



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

J U D G E M E N T

on Behalf of the Republic of Latvia

in Case No. 2015-06-01

12 November 2015, Riga

The Constitutional Court of the Republic of Latvia, comprised of: chairman of the court sitting Aldis Laviņš, Justices Kaspars Balodis, Gunārs Kusiņš, Uldis Ķinis, Sanita Osipova and Ineta Ziemele,

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

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 19¹ and Section 28¹ of the Constitutional Court Law,

at the sitting of 13 October 2015 examined in written procedure the case
“On Compliance of Section 11⁶(1) of the Judicial Disciplinary Liability Law with Article 100 of the Satversme of the Republic of Latvia”.

The Facts

1. On 27 October 1994 the Saeima adopted the Judicial Disciplinary Liability Law, which entered into force on 24 November 1994.

With the law of 10 June 2010 “Amendments the Judicial Disciplinary Liability Law” Section 11⁶, *inter alia*, was added to the Judicial Disciplinary Liability Law, it is worded as follows:

“Section 11.⁶ Availability of a Decision and Materials of the Disciplinary Case

(1) Until the time when a decision of the Judicial Disciplinary Board comes into effect, the decision regarding initiation of the disciplinary case and materials of the disciplinary case shall be available only for those persons for whom such right has been laid down in this Law.

(2) Materials of the disciplinary case adjudicated in an open sitting shall be restricted access information.

(3) Materials of the disciplinary case adjudicated in a closed sitting shall become restricted access information five years after coming into effect of the decision taken in the disciplinary case by the Judicial Disciplinary Board.

(4) Upon issuing of the information abovementioned in Paragraph two and three of this Section, the part of information, which discloses the identity of the natural person, shall be covered.

(5) Materials of the disciplinary case adjudicated in an open and closed sitting and a decision taken shall be available for the State administrative and court authorities, if they are necessary for these institutions for the fulfilment of the functions thereof. The recipient of the information shall ensure the protection provided for in law for these materials of disciplinary proceedings and decision taken.

(6) A decision taken in the disciplinary proceedings shall be sent to all chief judges, and also published on the website, by covering that part of information which discloses identity of a natural person.”

The aforementioned amendments entered into force on 1 August 2010. Section 11⁶ has not been amended thereafter and is in force in its initial wording.

2. The Applicant – the Department of Administrative Cases of the Supreme Court (hereinafter – the Applicant) – holds that the first part of Section 11⁶ of the Judicial Disciplinary Liability Law (hereinafter – the contested norm) is incompatible with Article 100 of the Satversme of the Republic of Latvia (hereinafter – the Satversme).

The Applicant is adjudicating administrative case No. A420595011, which has been initiated with regard to a judge's application requesting to recognise a decision by the Ministry of Justice as being unlawful and compensation for moral damages. The Administrative Regional Court in this case has identified unlawful actions by the Ministry of Justice in disclosing information about an initiated, but unadjudicated case against a judge, as well as about plans to initiate a disciplinary case with regard to him. The contested norm had been applied in the case.

Allegedly, both the contested norm and other parts of Section 11⁶ of the Judicial Disciplinary Liability Law should be interpreted to mean that neither before, nor after the adjudication of a disciplinary case the information about the concrete judge is to be disclosed to society. Namely, society can find out about a disciplinary case and its outcome only as about an unidentified case, but cannot find out the judges' identity.

Pursuant to Article 100 of the Satversme society has the right to receive information about actions of the judicial power, *inter alia*, about possible disciplinary violations committed by judges and investigation thereof. It is said that in this way also the functioning of Article 1 and Article 92 of the Satversme is ensured, as this facilitates public awareness and trust in the judicial power.

In Latvia, as in one of the states, where all persons may lodge a complaint against a judge, it is important to protect the judicial power against unfounded damage to reputation. Therefore the aim of Section 11⁶ of the Judicial Disciplinary Liability Law is to ensure discreetness towards a judge, the legality or ethicality of whose actions might be contested. However, also public concern about corporatism in the Latvian system of courts should be taken into consideration, therefore in those cases, when the rightness of a court's actions is doubted, transparency should be facilitated.

The restriction included in the contested norm had been established by law and it is said to have a legitimate aim – complying with the overarching principle of a democratic and judicial state, safeguarding the authority of the judicial power and at the same time satisfying the legitimate interest of society in

the work of the judicial power. However, allegedly, the contested norm does not allow reaching this legitimate aim, since Section 11⁶ of the Judicial Disciplinary Liability Law (except for the norms that establish the status of restricted access information to the materials of the case following adjudication of the case) does not comprise the duty to consider and principles that should be used in each particular case, when deciding on providing information. The confidentiality regulation is said to be unsuitable for reaching the legitimate aim, since it undermines public trust in the judicial power and exceedingly hinders legitimate public control over activities of the judicial power. Moreover, the legitimate aim of the restriction could be reached by another legal regulation, for example, by setting out that information is not provided before initiation of a disciplinary case, except for the instances, when society has been informed about the particular case already.

3. The institution, which adopted the contested act, – the Saeima – holds that the contested norm complies with Article 100 of the Satversme.

The Constitutional Court should examine the compatibility of the contested norm with the first sentence of Article 100 of the Satversme. Since the Applicant is not contesting, whether the restriction upon fundamental rights has been established by law and whether it has a legitimate aim, the case under examination contains only a dispute on whether the restriction that the contested norm comprises complies with the principle of proportionality.

The contested norm regulates accessibility of information in the initial stage of adjudicating a disciplinary case – before the final decision in a disciplinary case has been adopted and has entered into force. Allegedly, this means that the restriction upon accessibility of information applies only to such charges, which may turn out to be unfounded. Therefore it is important to retain confidentiality in this stage to protect the authority and independence of a court.

Basically, the restriction established by the contested norm aims to prevent that those persons, into whose disposal information comes in accordance with law, disseminate information about initiation of a disciplinary case and the

information that the materials of the case comprise. Moreover, this is a short-term restriction. If the decision by the Judicial Disciplinary Board is not appealed against and enters into force, it is published on the Internet home page, by covering the names of the judge and other persons. The second part of Section 8 of the Judicial Disciplinary Liability Law defines in detail the content of the decision to be adopted in a disciplinary case. Thus, an exhaustive description of all those circumstances that had been important for adopting the decision is publicly available. Therefore access to the materials of disciplinary case is said to unnecessary and ungrounded.

After familiarizing itself with the materials in the case the Saeima notes that cases, where information about an initiated, but unadjudicated disciplinary case has been published in press, is not sufficient grounds for revoking the guarantees for the authority and independence of the judicial power that the contested norm comprises. However, such cases could be taken into consideration in assessing the liability of an institution for disclosing information. The grounds for disciplinary liability defined in the Judicial Disciplinary Liability Law are said to be sufficiently serious, therefore before the respective charges are made public they must be examined by a collegial institution defined in the law. The damage that might be inflicted upon the authority of the judicial power and the authority of a concrete judge by disclosing unverified information would be difficult or even impossible to eliminate in later stages. The share of dismissed disciplinary cases (in the period from 2010 to 2015) is also said to prove that information about initiated disciplinary cases should not be published before the Judicial Disciplinary Board has conducted comprehensive examination of facts.

4. The summoned person – the Ministry of Justice – holds that the restriction included in the contested norm does not facilitate reinforcing of the authority of the judicial power and protection of reputation.

The contested norm transposed into the Judicial Disciplinary Liability Law the regulation that has been established with regard to the accessibility of

case materials in the second part of Section 28³ of the law “On Judicial Power”. The legislator had wished to make materials of judges’ disciplinary cases accessible on the same conditions that had been established with regard to access to materials of court cases. The terms of accessibility or inaccessibility of information depend upon the stage of proceedings (adjudicated or unadjudicated case) and the form, in which the case is heard (open or closed sitting).

The aim of the restriction included in the contested norms is to protect the authority of the judicial power and the judge. Whereas the aim of the system of judges’ disciplinary liability in a broader sense is to protect public interests, ensure integrity of court proceedings, maintaining public trust in judges and to create better understanding among judges about behaviour appropriate for a judge. Therefore the following issues should be solved in the case under review: is it necessary to ensure accessibility of the information referred to in the contested norm so that the proceedings of adjudicating a disciplinary case would reach the aim set for it, and whether the restriction upon the right to receive information is appropriate for reaching the particular aim and whether it is proportional. The proportionality of this restriction should be analysed separately with regard to each stage in adjudicating a disciplinary case.

In cases, when mass media have already reported on a judge’s disciplinary violation, the contested norm might have a negative impact upon public trust in the judicial power. I. e., lack of further information or seeming lack of response by competent officials might create an erroneous perception of lack of actions by the executive or the judicial power. At present the speed of information exchange has increased several times and mass media use all possible means for acquiring information to satisfy public demand. Whereas a news item that competent officials have refused to disclose information only reinforces society’s conviction about corporatism in the judicial power and decreases trust in the judicial power. Moreover, in some cases the very person, against whom the disciplinary case had been initiated, might be interested in making information public to restore his reputation, for example, if the disciplinary case is dismissed.

5. The summoned person – the Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) – holds that the contested norm is incompatible with Article 100 of the Satversme.

Not only the right to receive information, but also the right to search for it actively (request) is said to fall within the scope of Article 100 of the Satversme. Allegedly, the contested norm restricts the right to freely acquire information about initiation of a disciplinary case against a judge from persons and institutions involved in the adjudication of the disciplinary case. The restriction included in the contested norm has been established by law, and it is said to have a twofold legitimate aim: firstly, to protect the reputation of a judge as a natural person and, secondly, to protect the independence and authority of the judicial power.

The contested norm prohibits the judge, against whom a disciplinary case has been initiated, from responding to the information that the mass media already have obtained. Therefore persons, who do not belong to the system of courts, might begin doubting the objectivity of adjudicating the disciplinary case. The legitimate aim of the restriction upon fundamental rights, i.e., “protecting the independence and authority of courts” could be reached by the contested norms only in those situations, when information about initiation of a disciplinary case had not been already made public. The restriction included in the contested norm is said to be appropriate for reaching the legitimate aim “protecting a judge’s reputation”.

Allegedly, the legitimate aim “protecting the independence and authority of courts” could be reached by other measures, less restrictive upon a person’s rights and lawful interests. For example, regulatory enactments could set out the right to assess the necessity and scope of providing information in each particular case, on the basis of concretely defined criteria. In the case of unfounded initiation of a disciplinary case the damage inflicted upon a person and the system of courts could be decreased by effectively communicating with mass media about the outcomes of the adjudication of the disciplinary case.

Whereas the legitimate aim “protecting a judge’s reputation” could not be reached by less restrictive measures.

A fair balance should be found between the right to obtain information about the work of the judicial system and the right to personal data protection. Following the adoption of the contested norm the practice of adjudicating disciplinary cases has consolidated and public demand for information has grown considerably. Judges, similarly to civil servants are said to have indissoluble connection with significant public interest to receive information about their professional activities, therefore limits of protection for their private life are narrower. Disclosing of information should not be applied in equal scope in all situations; however, a complete prohibition to obtain any information about the initiated disciplinary case is said to be disproportional.

6. The summoned person – the Council for the Judiciary – holds that the contested norm complies with Article 100 of the Satversme.

In assessing the compliance of the restriction established by the contested norm with the Satversme, the regulation on the procedure for initiating disciplinary cases and the number of initiators, as well as the fact that a disciplinary case may be initiated due to political or subjective reasons should be taken into consideration. Pursuant to the Judicial Disciplinary Liability Law, an initiated disciplinary case may be dismissed or the person, who has initiated the disciplinary case, before the adjudication of the case by the Judicial Disciplinary Board may revoke his decision (order) on initiating a case by providing reasoning for it. Confidentiality in the initial stage of the proceedings should be ensured and the authority of judges and the court should be protected, irrespectively of whether the initiation of a disciplinary case has been founded or unfounded.

7. The summoned person – the Judicial Disciplinary Board (hereinafter – the Disciplinary Board) – holds that the contested norm complies with Article 100 of the Satversme.

The contested norm regulates the accessibility of information in the stage of initiating a disciplinary case and in the initial stage of its adjudication, before the final ruling has been adopted and has entered into force. It might happen that the facts indicated in the decision or in the order on initiating a disciplinary case are not confirmed; therefore it is important to maintain confidentiality exactly in the initial stage of adjudicating the case. The number of terminated disciplinary cases is said to prove that premature dissemination of information misinforms society about a probable violation committed by a judge. If the law were not restricting obtaining information about a judge, significant harm would be inflicted upon a judge's reputation and the prestige of the judicial power.

The restriction included in the contested norm is said to be proportional, since the judicial power should be protected against attacks, which might turn out to be unfounded, taking into account, in particular, that the obligation of discretion linked to a judge's office does not allow judges to respond appropriately to such attacks. Moreover, after the decision that is adopted in a disciplinary case has entered into force, it is published in the portal of Latvian courts, by covering the judge's personal data. Thus, society can familiarize itself with the circumstances, in which the violation was committed, and the sanction applied to the judge.

8. The summoned person – the Latvian Association of Judges – holds that the contested norm complies with Article 100 of the Satversme.

An initiation of a disciplinary case does not mean that a judge has committed a disciplinary violation. The Disciplinary Board has the right to decide, whether a disciplinary violation has been committed, and its decision may be appealed against at the Disciplinary Court. As regards those decisions that have been adopted in disciplinary cases and have entered into force, society receives information about the grounds for initiating a disciplinary case and the outcomes of adjudication, thus, also about the sanction applied.

A judge's office entails increased public interest. Therefore obtaining information about a disciplinary case that has been initiated and the judge's

identity before the possible violation has been assessed could leave a negative impact upon public trust in the judge and hinder him in performing his duties of office. If society is informed about disciplinary cases before the final ruling has entered into force, society may develop an unfounded perception that it has been already established that a judge has committed a violation. The terms for adjudicating disciplinary cases are said to be sufficiently short, which allows informing society about the final ruling shortly after initiation of a disciplinary case.

9. The summoned person – the Latvian Association of Administrative Judges – holds that the contested norm does not allow reaching the legitimate aim of the restriction upon fundamental rights.

The regulation included in the contested norm is said to mean that society does not have access to information about a judge and his actions, which, in the framework of professional supervision, have caused doubt regarding their compatibility with law. The right to receive information is said to be an inalienable feature of a democratic state. This right is said to include, *inter alia*, the right to be informed about actions by the judicial power. Information about an initiated disciplinary case signals of an error in the system of courts. The restriction to finding out the name of the judge, who, possibly, has committed a disciplinary violation, in turn, is said to cause distrust in the judicial power.

The case does not contain a dispute on whether the restriction to receive information about a judge that the contested norm comprises has a legitimate aim. However, it should be taken into consideration that a judge, in performing his duties of office, not only adjudicates the particular dispute, but also influences societal processes in general. A judge's error may cause legal consequences that are irreversible or hard to rectify. Therefore a judge, in order to ensure trust in the judicial power, must endure greater restrictions than an average person.

To ensure independence of the judicial power, the adjudication of disciplinary cases has been assigned to the judicial self-governance; however, it

is not only an internal matter of the judicial self-governance. Transparency is said to be necessary to decrease public doubts concerning judges' integrity and objectivity. The current restriction achieves the opposite effect and does not reach its aims; it also causes a risk that information might be disclosed in a biased way.

The Findings

10. The Applicant requests the Constitutional Court to review compliance of the contested norm with Article 100 of the Satversme.

Article 100 of the Satversme provides: "Everyone has the right to freedom of expression, which includes the right to freely receive, keep and distribute information and to express his or her views. Censorship is prohibited." Article 100 of the Satversme establishes not only the right to freely express one's views and distribute information, but also to freely obtain information (*see Judgement of 29 October 2003 by the Constitutional Court in Case No. 2003-05-01, Para 31*).

The contested norm provides that the decision on initiation of a disciplinary case, as well as materials of the disciplinary case until the moment when the decision by the Judicial Disciplinary Court enters into force are available only to those persons, who have been granted this right by the Judicial Disciplinary Liability Law. The Applicant holds that the prohibition included in the contested norm to provide information about disciplinary cases initiated against judges, without considering on case-by-case basis the necessity to provide information, is not justifiable.

It follows from the legal reasoning provided in the application and other case materials that, essentially, compliance of the contested norm with the first sentence of Article 100 of the Satversme is contested.

Therefore in the case under review the Constitutional Court will examine compliance of the contested norm with the first sentence of Article 100 of the Satversme.

11. Every person's individual right to freely receive, keep and distribute information is an integral part of the freedom of speech defined in Article 100 of the Satversme. Even though in the case reviewed by the Applicant nobody has requested information about a disciplinary case, which had been initiated against a concrete judge, it follows from the legal reasoning of the application and from other materials in the case that the case under review is directly linked to every person's right to freely receive information. The Constitutional Court has noted that a person's right to receive information is unlimited, unless law provides otherwise [*see Judgement of 6 July 1999 by the Constitutional Court in Case No. 04-02(99), Para 2 of the Findings*].

11.1. The Constitutional Court has recognised that the content of Article 100 of the Satversme can be more exhaustively revealed by abiding with Article 19 of the United Nations Organisation (hereinafter – the UN) International Covenant on Civil and Political Rights of 16 December 1996 (hereinafter – the Covenant), as well as Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) (*see, for example, Judgement of 2 July 2015 by the Constitutional Court in Case No. 2015-01-01, Para 11.1*).

The UN Human Rights Committee has noted that Para 2 of Article 19 of the Covenant consolidates the right to access to information that is at the disposal of state institutions, *inter alia*, of institutions belonging to the branch of judicial power, irrespectively of the form in which the information is stored, sources and time of creation. The states must ensure the necessary procedures allowing individuals to access information, for example, by establishing legal regulation in the field of freedom of information [*see: General Comment No. 34: Freedom of opinion and expression (Art. 19): 10/09/2011. CCPR/C/GC/34, paras 7, 18*].

Pursuant to the case law of the European Court of Human Rights (hereinafter – ECHR), the first part of Article 10 of the Convention is not to be interpreted as comprehensive right to access information that is at the disposal of state institutions (*see: Harris D., O'Boyle M., Bates E., Buckley C. Harris,*

O'Boyle & Warbrick: Law of the Europe Convention on Human Rights. Third edition. Oxford: Oxford University, 2014, p. 620).

The contested norm applies to information that is linked to one of the branches of state power, i.e., the judicial power. The holder of this information is an institution of the judicial power.

The task of the judicial power – one branch of the state power – is to ensure that in administration of justice the provisions of the national constitution, laws and other regulatory enactments are implemented, that the principle of justice is complied with, and that human rights and freedoms are protected (*see Judgement of 18 October 2007 by the Constitutional Court in Case No. 2007-03-01, Para 26*).

The judicial power defends justice as one of the fundamental values of a judicial state and acts in the interests of society.

Information about activities of the judicial power is to be recognised as being information in the interests of society. ECHR has also noted this in its case law (*see, for example, Judgement of 23 April 2015 by the Grand Chamber of ECHR in Case “Morice v. France”, Application No. 29369/10, Para 128*). Information about activities of the judicial power should be, first of all, understood as information about the institutional structure of the judicial system, courts and the jurisdiction thereof, cases to be reviewed by courts, the principles and procedure of adjudication, as well as final rulings in these cases, about judges, the procedure for appointing and approving of judges.

In view of the importance of the judicial power in a democratic society and the functions that the judicial power has been entrusted with, every person should be ensured the right to freely receive information about activities of the judicial power. Moreover, this right, as well as the procedure for exercising it should be defined in regulatory enactments.

11.2. The case under review is linked to information and documents of a certain type about activities of the judicial power, which are at the disposal of those institutions or officials, who have the right to initiate a disciplinary case against a judge or to adjudicate cases related to disciplinary violations

committed by judges. The competence of the institutions and officials referred to above is regulated by the provisions of the law “On Judicial Power” and the Judicial Disciplinary Liability Law.

Pursuant to Section 1(1) of the Judicial Disciplinary Liability Law a judge may be subjected to disciplinary liability for 1) intentional violation of law during the adjudication of a case in court; 2) failure to perform his or her duties of employment or allowing gross negligence in the adjudication of a case; 3) dishonourable actions or gross violation of the norms of the Judges Code of Ethics; 4) an administrative violation; 5) refusal to discontinue his or her membership in parties or political organisations; 6) failure to observe the restrictions and prohibitions provided for in the Law on Prevention of Conflict of Interest in the Activities of Public Officials. Section 3(1) of the Judicial Disciplinary Liability Law defines six subjects, who are entitled to initiate disciplinary case. These subjects are: the Chief Justice of the Supreme Court, the Minister for Justice, Chief Judges of regional courts, Chief Judges of district (city) courts, Heads of the Land Registry Offices of regional courts, and the Commission of Judicial Ethics.

Two institutions have been entrusted with examination of judicial disciplinary violations cases. On the basis of Section 2(1) of the Judicial Disciplinary Liability Law, cases concerning disciplinary and administrative violations by judges of district (city) courts, Land Registry Offices, regional courts and the Supreme Court are examined first of all by the Judicial Disciplinary Board. The Disciplinary Board is an institution of judicial self-governance, and it is comprised of the Chairperson of the Supreme Court Department, four Judges of the Supreme Court, two Chief Judges of regional courts, two Chief Judges of district (city) courts and two Heads of Land Registry Offices. Members of the Disciplinary Court are elected at a conference of judges. Whereas pursuant to Section 11¹ (1) of the Judicial Disciplinary Liability Law, the judge, to whom the decision by the Disciplinary Board referred to in Para 1 and Para 3 of Section 7(2) of the Judicial Disciplinary Liability Law applies, may appeal against the decision within seven days of the receipt thereof

to the Disciplinary Court. Pursuant to Section 48¹(1) of the law “On Judicial Power” and Section 2¹(1) of the Judicial Disciplinary Liability Law, the Disciplinary Court reviews the legality of the decision by the Disciplinary Board. The Disciplinary Court is composed of six Judges of the Supreme Court (two Judges from the Department of Civil Cases, from the Department of Criminal Cases and the Department of Administrative Cases), who are elected for the term of five years by the Plenary Session of the Supreme Court.

Activities by the judicial power would be inconceivable without judicial self-governance and other institutions established by judges, the existence of which is one among the essential pre-requisites for the independence of the judicial power. Therefore information about activities by the judicial power should be understood not solely as information about the structure of the judicial system or the cases to be adjudicated by courts, but also as information about judicial self-governance and other institutions established by judges and activities thereof. Also information about disciplinary cases against judges, *inter alia*, is to be understood as information about activities of the judicial power.

The institutions, which have been entrusted with the authorisation to adjudicate cases of judicial disciplinary violations, should enjoy public trust. Everybody should be ensured the right to receive information about the work of the Disciplinary Board and the Disciplinary Court, the system of judicial disciplinary liability, the procedure for reviewing disciplinary cases and about decisions adopted in disciplinary cases. Everybody has the right to know what kind of procedure for initiating and adjudicating disciplinary cases against judges has been established in the state.

Therefore the right of every person to receive information about activities of the judicial power falls within the scope of the first sentence of Article 100 of the Satversme.

12. The contested norm is part of Section 11⁶ of the Judicial Disciplinary Liability Law, which regulates availability of the decisions adopted in a disciplinary case and of the materials in disciplinary case.

The Applicant, having analysed parts of Section 11⁶ of the Judicial Disciplinary Liability law in their interconnection, has concluded that the contested norm prohibits to give an account of or to publicise information in any other form about a possible disciplinary violation by a certain judge, otherwise the fourth and the sixth part of the same Law would be meaningless. Allegedly, the contested norm prohibits from receiving information about the concrete judge both before and after adjudication of the disciplinary case. It is impossible to obtain, prior to adjudication of the disciplinary case, any information about the disciplinary case, which possibly would be initiated, nor about a disciplinary case that has already been initiated against a judge (*see Para 8 of the Application, Case Materials, Vol. 1, p. 49*).

12.1. The proceedings in disciplinary cases may be split into the following stages: 1) initiation of a disciplinary case; 2) adjudication of the disciplinary case by the Disciplinary Board (the first instance); 3) adjudication of the disciplinary case by the Disciplinary Court (the second instance). Section 3(2) of the Judicial Disciplinary Liability law provides that before the decision on initiating a disciplinary case is adopted a preliminary examination is conducted, which entails comprehensive examination of the materials that have been received, requesting the judge to provide a written explanation and assessment thereof. The preliminary examination may conclude with the initiation of a disciplinary case or a refusal to initiate a disciplinary case.

Pursuant to Section 3(3) of the Judicial Disciplinary Liability Law, the Chief Justice of the Supreme Court, the Chief Judge of a regional court, the Head of the Land Registry Office of a regional court, the Chief Judge of a district (city) court and the Commission of Judicial Ethics adopt a decision regarding initiation of a disciplinary case, whereas the Minister for Justice issues an order. The circumstances, in which the established violation was committed, the date when the violation was detected and the grounds for initiating a disciplinary case defined in law are indicated in the decision or the order. The decision (order) and the materials of preliminary examination are sent to the Disciplinary Board for review. Thus, a decision on initiating a disciplinary case

is a procedural document. The materials of a disciplinary case, in their turn, is the totality of all documents and other materials obtained in the course of preliminary examination and of reviewing the disciplinary case.

12.2. The protection established for the decision on initiating a disciplinary case and the materials of the disciplinary case starts operating at the moment, when the disciplinary case is initiated. I.e., the contested norm does not apply to the preliminary examination and the materials obtained in the framework thereof, if the preliminary examination has not concluded with the initiation of a disciplinary case. Thus, the contested norm regulates the accessibility of such information, which is related to a disciplinary case, which could be possibly initiated against a judge, but has not been initiated.

It follows from the contested norm and other norms of the Judicial Disciplinary Liability Law that the decision on initiating a disciplinary case and the materials of the disciplinary case until the moment, when the decision by the Disciplinary Board in the disciplinary case enters into force, are accessible to the judge, against whom the disciplinary case has been initiated, in some cases also to the representative of this judge, as well as to those institutions of the judicial power or public administration to which such rights have been granted in the Judicial Disciplinary Liability Law. Hence, the decision on initiating a disciplinary case and the materials of a disciplinary case are not generally accessible information.

12.3. The regulation that the contested norm comprises has been taken over from Section 28³ of the law “On Judicial Power”, which establishes the procedure, in which materials of cases under court adjudication are made accessible (*see, audio recording of the sitting of 26 May 2009 of the Subcommittee for Working with the Law on the Structure of Courts of the Legal Affairs Committee of the Saeima, Case Materials Vol. 1*). For example, the second part of the aforementioned Section provides that until the moment when the final court ruling in a disciplinary case has entered into force the case materials are accessible only to those persons, to whom such rights have been granted by procedural laws. Basically, the particular regulation is aimed at

protecting procedural documents, evidence or secret of investigation during the adjudication of the case.

The contested norm regulates accessibility of the decision on initiating the disciplinary case and the disciplinary case materials from the moment, when the disciplinary case is initiated, until the moment, when the decision by the Disciplinary Board in the particular disciplinary case enters into force. This means that the contested norm regulates accessibility of the decision on initiating a disciplinary case and of the disciplinary case materials only during adjudication of the disciplinary case. Whereas the procedure of making disciplinary case materials accessible after the decision by the Disciplinary Board has entered into force is regulated by other parts of Section 11⁶ of the Judicial Disciplinary Liability Law and other regulatory enactments.

The contested norm does not establish a prohibition to obtain information of general nature about a disciplinary case that has been initiated and is going to be adjudicated, insofar the respective information does not pertain to concrete procedural documents and the personal data of the judge and other persons that these documents comprise. The Applicant notes that society can find out about adjudication of a disciplinary case only as about an unidentified case, but cannot find out the identity of the concrete judge (*see Para 10 of the application, Case Materials, Vol. 1, p. 50*). Yet the procedural document – decision on initiating a disciplinary case – and the disciplinary case materials, as well as the judge’s data included in this document and the materials are also information about activities of the judicial power. However, until the moment when the decision by the Disciplinary Board in a disciplinary case has entered into force, the contested norms restricts a person’s rights to receive the aforementioned documents and materials, as well as the judge’s data that they comprise.

Thus, the contested norm restricts the right of every person, enshrined in the first sentence of Article 100 of the Satversme, to receive information about activities of the judicial power.

13. Similarly to the freedom of speech, the right of every person to freely receive information is not absolute either.

13.1. Article 116 of the Satversme provides that a person's rights, established in Article 100 of the Satversme, may be restricted in cases provided for by law in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals. It has been recognised in the case law of the Constitutional Court that any restriction upon receiving information must be interpreted as narrowly as possible [*see Judgement of 6 July 1999 by the Constitutional Court in Case No. 04-02(99), Para 2 of the Findings*].

Pursuant to Para 3 of Article 19 of the Covenant, exercising the right to receive information is insolubly linked to special obligations and responsibility. Therefore certain restrictions may be placed upon exercising of this right. However, such restrictions must be established by law and must be necessary for respecting the rights and reputation of other persons or for the protection of national security, public order, public health or morals. It also follows from the second part of Article 10 of the Convention in the context of the freedom of speech that these rights may be subjected to restrictions, which have been provided for in law and are necessary in a democratic society for reaching concrete legitimate aims, *inter alia*, also maintaining the authority of a court.

13.2. It follows from international documents and the regulation of other states that the right to receive information about judges' disciplinary cases may be restricted.

For example, Para 17 of the United Nations Basic Principles on the Independence of the Judiciary comprises a requirement to ensure confidentiality in the initial stage of adjudicating judges' disciplinary cases, unless otherwise requested by the judge (*see: Basic Principles on the Independence of the Judiciary. Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985*).

Whereas the national legal regulation with regard to a person's right to receive information about disciplinary cases against judges may be linked to the grounds for subjecting a judge to disciplinary liability that have been defined in each particular state or the number of those subjects, who are entitled to initiate a disciplinary case against a judge, or the particular procedural order for adjudicating a disciplinary case. For example, in those states, where the right to initiate a disciplinary case against a judge has not been granted to a broad circle of subjects, greater transparency is usually ensured in adjudicating disciplinary cases. A regulation, pursuant to which society is informed not only about the ruling made in the disciplinary case, but also about initiation of a disciplinary case and which provides for indicating both the judge's name and surname, and the substance of violation, is in force in Lithuania, where disciplinary cases against judges are initiated by the Judicial Ethics and Discipline Commission and are adjudicated by the Judicial Court of Honour (*see: Law Amending the Law on Courts; Regulation of the Judicial Court of Honor; The Rules of the Judicial Ethics and Discipline Commission. Available: <http://www.teismai.lt/en>*). Accessibility of information during adjudication of a disciplinary case may be linked to whether legal norms provide for a stage of preliminary examination (requesting and assessing explanations, additional documents) prior to taking the decision on initiating a disciplinary case.

Thus, the national legal regulation in this field is indissolubly linked to the general structure of the judicial disciplinary liability system of each state.

14. It has been recognised in the case law that the restrictions upon rights provided for by Article 100 of the Satversme should comply with certain requirements (*see, for example, Judgement of 5 June 2003 by the Constitutional Court in Case No. 2003-02-0106, Para 1 of the Findings, and Judgement of 22 February 2010 in Case No. 2009-45-01, Para 7*).

Thus, the Constitutional Court must examine, whether the restriction upon fundamental rights that the contested norm comprises has been established

by law, whether this restriction has a legitimate aim and whether the restriction is proportional to its legitimate aim.

15. To assess, whether a restriction upon human rights has been established by law, the following must be verified:

1) whether the law has been adopted in a procedure established in regulatory enactments;

2) whether the law has been promulgated and is publicly accessible in accordance with the provisions of regulatory enactments;

3) whether the law has been worded with sufficient clarity, so that a person would be able to understand the content of the rights and obligations following from it and would be able to predict the consequences of applying the law (*see Judgement of 2 July 2015 by the Constitutional Court in Case No. 2015-01-01, Para 14, and Judgement of 8 April 2015 in Case No. 2014-34-01, Para 14*).

It is not disputed in the case, whether the restriction that the contested norm comprises has been adopted by law.

The wording of the contested norm was included in the draft law submitted by the Legal Affairs Committee of the Saeima “Amendments to the Judicial Disciplinary Liability Law” (*draft law No. 1695/Lp9*), it has been discussed in three readings and no proposals with regard to it were received during the examination of the draft law (*see Case Materials, Vol. 1, pp. 92, 97, 184, 185*). The restriction upon fundamental rights that the contested norm comprises was established by the law “Amendments to the Judicial Disciplinary Liability Law” that was adopted by the Saeima on 10 June 2010 and was promulgated on 30 June 2010 in the official journal “*Lavijas Vēstnesis*” (No. 102). Hence, the contested norm has been adopted and promulgated in procedure that has been established by the Satversme and the Rules of Procedure of the Saeima.

The restriction that the contested norm comprises prohibits those persons, who have not been referred to in the Judicial Disciplinary Liability

Law, from receiving the decision on initiating a disciplinary liability law and materials of the disciplinary case until the moment when the decision by the Disciplinary Board in the particular disciplinary case enters into force has been worded with sufficient clarity. Neither have the participants of the case expressed a contrary opinion.

Therefore the restriction upon fundamental rights that the contested norm comprises has been established by law.

16. Every restriction upon fundamental rights should be based upon circumstances and arguments regarding its necessity, i.e., the restriction must be established in favour of important interests – a legitimate aim (*see, for example, Judgement of 22 December 2005 by the Constitutional Court in Case No. 2005-19-01, Para 9*).

The Constitutional Court has found that the aim of a restriction upon the freedom of speech may be recognised as being legitimate only if it complies not only with the aims referred to in Article 116 of the Satversme, but also with the aims referred to in Article 10 of the Convention, in favour of which the freedom of speech may be restricted (*see Judgement of 22 February 2010 by the Constitutional Court in Case No. 2009-45-01, Para 9*). A person's right to receive information is one of the aspects in the freedom of speech (*see Judgement of 2 July 2015 by the Constitutional Court in Case No. 2015-01-01, Para 11.1*). Therefore the legitimate aim of both restriction upon the freedom of speech and the right to receive information must comply not only with the legitimate aims referred to in Article 116 of the Satversme, but also with those referred to in the second part of Article 10 of the Convention.

16.1. The opinions expressed in the case on the legitimate aim of the restriction included in the contested norm differ. Therefore, to clarify this aim, discussion of the contested norm by the committees of the Saeima must be scrutinised.

It follows from the case materials that the wording of the contested norm was taken over from the draft Law on the System of Courts that had been

submitted to the Saeima and the first discussions about it at the Sub-committee for working with the Law on the System of Courts of the Saeima Legal Affairs Committee (hereinafter – the Subcommittee) took place at the sitting of 16 December 2008. At this sitting researcher I. Kažoka from the public policy centre “Providus” expressed the opinion that the status of restricted access information could be established for initiated disciplinary cases, since it could occur in practice that a disciplinary case has been initiated without grounds (*see minutes of the sitting in Case Materials, Vol. 1, p. 169, and audio recording in Case Materials, Vol. 1*). At the sitting of the Sub-committee of 7 April 2009 member of the committee S. Āboltiņa noted that the Ministry of Justice had been tasked to draft such regulation that would ensure that information about initiated disciplinary cases were made public only if the judge had been punished. Allegedly, such regulation was needed in connection with ungrounded and insignificant cases, as well as to prevent undermining of the prestige of the judicial system and exerting psychological influence upon a judge (*see minutes of the sitting in Case Materials, Vol. 1, p. 173, and audio recording in Case Materials Vol. 1*).

At the sitting of the Sub-committee of 26 May 2009 S. Āboltiņa noted that the regulation had been drafted in order to prevent a situation, where information about possible sanctioning of a judge was made public before the disciplinary case had been adjudicated (*see audio recording of the sitting in Case Materials, Vol. 1*).

After tracing the way, in which the wording of the contested norm was reviewed by the Saeima committees, it can be concluded that the contested norm was created with the aim of protecting a judge and the judicial power from ungrounded accusations, in particular, before all facts of the disciplinary cases had been examined and the final decision had been adopted, thus ensuring protection for a judge’s independence and maintaining the authority of the judicial power.

16.2. The case law of the Constitutional Court and the ECHR, as well as international documents and legal literature point to a judge’s special role in

society, as well as to the need to protect the independence of the judicial power and maintain the authority thereof.

The Constitutional Court has recognised the requirement to protect judges against any unfounded interference into administration of justice as being important for safeguarding justice and society and also as being in the interests of the State. Anyone, with regard to whom justice is being administered, is interested in ensuring the independence of judges. The requirement regarding judges' independence is closely linked to the independence of the judicial power and, thus, also to the implementation of the principle of separation of powers (*see Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01, Para 7.2 and Para 7.3*). ECHR has underscored that protecting the authority of the judicial power is important in a democratic and judicial state (*see Judgement of 23 April 2015 by the Grand Chamber of ECHR in Case "Morice v. France", Application No. 29369/10, Para 170*). The judicial power must enjoy public trust in order to perform its duties successfully. Therefore it is necessary to protect public trust in the judicial power against substantially unfounded accusations, in particular, in view of the fact the obligation of confidentiality is binding upon the judges, who are subjected to criticism, and to judges in general, which prohibits them from responding to these allegations (*see, for example, Judgement of 26 April 1995 by ECHR in Case "Prager and Oberschlick v. Austria", Application No. 15974/90, Para 34, and Judgement of 24 February 1997 in Case "De Haes and Gijssels v. Belgium", Application No. 19983/92, Para 37*).

The Economic and Social Council of the United Nations has noted in the Preamble to Bangalore Principles of Judicial Conduct: a competent, independent and impartial judiciary is essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law (*see: Bangalore Principles of Judicial Conduct, 29 April, 2003, United Nations Commission on Human Rights resolution 2003/43*). Article 11 of the Universal Charter of the Judge, adopted by the International Association of Judges in 1999, notes that disciplinary cases against judges should be organised in a fashion that does harm genuine

independence of judges (*see: The Universal Charter of the Judge. Adopted by the Central Council of the International Association of Judges, 1999*). Even though the aforementioned documents have not been approved in the procedure established for ratifying international documents, the Constitutional Court recognizes that they reveal significant general principles in the functioning of the judicial power.

An independent judicial power and a special status for the judge is an absolutely necessary element of a democratic judicial state (*see: Endziņš A. Tiesu sistēmas un politikas saskarsme un dinamika. Jurista Vārds, 2002. gada 7. maijs, Nr. 9, 4. lpp.*). If society has no trust in courts, it will not look for solution to its problems in courts, and thus one of the branches of the state power will not function (*see: Mits M. Tiesas kritikas robežas – Eiropas Cilvēktiesību un pamatbrīvību konvencijas standarti un Latvijas prakse. Latvijas Republikas Augstākās Tiesas Biļetens, 2014. gada oktobris, Nr. 9/2014, 32. lpp.*).

The legitimate aim of the restriction that the contested norm comprises is to prevent decrease in the authority of the judicial power and influencing a judge during the adjudication of a disciplinary case, when it is assessed, whether a judge has committed a disciplinary violation.

This aim has been set to maintain authority of the judicial power and protect judges' independence, and it complies with the need referred to in the second part of Article 10 of the Convention to maintain authority of the judicial power. Moreover, by envisaging in the contested norm protection both for the decision on initiating a disciplinary case and the materials of the disciplinary case, protection of other persons' rights is also taken care of, since materials of a disciplinary case may comprise information about concrete cases that the judge is adjudicating, the private life of participants thereof, commercial secret and other protected data.

It follows from the abovementioned that the restriction that the contested norm comprises serves for such legitimate aims as the protection of the democratic state order and protection of other persons' rights that are referred to in Article 116 of the Satversme.

Therefore the restriction upon fundamental rights that the contested norm comprises has a legitimate aim.

17. To assess, whether the restriction upon fundamental rights that the contested norm comprises complies with the principle of proportionality the Constitutional Court must establish:

firstly, whether the measures used by the legislator are appropriate for reaching the legitimate aim;

secondly, whether such action is necessary; i.e., whether the aim cannot be reached by other measures that are less restrictive upon a person's rights and lawful interests;

thirdly, whether the legislator's actions are proportional or appropriate; i.e., whether the benefit gained by society exceeds the restriction caused to a person's rights and lawful interests.

If it is recognised that the restriction upon fundamental rights is incompatible with even one of these criteria, then it does not comply with the principle of proportionality and is illegal (*see Judgement of 19 March 2002 by the Constitutional Court in Case No. 2001-12-01, Para 3.1 of the Findings*).

18. The measures chosen by the legislator are appropriate for reaching the legitimate aim if this particular aim is reached by the concrete regulation (*see Judgement of 7 October 2010 by the Constitutional Court in Case No. 2010-01-01, Para 13*).

The regulation of the contested norm prohibits a person to receive information about the particular judge and his alleged violation that has not been verified in full from the decision on initiating a disciplinary case and the materials of the disciplinary case. If information about the judge is not available until the final decision in the disciplinary case is adopted, then this information, which has not been fully verified, cannot be used also to request recusal of a judge in concrete legal proceedings. This prevents the probability that the receipt of fully unverified information about a probable disciplinary violation

committed by a judge would have a negative impact upon a judge in legal proceedings and would decrease authority of the judicial power. Moreover, the contested norm in interconnection with other parts of Section 11⁶ of the Judicial Disciplinary Liability Law protects the personal data of the participants in a case that is adjudicated by the particular judge. Thus, possible infringements upon the right to private life of the participants of legal proceedings are also prevented.

However, the Applicant notes that the legitimate aim of the restriction is not reached, because, as practice shows, information about a probable disciplinary violation committed by a judge may come at the disposal of mass media (*see, Para 31 of the Application, Case Materials, Vol. 1, p. 54*).

The cases, when information about a probable disciplinary violation committed by a judge has come at the disposal of mass media, do not create legal basis for revoking the protection of judicial independence and safeguards for retaining authority of the judicial power that have been established in the contested norm. I.e., the fact that a person, whose duty is to ensure the protection of the decision on initiation of a disciplinary case or disciplinary materials that has been established in the law, has not duly performed this obligation, does not give grounds for considering this norm as being incompatible with the Satversme.

Some examples from practice, pointed out by the Applicant, are only isolated cases, which can be prevented by ensuring due protection of information within an institution; however, *per se* these do not mean that the contested norm is incompatible with the Satversme.

Thus, the measures used by the legislator are appropriate for reaching the legitimate aim.

19. The restriction established by the contested norm is necessary, if no other measures exist that would be as effective and would place lesser restrictions upon persons' fundamental rights. However, a more lenient measure is not just any other measure, but only such a measure that allows reaching the legitimate

aim in at least the same quality (*see, for example, Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 19 of the Findings*).

19.1. The Applicant holds that the contested norm could establish the obligation to consider and principles that should be used in each particular case, when deciding on the accessibility of the decision on initiating a disciplinary case against a judge and the materials of the disciplinary case.

The restriction included in the contested norm was established both for the protections of every judge's independence and for maintaining authority of the judicial power as a united institution. Moreover, this is a fixed-term restriction; it is introduced until the moment, when the decision by the Disciplinary Board in a disciplinary case enters into force. If a subject were granted the right to consider in each particular case, whether a certain amount of information about the disciplinary case against a particular judge should be made publicly accessible, then in some cases information about unadjudicated disciplinary case would be disclosed, but would not be disclosed in some other cases. This would lead to a situation, where in some cases the judge would be feel that influence is exerted upon him and, thus, a judge's independence would be jeopardized. Such regulation might contradict the principle of equality in examining judges' disciplinary cases and judges' professional relationships (*see also: Bangalore Principles of Judicial Conduct, principle 5.3.*).

Hence, the proposed measure cannot be recognised as being such that would reach the legitimate aim of the restriction included in the contested norm in the same quality.

19.2. The possibility to allow persons to receive the decisions on initiating a disciplinary case and materials in a disciplinary case before the decision by the Disciplinary Board has entered into force could be considered as being another more lenient measure. The Applicant holds that the legitimate aim of the restriction upon fundamental rights could be reached by ensuring confidentiality at the time, when it is decided, whether there are grounds for initiating a disciplinary case, but ensuring access to information after the disciplinary case has been initiated.

Whereas the Saeima holds that these measures do not allow reaching the legitimate aim, since it would be impossible to prevent the damage caused by making public information related to charges that have not been verified by a collegial institution in a later stage of adjudicating a disciplinary case (*see opinion by the Saeima in the case materials, Case Materials, Vol. 1, p. 197*). The

The opinions by the Disciplinary Board and the Latvian Association of Judges also allow concluding that one of the main obstacles for reaching the legitimate aim by these more lenient measures that have been pointed out would be the threat that could be caused for authority of the judicial power by making public unverified and, perhaps, ungrounded charges, before these have been verified by an institution that has the right to adjudicate a disciplinary case against a judge (*see Case Materials, Vol. 1, pp. 123 and 162*).

The Constitutional Court underscores that the restriction that the contested norm comprises operates only within the period, when the decision by the Disciplinary Board in the disciplinary case has not yet entered into force; i.e., at the time, when the facts and the materials of the disciplinary case have not been comprehensively examined and the judge's actions have not been assessed. The need of the regulation included in the contested norm is substantiated, *inter alia*, also by the procedure for adjudicating a disciplinary case that is set out in the Judicial Disciplinary Liability Law.

Pursuant to Section 3(3) of the Judicial Disciplinary Liability Law, before the case is adjudicated by the Disciplinary Board, the person, who has initiated a disciplinary case, may revoke the decision or the order on initiating a disciplinary case by issuing a reasoned decision or an order. If the decision (order) on initiating a case has not been revoked, the case is examined on its merits by the Disciplinary Board and, if the decision taken by it is appealed against, by the Disciplinary Court. Pursuant to Section 6(5) of the Judicial Disciplinary Liability Law the adjudication of a disciplinary case by a Disciplinary Board begins by hearing the explanations provided by the judge about to be made disciplinary liable, as well as, if necessary, by other persons summoned to the sitting, by scrutiny of case materials and other documents. An

analogous procedure for adjudicating a case by the Disciplinary Court is established by Section 11³ (10) of the Judicial Disciplinary Liability Law.

Section 7(7) of the Disciplinary Liability Law defines the cases, when the disciplinary case must be dismissed: 1) if it has been initiated without grounds; 2) if the terms set in Section 4(1) of this law for making a judge disciplinary liable have expired. It follows from the above mentioned that initiation of a disciplinary case does not automatically mean that a judge has committed a disciplinary violation and that he will be made disciplinary liable. Thus, if any person were able to receive the decision on initiating a disciplinary case, materials of the disciplinary case or the personal data of the judge or other persons included in this document or materials before the decision by the Disciplinary Board in the disciplinary case had entered into force, then the legitimate aim of the restriction established by the contested norm would not be reached.

Thus, the legitimate aim of the restriction upon fundamental rights that the contested norm comprises cannot be reached by other measures, less restrictive upon a person's rights and lawful interests.

20. The Constitutional Court must also verify, whether the consequences caused to a person by the restriction upon his fundamental rights do not exceed the benefit that society in general gains from this restriction.

In the particular case it is the task of the legislator to find a proportional balance between the need to protect a judge's independence, authority of the judicial power, and the rights of other persons at the time when a disciplinary case is being adjudicated until the time when the decision by the Disciplinary Board in a disciplinary case enters into force, and the need to ensure a person's right to obtain a certain type of information about activities of the judicial power.

The restriction upon the rights established in the first sentence of Article 100 of the Satversme is not absolute. Firstly, it has a fixed term, since the contested norm operates from the moment when a disciplinary case is initiated

until the moment when the decision by the Disciplinary Board in a disciplinary case enters into force. Secondly, the contested norm does not prohibit a person to receive general information about the disciplinary case to be adjudicated, to the extent this does not pertain to the materials of the disciplinary case, as well as personal data of the judge about to be made disciplinary liable and the data of other persons. Namely, if necessary, representatives of the judicial power may provide general information, for example, that a disciplinary case has been initiated against a judge (without indicating the name and the surname) and that it is currently being adjudicated by the Disciplinary Board or the Disciplinary Court, which is going to adopt a decision within the term established by law.

A person's right to receive information about the activities of the judicial power, *inter alia*, information about disciplinary cases against judges, are important for ensuring general public trust in the judicial power, since information about the way institutions of judicial power perform the functions they have been entrusted with can be obtained from this information. The information that is provided about judges' disciplinary cases should allow any person to verify that any action by a judge that could be qualified a disciplinary violation is assessed by the respective authorised institution in the procedure established in regulatory enactments, ensuring comprehensive examination of circumstances and adoption of a fair decision. The Constitutional Court recognizes that it is the final decision adopted in a disciplinary case and not the decision on initiating this case, nor materials in the case that should ensure certainty that any judge, who has committed a disciplinary violation, shall be made liable as provided for in law. Therefore it is this final decision that should be available to any person. Whereas until the final decision in a disciplinary case is adopted, reinforced protection should be ensured to a judge's independence and to authority of the judicial power, since usually the judge continues performing his duties of office and is not suspended during the adjudication of the disciplinary case (contrary to what happens, for example, in the framework of criminal proceedings).

Fully unverified information about a probable violation committed by a judge, which has been obtained during adjudication of a disciplinary case, before authorised institutions have provided their final assessment of a judge's actions, might cause doubts about the judge's objectivity or competence to adjudicate cases that he has been entrusted with. Thus also the authority of the judicial power as a whole would be jeopardized, which might manifest itself as ungrounded motions to recuse a judge in concrete legal proceedings. Retaining authority of the judicial power is in the interests of society as a whole. Without the contested norm the restriction upon the rights and lawful interests of an individual as a member of society would exceed the current restriction that is caused by the contested norm. The benefit that society as a whole gains from maintaining the authority of the judicial power while the disciplinary case is being adjudicated exceeds the damage caused to an individual by restricting his rights to receive information about a probable disciplinary violation by a judge that has not been fully verified.

Thus the restriction upon fundamental rights that is included in the contested norm complies with the principle of proportionality.

Therefore the contested norm complies with the first sentence of Article 100 of the Satversme.

The Substantive Part

On the basis of Article 30 – 32 of the Constitutional Court Law the Constitutional Court

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to recognise Section 11⁶ (1) of the Judicial Disciplinary Liability Law as being compatible with the first sentence of Article 100 of the Satversme of the Republic of Latvia.

The Judgement is final and not subject to appeal.

The Judgement enters into force on the day it is published.

Chairperson of the court sitting

Aldis Laviņš