



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

---

Riga, June 5, 2003

## JUDGMENT in the name of the Republic of Latvia

in case No. 2003-02-0106

The Constitutional Court of the Republic of Latvia in the body of the Chairman of the Court session Aivars Endziņš, justices Juris Jelāgins, Romāns Apsītis, Ilma Čepāne, Andrejs Lepse, Ilze Skultāne and Anita Ušacka pursuant to Article 85 of the Republic of Latvia Satversme (Constitution), Articles 16 (Items 1 and 6), 17 (the first part of Item 3) and 28<sup>1</sup> on the basis of the constitutional claim by twenty four deputies of the 8<sup>th</sup>. Saeima – Boriss Cilēvičs, Jānis Jurkāns, Jānis Urbanovičs, Nikolajs Kabanovs, Pāvels Maksimovs, Ivans Ribakovs, Dainis Turlais, Valērijs Karpuškins, Vladimirs Buzajevs, Anatolijs Mackevičs, Andris Tolmačovs, Sergejs Fjodorovs, Vjačeslavs Stepaņenko, Martijans Bekasovs, Aleksejs Vidauvskis, Oļegs Deņisovs, Aleksandrs Golubovs, Juris Sokolovskis, Valērijs Agešins, Jakovs Pliners, Vitālijs Orlovs, Andrejs Aleksejevs, Andrejs Klementjevs and Aleksandrs Bartaševičs holding the proceedings in writing reviewed the case

**”On the Compliance of Article 19 (the Fifth Part) of the Radio and Television Law with Articles 89, 91, 100 and 114 of the Republic of Latvia Satversme (Constitution) as well as with Articles 10 and 14 (Read together with Article 10) of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Articles 19 and 27 of the International Covenant on Civil and Political Rights”.**

### The establishing part

1. On August 24, 1995 the Republic of Latvia Saeima passed the Radio and Television Law. The Law determines the procedure of formation, registering, operation and supervision of the electronic mass media, existing under the Republic of Latvia jurisdiction.

Chapter III of the Law incorporates the provisions for program development and broadcasting, including the provisions on the language of a program. Initially the fifth part of Article 19 of the Radio and Television Law established that the proportion of a broadcaster's foreign languages programs shall not exceed 30 per cent of the total air time per month. On October 30, 1997 the Saeima amended the above part of the Article and determined that the proportion of a broadcaster's foreign languages programs shall not exceed 30 per cent of the total air time per twenty four hours.

On October 29, 1998 the Saeima adopted the Law by which the fifth part of Article 19 of the Radio and Television Law were amended again and the new wording is in effect since November 28, 1998. It determines: " the proportion of foreign languages programs created by a broadcasting organization shall not exceed 25 per cent of the total air time per twenty four hours".

By May 4, 1990 Supreme Council Declaration "On the Accession of the Republic of Latvia to International Instruments on Issues of Human Rights" the Republic of Latvia acceded to UNO December 16, 1966 International Covenant on Civil and Political Rights (henceforth – the Covenant). In the Republic of Latvia the Covenant entered into force on July 14, 1992.

Article 19 of the Covenant establishes that everyone shall have the right to hold opinions without interference. The Article explains that this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. The right may be subject to certain restrictions, but " these shall only be such as are provided by law and are necessary: (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order, or of public health or morals".

In its turn Article 27 of the Covenant determines that in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture or to use their own language.

On June 4, 1997 the Republic of Latvia Saeima ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms (henceforth – the Convention). In the Republic of Latvia it is in effect since June 13, 1997.

Like the Covenant, the Convention determines the right of everyone to freedom of expression, including the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers (Article 10). It includes also the pretext that this Article "shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises".

Article 10 (the second part of it) enumerates the legitimate objectives because of which implementation of the freedom of expression may be subject to restrictions. It envisages that the restrictions shall be prescribed by law as they are necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

In its turn Article 14 of the Convention determines that the enjoyment of the rights and freedoms set forth in this Convention, including the right to freedom of expression shall be secured without discrimination on any ground (also language or association with a national minority).

2. **Submitters of the claim** – twenty four deputies of the Saeima – request to evaluate the conformity of the challenged legal norm with:
- 1) Articles 89, 91, 100 and 114 of the Republic of Latvia Satversme (henceforth – the Satversme);
  - 2) Articles 10 and 14 (read together with Article 10) of the Convention;
  - 3) Articles 19 and 27 of the Covenant.

The applicants request to declare the challenged norm null and void as from the moment of its acceptance.

They point out that all the private broadcasting organizations, which have been created in Latvia, are subject to the provision on 25 per cent limitation, thus one may conclude that the challenged norm denies the right of forming private organizations , broadcasting programs in minority languages. To their mind it discriminates the subjects of private rights on the ground of language and thus it essentially restricts the right of a person to receive and impart information in the minority language.

In their application the submitters point out that Article 100 of the Satversme determines the right of every person to freedom of expression, which includes the right to freely receive, keep and distribute information, also including the right of a person of an ethnic minority to freedom of expression. Besides, Article 91 of the

Satversme determines that human rights shall be realized without discrimination of any kind. The right to freedom of expression has been determined also in Article 10 of the Convention and Article 19 of the Covenant, in its turn Article 14 of the Convention establishes that the right to freedom of expression shall be secured without discrimination.

The applicants stress that persons, who belong to ethnic minorities have the right to preserve and develop their language (Article 114 of the Satversme). Besides, protection of the rights of ethnic minorities is determined also in Article 27 of the Covenant.

3. **The Saeima** in its written reply to the Constitutional Court points out that restrictions, established in the challenged norm, are not at variance with Articles 89, 91, 100 and 114 of the Satversme, Articles 10 and 14 (read together with Article 10) of the Convention and Articles 19 and 27 of the Covenant. The Saeima requests to declare the claim as ungrounded and dismiss it. The viewpoint that the first part of Article 10 of the Convention does not limit the right of the State to require the licensing of broadcasting, television or cinema enterprises is expressed in the written reply therefore the Convention envisages that the state may subject broadcasting rights to certain provisions.

The Saeima substantiates its viewpoint with the probation of proportionality, namely, the state experiences the right of restricting rights, if the restrictions have been provided for by law, if the restrictions have a legitimate aim and if the necessity for the restrictions in the democratic society is determined. When evaluating several Judgments of the European Court of Human Rights, the Saeima has concluded that the States have the right of determining restrictions to broadcasting and not granting licenses to organizations, which do not meet the requirements incorporated into the laws.

It is stressed in the written reply that the legitimate aim of the challenged norm has been to secure using the Latvian language as the State language in the public sphere. To substantiate its viewpoint, the Saeima uses also historical arguments, namely, when debating on the challenged norm, it was stressed that the main objective of the norm is to secure that the broadcasting organizations, which are broadcasting in Latvia, respect the state language but at the same time to give them the possibility of broadcasting in another language as well. The challenged norm does not deny the possibility for ethnic minorities to form broadcasting organizations, but serves for ensuring the situation when the transmissions are broadcasted in both - the language of the ethnic minority and the state language. The Saeima points out that in accordance with the Language Law any other language (with an

exception of the Liiv language) used is considered to be the foreign language. Thus the challenged norm refers not only to languages of ethnic minorities but also to any foreign language, therefore the challenged norm is not discriminating with regard to the ethnic minorities as the restriction concerns any foreign language.

In the written reply it is pointed out that the legal norms on the right of persons of ethnic minorities to preserve and develop their language, enshrined in Article 114 of the Satversme and Article 27 of the Covenant, do not assign the State the obligation of guaranteeing unlimited use of the language of ethnic minorities in the public sector. To their mind the State has the duty of securing that the above right is implemented and protected against violation.

### **The concluding part**

1. Freedom of expression belongs to the so-called human rights of the first generation and is considered to be one of the most essential fundamental human rights. It – more than any other of the human rights- symbolizes the mutual dependence of civil and political rights as the freedom of expression belongs to both – civil and political rights.

Freedom of expression embraces a wide sector and includes two aspects: private and public. The private aspect of freedom of expression means that every person has the right to hold private views and the right to adhere as well as to voice them. Freedom of expression is one of the essential preconditions for the creation of the society, which is based on mutual respect. Thus the right to freedom of expression is closely connected with such important rights as the right of a person to private life, which envisages protection against any interference (*see Manfred Nowak. UN Covenant on Civil and Political Rights. CCPR Commentary. Publisher N.P.Engel, Kehl, Strasbourg, Arlington, 1993, p. 336*).

In its turn the public aspect of freedom of expression refers to the right of everyone to freely receive information and voice his/her views in any way- orally, in a written form, visually, with the help of artistic means etc. Mass media – radio and television are also the means of receiving and imparting information.

The European Court of Human Rights in its Judgment "*Autronic AG v. Switzerland*" has concluded that Article 10 of the Convention refers to "everyone" i.e. physical and legal entity. Besides the Court has repeatedly concluded that the above Article shall be applied also to commercial corporations (*see the European Court of Human Rights October 24, 1991 Judgment in case "Sunday Times v. the United*

*Kingdom*”; February 22, 1990 Judgment in case “*Groppera Radio AG and Others v. Switzerland*”; October 25, 1989 Judgment in case “*Markt Intern Verlag GmbH and Claus Berman v. the Federal Republic of Germany*”; April 1, 1989 Judgment in case “*Autronic AG v. Switzerland*”).

The first sentence of the Satversme Article 100 determines that “everyone has the right to freedom of expression, which includes the right to freely receive, keep and distribute information and to express their views.” The content of this Satversme Article is close to Article 19 of the Covenant and Article 10 of the Convention.

Article 100 of the Satversme is formulated laconically. It determines the right of everybody to freedom of expression but does not specify the ways of realization of it. The Satversme, *expressis verbis*, does not envisage freedom of press (mass media). The term “freedom of press” is formulated in the Law “On Press and other Mass Media”, Article 1 of which determines that “in the Republic of Latvia any person, any group of persons, governmental authority, entrepreneurial institutions and organizations have the right of freely expressing their views and opinions and distribute information in press and other mass media, receiving through them information on any issue it is interested in or on public life”.

The most complete formulation of the term “freedom of expression” can be found in Article 19 of the Covenant: “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice”. The same follows also from Article 10 of the Convention and the analyses of the conclusions stated in the Judgments of the European Court of Human Rights.

**Thus the term “freedom of expression”, which is incorporated into Article 100 of the Satversme, includes also the notion “freedom of press”.**

Even though the right to freedom of expression is considered to be one of the most essential human rights, as it affects all the other human rights, it is not absolute. Both – the Satversme and the above international instruments on human rights allow restrictions to the right. The Convention and the Covenant include an extended list of the permissible restrictions. The legal literature stresses that the State may determine restrictions to freedom of expression in cases when the right of the persons to freedom of expression may affect rights of other

persons as well as in cases when freedom of expression creates clear and direct threat to the society (*see Manfred Nowak, p.337*).

The Constitutional Court in several of its Judgments , e.g. April 23, 2003 Judgment in case No. 2002-20-0103; September 23, 2002 Judgment in case No. 2002-08-01; August 30, 2000 Judgment in case No. 2000-03-01, has concluded that in certain circumstances the state experiences the right of restricting fundamental rights, guaranteed by the Satversme. Fundamental rights may be subject to restrictions in circumstances provided for by the Satversme in order to protect vital public interests and if the principle of proportionality is observed.

It means that restriction of the right to freedom of expression shall comply with the following requirements:

- a) it shall be determined by law;
  - b) it shall be justified by a legitimate aim, which the State wants to reach when determining the restriction;
  - c) it shall be proportional to the aim.
2. As the challenged legal norm, which includes the restriction to the fundamental human right, has been determined by the Law , passed at the Saeima and which has been published in accordance with the procedure, determined by law and is valid, the Court holds that there is no doubt that the restrictions have been determined by law.
  3. Article 116 of the Satversme establishes that freedom of expression may be subject to restrictions in circumstances provided for by law in order to reach any of the envisaged legitimate aims – to protect the rights of other people, the democratic structure of the State, public safety, welfare and morals.

The Saeima in its written reply points out that the legitimate aim of the challenged norm has been increase of influence of the Latvian language in the Latvian cultural environment and advancement of public integration.

To ascertain whether the challenged norm, which determines the scope of usage of foreign languages, has a legitimate aim, one has to take into consideration several facts. For example, the fact that Article 4 of the Satversme establishes that the Latvian language is the official language in the Republic of Latvia; that the status of the State language has been fixed in the Satversme only recently – on October 15, 1998; that from 1940 till 1990 because of historical circumstances usage of the Latvian language had noticeably decreased; that at the moment it is of the utmost importance to protect the Latvian language and further its development.

One of the legitimate aims, determined by Article 116 of the Satversme, which permits restriction to the right to freedom of expression, is public welfare. Side by side with the aspects of material welfare, the notion "public welfare" includes also non-material aspects, which are necessary for functioning of the harmonious society. "Activity of the State to secure public dominance of the Latvian language" may be considered as one of the non-material aspects (*Levits E. The Main Issues of Approximation of Human Rights in Latvia// Human Rights in the World and in Latvia. Riga, 2000, p.287*).

Increase of the influence of the Latvian language will further the process of public integration and secure harmonious functioning of the society, and that is an essential precondition of public welfare.

The Constitutional Court has already earlier concluded that "limitation of the usage sectors of the Latvian language as the State language in the State territory shall be regarded as the threat to the democratic system and thus – the private life of the applicant is limited to protect the right of other inhabitants of Latvia to use the Latvian language freely in the entire territory of Latvia and to protect the democratic state system" (*see the Constitutional Court December 21, 2001 Judgment in case No. 2001-04-0103*).

**Thus the text on the restriction of freedom of expression, included in the challenged norm, has legitimate aims.**

4. In compliance with Article 4 of the Satversme, the Latvian language is the official language in the Republic of Latvia. Article 16 of the State Language Law establishes that "the language of mass media broadcasts is determined by the "Radio and Television Law"". The fifth part of Article 19 of the Radio and Television Law includes the challenged norm, which determines that the proportion of a broadcaster's foreign languages programs shall not exceed 25 per cent of the total air time per twenty four hours. In its turn, in accordance with Article 5 of the Language Law "any other language, besides the Liv language, used within the Republic of Latvia, must be regarded as a foreign language". And the sense of the term "a foreign language" shall be applied also to the challenged norm.

To evaluate whether the limitations of freedom of press, incorporated into the challenged norm, are necessary in a democratic society and may be used as the means for reaching the legitimate aim, one has to elucidate if the borderline of the essence of human rights has not been violated. It means that one has to check whether the limitations are socially needed and proportionate.



- 4.1. Anyone has the right of being engaged in commercial activity, also the right of forming commercial broadcasting organizations. One of the essential factors of the existence of broadcasting organizations is the possibility of selling advertising time. At the present moment the challenged norm forbids the commercial broadcasting organizations to include in their programs advertisements in foreign languages to the degree that their existence shall not be threatened because of financial reasons. At the same time limitations do not refer to cable television, satellite television, satellite radio and press – the publishing mass media.

The Saeima has amended the challenged norm three times, each time decreasing the air time limit of broadcasting the programs in foreign languages. From the verbatim reports of the Saeima it can be seen that both – at the time of passing the Law in 1995 and later, when there was a heated debate on the amendments to the challenged norm the viewpoint of the Saeima deputies has been different.

Already on June 14, 1995 when the Radio and Television Law was reviewed in its second reading, the deputy Ilga Kreituse expressed the viewpoint that ” the state radio shall be separated from the private organizations... if we think about the private radio, about the private broadcasting organizations, we have to remember that they are private, existing on money of their own and by limiting their air time we come into conflict with the relations of the free market (*Verbatim Report of the Saeima June 14, 1995 Session*).

Implementation of the challenged norm has neither furthered more extensive use of the State language nor advanced the process of integration. The results of the research, attached to the materials of the case, prove that if – because of language restrictions - the residents cannot use the services of the local broadcasting organizations, they choose the services of broadcasting organizations of other states, most of all – the Russian television channels. When compared with the 1997 data, in 2000 the audience (of non-citizens) of the Russian television channels has greatly increased, as three fourths of the non-citizens regularly watch the Russian television programs (*see materials of the case, page 258*).

**Thus the limitation to the use of language, included in the challenged norm, cannot be regarded as socially needed in the democratic society.**

- 4.2. In 2003 the National Radio and Television Council (henceforth – the Council), which supervises the mass media operations in the Republic of Latvia has elaborated the National Conception on the Advancement of the Latvian Electronic Mass media for 2003 – 2005. Inter alia the Council asks to pay attention to the fact that the discussion on furthering attraction of foreigners' audience to the information space of Latvia is needed. In the elaborated Conception the Council points out that it is necessary to evaluate the restriction of the right to freedom of expression, incorporated into the fifth part of Article 19 of the Radio and Television Law and states that the amendment to the Article shall be worked out.

The Council holds that solution of this issue will become topical because of two reasons: 1) several broadcasting organizations have drawn the attention of the Council to the fact that the limitations of the use of foreign languages prevent the development of radio and television organizations; 2) the potential ratification of the European Council General Convention for the Protection of National Minorities at the 8<sup>th</sup>. Saeima will be at variance with the Radio and Television Law: Article 9 of the above Convention envisages the right of the minorities to receive and impart information and ideas in the language of the minority without any interference of the state institutions. And that is at variance with the restrictions, included in the fifth part of Article 19 of the Radio and Television Law.

Thus the theses, included in the National Conception confirm that the Council is of the opinion that the challenged norm has to be amended and the disproportionate restrictions on usage of foreign languages shall be eliminated.

The first part of Article 10 of the Convention does not prohibit the state to envisage licensing of radio and television broadcasting. The European Court of Human Rights in its Judgment "*Radio ABC v. Austria*" has acknowledged that "its aim has been to explain that the state is allowed by licensing to regulate the procedure of radio broadcasting in its territory, mainly the technical aspects of broadcasting. Technical aspects are of importance but the decision to grant the license or refusal to do so may be based on other considerations, like the nature and objectives of the broadcasting organization, its potential audience in the national, regional or local level, the right to specific audience and the liabilities following from the international instruments" (*the European Court of Human Rights October 20, 1997 Judgment in case "Radio ABC v. Austria*).

**Thus the process of licensing radio and television broadcasting incorporates different aspects.**

Granting radio and television broadcasting licenses shall not create disproportionate restrictions to fundamental human rights; inter alia also to freedom of expression. To secure enlargement of sphere of influence of the Latvian language in the electronic mass media, only such means, which comply with this requirement, shall be used. For example, one of the criteria for granting broadcasting licenses to the private broadcasting organizations might be the number of the companies, broadcasting in foreign languages, their offering to broadcast programs, which further public integration as well as other criteria.

The former Estonian Minister of National Affairs has pointed out that the companies, broadcasting programs in foreign languages, have stimulated the process of integration in Estonia. By including in their programs diverse information they have given versatile insight into the integration processes. Besides, the programs of the above broadcasting organizations have served as the platform for discussions of integration issues (*see Katrina Saksa. Public Broadcasting Organizations and Public Integration in Estonia//www.politika.lv, 25.11.2002*).

It testifies that there exists the possibility of reaching the advanced aim by other means, which limit the rights of a person in a lesser degree.

**Thus we may conclude that the language use restrictions, which are incorporated into the challenged norm cannot be regarded as necessary and proportionate in the democratic society .**

5. As the challenged norm is unconfirmable with one of the Satversme Articles, i.e., Article 100, there is no need to evaluate the compliance of it with other Satversme Articles – 89, 91 and 114.

### **The substantive part**

On the basis of Articles 30 -32 of the Constitutional Court Law, the Constitutional Court decided:

**to declare the fifth part of Article 19 of the Radio and Television Law as unconfirmable with the Republic of Latvia Satversme Article 100 and null and void as of the day of the publication of the Judgment.**

The Judgment takes effect as of the moment of its publication. The Judgment is final and allowing of no appeal.

The Chairman of the Court session

Aivars Endziņš