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## **Temporary adjustment in the practice of the Constitutional Court of the Republic of Latvia: recent developments**

**Keywords:** Constitutional Court, temporary adjustment, constitutional complaint, court ruling, legislation procedure, national referendum

**Słowa kluczowe:** Sąd Konstytucyjny, zarządzenie tymczasowe, skarga konstytucyjna, orzeczenie sądowe, postępowanie ustawodawcze, procedura ustawodawcza, referendum ogólnokrajowe

### **Streszczenie**

#### **Zarządzenia tymczasowe w praktyce Sądu Konstytucyjnego Republiki Łotewskiej: najnowsze tendencje**

W artykule autorka analizuje doświadczenia Sądu Konstytucyjnego Republiki Łotewskiej w stosowaniu zarządzeń tymczasowych podczas badania skarg konstytucyjnych składanych przez jednostki. Przedmiotem rozważań są również ustalenia Sądu Konstytucyjnego dotyczące kwestii nieprzewidzianych w procedurze kontroli konstytucyjności prawa. Dlatego też autorka zajmuje się odpowiedzią na pytanie, czy Sąd Konstytucyjny może zawiesić postępowanie sądowe i procedurę ustawodawczą.

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### Summary

In the article author analyses the experience of the Constitutional Court of the Republic of Latvia in applying temporary adjustment in examining constitutional complaints submitted by persons. In view of the case law of the Constitutional Court, the rulings of the Constitutional Court regarding issues not envisaged in the Constitutional Court procedure are analysed as well. Thus, the article provides answers to questions – whether the Constitutional Court may suspend legal proceedings and legislation procedure.

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### I.

Temporary adjustment is one of the procedural issues to be dealt with by the Constitutional Court, basically linked with exercising the constitutional complaint. Simultaneously, the Constitutional Court, due to its competence, is frequently involved in policy making. This conclusion is not a novelty in countries implementing the European model of constitutional control. If subjects of abstract constitutional control – the Parliament, a definite number of deputies, the President of the State, the executive power – have the right to apply to the Constitutional Court, then the Court, directly or indirectly, may become involved in political processes. Latvia is no exception in this regard.

In the interaction of politics and law, the Constitutional Court has adopted very important decisions, inter alia, on the application of temporary adjustment as demanded by the applicants. The Constitutional Court, dealing with procedural issues, unregulated by legal acts, has had to answer sufficiently complex questions, as, for example, whether it has the right to suspend legal proceedings. However, the most complicated and politically sensitive issue, which the Constitutional Court had to deal with was, whether the Constitutional Court may have the right to suspend parliamentary legislation procedure. This issue became relevant at the beginning of 2012 in connection with the referendum on maintaining the legal status of the Latvian language as the only official language in the state. This last, „referendum” case, brought to the foreground the scope of rights of the Constitutional Court and the application of temporary adjustment in the Constitutional Court procedure.

## II.

Constitutional complaint – an application, which in accordance with Article 19<sup>2</sup> of the Constitutional Court Law may be submitted by a private person, is one of the most important legal remedies in Latvia. A person may contest in the Constitutional Court the compliance of a legal act (provision) with the fundamental human rights enshrined in the Constitution. However, Latvia allows only constitutional complaint, but not *actiopopularis*. It means that the person has to abide by various procedural and material restrictions, including the principle of subsidiarity, before submitting a constitutional complaint to the Constitutional Court. In accordance with the principle of subsidiarity, prior to submitting an application to the Constitutional Court, all other real and effective options of legal remedies must be exhausted<sup>2</sup>. Usually the other legal remedies that the person can use in the national level to protect his rights that have been infringed are applying to the so-called court of general jurisdiction or relevant institution of the judicial system<sup>3</sup>. This is the moment, when, if the principle of subsidiarity is complied with, the possibility to apply temporary adjustment in the Constitutional Court procedure arises.

The legal basis for temporary adjustment is Para 5, Article 19<sup>2</sup> of the Constitutional Court Law, which envisages that „submission of a constitutional complaint (application) shall not suspend the implementation of the court ruling except for the cases when the Constitutional Court has decided otherwise”<sup>4</sup>. Thus – temporary adjustment in the Constitutional Court procedu-

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<sup>2</sup> On Compliance of Section 59.5 of the Credit Institution Law with Article 1 and Article 105 of the Satversme of the Republic of Latvia: Judgement of the Constitutional Court of the Republic of Latvia in case No 2010-71-01, Section 14, [http://www.satv.tiesa.gov.lv/upload/Judgment%202010-71-01-parex\\_\\_ENG.pdf](http://www.satv.tiesa.gov.lv/upload/Judgment%202010-71-01-parex__ENG.pdf) (10.04.2014).

<sup>3</sup> On Compliance of Section 19 (5) of the Law on Procedures for Coming into Force of the Commercial Law with Article 105 of the Satversme of the Republic of Latvia and Article 5 of the Agreement between the Government of the Republic of Latvia and the Government of the Kingdom of Denmark concerning the Promotion and Reciprocal Protection of Investments: Judgement of the Constitutional Court of the Republic of Latvia in case No 2009-113-0106, Section 14, [http://www.satv.tiesa.gov.lv/upload/spriedums\\_2009-113-0106.htm](http://www.satv.tiesa.gov.lv/upload/spriedums_2009-113-0106.htm) (10.04.2014).

<sup>4</sup> Constitutional Court Law, <http://www.satv.tiesa.gov.lv/?lang=2&mid=9> (10.04.2014).

re is the right of the Constitutional Court to suspend the implementation of the ruling of the court. It must be emphasized that the Constitutional Court Law does not envisage any other temporary adjustment.

Latvia's experience in envisaging temporary adjustment is not unique. Such a procedural institution is envisaged also in other countries. For example, Article 50 of the Constitutional Tribunal Act of Poland provides the right of the Tribunal to issue a preliminary decision „to suspend or stop the enforcement of the judgement in the case to which the complaint refers if the enforcement of the said judgement, decision or another ruling might result in irreversible consequences linked with great detriment to the person making the complaint or where a vital public interest or another vital interest of the person making the complaint speaks in favour thereof”<sup>5</sup>. Para 32 of the German Law on the Federal Constitutional Court sets out the rights of the Court to apply temporary adjustment ”if this is urgently needed to avert serious detriment, ward off imminent force or for any other important reason for the common wealth”<sup>6</sup>. Temporary adjustment has also been construed as the right of the Court to suspend the coming into force of a law<sup>7</sup>. The Constitutional Court of Slovenia has as extensive rights in applying temporary adjustment as Germany. Article 39 of the Slovenian Constitutional Court Act provides that „until a final decision, the Constitutional Court may suspend in whole or in part the implementation of a law, other regulation, or general act issued for the exercise of public authority”<sup>8</sup>. But if a constitutional complaint is accepted, then the Panel of the Constitutional Court of Slovenia like in Constitutional Court in Latvia may suspend the implementation of the contested individual act, „if difficult to remedy harmful consequences could result from the implementation thereof”<sup>9</sup>.

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<sup>5</sup> The Constitutional Tribunal Act, <http://www.trybunal.gov.pl/eng/index.htm> (10.04.2014).

<sup>6</sup> Law on the Federal Constitutional Court (Gesetz über das Bundesverfassungsgericht) <http://www.iuscomp.org/gla/statutes/BVerfGG.htm#32> (10.04.2014).

<sup>7</sup> Law on the Federal Constitutional Court. Legaltexts. Internationes, Bonn 1996, p. 29.

<sup>8</sup> ConstitutionalCourtAct, <http://www.us-rs.si/media/constitutional.court.act.full.text.pdf> (10.04.2014).

<sup>9</sup> Ibidem, Article 58.

### III.

The Constitutional Court Law (Para 5, Article 19<sup>2</sup>) contains presumption that submission of a constitutional complaint shall not suspend the implementation of the court ruling. It means that the Constitutional Court may decide otherwise, i.e., to suspend the enforcement of a court ruling in exceptional or extraordinary cases. Thus, it can be considered that „temporary adjustment should be considered as extraordinary element of the Constitutional Court procedure [...]”<sup>10</sup> Application of temporary adjustment only in extraordinary cases means that the Constitutional Court cannot be used as the instrument to delay enforcement of the ruling if the person is dissatisfied with it. Moreover, the need to safeguard the legal certainty of the other party, i.e., that a court ruling, which has come into force, will be enforced, must be taken into consideration. Here the following principle must be abided by: until it has been decided otherwise, the ruling made by a court must be presumed to be lawful. At the same time, considering the content of the constitutional complaint, there may be, and, as seen in practice; – there are cases when suspending a court ruling is even necessary.

The Constitutional Law Court does not define the factual conditions, which must set in or be identified, for the Constitutional Court to be able to apply temporary adjustment. Since temporary adjustment is an extraordinary procedural measure, it can be applied to reach important objectives<sup>11</sup>. Thus far the Constitutional Court in its jurisprudence has recognized temporary adjustment in two cases.

Firstly, the Constitutional Court has recognised the possibility to rule on suspending the enforcement of a court ruling, under extraordinary conditions, due to which the enforcement of the ruling before the judgement of the Constitutional Court has come into force may render the enforcement of the Constitutional Court judgement impossible. The Constitutional Court has explained that application of temporary adjustment may be requested, if „a real possibility exists that the enforcement of the Constitutional Court

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<sup>10</sup> LR Satversmes tiesas Rīcības sēdes 27.03.2012. lēmums lietā Nr. 2012–07–01, 4.p. Ne-publicēts.

<sup>11</sup> Par lietas ierosināšanu: LR Satversmes tiesas 1. Kolēģijas 20.06.2008. lēmums, 6.2.p. Ne-publicēts.

ruling in the future would be threatened or impossible<sup>12</sup>. Obviously, there would be no logic in continuing the Constitutional Court procedure, knowing, that the end result would be unenforceable, or, in such cases the Constitutional Court should have the right to suspend the enforcement of the court ruling, if its enforcement could make the Constitutional Court procedure meaningless<sup>13</sup>. Thus, for example, the Constitutional Court refused to apply temporary adjustment in a case, in which suspension of the enforcement of court ruling was requested, in compliance with which real estate was described and evaluated (but not alienation or any other activities)<sup>14</sup>. The Constitutional Court adopted a rather controversial decision on suspending the enforcement of a ruling in a case, in which a person was imposed a criminal punishment – a monetary fine, set in accordance with the legal provision contested at the Constitutional Court. When examining the person's application on applying temporary adjustment, the Constitutional Court concluded that every month 30% were deducted from the social provision benefit that the person was entitled to<sup>15</sup>. If the enforcement of the court ruling were not suspended, the person would continue to serve the criminal punishment – monetary fine, however, taking into consideration the criterion defined by the Constitutional Court itself, in this case the Constitutional Court procedure could not become meaningless. Money is an equivalent, which, in case of a Constitutional Court ruling in favour of the person, could be returned to the person. The fact, that a simplified procedure for restituting monetary fine in such cases has not been laid down in Latvia, could have been a fact, influencing the decision of the Constitutional Court.

Secondly, the Constitutional Court has recognised that it may apply temporary adjustment, if the enforcement of the court ruling could cause significant harm to the applicant<sup>16</sup>. The Constitutional Court, in view of this criterion, has ruled on applying temporary adjustment in a case where the

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<sup>12</sup> LR Satversmes tiesas Rīcības sēdes 20.01.2012. lēmums lietā Nr. 2012-03-01, 6.p, [http://www.satv.tiesa.gov.lv/upload/2012-03-01\\_ricibas\\_sedes\\_lemums.pdf](http://www.satv.tiesa.gov.lv/upload/2012-03-01_ricibas_sedes_lemums.pdf) (10.04.2014).

<sup>13</sup> LR Satversmes tiesas Rīcības sēdes 31.08.2005. lēmums, 3.p. Nepublicēts.

<sup>14</sup> Ibidem, 2.p.

<sup>15</sup> Par lietas ierosināšanu: LR Satversmes tiesas 2. Kolēģijas 29.04.2008. lēmums, 8.p. Nepublicēts.

<sup>16</sup> Par lietas ierosināšanu: LR Satversmes tiesas 1. Kolēģijas 20.06.2008. lēmums, 6.2.p. Nepublicēts.

provision of the Civil Procedure Law, which regulated the procedure for selling collateral, was contested. The applicant requested suspending the enforcement of the court ruling, since on the basis of the court ruling the auction of the person's real estate, which was simultaneously her only place of residence, had been started<sup>17</sup>. It is clear that in case the court ruling were enforced, the applicant would have been divested of place of residence, the property as such, and additional liabilities would appear (unpaid mortgage sum, because of the decreased value of the collateral, renting another place of residence, etc.). It can be said that in this case the enforcement of the court ruling would obviously inflict significant harm to the person, and suspending the enforcement of the court ruling conformed to the essence of this institution.

From the point of view of the Constitutional Court procedure, it must be explained that the Court does not decide on suspending the enforcement of a court ruling *ex officio*. The person must submit a motivated and substantiated application, providing arguments, why the Constitutional Court should pass a decision on suspending the enforcement of a court ruling<sup>18</sup>. If this requirement is not met, the Constitutional Court will decide to reject the request to apply temporary adjustment<sup>19</sup>.

#### IV.

The Constitutional Court procedure is basically regulated by the Constitutional Court Law and the Rules of Procedure of the Constitutional Court<sup>20</sup>. Interaction of the Constitutional Court procedure with another type of procedure – the civil procedure – is envisaged only in two cases. The provi-

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<sup>17</sup> LR Satversmes tiesas Rīcības sēdes 5.03.2010. lēmums lietā Nr. 2010-08-01, 2.p. Npublicēts.

<sup>18</sup> Par lietas ierosināšanu: LR Satversmes tiesas 2. Kolēģijas 8.04.2010. lēmums, 9.p. Npublicēts.

<sup>19</sup> Par lietas ierosināšanu: LR Satversmes tiesas 1. Kolēģijas 21.04.2010. lēmums, 9.p. Npublicēts; Par lietas ierosināšanu: LR Satversmes tiesas 2. Kolēģijas 3.03.2010. lēmums, 6.p. Npublicēts.

<sup>20</sup> Rules of Procedure of the Constitutional Court, <http://www.satv.tiesa.gov.lv/?lang=2&mid=10> (10.04.2014).

sions of the Civil Procedure Law are applied, if during the Constitutional Court procedure it is necessary to set procedural terms and apply procedural sanctions — a monetary fine. The principle that other procedural issues, not regulate by the Constitutional Court Law and the Rules of Procedure of the Constitutional Court, are decided by the Constitutional Court is abided by in the Constitutional Court procedure. Requests regarding application of temporary adjustment, not envisaged by any legal act, the Constitutional Court has treated as unregulated procedural issues.

On 21 March 2012 the Constitutional Court received one of the most recent requests to apply temporary adjustment in connection with a case, which gained great publicity, – the insolvency case of a major bank in Latvia – „LatvijasKrājbanka”. The insolvency of this bank caused significant loss of both private and public persons’ recourses. The applicants (the victims) requested temporary adjustment in the case, disputing the provisions of the Law on Credit Institutions, which regulate and define the administrator’s rights in the insolvency procedure<sup>21</sup>. Since parallel to that an insolvency procedure was going on in a court of general jurisprudence, the applicants requested the Constitutional Court to suspend court procedure in the concrete civil case, which was examining the issue of application by the insolvency administrator for starting the bankruptcy procedure<sup>22</sup>. I.e., by requesting temporary adjustment, the applicants, essentially, wanted to stop the initiation of the bankruptcy procedure.

In accordance with Article 85 of the Constitution the Constitutional Court is the institution of constitutional control, its competence is functionally separated from the competence of the judicial system. The functional separation of judicial institutions is absolute, since none of the judicial institutions has the right to undertake the mandate set for another. „Courts, incorporated into the legal system of general jurisdiction, are authorised to review civil liability controversies, criminal cases as well as claims arising from administratively legal relations. However, in compliance with the law, the above courts are not authorised to declare acts of normative nature null and void. Therefore in 1996 in

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<sup>21</sup> Par lietas ierosināšanu: LR Satversmes tiesas 1. Kolēģijas 8.03.2012. lēmums, [http://www.satv.tiesa.gov.lv/upload/2012\\_24\\_ieros.pdf](http://www.satv.tiesa.gov.lv/upload/2012_24_ieros.pdf) (10.04.2014).

<sup>22</sup> LR Satversmes tiesas Rīcības sēdes 27.03.2012. lēmums lietā Nr. 2012-07-01, [http://www.satv.tiesa.gov.lv/upload/rs\\_lemums\\_2012-07-01.pdf](http://www.satv.tiesa.gov.lv/upload/rs_lemums_2012-07-01.pdf) (10.04.2014).



Latvia was established the court, not incorporated into the legal system of jurisdiction – the Constitutional Court, which in compliance with Article 85 of the Satversme, is authorised to review cases regarding compliance of laws and other acts with the Satversme and other laws<sup>23</sup>. Considering the principle of the functional separation of judicial institutions, it can be concluded that the Constitutional Court may not interfere in the competence of courts, inter alia, suspend an initiated legal proceedings in a case. It is obvious that „the Constitutional Court must refrain from interfering in the course of a concrete civil case, allowing the court of general jurisdiction to choose the most appropriate model of action in the concrete case<sup>24</sup>. Thus, the Constitutional Court, taking into account Article 85 of the Constitution, cannot be granted the right to interfere in the adjudication of justice in other judicial institutions. This conclusion, in its turn, means that the Constitutional Court may not decide on suspending court proceedings in a court of general jurisdiction.

Persons always try use all opportunities to achieve the best possible result for solving their problem, inter alia, requesting the Constitutional Court to decide on issues, not covered by its jurisdiction. But in this case – „the Krājbanka case” – so called legal „weapons” – solving the dispute within the constitutional framework– were in the hands of the court of general jurisdiction, since Para 3 of Article 19<sup>2</sup> of the Constitutional Court Law envisages that „[i]nitiation of a matter in the Constitutional Court shall prohibit adjudication of the relevant civil matter, criminal matter or administrative matter in a general jurisdiction court until the moment when a Constitutional Court verdict has been pronounced.” Or, the legislator has provided that if the same dispute is examined by the Constitutional Court and a court of general jurisdiction, then the procedure of the Constitutional Court prevails

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<sup>23</sup> On Conformity of the State Stock Company – the Real Estate Agency Regulations „On the Procedure by which Free Apartments in Dwelling Houses under the Management of the Real Estate Agency shall Be Rented” with Articles 2, 10 and 11 of the Law „On Housing Support Granted by the State and Local Governments”, Article 40 of the Law „On the Rent of Dwelling Space” and Item 4 of the Transitional Provisions of the Law „On the Privatisation of State and Local Governments Apartment Houses: Judgement of the Constitutional Court of the Republic of Latvia in case No 04–03(99), Section 1, <http://www.satv.tiesa.gov.lv/?lang=2&mid=19> (10.04.2014).

<sup>24</sup> LR Satversmes tiesas Rīcības sēdes lēmums 27.03.2012. lietā Nr. 2012-07-01, 7.p, [http://www.satv.tiesa.gov.lv/upload/rs\\_lēmums\\_2012-07-01.pdf](http://www.satv.tiesa.gov.lv/upload/rs_lēmums_2012-07-01.pdf) (10.04.2014).

(is primary)<sup>25</sup>. Likewise, Para 4 of Article 214 of the Civil Procedure Law sets out that the court shall suspend legal proceedings, if the Constitutional Court has initiated a case in connection with a constitutional complaint submitted by a party or a third person<sup>26</sup>. However, to the extent of the author's knowledge, the court did not suspend legal proceedings in the case analysed. Since the court ruling was not publicly accessible at the time of preparing this article, it is, unfortunately, impossible to assess the court's arguments.

One of the most complicated and sizeable case ever examined by the Constitutional Court is the so-called Latvian-Russian border agreement case. At the beginning of 2007 members of the Saeima submitted an application contesting the compliance of the Law „On Authorisation to the Cabinet of Ministers to Sign the Draft Agreement between the Republic of Latvia and the Russian Federation on the State Border between Latvia and Russia Initialled on August 7, 1997” with the Preamble and Article 9 of the Declaration of May 4, 1990 of The Supreme Council of the Republic of Latvia „On Restoration of Independence of the Republic of Latvia” and Compliance of the Treaty of March 27, 2007 of the Republic of Latvia and the Russian Federation of the State Border of Latvia and Russia with Article 3<sup>27</sup> of the Satversme of the Republic of Latvia<sup>28</sup>. It should be specified that the border agreement

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<sup>25</sup> A. Rodiņa, *Konstitucionālās sūdzības teorija un prakse Latvijā*. Latvijas Vēstnesis, Rīga, 2009, 184.lpp.

<sup>26</sup> Civilprocesa likums: LR likums. Latvijas Vēstnesis Nr. 326/330 (1387/1391), 3.11.1998.

<sup>27</sup> „3. The territory of the State of Latvia, within the borders established by international agreements, consists of Vidzeme, Latgale, Kurzeme and Zemgale”. The Constitution of the Republic of Latvia, <http://saeima.lv/en/legislation/constitution> (10.04.2014).

<sup>28</sup> On Compliance of the Law „On Authorisation to the Cabinet of Ministers to Sign the Draft Agreement between the Republic of Latvia and the Russian Federation on the State Border between Latvia and Russia Initialled on August 7, 1997” and the Words „Observing the Principle of Inviolability of Borders Adopted by the Organization of Security and Cooperation in Europe” of Article 1 of the Law „On the Republic of Latvia and the Russian Federation Treaty on the State Border of Latvia and Russia” with the Preamble and Article 9 of the Declaration of May 4, 1990 of The Supreme Council of the Republic of Latvia „On Restoration of Independence of the Republic of Latvia” and Compliance of the Treaty of March 27, 2007 of the Republic of Latvia and the Russian Federation of the State Border of Latvia and Russia with Article 3 of the Satversme of the Republic of Latvia: Judgement of the Constitutional Court in case No 2007-10-0102, [http://www.satv.tiesa.gov.lv/upload/judg\\_2007\\_10\\_0102.htm](http://www.satv.tiesa.gov.lv/upload/judg_2007_10_0102.htm) (10.04.2014).

was not yet ratified, i.e., approved by the Saeima<sup>29</sup>. The right to contest the compliance of an international agreement also prior to its approval by the Saeima, which were used in this case, is the only way of exercising *apriori* form of constitutional control, envisaged by the Constitutional Court Law<sup>30</sup>.

The Constitutional Court received the application from the Saeima deputies on 2 May 2007 – after Saeima on 27 April 2007 had adopted in the first reading Draft Law, ratifying border agreement concluded between Latvia and Russia<sup>31</sup>. This application contained a request to suspend the ratification of the border agreement or its approval by the Saeima. The deputies of the Saeima, substantiated their request by pointing out that „a real possibility existed that in the case [...] it would be impossible to enforce the judgement adopted by the Constitutional Court [...]. The border agreement was said to be a special international agreement, and the parties could not denounce it or secede it unilaterally [...]. since the Saeima wants to approve the Border Agreement before the Constitutional Court pronounces its judgement, the Constitutional Court should decide on the possibility of applying temporary adjustment, which would allow effective enforcement of the Court judgement”<sup>32</sup>. Thus, – as to the merits of the request, the Saeima deputies requested suspending the legislation procedure in the Saeima. Or, the Constitutional Court had to answer the question – is it allowed to intervene in the legislation procedure in the Saeima, considering that, „[n]either the Constitution, nor the Constitutional Court

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<sup>29</sup> „68. All international agreements, which settle matters that may be decided by the legislative process, shall require ratification by the *Saeima*.” The Constitution of the Republic of Latvia, <http://saeima.lv/en/legislation/constitution> (10.04.2014).

<sup>30</sup> Constitutional Court of Latvia can adjudicate compliance of international agreements signed or entered into by Latvia (also until the confirmation of the relevant agreements in the Saeima) with the Constitution. Article 16, point 2. Constitutional Court Law, <http://www.satv.tiesa.gov.lv/?lang=2&mid=9> (10.04.2014); See also H. Steinberger, *Models of Constitutional Jurisdiction*. CDL\_STD (1993) 002, p. 5–10, <http://www.venice.coe.int/docs/1993/CDL-STD%281993%29002-e.pdf> (10.04.2014).

<sup>31</sup> In accordance with the Rules of Procedure of the Saeima (article 114, part 2, point 3) 2) only two readings are required for adopting draft laws on the ratification of international agreements. Rules of Procedure of the Saeima, <http://saeima.lv/en/legislation/rules-of-procedure> (10.04.2014).

<sup>32</sup> LR Satversmes tiesas 10.05.2012. lēmums par pieteikuma iesniedzēja lūgumu lietā Nr. 2007-10-0102, 3.p, [http://www.satv.tiesa.gov.lv/upload/2007\\_10\\_0102\\_lasijums.htm](http://www.satv.tiesa.gov.lv/upload/2007_10_0102_lasijums.htm) (10.04.2014).

Law regulates the issue of suspending ratification of an international agreement signed or concluded by Latvia. Neither does the Rules of Procedure of the Constitutional Court provide regulation of this kind<sup>33</sup>.

The Constitutional Court, analysing the Vienna Convention on the Law of Treaties of 23 May 1969, concluded that if the Constitutional Court were to recognise that the Border Agreement, indeed, is incompatible with Article 3 of the Constitution, the enforcement of the Constitutional Court judgement could be threatened. However, simultaneously the Constitutional Court admitted that the ratification of the Border Agreement as such did not hinder the enforcement of the Constitutional Court judgement, since at that moment ensuring the enforcement of the judgement depended upon the actions of other constitutional institutions in the state (for example, the President of the State, who has to implement the Saeima decisions on the ratification of international agreements, which could be done after the Constitutional Court judgement had come into force).

For Latvia, as a democratic state, the division of power is the foundation for its actions. It „manifests itself in division of the state power into legislative, executive and judicial power, which are being realised by independent and autonomous institutions. The above principle guarantees balance and mutual control among them<sup>34</sup>. In accordance with the abovementioned principle, legislative power in Latvia is vested to two subjects: to the *Saeima*, and also to the people<sup>35</sup>. The Constitutional Court, in accordance with the principle of the division of power, is a judicial institution, which ensures „the control of the judiciary over the legislator and the executive power<sup>36</sup>.

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<sup>33</sup> Ibidem, 6.p.

<sup>34</sup> On Conformity of Items 1 and 4 of the Saeima April 29, 1999 Resolution on Telecommunications Tariff Council with Articles 1 and 57 of the Satversme (Constitution) of the Republic of Latvia and Other Laws: Judgement of the Constitutional Court of the Republic of Latvia in case No 03–05 (99), Section 1, <http://www.satv.tiesa.gov.lv/?lang=2&mid=19> (10.04.2014).

<sup>35</sup> „64. The *Saeima*, and also the people, have the right to legislate, in accordance with the procedures, and to the extent, provided for by this Constitution.” The Constitution of the Republic of Latvia, <http://saeima.lv/en/legislation/constitution> (10.04.2014).

<sup>36</sup> On Compliance of the second sentence of Paragraph 7 and Paragraph 17 of the Transitional Provisions of the Law „On Judicial Power” (in the wording of 14 November, 2008 of the Law) to Articles 1, 83 and 107 of the Satversme of the Republic of Latvia: Judgement of

At the same time, the Constitutional Court does not have unlimited rights. Article 85 of the Constitution defines the competence of the Constitutional Court, providing that „the Constitutional Court, on the basis of legal norms settles specific disputations on the compliance of legal norms with the norms of higher legal force in a process”<sup>37</sup> Thus– the Constitutional Court examines specific disputes or acts as negative legislator. „The Constitutional Court, in accordance with Article 85 of the Constitution, may only verify the constitutionality of the laws adopted by the Saeima, but can not decree, what kind of laws should be reviewed by the Saeima and when these should be adopted”<sup>38</sup>. Thus, the Constitutional Court concluded „[a]biding by the principle of the division of power, the Constitutional Court has no right to suspend the procedure of adopting a law in the Saeima”<sup>39</sup>.

The Saeima itself had the right, which was not exercised in this case, to suspend the legislation procedure or ratification of an international agreement. The decision of the Saeima– not to suspend the legislation procedure was, undoubtedly, a political decision. The Saeima is entrusted with policy making, however, knowing that the Constitutional Court is hearing a case, pertaining to the constitutionality of the decision adopted by the Saeima, and that the Court decision could leave an impact in the international community, it would have been the duty of the Saeima to suspend the legislation procedure. Legal acts do not provide that in case of preventive constitutional control the procedure of ratifying international agreements should be suspended, however, this obligation follows from the principle of cooperation and respect among institutions realising power. After all, the aim of institutions realising the function of power is to ensure functioning of Latvia as a law-based state.

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the Constitutional Court of the Republic of Latvia in case No 2009-11-01, section 5, [http://www.satv.tiesa.gov.lv/upload/judg\\_2009\\_11.htm](http://www.satv.tiesa.gov.lv/upload/judg_2009_11.htm) (10.04.2014).

<sup>37</sup> On the Compliance of Section 1, Paragraph 1; Section 4, Paragraph 1; Section 6, Paragraph 3; Section 22 and Section 50 of the Office of the Prosecutor Law with Sections 1, 58, 82, 86 and 90 of the Republic of Latvia Satversme: Judgement of the Constitutional Court of the Republic of Latvia in case No 2006-12-01, Section 9.2, [http://www.satv.tiesa.gov.lv/upload/judg\\_2006-12-01.htm](http://www.satv.tiesa.gov.lv/upload/judg_2006-12-01.htm) (10.04.2014).

<sup>38</sup> LR Satversmes tiesas 10.05.2012. lēmums par pieteikuma iesniedzēja lūgumu lietā Nr. 2007-10-0102, 10.p, [http://www.satv.tiesa.gov.lv/upload/2007\\_10\\_0102\\_lasijums.htm](http://www.satv.tiesa.gov.lv/upload/2007_10_0102_lasijums.htm) (10.04.2014).

<sup>39</sup> Ibidem.

According to Article 65 of the Constitution, one-tenth of the electorate may submit draft laws to the Saeima<sup>40</sup>. At the end of 2011 the Central Election Commission collected signatures of 187 378 electors or 12.14 percent of the citizens with the right to vote of the last Saeima election regarding draft law „Amendments to the Constitution of Latvia”<sup>41</sup>. This draft law envisaged provisions for Russian language as the second state language<sup>42</sup>. Even though society and the political elite doubted, whether the necessary number of signatures would be collected, in accordance with Article 78 of the Constitution the law „Amendments to the Constitution of the Republic of Latvia” was submitted to the President of the State, who submitted it for reviewing to the Parliament. On 22 December 2011 the Saeima rejected the amendments to the Constitution submitted by the electors<sup>43</sup>. Consequently, the law „Amendments to the Constitution of the Republic of Latvia” had to be submitted for a referendum, since, in accordance with Article 78 of the Constitution, if the Saeima does not adopt without amendments as to the content a draft law submitted by the people, it must be submitted for national referendum<sup>44</sup>. National referendum on the adoption of the aforementioned draft law was held on 18 February 2012<sup>45</sup>.

<sup>40</sup> „65. Draft laws may be submitted to the *Saeima* by the President, the Cabinet or committees of the *Saeima*, by not less than five members of the *Saeima*, or, in accordance with the procedures and in the cases provided for in this Constitution, by one-tenth of the electorate.” The Constitution of the Republic of Latvia, <http://saeima.lv/en/legislation/constitution> (10.04.2014).

<sup>41</sup> Collection of signatures for amendments to the Constitution of the Republic of Latvia will take place from 1 till 30 November, <http://web.cvk.lv/pub/public/30189.html> (10.04.2014).

<sup>42</sup> The Draft Law „Amendments to the Constitution of the Republic of Latvia” <http://web.cvk.lv/pub/public/30190.html> (10.04.2014).

<sup>43</sup> Latvijas Republikas 11.Saeimas rudens sesijas sešpadsmitā (ārkārtas) sēde 2011.gada 22. decembrī, <http://saeima.lv/lv/transcripts/view/99> (10.04.2014).

<sup>44</sup> „78. Electors, in number comprising not less than one tenth of the electorate, have the right to submit a fully elaborated draft of an amendment to the Constitution or of a law to the President, who shall present it to the *Saeima*. If the *Saeima* does not adopt it without change as to its content, it shall then be submitted to national referendum.” The Constitution of the Republic of Latvia, <http://saeima.lv/en/legislation/constitution> (10.04.2014).

<sup>45</sup> The referendum results showed that 273,347 voters cast their votes for adopting of the amendments to the Constitution, while 821,722 voters were against the amendments to the Constitution. Article 79 of the Constitution of the Republic of Latvia stipulates that

The question put for the national referendum was, seemingly, about „regular” amendments to the Constitution, however, in this case the amendments concerned a very significant issue– the state language and possibilities to retain Latvian as the only state language. Society had divergent opinions on granting the state language status to Russian language, discussions even started in Latvia, whether Article 4<sup>46</sup> of the Constitution could be amended at all. Likewise, the President of the State, submitting to the Saeima the draft law elaborated by people, explained that „defining Russian language as the second state language would mean renunciation of Latvia as a nation state and colluding with the core of the Constitution, the ideas upon which the Republic of Latvia was founded and its independence restored”<sup>47</sup>. At the same time the President of the State pointed out that „Article 78 of the Constitution of the Republic does not grant a choice to the President of the State to submit or not to submit to the Saeima a draft law initiated by electorate. By fulfilling the duty set out in this Article, I submit the draft law to Saeima for deciding, however, I believe that a constitutional assessment is needed, whether reviewing such draft laws should be admissible”<sup>48</sup>.

The author considers that the President of the State had the right to at least delay submitting the draft law to Saeima, thus gaining time for its assessment, since no legal act sets a term for this action. Likewise, the President of the State, believing that the draft law was incompatible with the core of

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amendments to the Constitution submitted to a referendum, shall be adopted, if at least one-half of those who have the right to vote have declared themselves in their favour. According to information from the Population Register of the Office of Citizenship and Migration Affairs there were 1,545,004 citizens of Latvia having the right to vote on 18 February 2012. Therefore the results of the referendum show that the amendments to the Constitutions were not supported since the number of votes „For” received in the referendum was less than 772,502 or one-half of voters who have the right to vote. See Referendum on the Draft Law „Amendments to the Constitution of the Republic of Latvia”, <http://web.cvk.lv/pub/public/30287.html> (10.04.2014).

<sup>46</sup> „4. The Latvian language is the official language in the Republic of Latvia. The national flag of Latvia shall be red with a band of white.” The Constitution of the Republic of Latvia, <http://saeima.lv/en/legislation/constitution> (10.04.2014).

<sup>47</sup> Valsts Prezidenta 2011. Gada 20. Decembra vēstule Nr. 261 LR Saeimas priekšsēdētājam S. Āboltiņai, <http://www.president.lv/images/modules/items/PDF/likumdosanas-iniciativa20122011.pdf> (10.04.2014).

<sup>48</sup> Ibidem.

the Constitution, essence of the state, could decide notto submit the draft law to the Saeima. The President's decision could be subsequently contested at the Constitutional Court<sup>49</sup>. Since the President of the State did not use these possibilities, the political elite was looking for ways to suspend the national referendum. Therefore prior to the national referendum, on 12 January 2012 deputies of the Saeima submitted an application to the Constitutional Court contesting the compatibility of a provision in „Law on National Referendums and Legislative Initiatives”, the President's of the State decision and the opinion of the Presidium of Saeima with constitutional provisions<sup>50</sup>. However, the most interesting aspect in this issue under consideration was the fact that the applicants requested to apply temporary adjustment also in this case, i.e., to suspend the national referendum on the draft law „Amendments to the Constitution of the Republic of Latvia”. On 20 January 2012 the Constitutional Court decided on initiating the case, and during its assignment meeting also examined the question, whether the Constitutional Court has the right to suspend the national referendum procedure<sup>51</sup>.

The Constitutional Court in its assignment meeting, deciding, whether to suspend the national referendum or not– similarly as in the „border agreement case”, concluded that this issue was an unregulated procedural issue, on which the Constitutional Court should decide. The Constitutional Court in its decision analysed, whether the arguments included in the application were sufficient for satisfying it, by identifying, whether the enforcement of the Constitutional Court judgement in the future could be threatened or become impossible. The decision of the assignment meeting, inter alia, points out that „the Constitution does not grant to the Constitutional Court the right to interfere with the legislation procedure”<sup>52</sup>. It must be explained that the nation-

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<sup>49</sup> Constitutional Court can review also compliance of other acts of the Saeima, the Cabinet, the President, the Speaker of the Saeima and the Prime Minister, except for administrative acts, with law. Article 16, point 4. Constitutional Court Law, <http://www.satv.tiesa.gov.lv/?lang=2&mid=9> (10.04.2014).

<sup>50</sup> Pieteikums Nr. 5/2012. Nepublicēts.

<sup>51</sup> Par lietas ierosināšanu un lūgumu sasaukt Satversmes tiesas rīcības sēdi: LR Satversmes tiesas 2. Kolēģijas 20.01.2012. lēmums, [http://www.satv.tiesa.gov.lv/upload/2012\\_5\\_ierosin\\_deputati\\_tautas\\_nobalsosana.pdf](http://www.satv.tiesa.gov.lv/upload/2012_5_ierosin_deputati_tautas_nobalsosana.pdf) (10.04.2014).

<sup>52</sup> LR Satversmes tiesas rīcības sēdes 20.01.2012. lēmums lietā Nr. 2012-03-01, 8.p, [http://www.satv.tiesa.gov.lv/upload/2012-03-01\\_ricibas\\_sedes\\_lemums.pdf](http://www.satv.tiesa.gov.lv/upload/2012-03-01_ricibas_sedes_lemums.pdf) (10.04.2014).



al referendum, which took place, in this case was implementation of the legislation procedure, as defined in the Constitution. However, the assignment meeting also concluded that „application [...] does not provide significant arguments, substantiating the application of temporary adjustment prior to hearing Case No. 2012–03–01 as to its merits. Thus the Constitutional Court has no grounds to suspend [...] the announced national referendum on the draft law „Amendments to the Constitution of the Republic of Latvia”<sup>53</sup>.

The author assesses the decision of the Constitutional Court as contradictory. The Constitutional Court has indicated that it could not interfere with legislation procedure, however, at the same time the Constitutional Court did not point out that it had no right to suspend the national referendum, but that in this case important arguments for suspending the national referendum were not provided. I.e., the Constitutional Court did not have sufficient grounds for suspending the national referendum. Thus– this decision significantly differs from the previous decision in the „border agreement case”. In one case (the border agreement case) it was decided that the Constitutional Court has no right to interfere with the legislation procedure, but in the latter (the national referendum case), the Constitutional Court allowed a possibility of suspending the national referendum– i.e., the legislation procedure. This leads to the question– how does this conclusion comply with the principle of the division of power, recognised by the Constitutional Court itself? The question also arises about the rights of the sovereign, i.e., the nation, to decide issues in a referendum. The legislation procedure, which was covered in this specific case, in Latvia is regulated by the Constitution and the Rules of Procedure of the Saeima. None of the abovementioned legal acts envisages the right of the judicial power – the right of the Constitutional Court– to influence and determine the legislation procedure. If the legislator would want to grant such right to the Constitutional Court– to suspend legislation procedure, it should be clearly defined in appropriate legal regulation – first of all in the Constitution. The Constitutional Court should act as the negative legislator and should verify the constitutionality of the adopted laws, but should not regulate and define adoption of laws.

The Constitutional Court should retain its right to exclusive constitutional control, leaving the legislative functions to the Saeima and the people.

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<sup>53</sup> Ibidem.

Each institution should fulfil functions set out for it. Moreover, it is important for every institution to maintain and safeguard its independence, the basis for its functioning. Inter alia, the Constitutional Court should be able to safeguard its right to administer justice, abiding by the principles that were the basis for its establishment, including the principle of the division of power.

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