methodologies for assessing a draft law and draft amendments to the Satversme differ. The Constitutional Court has concluded that the Satversme divides the legislative power and the constitutional power, moreover, stricter requirements are set as regards the right to adopt or to amend the Satversme (*see Judgement of 29 November 2007 by the Constitutional Court in Case No. 2007-10-0102, Para 56.1 and 56.2).*

The Applicant has not turned to the Constitutional Court in connection with the application of the contested norms in cases of reviewing the decision by CEC pertaining to draft amendments to the Satversme submitted by electorate. Moreover, the Applicant does not contest the provision on assessing a draft law submitted by electorate as to its form. Since the Constitutional Court must take into consideration the actual circumstances, on which the case is founded, then in the framework of the case under review the contested norms are examined only insofar as they pertain to the assessment of a draft law submitted by electorate as to its content.

10.2. It follows from the arguments presented in the application that the compatibility of the norms contested in this case with norms of higher legal force should be assessed in interconnection with the findings expressed in the rulings by the Constitutional Court. I.e., as established, in Decision in Case No. 2012-03-01 the

Constitutional Court assessed the compliance of Section 11(1) and Section 25(1) of Law on National Referendums with Article 1, Article 77 and Article 78 of the Satversme. The aforementioned decision comprises findings on the evaluation and verification of a draft law submitted by electorate, however, in the framework of the case the compliance of the norms contested in the case under review with the Satversme was not assessed *expressis verbis*.

It also follows from Decision in Case No. 2012-03-01 that the Constitutional Court has taken into consideration the wording of Law on National Referendums of 8 November 2012, which is contested in the case under review. Insofar the context of legal relationships has not changed, the conclusions made in Decision in Case No. 2012-03-01 are also applicable to the case under review.

Thus, the Constitutional Court must first of all establish what the requirements set for the exercise of electorate's legislative initiate by the principle of division of power are.

11. It follows from the concept of democratic republic, enshrined in Article 1 of the Satversme, that all state institutions have the obligation to abide by legality and the principle of division of power in their reciprocal relationships, as well as to implement reciprocal supervision, in compliance with the rule of law and other principles of a judicial state. The aim of division of power is to ensure person's fundamental rights and democratic state order, guaranteeing a balance and reciprocal control among the institutions of state power (*see, for example, Judgement of 20 December 2006 by the Constitutional Court in Case No. 2006-12-01, Para 6.1).*

In assessing the compliance of a legal norm with the principles of a judicial state enshrined in Article 1 of the Satversme, it must be taken into consideration that these principles may manifest themselves differently in various fields of law (*see, Judgement of 8 November 2006 by the Constitutional Court in Case No. 2006-04-01, Para 15.2 and Para 15.3).* The principle of the division of power means that all actions of the state essentially are functionally divided into three types of activities or three functional branches of the state power – legislative power, executive power and judicial power. The division of jurisdiction of the state institutions belonging to the three branches of power, which forms the system of the division of power or "checks and balances", is defined in the Satversme. However, the Satversme also grants to the Saeima the right to specify the model of division of power.

Article 64 of the Satversme provides that the Saeima and also the people have the right to legislate in Latvia, according to the procedure and to the extent provided for in the Satversme. Article 78 of the Satversme, in its turn, provides: "Electors, in number comprising not less than one tenth of the electorate, have the right to submit a fully elaborated draft of an amendment to the Satversme or of a law to the President,

who shall present it to the Saeima. If the Saeima does not adopt it without change as to its content, it shall then be submitted to national referendum." The Constitutional Court has noted that the right of a totality of citizens to participate in the legislative process is to be considered a right, which belongs to the institutional field of constitutional order (*see, Judgement of 19 May 2009 by the Constitutional Court in Case No.2008-40-01, Para 12, and Decision of 19 December 2012 on terminating judicial proceedings in Case No. 2012-03-01, Para 17).*

The constitutional institutions of power may exercise the jurisdiction of the State of Latvia themselves or establish institutions of public administration for this purpose. Thus, as regards all issues in the life of society and the State, insofar their legal regulation is founded upon the Satversme requirements, one of the constitutional institutions of State power or institutions of public administration established by them have the jurisdiction to act and to handle the respective issue. Thus, only such a legal situation, in which at least one constitutional institution of state power or an institution of public administration established by it has the obligation to ensure that the requirements of the Satversme are complied with, is compatible with the Satversme (*see Decision of 19 December 2012 by the Constitutional Court on terminating judicial proceedings in Case No. 2012-03-01, Para 19.2).*

The Constitutional Court has also noted that Article 1 of the Satversme in some cases, when abiding by other constitutional norms requires it and when it is impossible to ensure appropriate governance otherwise, authorises the Saeima to establish an independent institution. If the legislator, exercising the right envisaged in Article 57 of the Satversme to define in law the interrelations between state institutions, releases an institution of public administration from subordination to the Cabinet of Ministers, then it must envisage another, but no less effective model for supervising the operations of this institution (*see Judgement of 16 October 2006 by the Constitutional Court in Case No. 2006-05-01, Para 16 –16.4, and Decision of 8 June 2012 on terminating judicial proceedings in Case No. 2011-18-01, Para 17.2).*

The principle of the division of power also defines the control by the judicial power over the legislative and executive power. The Constitutional Court has concluded that the judicial power has the task to ensure that in examining a concrete case the implementation of the provisions of the Satversme, laws and other regulatory enactments, compliance with the general principles of law were guaranteed, and that human rights and freedoms were protected. In a judicial state the courts are the ones to be recognised as the most effective mechanism, which, by examining each case individually, may establish, whether a reasonable balance between the rights of a concrete person and the interests of society has been observed (*see Decision of 13 October 2010 by the Constitutional Court on terminating the judicial proceedings in*

Case No. 2010-09-01, Para 12, and Decision of 13 December 2011 on terminating judicial proceedings in Case No. 2011-15-01, Para 7).

Thus, the principle of division of power, envisaged in the Satversme, has the aim to ensure implementation and protection of the fundamental values of a democratic and judicial state.

12. Articles 78 – 80 of the Satversme comprise the basic rules for realising the electors' legislative initiative. However, in view of the concise style of the Satversme, the electors' legislative initiative is not examined in detail. Therefore Law on National Referendums defines the procedure for exercising rights envisaged in Article 78 of the Satversme, specifying the rights of the subject of electors' legislative initiative – one tenth of the electorate. Moreover, the Saeima's constitutional obligation, which follows from Article 1 and Article 78 of the Satversme, to define clear regulation for implementing the electors' legislative initiative and national referendum, includes also the necessity to establish a mechanism for verifying, whether the requirements of Article 78 of the Satversme are met, since the totality of citizens, as one of the legislators, has no right to violate the Satversme (*see Judgement of 19 May 2009 by the Constitutional Court in Case No. 2008-40-01, Para 9, and Decisions of 19 December 2012 on terminating judicial proceedings in Case No. 2012-03-01, Para 16, Para 18.3 and Para 19.1).*

12.1. In the meaning of Article 78 of the Satversme, the legislative procedure starts when the President of the State submits to the Saeima a draft law, which has been fully elaborated by one tenth of the electorate. However, the implementation of the electors' legislative initiative starts prior to this, in accordance with the procedure set out in Law on National Referendums.

In order to submit a draft law to the Saeima, the signatures of one tenth of the electorate must be collected. The necessary number of the draft law supporters is calculated on the basis of the citizens with the right to vote at the time of the last Saeima election. Thus, in order for the subject envisaged in the Satversme – one tenth of the electorate – to constitute itself, a noteworthy number of signatures by the citizens with the right to vote must be collected. This procedure requires private and state budget means, as well as other resources. Pursuant to Para 4 of the Transitional Provisions of Law on National Referendums, during the first stage of signature collection 30 000 electors' signatures must be certified by a sworn notary or a custody court, which engages in notarial activities. The second stage of signature collection is ensured by the State.

Thus, the Saeima's constitutional obligation to regulate the implementation of the electors' legislative initiative is aimed at coordinating the actions by the totality of

citizens, defining, for example, concrete terms for collecting signatures, as well as at ensuring as effective as possible use of private and state budget resources. Likewise, this obligation of the Saeima ensures that the requirements of Article 78 of the Satversme are complied with in this procedure, *inter alia*, also the requirement that the draft law submitted by the electors must be fully elaborated.

12.2. In accordance with the regulation, which is currently in force, i.e., Section 23 of Law on National Referendums and Para 4 of the Transitional Provisions, an initiative group is formed for collecting signatures of citizens with the right to vote in favour for a concrete draft law. It can be a political party, an association of political parties or an association established by at least 10 electors. The initiative group submits the elaborated draft law to CEC. If necessary, CEC, in its turn, requires information, explanations or opinions from state and local government institutions and invites experts, and within 45 days adopts one of the following decisions:

1) to register the draft law;

2) to set a term for eliminating the deficiencies identified in the application and the draft law;

3) to refuse registering the draft law, if the initiative group does not comply with the legal requirements or if the draft law is not fully elaborated as to its form or content. The initiative group can appeal against this decisions before the Senate.

Thus, it follows from Para 2 of the fifth part of the contested Section 23 of Law on National Referendums that CEC is obliged, *inter alia*, to assess, whether the draft law submitted by electors is fully elaborated as to its content. Section 23^1 (1) of Law on National Referendums, in its turn, provides that the initiative group may appeal to the Senate against the refusal by CEC to register the draft law.

Hence, the Constitutional Court must establish, whether the Saeima has abided by the limits of its discretion and whether the requirements set for the exercise of electors' legislative initiative in the contested norms comply with the fundamental values of a democratic and judicial state.

13. The Saeima, in setting out the procedure for national referendums and implementation of electors' legislative initiative, enjoys discretion to the extent it is not limited by constitutional norms. Likewise, the Saeima also has wide discretion in selecting, of among a number of laws, the law in which the corresponding regulation will be included, and also with regard to issues linked to legislative technique within the framework of a single law (*see, for example, Judgement of 19 June 2010 by the*

Constitutional Court in Case No. 2010-02-01, Para 9.4.2, and Decision of 19 December 2012 on terminating judicial proceedings in Case No. 2012-03-01, Para 16).

Already since the adoption of the Satversme, CEC has been entrusted with the jurisdiction to verify the compliance of a draft law submitted by electors with the requirements of Article 78 of the Satversme. This jurisdiction of CEC follows from Article 78 of the Satversme, Law on National Referendums, as well as Law on the Central Election Commission.

13.1. Pursuant to Section 1 of Law on the Central Election Commission, CEC is a state institution, established by the Saeima, which acts independently. It is comprised of nine members – electors. The Chairperson of CEC and seven members are elected by the Saeima, but one is nominated by the Supreme Court, at its plenum, from among its members (Section 2 of Law on the Central Election Commission).

CEC ensures enforcement of Law on National Referendums, as ell as uniform and correct application of it. CEC, in fulfilling its obligations and exercising its rights, shall act in the framework of valid regulatory enactments, *inter alia*, the provisions of Law on National Referendums (Section 4 and Section 8 of Law on the Central Election Commission).

13.2. The Constitutional Court in its decision in Case No. 2012-03-01 recognised that CEC's jurisdiction comprised assessment, whether the submitted draft law complied with the requirement, envisaged in Article 78 of the Satversme, of being "fully elaborated". This, in turns, contains the requirement that the draft law should be fully elaborated as to its content. It follows from the conclusions made by the Constitutional Court that a draft law cannot be considered to be fully elaborated as to its content, if:

1) it envisages deciding on issues, which are not be regulated by law at all;

2) in case of adoptions, would be incompatible with the norms, principles and values included in the Satversme;

3) in case of adoption would be incompatible with Latvia's international commitments (*see Decision of 19 December 2012 by the Constitutional Court on terminating judicial proceedings in Case No. 2012-03-01, Para 16, 18.3 and 19.3).*

The Venice Commission has also envisaged that the draft law to be submitted to a national referendum should comply with norms of higher legal force, international law and the principles of the Council of Europe (democracy, human rights and judicial state). Draft laws, which do not comply with these requirements, should not be submitted to a national referendum *[see: Code of Good Practice on Referendums, CDL-AD(2007)008rev, Venice, 16-17 March 2007, point III.3. http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282007%29008-e]*.

Since the text of the draft law submitted by the initiative group cannot be amended in the further procedure, it must be ensured that a draft, which is incompatible with the fundamental values of a democratic and judicial state, is not forwarded for a national referendum. The mechanism for implementing the electors' legislative initiative, selected by the Saeima, in its turn, must ensure that the advancement of a draft law, which is incompatible with the aforementioned values, were stopped as soon as possible. If draft laws of poor quality or unconstitutional draft laws were regularly submitted to national referendums, it would level out the very idea of electors' legislative initiative and over time the civic activity of electors might decrease.

Thus, CEC's jurisdiction comprises assessment of draft laws submitted by electors as to their content.

14. It is essential to establish the extent of CEC's jurisdiction to assess the draft laws submitted by electors as to their content. The Constitutional Court has concluded that the people should have the possibility to influence decision taking in the State. The people's will should be the foundation and the source of state power. The sovereignty of people in Latvia is implemented with the same elements of democracy as a national referendum or the electors' legislative initiative (*see Judgement of 19 May 2009 by the Constitutional Court in Case No. 2008-40-01, Para 11).*

14.1. The Applicant draws attention to the fact that usually CEC members are persons nominated by political parties in accordance with the principle of parity. Therefore, the Saeima, by granting to CEC the jurisdiction to assess a draft law submitted by electors as to its content, could indirectly influence the further course of this initiative (*see Case Materials, Vol.1,pp. 9 and 18*).

The Constitutional Court holds that pursuant to Section 1 of Law on the Central Election Commission, CEC is established following each Saeima election. The composition of CEC reflects the range of political parties, which the majority of citizens with the right to vote had wished to see as their representatives. Moreover, CEC in its activities must comply with the Satversme and other regulatory enactments.

However, it must also be taken into consideration that the draft laws submitted by electors at the specific moment might not comply with the programs or political priorities of the political parties represented in the Saeima. Thus, the electors' right to legislative initiative is one of the mechanisms, which protect their interests and rights, as well as allow the bearer of sovereign power – the people – to express its opinion on the need to adopt a concrete law. The member of the Constitutional Assembly Rainis has noted: "A referendum means that the people can express its thoughts also directly,

not only through its representatives, which it has sent to election. In a civilized, civic state this expression of thoughts is rather limited, but not to the extent that the people's will would no longer finds its expression." Member of the Assembly Kārlis Dzelzītis has expressed the opinion that "the people's initiative and referendum are, indeed, to be considered as very useful supplements to the parliamentary system [..] by accepting the people's initiative, a certain number of electors is given the possibility to submit a proposal to issue one law or another, which is put to vote" (*Transcript of 28 September 1921 5th meeting of IV session of Latvia's Constitutional Assembly and transcript of the 19th meeting of 8 November 1921).*

Thus, the electors' right to legislative initiative is an important tool, with the help of which the people – the sovereign – may act as a legislator.

14.2. It follows from the decision in Case No. 2012-03-01 that a draft law, elaborated by electors, which obviously is incompatible with legal norms of higher legal force, should not be submitted to the Saeima. The people themselves decide, whether the submitted draft law is compatible with the fundamental values of a democratic and judicial state, by expressing their opinion at a referendum (*see, Decision of 19 December 2012 by the Constitutional Court on terminating judicial proceedings in Case No. 2012-03-01, Para 22).*

The summoned persons in the case under review have generally agreed that CEC has the right to assess the draft laws submitted by electors as to their content, in view of the guidelines provided by the Decision in Case No. 2012-03-01. However, the criterion for the scope, in which CEC should assess the compatibility of the draft law submitted by electors with the Satversme as to its content, several opinions mention the "obviousness" of the probable incompatibility. For example, the Ombudsman has noted that further advancement of a draft law, which is obviously incompatible with the Satversme, would be inadmissible. I.Nikuļceva, in her turn, has expressed the opinion that CEC as a state institution should not be granted excessive discretion (*see Case Materials, Vol.1, p. 194 and Volume 2, p.7).*

14.3. The Constitutional Court concludes that the legal assessment, whether the draft law submitted by the electors is to be considered as being fully elaborated in the meaning of Article 78 of the Satversme, should be set apart from the assessment of its usefulness or admissibility or its political assessment, which can be performed only by the legislator – the Saeima or the people. Considering the purpose for which CEC was established and its jurisdiction, it must perform only legal assessment of the draft law. Moreover, CEC may refuse to register a draft law submitted by electors, only if it as to its content is obviously incompatible with the guidelines provided by the Constitutional Court in Decision in Case No. 2012-03-01.

It is also noted in the legal science that the obligation to assess a draft law submitted by electors, which follows from Article 78 of the Satversme, does not mean that CEC has the right to assess this project by judging, whether it should be recognised as being "good or desirable". In this respect, the submitters of a draft law have "total freedom" *(see: Dišlers K. Vai Centrālajai vēlēšanu komisijai ir tiesība pārbaudīt iesniegtos likumprojektus. Jurists, 1928. gada oktobris, Nr. 5, 135.–136. sleja).* However, it has also been recognised that regarding issues, which are not to be decided by way of legislation, the electors' legislative initiative cannot be implemented (*see: Dišlers K. Vēl viens ierosinājums, pie tam nekonstitucionāls. Tautas Tiesības, 1927. gada 15. jūnijs, Nr. 11/12, 331. lpp.).*

Therefore CEC must register all draft laws submitted by electors in order for the procedure of collecting signatures to begin, except for the cases, when the draft law obviously is not fully elaborated as to its content. The electors, in their turn, can express their assessment of the draft law during the process of collecting signatures, but later on – at the national referendum. An interpretation of Para 2 of Section 23(5) of Law on National Referendums, which would allow CEC to place disproportional restrictions upon the electors' right to legislative initiative, would be incompatible with the Satversme, as well as the fundamental values of a democratic and judicial state. An interpretation like this would render the electors' right to legislative initiative ineffective and would be incompatible not only with the principle of the division of power, but also with the principle of the people's sovereignty. Thus, the Constitutional Court concludes that the Saeima, in defining the jurisdiction of CEC, has not exceeded the limits of its discretion.

Hence, Para 2 of Section 23(5) of Law on National Referendums complies with Article 1 of the Satversme.

15. In assessing the requirements regarding the implementation of electors' legislative initiative, it must be established, whether the legal rights of the initiators of the draft law are ensured in this process and whether this process is legal.

The Constitutional Court in Decision in Case No. 2012-03-01 concluded: the applicant's opinion that there was no mechanism for assessing the legality of the decisions adopted by state institutions involved in the implementation of electors' legislative initiative was unfounded. It is noted in the decisions that with regard to appealing against the decisions adopted by CEC, Section 13 of Law on the Central Election Commission provided that those CEC decisions, with regard to which the respective law did not set out an appeals procedure, were to be appealed against in court according to the procedure set out in the Administrative Procedure Law. Moreover, with the amendments of 8 November 2012 to Law on National Referendums, the Law now comprises Section 23^1, which provides that the initiative

group may appeal against the decision by CEC to refuse registering a draft law to the Senate (*see Decision of 19 December 2012 by the Constitutional Court on terminating judicial proceedings in Case No. 2012-03-01, Para 20).* Thus, it was concluded that there should be a mechanism for assessing legality and that it existed.

The Applicant holds that the Senate, in assessing the CEC decision, which has been appealed, to refuse registering a draft law, has no right to assess the content of this draft law. The assessment of the constitutionality of legal norms is said to be exclusive jurisdiction of the Constitutional Court. Moreover, the Senate must assess not only the legality of the process, in which CEC adopts decisions, but also the arguments they contain as to their merit (*see Case Materials, Vol.1., p.10*).

15.1. The Saeima has the right to place into the jurisdiction of an administrative court also the examination of cases, which is not narrowly of administrative law nature. Moreover, it follows from Section 13 of Law on the Central Election Commission that CEC is an institution, upon which the provisions and principles of APL are binding.

The points made in the Saeima's written answer can be upheld – that the contested norms do not envisage regulation, which was not previously envisaged by Law on National Referendums (*see, Case Materials, Vol.1, p.38*). It is concluded in Decision in Case No. 2012-03-01 that even before the amendments of 8 November 2012 came into force, CEC had the obligation to assess, whether the draft laws submitted by electors were fully elaborated as to their content, but the decision by CEC, in its turn, could be appealed against before an administrative court in accordance with the procedure set out in the Administrative Procedure Law.

By including Section 23^1 in Law on National Referendums, the procedure for appealing against the decisions by CEC to refuse to register a draft law submitted by the electors was specified. I.e., this jurisdiction was transferred to the Senate, which examines the case as a court of first instance. To make the process more effective and speedier, the procedural term for examining CEC's decision was shortened and it was set out that the decision by the Senate was not subject to appeal. Also during the inter-war period the legality of decisions by CEC was verified by the Senate.

When the draft law, which envisaged adding Section 23^1 to Law on National Referendums, was discussed, a possibility to transfer the verification of such decisions by CEC, which refuse to register draft laws submitted by electors, into the jurisdiction of Administrative Regional Court. Dr. iur. Jautrīte Briede, the Senator of the Supreme Court, on 22 May 2012 noted during the meeting of the Saeima Legal Affairs Committee, that it was a political decision – the level of court, to which this jurisdiction would be transferred, and "of course, the Senate may do it, similarly as with regard to election". She also noted that it would be justified to transfer to the administrative court for verification only such decisions, by which registration of a

draft law was refused, since these decisions were final in terminating the procedure for implementing electors' legislative initiative, and "it is important to verify in administrative procedure that, which puts a full stop [to a process]". However, when discussing the obligation to prove, J. Briede expressed the opinion that in such a case the Senate, *inter alia*, would have to assess the compatibility of the submitted draft law to the Satversme and this would be more a question of interpretation, therefore it was not really feasible to talk about evidence in this procedure (*see audio recording of 22 May 2012 meeting of the Saeima Legal Affairs Committee attached to Case Materials*).

15.2. Everybody applying the law must apply the Satversme directly and immediately. The Constitutional Court has concluded that it is exactly the duty of the courts of general jurisdiction and administrative courts to verify the way the party applying the law has revealed the content of a concept with high degree of legal abstraction used in regulatory enactments and whether the outcome of applying the legal norms complies with the fundamental principles of a judicial and democratic state (*see Decision of 19 December 2012 by the Constitutional Court on terminating judicial proceedings in Case No. 2012-03-01, Para 18.2).* Also Gunārs Kusiņš, the head of the Saeima Legal Bureau, noted at the meeting of the Saeima Legal Affairs Committee of 22 May 2012, that Section 23^1 of Law on National Referendums did not place new tools at the disposal of the Senate, since the Senate already applied the general principles of law enshrined in the Satversme (*see audio recording of 22 May 2012 meeting of the Saeima Legal Affairs Committee attached to Case Materials*).

15.3. The Constitutional Court has an exclusive jurisdiction to recognise legal norms as being incompatible with legal norms of higher legal force and pronounce them invalid. However, the compatibility of legal norms with norms of higher legal force can be assessed not only by the Constitutional Court. Also the administrative court, within the framework of each case, must verify the compatibility of the applicable norm with legal norms of higher legal force. The court may apply the legal norm only if the court holds that it complies with the Satversme. I.e., Section 104(1) of APL envisages that in case of doubts the administrative court verifies, whether the legal norm that has been applied by an institution and that should be applied during administrative judicial proceedings complies with legal norms of higher legal force. Pursuant to the second part of this Section, if it holds that the norm does not comply with the Satversme or provision of international law, it suspends judicial proceedings in the case and submits a reasoned application to the Constitutional Court. Moreover, Section 104(3) of APL provides: if a regulatory enactment of a lower legal force has been acknowledged as being incompatible with a law or a directly applicable general principle of law, then the court must apply this law or the general principle of law. The application, on the basis of which the case

under examination was initiated, also proves that the administrative court, at least indirectly, assesses the constitutionality of legal norms.

Thus, the assessment of the constitutionality of legal norms falls also within the competence of administrative courts. The contested norm – Section 23^1 (1) of Law on National Referendums – does not set out new jurisdiction, which previously was not envisaged by law, for the Senate and the administrative court.

15.4. Section 23^1 (2) of Law on National Referendums provides that the Senate examines the case as a court of first instance. Pursuant to Section 105(1) of APL, the courts of first instance examine case to its merits. Thus, neither the contested norms, nor any other norm envisages restricting the Senate's jurisdiction to examining only the procedure, in which CEC adopts its decisions.

In view of the conclusions made in this Judgement, the Senate should establish, whether the draft law submitted by electors is truly and obviously not fully elaborated as to its content, as acknowledged by CEC, and whether the decision by CEC provides legal reasoning for the respective incompatibility of the draft law. Thus, the Senate must assess, whether CEC in the specific case, by taking a decision to refuse registering a draft law submitted by electors, has not exceeded the limits of its jurisdiction. J. Briede also noted during the meeting of the Saeima Legal Affairs Committee on 22 May 2012: since CEC, possibly, is not politically totally neutral, it is only reasonable that its decision is examined by court, which examines all issues with utmost political neutrality (*see audio recording of 22 May 2012 meeting of the Saeima Legal Affairs Committee attached to Case Materials*).

The Constitutional Court concludes that the court's control may ensure that CEC decisions are well founded and adopted within the framework of law. Moreover, it should be taken into account that the Senate does not have to assess legal norms, which are already in force, but whether the draft law submitted by electors is fully elaborated as to its content. Thus, the Saeima has not exceeded the limits of its discretion by envisaging the Senate's jurisdiction to examine complaints about CEC decisions to refuse registering draft laws submitted by electors.

Thus, Section 23^1 (1) of Law on National Referendums complies with Article 1 of the Satversme.

The Substantive Part

Pursuant to Section 30 – 32 of the Constitutional Court Law the Constitutional Court

held

to recognise Para 2 of Section 23(5) and Section 23^{1}(1) of Law on National Referendums, Legislative Initiatives and European Citizens' Initiative as being compatible with Article 1 of the Satversme of the Republic of Latvia."

The Judgement is final and not subject to appeal.

The Judgement enters into force as of the day of its publication.

The Presiding Judge G. Kūtris