



Provisions laying down the procedures by which the court decides to refuse to initiate appellate proceedings in an administrative violation case are incompatible with the Constitution

On 15 March 2018, the Constitutional Court adopted a judgment in Case No 2017-16-01 “On Compliance of Section 213, Parts five and seven of Section 289²⁰ of the Latvian Administrative Violations Code with the first sentence of Article 92 of the Constitution of the Republic of Latvia”.

The Contested Norms

Section 213 of the Latvian Administrative Violations Code (hereinafter – the Code):

“The district (city) court judges shall examine cases of the administrative violations provided for in Section 53¹ (if the violation has been committed by an official), Section 149⁴(7), Section 149⁵(5), Section 149¹⁵ parts three, four, five, seven and eight, Section 155⁴(2), Section 155⁸, Section 165⁴(1), Section 166¹⁷, Section 173², Section 174³ parts one and two, Sections 174⁵, 175–175⁴, 175¹⁰, 177, 178, Sections 190⁵, 190⁶, 200, 200¹, 201²–201⁹, 201³⁹–201⁴², 204¹, Section 204²(1), and Section 204¹⁷ (except for the matters pertaining to employment relationships) of this Code”.

Section 289²⁰(5) of the Code:

“If the judge to whom the appellate complaint has been transferred for review recognises that initiation of appellate proceedings shall be refused as there are no grounds for initiation thereof, the question of the initiation of appellate proceedings shall be decided by three judges in a collegial manner within 10 days.”

Section 289²⁰(7) of the Code:

“If judges recognise unanimously that none of the grounds for initiating appellate proceedings referred to in Section 289¹⁷(3)¹ of this Code exists, the judges shall adopt a

¹ In addition, an appellate complaint must indicate the grounds for initiating appellate proceedings: 1) which provision of substantive law has been misapplied or misinterpreted, or which provision of procedural law has been violated by the district (city) court and how this has affected the adjudication of the case; 2) which evidence has been incorrectly assessed by the district (city) court, how the incorrect legal assessment of the circumstances of the case manifests itself and how it has affected the adjudication of the case.

decision to refuse initiation of appellate proceedings. The decision shall be drawn up in the form of a resolution, indicating the judges who have adopted the decision. The decision shall not be subject to appeal. The applicant shall be informed about the decision adopted.”

The Norm of Higher Legal Force

First sentence of Article 92 of the Constitution: “Everyone has the right to defend his or her rights and lawful interests in a fair court.”

Facts of the Case

The Applicants – four private individuals and one legal entity – were made administratively liable and, inter alia, sentenced to administrative detention and fined. They brought appellate complaints against the decisions of the first instance courts. However, in all the five cases three judges of the appellate instance court, by adopting a decision drawn up in a form of resolution, refused to initiate appellate proceedings.

The applications indicate that the procedure for reviewing cases of administrative violations provided for in Section 213 of the Code does not secure the individual’s right to a fair trial, which is enshrined in the first sentence of Article 92 of the Constitution. What the applicants mean is that, when reviewing the respective cases, the court, instead of administering justice, assumes the function of “pressing charges”, i.e., the role of the prosecutor. In their turn, parts five and seven of Section 289²⁰ of the Code deny access to an appellate court and thus fail to secure the right to a reasoned court ruling and objective examination of the complaint. Therefore, allegedly, the mentioned provisions are incompatible with the first sentence of Article 92 of the Constitution.

The Court’s Findings and Ruling

On the constitutionality of Section 213 of the Code

Considering that Section 213 of the Code applies to reviewing administrative violation cases in first instance courts, whereas the rest of the contested norms set out the procedure for adopting a decision to refuse initiation of appellate proceedings, the Constitutional Court has first evaluated compliance of Section 213 of the Code with the first sentence of Article 92 of the Constitution. [10]

The Constitutional Court has indicated that the legislator has wide discretion in adopting procedural laws and determining both the categories of cases to be reviewed within the corresponding proceedings and the procedures for reviewing cases of different categories. The Constitutional Court has concluded that the legislator within its discretion established a procedure for reviewing cases of administrative violations provided for in Section 213 of the Code. Having evaluated the procedure for reviewing cases of administrative violations provided for in Section 213 of the Code, the Constitutional Court has concluded that the respective procedure ensures objective adjudication of cases. [11.1, 11.2, 11.3]

On the constitutionality of parts five and seven of Section 289²⁰ of the Code

The Constitutional Court has concluded that in Section 289¹⁷(1) of the Code the legislator guaranteed the right to appeal a decision adopted in every administrative violation case by filing a complaint with an appellate instance court. [13]

The Constitutional Court has indicated: given that the State provided for such possibilities of appeal, the court process must comply with various aspects of the right to a fair trial, including access to court and fair proceedings. [13]

On access to court in the aspect of the initiation of appellate proceedings

The Constitutional Court has indicated that in the context of administrative violation cases the State's duty to secure the right of access to court takes the shape of guaranteeing to an individual the right to file an appeal at least with one instance. The right to appeal is also deemed as secured if the individual first needs to apply to court with a request to consider his or her appellate complaint, regardless of whether proceedings will be initiated based on that complaint. [14.1]

The Constitutional Court has concluded that the Applicants were not denied access to appellate instance court. That is, the Applicants filed their complaints, and all those complaints were considered by the appellate instance court to decide whether appellate proceedings could be initiated; in every case, the court concluded that none of the grounds for initiating appellate proceedings referred to in Section 289¹⁷(3) of the Code existed. Thus, the Constitutional Court has concluded that parts five and seven of Section 289²⁰ of

the Code secure the individual's right of access to court, as following from the first sentence of Article 92 of the Constitutional, in the context of the initiation of appellate proceedings. [14.2]

On whether the individual's right of access to court in the context of the initiation of appellate proceedings in administrative violation cases is also guaranteed in terms of judicial integrity

The Constitutional Court has indicated that among the elements comprised by the first sentence of Article 92 of the Constitution there is also the guarantee of judicial integrity, i.e. neutrality. The institution of judge's recusal is one of the means of securing judicial integrity. [15.1]

First and foremost, the Constitutional Court has indicated that there are several ways of ensuring judicial integrity. The guarantees of the independence and objectivity of judges are provided for in both the Constitution and the Law On the Judiciary. Moreover, the responsibility for securing the right to an objective examination of a case lies primarily with the judge who is reviewing the case. [15.2]

In the case under review, the Constitutional Court has taken into account that a decision to refuse initiation of appellate proceedings is not subject to appeal and acknowledged that, in such a situation, the judge's obligation to recuse from the case is not a sufficient guarantee excluding any legitimate doubt as to his/her integrity. Also, considering that the same guarantees of the right to fair trial, as following from the first sentence of Article 92 of the Constitution, apply to administrative violation cases and criminal cases, the Constitutional Court has concluded that, also at the procedural stage of deciding whether appellate proceedings must be initiated, the participants of the case must have the right to know, before the respective decision has been adopted, which judges will be adopting it, as well as the right to request the recusal of a judge. [15.2, 15.3]

On the right to a reasoned court ruling

The Constitutional Court has noted that a fair trial as a due procedure compatible with a state governed by the rule of law comprises also the right to a reasoned court ruling. The

aim of a reasoned ruling is to ensure that both the participants of the case and the society can understand how the court has arrived at a particular, and no other, outcome of the case, and thus exclude the possibility of arbitrariness on the part of the court. [16]

The Constitutional Court has taken into account that also at the procedural stage of deciding whether appellate proceedings shall be initiated the examination of evidence and facts of the case is within the court's competence. [16.1.1]

The Constitutional Court has also concluded that no cassation instance is envisaged for administrative violation cases. However, uniform case law is a substantial issue when it comes to this category of cases. Indication of reasons in a court decision to refuse initiation of appellate proceedings is a means to facilitate the development of a uniform case law in the sphere of administrative violations. [16.1.3, 16.2]

The Constitutional Court has acknowledged that the first sentence of Article 92 of the Constitution does not imply the court's obligation to provide a detailed answer to every argument made by the applicant. Nevertheless, in an administrative violation case, the right to a fair trial as guaranteed by the first sentence of Article 92 of the Constitution demands that the ruling be reasoned in a way allowing both the appellant and the society to understand how the court has arrived at a particular, and no other, decision, and thus also attesting to the fact that the individual has been heard and the court's decision is not arbitrary or based on subjective reasons. The Constitutional Court has also noted that, although the length of the explanation of reasons may be different in each particular case, it must allow the individual to understand why the appellate proceedings are not initiated. [16.2]

On the force of the Constitutional Court's judgment in time

The Constitutional Court has concluded: for the legislator to be able to adopt new legal regulation, that is, to introduce the corresponding amendments in the Code, it is both necessary and permissible that parts five and seven of Section 289²⁰ of the Code, insofar as they do not envisage the right to request the recusal of the appellate court judges who decide whether the initiation of appellate proceedings in an administrative violation case should be refused, remain in force for a certain time. The Constitutional Court has decided to

recognise these norms as invalid from 30 November 2018, and with regard to the applicant A. Hāzis – from the moment of publication of this judgment. [17.1]

The Constitutional Court has ruled that, with regard to the applicants and the individuals who, for protection of their fundamental rights, applied to the Constitutional Court before the day of coming into force of this judgment, Section 289²⁰(7) of the Code, insofar as it does not envisage the obligation for the court to include reasoning in a decision to refuse initiation of appellate proceedings in an administrative violation case, is recognised as being invalid from the moment the infringement of the applicant's fundamental rights occurred. The Constitutional Court has also pointed out that, until a new legal regulation has been adopted, the individuals' rights to a reasoned ruling shall be secured by directly applying Article 92 of the Constitution and the findings stated in this judgment. [17.2, 17.3]

The Constitutional Court has ruled:

- 1) to recognise Section 213 of the Latvian Administrative Violations Code as being compatible with the first sentence of Article 92 of the Constitution of the Republic of Latvia;
- 2) to recognise parts five and seven of Section 289²⁰ of the Latvian Administrative Violations Code, insofar as they do not envisage the right to request the recusal of the appellate court judges who decide whether the initiation of appellate proceedings in an administrative violation case should be refused, as being incompatible with the first sentence of Article 92 of the Constitution of the Republic of Latvia and invalid from 30 November 2018;
- 3) with regard to the applicant Alvis Hāzis, to recognise parts five and seven of Section 289²⁰ of the Latvian Administrative Violations Code, insofar as they do not envisage the right to request the recusal of the appellate court judges who decide whether initiation of appellate proceedings in an administrative violation case should be refused, as being incompatible with the first sentence of Article 92 of the Constitution of the Republic of Latvia and invalid from the day of publication of this judgment;
- 4) to recognise Section 289²⁰(7) of the Latvian Administrative Violations Code, insofar as it does not envisage an obligation for the court to include reasoning in a decision to refuse initiation of appellate proceedings in an administrative violation case, as being

incompatible with the first sentence of Article 92 of the Constitution of the Republic of Latvia;

- 5) with regard to the applicants Aleksejs Stepanovs, Alvis Hāzis, Raimonds Bētiņš, Mārtiņš Kalniņš and the limited liability company “Alcamo”, as well as the individuals who, for protection of their fundamental rights, applied to the Constitutional Court before the day of coming into force of this judgment, to recognise Section 289²⁰(7) of the Latvian Administrative Violations Code, insofar as it does not envisage the obligation for the court to include reasoning in a decision to refuse initiation of appellate proceedings in an administrative violation case, as being incompatible with the first sentence of Article 92 of the Constitution of the Republic of Latvia and invalid from the moment the infringement of a corresponding applicant’s fundamental rights occurred.

The judgement of the Constitutional Court is final and not subject to appeal, it enters into force on the day of its publication.

The text of the judgement [in Latvian] is available on the homepage of the Constitutional Court: http://www.satv.tiesa.gov.lv/wp-content/uploads/2017/05/2017-16-01_Spriedums.pdf

The press release was prepared with the aim to facilitate understanding of the actual facts of the case. It shall not be regarded as part of a ruling and is not binding to the Constitutional Court. The judgements, decisions and other information regarding the Constitutional Court are available at the homepage of the Constitutional Court www.satv.tiesa.gov.lv.

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