

J U D G M E N T
IN THE NAME OF THE REPUBLIC OF LATVIA

Riga, March 5, 2003

in case No.2002-18-01

The Constitutional Court of the Republic of Latvia in the body of the Chairman of the Court session Aivars Endziņš, justices Romāns Apsītis, Ilma Čepāne, Juris Jelāgins, Andrejs Lepse, Ilze Skultāne and Anita Ušacka

under Article 85 of the Republic of Latvia Satversme (Constitution), Articles 16 (Item 1), 17 (Item 11 of the first part) and 28¹ of the Constitutional Court Law on the basis of the constitutional claim by Armands Stendzenieks holding the proceedings in writing reviewed the case

"On the Compliance of Article 2, Item 2 of the Saeima Election Law with Articles 6, 8 and 91 of the Republic of Latvia Satversme (Constitution)".

The establishing part

1. On June 9, 1922 the Republic of Latvia Constituent Assembly (henceforth – the Constituent Assembly) adopted the Law "On the Saeima Elections" (henceforth – 1922 Election Law). Article 3 of the Law determined that the following persons shall not be entitled to vote: "1) who have been deprived of rights or the rights are limited on the basis of a court decision, which is in effect, if 10 years from the day of serving their time have not passed or if they have not regained their lost rights through amnesty or pardon; 2) who are serving sentence of imprisonment for crimes committed because of avaricious reasons and if 10 years from the day of serving their time have not passed; 3) who are suspected of or accused of committing crimes, envisaged in Items 1 and 2; these persons only lose their right to vote, but can be elected; 4) who have been deprived of the right to vote because they have hindered the process of free or fair elections; 5) who are detained or under trial for evading military service or desertion".

On October 20, 1992 the Republic of Latvia Supreme Council adopted the Law "On the Elections for the 5th Saeima" (henceforth – 1992 Election Law). In the preamble it is stressed that the Republic of Latvia Supreme Council decides to apply Republic of Latvia June 9, 1992 Law "On the Saeima Elections" in a new wording for the elections of the 5th Saeima. Article 3 of the 1992 Election Law established that voting rights are lost by: "1) persons serving court sentences of imprisonment in penitentiaries; 2) detained, accused persons or persons under trial, if arrest for them is considered a security measure. These persons only lose the right to vote, but can be elected".

On May 25, 1995 the Republic of Latvia Saeima (henceforth – the Saeima) passed the Saeima Election Law. Article 2 of the Law determines that the following persons shall not be entitled to vote: "1) persons serving a sentence of imprisonment in penitentiaries; 2) persons suspected of or accused of a crime, or subject to a trial, if they have been arrested for reasons of security; 3) persons whose incapacity to act has been legally recognized".

2. Submitter of the constitutional claim A.Stendzenieks (henceforth – the submitter) challenges compliance of Article 2, Item 2 of the Law (henceforth – the challenged legal norm) with Articles 6, 8 and 91 of the Republic of Latvia Satversme (henceforth – the Satversme), because the challenged norm denies the right to vote to persons suspected, accused of a crime or subject to a trial, if they have been arrested. In 1998 during the elections for the 7th Saeima the submitter has been an accused person but in 2002 elections for the 8th Saeima – subject to a trial. He has been arrested for reasons of security. In accordance with the challenged norm he had been denied the active right to vote both during the elections for the 7th Saeima and the 8th Saeima.

The submitter holds that the challenged legal norm violates his rights fixed in the Satversme and international legal acts for the following reasons:

2.1. The challenged legal norm to his mind is at variance with the principle of general elections, established in Article 6 of the Satversme (henceforth – general elections). This principle to his viewpoint means that all the citizens, who have legal capacity and capacity to act, are entitled to the right to vote. In its turn in accordance with the Law the person may be deprived of the capacity to act only by the court decision and he has not been deprived of the capacity to act. Thus there is no reason to limit the rights of those citizens, who have been arrested for security and who have both – the legal capacity and capacity to act.

Application of security measures may not create other limitations on person's capacity to act, with an exception of those, which are necessary to avoid or ensure circumstances, established in the Latvian Criminal Procedure Code, namely, if there exists a possibility that the accused or the person on the trial, when not arrested, may evade investigation, impede in the process of clarifying of truth in a criminal matter, threaten or influence the witnesses as well as those limitations, which are necessary to ensure execution of the judgment. Thus, application of the security means, including the arrest may not deprive the person from the right of participating in the Saeima elections.

2.2. Limitations, connected with the arrest of persons cannot be regarded as those, in the result of which the person ceases to be a full-fledged citizen. In such a case any application of any security measure shall be regarded as a limitation, because all of them in a certain extent limit the capacity to act of a citizen.

2.3. In compliance with the presumption of innocence persons, to whom arrest has been applied as a security measure, shall be regarded as innocent to the moment of the court passing a verdict of guilty. Thus there is no reason to deny the active right to vote to the above persons, the more so because the law does not deny the right to passive vote. The submitter was the deputy candidate to the Saeima both in 1998 and in 2002.

3. After getting acquainted with the case material the submitter in his written conclusion upheld his viewpoint.

4. The Saeima in its written reply points out that the challenged legal norm is not at variance with the legal norms of the Satversme because:

4.1. The general election principle incorporates the right to vote to the citizens of Latvia with adequate legal capacity. The notion "general elections", incorporated into Article 6 of the Satversme cannot be interpreted as the right of absolutely all persons to vote, as the election right is not absolute, they may and even shall be limited. Thus the body of voters is always smaller than the body of the citizens and the principle of general elections can be attributed only to the range of persons with election rights.

The norms of the Satversme and the Saeima Election Law determine the body of persons having the right to vote. The Satversme envisages limitations of the right to vote and the limitations are connected with full rights of the citizenship and age. The concept of full rights has been specified in the Saeima Election Law, even in the challenged norm. Thus the Saeima holds that the challenged legal norm is not at variance with the principle of general elections, determined in Article 6 of the Satversme.

4.2. When applying the right one shall in every particular case interpret the concept "a full-fledged citizen", enshrined in Article 8 of the Satversme, by reading it together with the limitations, determined by the laws, namely, the challenged legal norm specifies it with regard to the Saeima elections.

Election rights, fixed in the Satversme and international agreements binding on Latvia may be subject to restrictions by law. In accordance with Article 116 of the Satversme the restrictions shall be justified with a legitimate aim and be proportionate to it.

To assess the conformity of the challenged legal act with Article 8 of the Satversme it is necessary to analyze the legal norms, regulating detention.

In compliance with the Criminal Procedure Code arrest (detention) is the most severe security measure and applying of it is strictly regulated to exclude the possibility of arbitrary use by the state institutions. It is applied to the person – accused or subjected to trial – only if the probability that he/she might evade investigation or impede in clarifying of truth in a criminal matter as well as threaten or influence the witnesses or commit a crime exists. It is also applied to ensure execution of the judgment. Besides, the person who commits disclosure of data, procurator or court (judge), when choosing the security measure shall take into consideration the seriousness of the crime, the personality of the accused or subjected to trial, the probability that the accused or the defendant may evade investigation and court, impede in clarification of truth and other circumstances. Arrest (detention) as the security means is applicable only by the decision of the judge and only in case if the crime, for which deprivation of liberty is applied, is envisaged by the Criminal Law. Besides, the judge examines if there is a legal ground for the arrest of a particular person.

Accused persons and defendants are persons who – after the adoption of the decision – may be held criminally liable and on whom the person, who commits disclosure of data or the procurator, has collected proof for committing the crime. The challenged legal norm restricts the right to vote only to the persons, whose guilt the procurator considers as proved or persons to whom charges will be shortly brought; i.e. – persons to whom deprivation of liberty for the committed crime is applicable and whose freedom of movement it is necessary to restrict already before the announcement of the court judgment. Thus the limitation of the right to vote is connected with the status of the arrested person.

Besides, as regards the right to vote, the Saeima doubts whether the arrested person is able to freely express his/her will as the person is isolated from the public and has insufficient access to pre-election information.

The Saeima stresses that the Satversme norms shall be interpreted as read together with the norms of human rights, binding on Latvia and their interpretation in practice. The European Court of Human Rights has concluded that it is important not to establish restrictions to the right to vote, which concern the essence of the right and divest their effectiveness. The most important thing is not to prevent the expression of the free will of people. The challenged legal norm does not prevent the expression of the free will of the people and thus it is not at variance with Articles 8 and 91 of the Satversme.

The concluding part

1. The election rights are considered to be the most important political rights. In Latvia the election rights are fixed in the Satversme and specified in several laws. Article 6 of the Satversme envisages: "The Saeima shall be elected in general, equal, direct and secret elections". In its turn Article 8 of the Satversme establishes: "All citizens of Latvia who enjoy full rights of citizenship and who on election day have attained eighteen years of age shall be entitled to vote". These Satversme norms formulate the principles of the Latvian electoral system and the notion of a person having the right to vote. Elections to the Parliament are specified in the norms of the Saeima Election Law. Thus the principle of general elections and the notion of a full-fledged person, used in the Satversme shall be interpreted as read together with Article 2 of the Saeima Election Law, which enumerates the persons who shall not be entitled to participate in the Parliamentary elections in Latvia, namely: 1) persons, serving a sentence of imprisonment in penitentiaries; 2) persons suspected of or accused of a crime, or subject to trial, if they have been arrested for reasons of security; 3) persons, whose incapacity to act has been legally recognized.

2. Legal issues of elections are regulated by several international legal acts, binding on Latvia. Thus Article 21 of the Universal Declaration of Human Rights (henceforth – the Declaration), adopted by the United Nations Organization (henceforth – the UNO) on December 10, 1948 establishes: "1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (...) 3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures". Thus participation in parliamentary election is one of the most important forms of expression of the free will of the citizens. Article 25 of the International Covenant on Civil and Political Rights (henceforth – the Covenant), adopted by the General Assembly of the UNO on December 16, 1966 stresses that every citizen shall have the right and the opportunity without any discrimination and unreasonable restrictions to vote and be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors. The states, which have acceded to the Covenant, shall ensure adoption of adequate laws as well as undertake other activities to ensure that the rights guaranteed in the Covenant, inter alia also the voting right, are implemented. The elections shall guarantee the free expression of the will of the electors. (*See also the Constitutional Court September 23, 2002 Judgment in case No.2002-08-01.*)

The First Protocol, Article 3 of November 4, 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (henceforth – the Convention) envisages holding free elections at reasonable intervals by secret ballot, under conditions, which will ensure the free expression of the opinion of the people in the choice of the legislature. Even though the formulation of the Article indicates that the Member States of the Convention – the high contracting parties – have the obligation of organizing free and secret elections, in the practice of the European Court of Human Rights it has been pointed out that the Convention guarantees also subjective election rights (*see the European Court of Human Rights March 2, 1987 Judgment in Mathieu-Mohin and Clerfayt case*).

Thus the International legal acts determine the basic principles of the electoral rights to be observed by the Member States: elections shall be general, equal, free, secret and direct, however creation of a specified electoral system and regulation of organization is within the authority of the legislator of every state, namely, constitutions and laws regulate the basic principles of the elections. Besides, the States enjoy free choice in the implementation of the right to vote (*see the European Court of Human Rights March 2, 1987 Judgment in Mathieu-Mohin and Clerfayt case*).

3. The contemporary election systems of states allow and envisage restrictions in the right to vote, which are connected with: 1) age; 2) citizenship; 3) other qualifications.

In most states the age qualification of the person having the right to vote for the Parliament is 18 years (Member States of the European Union, Latvia, Lithuania, etc.), 21 years (Pakistan), 16 years

(Nicaragua). One has to note that in accordance with the European Council Parliamentary Assembly 1997 Recommendation No.1315 the viewpoints on the minimum age of the voter has been approximated in Europe, namely – a person who has reached the age of 18 years has the right to vote (Item 6).

Citizens have the right to participate in the Parliamentary elections in most states, but in several states additional criteria are determined, like the period of residence in the state (Australia, Denmark etc.) or naturalization (Belgium, Costa Rica etc.).

Other restrictions are connected with mental disability of the person (Germany, Denmark, Latvia, Lithuania etc.), criminal incarceration (Canada, Hungary, Latvia, Turkey, the Ukraine etc.), previous conviction (Belgium, France, Hungary etc.), detention (Latvia, Belarus, Mexico, Guatemala, El Salvador etc.), military service (Spain, Turkey etc.) as well as other qualifications. [See IDEA (International Institute for Democracy and Electoral Assistance) in cooperation with UNDP (United Nations Development Programme) and IFES (International Foundation for Election Systems) research "Election Process Information Collection (EPIC) project"; <http://www.epicproject.org>. The latest research specifications were made on February 16, 2003.] However the restrictions shall be 1) determined by law; 2) justified by the legitimate aim; 3) proportionate to this aim.

In order to assess whether the challenged legal norm complies with the norms of the Satversme, one has to ascertain whether the determined restrictions are in conformity with these criteria.

4. The limitations, incorporated in the challenged legal norm, have been determined by law – Article 2, Item 2 of the Saeima Election Law.

5. When determining limitations to the rights of persons, they shall be justified with a legitimate aim: rights of other persons, democratic state system, public security, welfare, morality.

5.1. From the Saeima session verbatim reports can be seen that, when debating on the Saeima Election Draft Law, the challenged norm has been adopted from the previous wordings of the law, without analyzing its suitability in the democratic society and without taking into consideration the development of the right to vote in a democratic state. When discussing the draft law in its third reading, the deputies voted for the motion to delete the challenged norm. The Saeima Legal Affairs Commission had already rejected the motion. No deputy expressed the viewpoint on the motion and it was rejected by majority vote. (*See Verbatim Report of the May 25, 1995 Saeima session.*)

Thus the restriction, which the Constitutional Assembly had incorporated into 1922 Election Law, was retained. One should also take into consideration the fact that since 1922 only the wording of the above legal norm has been amended.

To establish the aims of the challenged legal norm, one has to analyze the restrictions of the right to vote in Latvia since the moment of adoption of the 1922 Election Law as well as the development of the election rights of the world and the tendencies of liberalization.

The Latvian scientist in the sector of legal sciences Kārlis Dišlers mentioned the rapid development of the election rights and concluded that at that time in many states the citizens, having the right to vote reached 50-60% of the total number of citizens, which meant that the right to vote in many democratic states had enlarged 3-6 times than before the first world war. He also points out that restrictions to the right to vote have been gradually repealed already from the 19th. century. For example, women and soldiers were given the right to vote and such qualifications as property and education had been abrogated. [*K.Dišlers. Fundamentals of a Democratic State (Introduction to the Constitutional Law) The second supplemented edition; A.Gulbis, Riga, 1931, p.70*].

In 1921 during the debate on draft of the Satversme, the viewpoint of different deputies on the restrictions to the Election Law was not unified. A long debate was held on the incorporation of the restrictions in the fundamental law or in a separate law. The deputy Arveds Bergs said: "(...) only the main principles and the fundamental provisions shall be enshrined in the Satversme. (...) The Satversme shall be something solid and definite, to be amended on very rare occasions. Therefore it is not advisable to incorporate minute amendments into the Satversme. (...) If we determine who enjoys the right to vote in the Election Law then there is no need to determine who does not have the right to vote or who has lost the above right. (...) Such Articles will not be of equal worth. The principle is that every Latvian citizen shall have the right to vote and there shall be only some exceptions to the principle" (*see Verbatim Reports of the Constitutional Assembly IV session, held on October 11, 1921, Nr.17, pp. 1575-1576*). Deputy Felikss Cielēns has also concluded "The Election Law (...) is an important law, as it gives concrete embodiment to the Constitution. No Article of the Constitution, if it remains just on paper, is of any benefit. The rights envisaged by the Constitution are important only if they in this or that way are incorporated into efficient legislature and are used in real life. (...) Realization of the above rights takes place through the Election Law" (*see the same source p.1577*).

Thus already the Constitutional Assembly, when discussing the restrictions to the election rights, came to the conclusion that the restrictions may be changed and shall not be incorporated into the Constitution but into the Election Law. One should note that in the context of the world election system of that time the 1922 Election Law was a progressive law and envisaged far less restrictions to the right to vote than several other democratic states, e.g. women had the right to vote.

5.2. To evaluate the conformity of the challenged legal norm with the Satversme norms, the contents of the principle of general elections and the concept "full rights of citizenship" has to be ascertained.

5.2.1. The concept "general elections" envisages the right of every person to vote (active election right) and to be elected (passive election right). Well-grounded is the viewpoint of the Saeima that the principle of general elections, enshrined in Article 6 of the Satversme, shall not be interpreted only grammatically – as the right of all the citizens to participate in the elections.

Both from the Satversme and the international instruments, binding on Latvia, follows that the election rights are not absolute and in specific cases may be restricted (*see the Constitutional Court Judgment in case No.2002-08-01*). Already at the session of the Constitutional Assembly, when expressing his viewpoint on the draft of the Satversme during its second reading Mārgers Skujenieks has stressed: "(...) there are certain categories of citizens, who shall not be entitled to vote, e.g., the imbeciles, persons under custody, criminals etc." (*see Verbatim reports of the IV Latvian Constitutional Assembly 10th. Session, held on October 11, 1921 ; No.17, p.1575*).

The legislator is authorized to establish such restrictions which it considers to be necessary, adequate and proportionate in a democratic society. The Saeima reasonably points out that the principle of general elections refers to the range of persons, whose right to vote has not been limited and does not refer to the range of persons to whom restrictions to the above right have been determined by law and legitimate aim.

5.2.2. The fact, whether it is permissible to exclude from the range of "persons, enjoying full rights of citizenship" mentioned in the Satversme, persons, to whom the security measure – detention has been applied shall be ascertained. Thus the criminal procedural norms shall be analyzed to establish the status of the detained persons, who have not been convicted for the committed criminal offences by the court judgment in effect.

Article 69 of the Criminal Procedure Code thoroughly enumerates the security means. They are: signature about not changing the place of residence, caution money, bail bond, police supervision, home arrest, arrest, placement of soldiers under the supervision of the commander, placement of minors under custody of parents or guardians. In conformity with Article 68 of the Criminal Procedure Code the security measure is applied to ensure execution of the judgment as well as when there exists a potential possibility that the accused or the defendant might evade investigation or impede in clarifying of truth in a criminal matter, threaten or influence the witnesses, commit a criminal offence. Article 70 of the Code in its turn envisages the exception, when the security measure may be applied to the person, suspected of committing a crime, even before making the charge. Article 72 determines the circumstances, which the person who commits disclosure of data, the procurator, the court (judge) shall take into consideration when reaching the decision on applying of the security measure: character of the committed crime, personality of the accused person or the defendant, the possibility that the accused or the defendant might evade from investigation and court or impede in clarifying the truth, threaten or influence the witnesses as well as the occupation, age, state of health, family status and other circumstances.

One should take into consideration that the criteria, mentioned in the Criminal Procedure Law, which shall be taken into consideration before applying of the security measure, are connected with clarifying of truth in the criminal matter and other circumstances, enumerated in the Criminal Procedure Code but are not connected with endangering of the democratic system or other reasons, which could be regarded as the basis for restrictions of the right to vote or expression of the free will. The fact, that the person is arrested, namely, that the fundamental rights of the person, fixed in Article 94 of the Satversme, are restricted does not mean that other fundamental rights of the person shall be restricted too (*see Constitutional Court Judgment in case No.2002-04-03*).

Arrest is considered to be the most severe security measure, as – by applying it – the freedom of the person is restricted. Article 76 of the Criminal Procedure Law determines that arrest may be applied when a crime, for which the penalty of deprivation of liberty is anticipated, has been committed.

Besides, arrest as the security measure may be applied only with the decision of the judge after the judge has verified the legal grounds for arresting the person. In accordance with Article 83 the measure is repealed or amended with the decision by the person, who commits disclosure of data, procurator or judge (court) but the measure applied by the judge (court) during the pre-court investigation shall be repealed or amended only with a motivated decision of the procurator. The security measure is

amended by substituting it with a most severe or less severe measure, if the circumstances of the case demand it.

Thus the law envisages the possibility of substituting the applied security measure – arrest – by a less severe security measure, e.g., caution measure or a personal bail. K. Dišlers wrote: "In fact persons, who have not been convicted and whose cases may end in the verdict of not guilty cannot be regarded as persons, who have lost their rights; therefore the law leaves them the passive election rights. Then why should they be deprived of active election rights? It seems motives of technical character have been ruling. (...) The Constitutional Assembly Election Law determines that the persons finding themselves in the stage of investigation or trial lose their right to vote only if they are arrested. Thus it means that the rich person, who is able to pay the big sum of caution money, is set free and can participate in the elections but the poor person, who is accused of the same or even less severe offence but cannot pay the security (caution) money, is arrested and loses his/her right to vote. Such a provision is unjust and therefore the law in effect does not qualify persons of the same status and disfranchises them because it seems very awkward to take citizens from the places of arrest to the ballot-box. Solution of this issue can be considered as more correct than that, incorporated into the Constitutional Assembly Law." The author has also pointed out: "In 1930 the 3rd. Saeima Commission of Public Rights adopted the draft of the Saeima Election Law, under which even those persons, whose cases were investigated, did not lose their right to vote" (*K. Dišlers, pp.76-77*). Thus it can be seen that already in 1930 the legislator had intended to repeal the restriction, however – because of historical circumstances did not manage to discuss and implement it.

5.2.3. The Saeima Election Law does not forbid the passive election rights to persons, to whom arrest as the security measure has been applied. The submitter, when being arrested, has made use of the passive election law, established by law. In 1998 he has been the candidate to the 7th Saeima from the Party of the National Progress (*see "Latvijas Vēstnesis", No.261/264, September 10, 1998*) but in 2002 – to the 8th Saeima from the Party of Socialdemocratic Welfare (*see "Latvijas Vēstnesis", No.123, August 31, 2002*). As in both cases the lists of the above parties did not overcome the barrier determined by the Saeima Election Law, no candidates from the lists were elected (*see "Latvijas Vēstnesis", No.313/314, October 24, 1998 and No.153, October 23, 2002*).

Thus the law gives a diverse interpretation of the concept "a full-fledged citizen" incorporated into the Satversme when referring to active and passive election rights. The Saeima has not given a reasonable motivation of considering the person, who has been arrested without a court judgment, a full-fledged citizen as concerns the passive election rights, at the same time stating that the person loses the full rights of citizenship as concerns the active election rights.

5.2.4. Article 92 of the Satversme determines: "Everyone shall be presumed innocent until their guilt has been established in accordance with law". The same provision has been enshrined also in Article 11 of the Declaration, Article 14 of the Covenant, Article 6 of the Convention as well as Article 1, part 2 of the Criminal Law. Thus the presumption of innocence is fixed both in the Satversme, international legal acts binding on Latvia and the laws. This presumption means that no one shall be found guilty of committing an offence other than by the judgment of the court and in accordance with law. Therefore any restriction inflicted on the arrested but not convicted person shall be commensurate with the principle of presumption of innocence. Only the restrictions, which are necessary for performing criminal procedural activities or for maintaining order and security at the place of detention shall be permitted as regards persons, who are to be presumed innocent to the moment of proving them guilty (*see Constitutional Court Judgment in case No.2002-04-03*).

One cannot agree with the statement of the Saeima, that persons, who are in the places of detention are isolated from the society and cannot be quite free in expressing their will as they do not receive sufficient pre-election information. The Latvian citizens having the right to vote and residing abroad, persons who are in hospitals and people with low incomes also have limited accessibility to pre-election information. However, they are not denied the active election right. Besides, the arrested persons have access to mass media, thus – as regards the right to vote – they are informed and free in expressing their will.

5.3. Restrictions shall be commensurate with the aim the legislator has tried to reach by implementing the restrictions. The Saeima in its written reply has not given adequate motivation to prove that by denying the right to vote to persons, to whom arrest has been applied as the security means, the gain of the society will be greater than the restrictions of individual rights.

6. It should be taken into consideration that liberalization of election rights is a continuous process. In accordance with the European Agreement on the creation of association between the European Community and Member States as one party and the Republic of Latvia as the other party (henceforth – Association Agreement), which in Latvia has taken effect on February 1, 1998, Latvia has expressed its will to become a Member State of the European Union. On December 13, 2002 in Copenhagen at the

European Summit of the European Union Latvia received an official invitation to join the European Union. To implement this objective the referendum is going to be held in September, 2003. In conformity with the Association Agreement one of the fundamental assignments is gradual integration of Latvia into the European Union. And it – inter alia – is connected with implementation of adequate political reforms in Latvia. Thus – it means also legislative alignment. The legal norms of the European Union shall be approximated only with such national legal system, which meets the requirements of a law-based state.

When joining the European Union, nine deputy posts at the European Parliament are envisaged for Latvia. The next elections of the European Parliament will take place in 2004 and Latvian voters might participate in the elections. Even though elections of the European Parliament are held in compliance with national legal acts and with different procedures of the elections, common principles shall be observed by all the Member States. European Parliamentary elections are regulated in Chapter V, Section I of the European Community Foundation Agreement: representatives to the Parliament shall be elected by the peoples of the Community States in general and direct elections (Article 190, Item 1). The European Parliament – in compliance with a common procedure or common principles – elaborates motions on general, direct elections common procedure of elections for all the Member States. The European Council recommends the Member States to adopt the above principles or procedure in compliance with the constitutional requirements of the particular state.

7. The legislator, when maintaining the challenged legal norm in the Saeima Election Law, has not sufficiently substantiated the necessity of the above restriction for up-to-date democratic society and what is the legitimate aim of it. It has not been sufficiently substantiated in the Saeima written reply either. One should take into consideration that no European Union Member State restricts the right to vote to persons, to whom the arrest has been applied as the security measure. Because of the differentiated procedure, Latvia might experience difficulties of joining the voting procedure of the European Parliament. Besides, such or similar restriction of the right to vote cannot be found in any other European Union Candidate State.

Thus the challenged legal norm is at variance with the general principle of elections, enshrined in Article 6 of the Satversme and the concept "full-fledged" incorporated into Article 8 of the Satversme. In the up-to-date democratic phase the challenged norm does not have a legitimate aim and loss of the rights of an individual, created by it, is not proportionate with the public benefit.

8. If unconformity of the challenged legal norm with even one legal norm of higher legal force in effect is established, it shall be declared as null and void and there is no necessity to assess its unconformity with other legal norms. As the unconformity of the challenged legal norm with Articles 6 and 8 of the Satversme has been established, the Constitutional Court is not evaluating the compliance of the challenged norm with Article 91 of the Satversme.

The Substantive part

On the basis of Articles 30-32 of the Constitutional Court Law the Constitutional Court

d e c i d e d :

to declare Article 2, Item 2 of the Saeima Election Law as unconfirmable with Articles 6 and 8 of the Republic of Latvia Satversme and null and void as from the day of publishing of the Judgment.

The Judgment takes effect as of the day of its publishing. The Judgment is final and allowing of no appeal.

Chairman of the Court session

A.Endziņš