doi:10.25143/prom-rsu_2016-08_dt

Rīgas Stradiņa universitāte

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THE ROLE OF THE EUROPEAN COURT OF HUMAN RIGHTS IN ENSURING THE RIGHT TO A FAIR TRIAL WITH THE REPUBLIC OF LATVIA AND REPUBLIC OF FINLAND AS AN EXAMPLE

Doctoral Thesis
to obtaining the degree of the Doctor of Law
Speciality: Law
Subfield: International Law

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The thesis was elaborated with the financial support under the ESF project of "Support for the Acquisition of Doctoral Study Programmes and Scientific Degree at Rīga Stradiņš University", agreement Nr. 2009/0147/1DP/1.1.2.1.2./09/IPIA/VIAA/009.

Rīga, 2016

ANNOTATION

The aim of the doctoral thesis "The role of the European Court of Human Rights in ensuring the right to a fair trial with the Republic of Latvia and Republic of Finland as an example" is a comparative analysis and study of the values of the European Convention and the role of the European Court of Human Rights to ensure the right to a fair trial in the Republic of Latvia and the Republic of Finland.

Key words: Jurisprudence, human rights, the right to a fair trial, international legal standards, constitutional and international control mechanisms.

The author made a comparative analysis of international and national legislations of the Latvian Republic and the Republic of Finland, judicial practice, study of findings and the basis of decision by the Constitutional Court as well as the three Departments of the Supreme Court of Republic of Latvia, the Supreme Court and the Supreme Administrative Court of Republic of Finland, author proposes new theoretical ideas and particular proposals to amend the national legislation.

Structure of the thesis is created on the basis of logic, aims and objectives of the conducted study.

The structure of the Doctoral thesis is defined by the object and subject, with the targets and missions, consisting of four chapters, which include eighteen paragraphs, conclusions, appendices and bibliography for the sources as well as interviews with the Judges of European Court of Human Rights and Constitutional Court of Republic of Latvia.

In the first chapter, the author examines the essence of the assignment, the historical emergence of human rights and freedoms, assessing the role and the legal meaning of the Constitution in the national legal system.

The second chapter examines the influence of European Convention on Human Rights and the role of the ECHR in the courts of Republic of Latvia and the Republic of Finland.

The third chapter analyses international legal standards in the national legal system.

In the fourth chapter the author examines the guarantees of a fair trial in the national courts of the Republic of Finland.

In the concluding part author gives a comparative picture of the national judicature and the enforcement of ECHR judgments in Latvia and Finland and puts forward some practical recommendations for discussion and approbation.

The undertaken study has shown that despite the considerable differences between the national legal systems of the Republic of Latvia and the Republic of Finland, both systems use a statutory method of implementation of the international norms into the legal system, thus enforcing the right to fair judicial trial.

The Doctoral thesis consists of 200 pages, 490 used sources of information.

ANOTĀCIJA

Promocijas darbs "Eiropas Cilvēktiesību tiesas loma tiesību uz taisnīgu lietas izskatīšanu tiesā nodrošināšanā: Latvijas Republikas un Somijas Republikas pieredze" ir veltīts abu valstu tiesību aktu, tiesību doktrīnu un tiesu prakses izpētei nozīmīgā cilvēktiesību garantēšanas jautājumā.

Promocijas darba mērķis ir veikt Eiropas Cilvēktiesību konvencijas un Eiropas Cilvēktiesību tiesas lomas izvērtēšanu tiesību uz taisnīgu lietas izskatīšanu garantēšanā Latvijas Republikas un Somijas Republikas tiesās.

Atslēgvārdi: tiesvedība, cilvēktiesības, tiesības uz taisnīgu lietas izskatīšanu tiesā, starptautiskie standarti, konstitucionālā un starptautiskā kontrole.

Autors ir veicis Latvijas Republikas un Somijas Republikas tiesību aktu, tiesību doktrīnu, tiesu prakses, Latvijas Republikas Satversmes tiesas un Augstākās tiesas, kā arī Somijas Republikas Augstākās tiesas un Augstākās Administratīvās tiesas nolēmumu salīdzināšanu un apjomīgu un sistēmisku to analīzi, kas bija par pamatu inovatīvu zinātnisku atziņu paušanai un priekšlikumu izteikšanai tiesību aktu un tiesu prakses pilnveidošanai.

Darba struktūru nosaka tā izstrādes mērķis un uzdevumi, pētījuma objekts un priekšmets. Promocijas darbs sastāv no ievada, četrām nodaļām, kuras iedalītas 18 apakšnodaļās, nobeiguma, literatūras un avotu saraksta, anotācijām. Darbam pievienoti pielikumi, kuri atspoguļo ekspertu aptauju rezultātus.

Pirmajā nodaļā autors noskaidro pētījuma mērķi un uzdevumus, analizē personas tiesību un brīvību evolūcijas vēsturi, īpaši akcentējot Konstitūcijas vietu un lomu nacionālajā tiesību sistēmā.

Otrajā nodaļā tiek analizēta Eiropas Cilvēktiesību un pamatbrīvību aizsardzības konvencijas un Eiropas Cilvēktiesību tiesas loma nolēmumu pieņemšanā Latvijas Republikas un Somijas Republikas tiesās.

Trešajā nodaļā tiek analizēta starptautisko standartu ietekme uz Latvijas Republikas un Somijas Republikas nacionālajām tiesību sistēmām un tiesu praksi.

Ceturtajā nodaļā autors aplūko tiesību uz taisnīgu lietas izskatīšanu tiesā nodrošināšanu Somijas Republikas tiesās.

Promocijas darba nobeiguma daļā autors salīdzina Eiropas Cilvēktiesību tiesas nolēmumu izpildi Latvijas Republikā un Somijas Republikā, formulē secinājumus un izvirza konkrētus priekšlikumus tiesību aktu un tiesu prakses pilnveidošanai Latvijas Republikā un Somijas Republikā.

Autora veiktais pētījums pārliecinoši demonstrē, ka, neskatoties uz Latvijas Republikas un Somijas Republikas nacionālo tiesību sistēmu atšķirībām, abās valstīs starptautisko tiesību normu implementācijai nacionālajā tiesību sistēmā ir normatīvs raksturs, dominējošā loma pieder Latvijas Republikas Satversmei un Somijas Republikas Konstitūcijai, abās valstīs tiek nodrošinātas tiesības uz taisnīgu lietas izskatīšanu tiesā saskaņā ar nacionālajiem likumiem un valstu starptautiskajiem līgumiem.

Promocijas darba apjoms ir 200 lappuses, izmantoti 490 informācijas avoti.

CONTENTS

ABBREVIATIONS

Accession Declaration	Declaration on the Accession of the Republic of Latvia to International Instruments Relating to Human Rights
ICCPR	International Covenant on Civil and Political Rights
Convention	European Convention of Human Rights
ECHR	European Court of Human Rights
EUCFR	European Union Charter of Fundamental Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
Constitutional Court	Constitutional Court of the Republic of Latvia
HE	Government proposal to Parliament of the Republic of Finland (Hallituksen esitys)
Independence Declaration	Declaration on the Renewal of Independence of the Republic of Latvia
KKO	Supreme Court of the Republic of Finland
KHO	Supreme Administrative Court of the Republic of Finland
Protocol No. 7	Protocol No. 7 to the ECHR
Protocol No. 11	Protocol No. 11 to the ECHR
Protocol No. 14	Protocol No. 14 to the ECHR
Saeima	The Saeima of the Republic of Latvia (Saeima has been the name of the Parliament of the Republic of Latvia since 1922)
UDHR	Universal Declaration of Human Rights

GENERAL DESCRIPTION OF THE DOCTORAL THESIS

This research is the first comparative study on a detailed investigation of the values of the European Convention and the role of the European Court of Human Rights to ensure the right to a fair trial in the Constitutional Court and the Supreme Court of the Republic of Latvia and the Supreme Court of the Republic of Finland, including the consideration of claims that have come into enforceable decisions of national courts. The basis for the review of the case in court is, in particular, the establishment of the European Court of Human Rights violations of the provisions for the Protection of Human Rights and Fundamental Freedoms and the attached Protocols.

The author has studied and analyzed the materials of the Constitutional Court's decisions and the three departments of the Supreme Court of the Republic of Latvia, as well as the decisions of the Supreme Court and the Supreme Administrative Court of the Republic of Finland between 2010 and 2015, including the claims review for quashing of the final criminal cases on the basis of ECHR decisions made on the recognition of violations of articles of the Convention and its protocols. According to the questionnaire, developed by the author, a sociological survey was conducted in the Republic of Latvia and the Republic of Finland. This paper used and analyzed decisions, published on the official websites of the European Court of Human Rights, the Constitutional Court, Supreme Court and the Prosecutor's Office of the Republic of Latvia, reports the Government of the Republic of Latvia on the implementation of ECHR decisions, as well as data obtained from the Supreme Court and Supreme Administrative Court of the Republic of Finland, related to the implementation of the ECHR case law, showing patterns and marked deviations from the implementation of ECHR decisions in an event of a conflict between international law and the Constitution of the state.

Relevance of the paper. Ensuring provision of human rights is a basic principle of a democratic state, as well as one of the elements of the rule of law. The State has the responsibility to provide the human rights and freedoms, as well as to eliminate any potential violations. The preamble to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) states that respect for human rights and fundamental freedoms can best be accomplished by an effective political democracy.

This Doctoral thesis for the first time considered the comparison between adjudication ruling of the European Court of Human Rights (ECHR) in the Republic of Latvia and the Republic of Finland, with the analysis of the review of cases through national judicial procedure based on the recent findings made by ECHR of violations of the Convention and its protocols.

The author conducted a comparative analysis of international and national legislations of the Republic of Latvia and the Republic of Finland, judicial practice, study of findings and the basis of decision by the Constitutional Court as well as the three Departments of the Supreme Court of the Republic of Latvia, the Supreme Court and the Supreme Administrative Court of the Republic of Finland, author proposes the following **research questions for consideration**:

1. How to apply the European Convention and the international standards of human rights in the national court system to an extent that does not lead to decrease or limitation of fundamental rights included in the Constitution? How to keep the constitutional sovereignty of the state and improve the protection of the rights and freedoms of man and citizen guaranteed by the Constitution and the European Convention?

2. How to use the provisions of the Convention to ensure the right to a fair trial in Latvia and Finland, which is independent of politics and based on the rule of the Constitution and the application of international law to the extent that does not lead to decrease or limitation of fundamental rights included in the Constitution? How to optimize a fair trial in the lawsuit to quash the previously made decisions of the national court on the basis of newly discovered facts about the recognition of a violation of the ECHR and its Protocols?

3. What is the priority in addressing judicial errors identified by the ECHR – ECHR decision or the Constitution of the Republic of Latvia and the Republic of Finland and whether the practice of courts in Latvia and Finland, the requirements of the ECHR on the right to a fair trial?

4. Can judgments delivered by ECHR on the appeal be enforced against Latvia and Finland, if it leads to a contradiction with the Constitution, and calls into question the supremacy of the Constitution, which has in the legal system a higher legal force in relation to any legal acts?

Scientific novelty of the Doctoral thesis is:

1. Doctoral thesis is a study on the theoretical understanding of the role of the ECHR, the ECHR case -law in the system of law in these countries and the case-law of the Constitutional Court and the three departments of the Senate of the Supreme Court of the Republic of Latvia, the Supreme Court and the Supreme Administrative Court of Finland, the consideration of claims for cancellation of decisions which entered into force of judgments by national courts after the ECHR identifies a violation of articles of the Convention or its' Protocols.

2. From the analysis of decisions of the Constitutional Court of the Republic of Latvia and the Supreme Court of the Republic of Finland, concluded that the priority of the Constitution of the resolution of the constitutional and legal conflicts that may arise in connection with the interpretation of the Convention for the Protection of Human Rights and Fundamental Freedoms.

3. In a study presented to the comparative analysis of the Constitution of the European countries, Russia and the USA, on the basis of which the author presented the position that the protection of national security and human rights of the Constitution states take precedence over international law, which only complement its basic principles.

4. To conduct a comparative study of the problem of compliance enforcement practice of Latvia and Finland with European standards of justice analysed the jurisprudence of the European Court of Human Rights and its application in the proceedings of these countries.

5. Scientific novelty of the study is a research into the influence of European Convention on Human Rights and the European Court of Human Rights on the national court proceedings in the Republic of Latvia and the Republic of Finland, for reviewing claims in the Supreme Court of the Republic of Latvia and the Republic of Finland, for quashing of prior decisions based on the violations of the Convention identified by the ECHR.

6. The Doctoral thesis is written for the first time not only with the analysis of the decisions of the ECHR, but also supported by the analysis of other adjoining regulations, statistics and a large amount of literature by Latvian and Finnish authors previously untouched in a legal science in Finland and Latvia, as well as interviews with the Judges for the European Court of Human Rights and with the Judges and former Judges for the Constitutional Courts of the Republic of Latvia.

The scope and structure of Doctoral thesis. The structure is defined by the object and subject, with the targets and missions, consisting of four chapters, which include eighteen paragraphs, conclusions, appendices and bibliography for the sources as well as the surveys.

The purpose of the study is to conduct a thorough research into the values of the ECHR for the national judicial decisions in Latvia and Finland to ensure the right to a fair trial in the context of the provisions of the European Convention and the ECHR and to determinate the most effective mechanisms to enforce the ECHR decisions in the national court proceedings.

The object of research - the constitutional and legal relations connected with the implementation of the European Convention in Finland and Latvia and subsequent

recognition, observance and protection of the rights and freedoms of man and citizen guaranteed by the Constitution and the European Convention.

The subject of research - the provisions of international instruments, the judicial practice of the ECHR, the Constitutional Court and the Supreme Court of the Republic of Latvia, the Supreme Court of the Republic of Finland, securing the right to a fair trial.

In order to archive the goals defined during the Doctoral thesis the following research objectives were set and solved:

1. To analyse the role and importance of the legal proceedings in the national Constitution of the Republic of Latvia and the Republic of Finland.

2. Define the place and role of the European Convention of Human Rights and practice of ECHR in a fair trial.

3. Investigate the case review process in the Supreme Court of the Republic of Latvia and the Republic of Finland and the implementation of international standards of supervision of the judicial activities.

4. Specify the implementation of and the right to protection of a fair trial.

Location of studies: Latvia and Finland.

The theoretical basis of the research also include scientific works, which deal with the theory of international law, by Latvian, Finnish and other foreign authors - former chairman of the Constitutional Court of the Republic Latvia Aivars Endziņš, Gunārs Kūtris, Deputy Chairman of the Constitutional Court of the Republic Latvia Uldis Ķinis, former Judges of the Constitutional Court of the Republic Latvia Anita Ušacka and Juris Jelāgins , former Judges of ECHR from Latvia and Finland Egils Levits, Ineta Ziemele, Matti Pellonpää and Päivi Hirvelä, as well as a new Judges of ECHR Martins Mits and Pauliine Koskelo, as well as legal scholars from the Republic of Latvia and the Republic of Finland: Osvalds Joksts, Tālavs Jundzis, Sandra Kaija, Uldis Krastiņš, Kalvis Torgāns, Andrejs Vilks, Aulis Aarnio, Markku Fredman, Martin Scheinin, Pasi Pölönen, Antti Tapanila and legal scholars from Russia : Kovler A. I., Kashepov V.P., Osminin B. I., Rudnev V.I.

General scientific and special judicial methods were employed in the process of doctoral thesis research.

The historical method was used to study the origin and development of human rights institutions at various evolution stages of the state and society, including the right to a fair trial.

The comparative method was used in the work analysis of various authors and rights experts on the role of the European Court of Human Rights and the courts of all instances of

nation-states in ensuring the right to a fair trial in accordance with the Constitution and international obligations of those States. This method clarified common and distinctive features in the jurisprudence of the Republic of Latvia and the Republic of Finland.

Formal-logical method was used in clarifying certain relationships in the jurisprudence of the Republic of Finland and the Republic of Latvia in the context of the right to a fair trial in court and formulating the author's position on controversial legal issues.

Induction method was used in the processing of empirical material, with its application the author has compiled and thoroughly examined the specific facts of the judicial practice of the Republic of Finland and the Republic of Latvia, which allowed him to make logical generalizations, which formed the basis of the author's conclusions and proposals in the field of rulemaking.

Using **the method of deduction**, the author was able to comprehend and understand the logic and the basis of individual decisions of the European Court of Human Rights as well as courts at all levels in both the Republic of Latvia and the Republic of Finland.

To illustrate the need for and feasibility of certain provisions of law and assessment of the validity of decisions by the courts at all levels the authors used **theoretical modeling method.**

The work is based on 490 sources.

The Doctoral thesis comprises the introduction, four main chapters, conclusions and suggestions, as well as the list of literature.

The study showed that the greatest number of violations by the national courts is related to the derogation from Article 6 of the Convention. Miscarriage of justice in sentencing by national courts and the increasing number of cases in the higher courts require amendment of the national legislation and the reform of the judicial system in accordance with the standards of the Council of Europe legislation.

The study discussed in detail examples of the application by the Constitutional Court of the Republic of Latvia, the Supreme Courts of both the Republic of Latvia and the Republic of Finland of the judicial precedents of the ECHR when considering similar cases by the national courts of those countries.

The Doctoral thesis is a study on the theoretical understanding of the role of the European Convention and ECHR case law on the system of law and the case-law of the Supreme Court of the Republic of Latvia and the Supreme Court of Republic of Finland.

The practical significance of the thesis is that formulated reasoned proposals (*de lege ferenda*) can be taken into account in the improvement of national legislation and law

enforcement to bring them into compliance with international legal provisions, which are reflected in the European Convention on Human Rights and fundamental freedoms.

Testing of the theme, main points and conclusions, reflected in the presentations and discussions at the 9 scientific and academic conferences and 21 publications of the author in the Europe, Russia and United States, which has set forth the main content of heading for the promotion thesis, as well as in legal journals of Europe and USA, including Latvia and Russia, in conjunction with lecturing at the MBA Faculty of Law and more than 10 year practice of Law in Finland, compiling 5 appeals and complains to the ECHR, drafting and conducting civil cases in local courts with foreign energy companies, as well as multiple quarums and court cases which included international companies and private clients.

This Doctoral thesis made use of materials from the cases made by the author for the claims and appeals brought forward for ECHR review as well as case-work of different stages of Finnish Courts.

The main aspects of the findings and deductions will help develop some of the theory of international law and will expand the concept of international and constitutional law. Acquired results can serve as a basis for further research by the author.

1. LEGAL MEANING OF THE CONSTITUTION OF THE REPUBLIC OF LATVIA AND THE REPUBLIC OF FINLAND AS THE DECISIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS FOR THE NATIONAL LAW PROCEEDINGS

1.1. Historical development of human rights and freedoms in the Republic of Latvia

Formed in 1918 the Provisional Government of the Republic of Latvia in relation to political and civic values declared that its "purpose in relation to the welfare of the state is to provide to the residents of Latvia all the rights of a democratic state. With relentless persistence the Government will implement the rights of citizens, which are a norm enjoyed by all democratic states".[1]

According to Article 1 of the Constitution of Latvia the country is an independent democratic republic. Back in 1921, reporting on the draft of the Constitution in the first reading, the rapporteur Marģers Skujenieks stressed that "the main thesis defines all the further content of the law, its spirit, and he has been the guiding principle in the work of the Constitutional Commission".[2]

May 4, 1990, when *de jure* independence of Latvia was restored and the Republic of Latvia by the Declaration of the Supreme Council from May 4, 1990 "On accession of the Republic of Latvia to the international legal instruments on human rights" has joined the UN International Covenant of 16 December 1966 on Civil and Political Freedoms (hereinafter – ICCPR). Thus, the state has undertaken the obligation to fulfil the norms of international law and human rights.

June 4, 1997 the Saeima passed the Law "On the European Convention on Human Rights and Fundamental Freedoms from 4 November 1950 and its Protocols 1, 2, 4, 7 and 11", which were attached to the said Convention and a number of its protocols. In addition, Article 4 of the Law Latvia recognized the compulsory jurisdiction of the European Court of Human Rights on all matters relating to the interpretation and application of the said Convention and its protocols.

European Convention on Human Rights in Latvia entered into force on the 13 June 1997.

Development and adoption of the new Constitution of the Republic of Latvia in 1993 has given a significant boost to large-scale legal reform. In 1998, the Constitution was supplemented by section 8 of the basic human rights. Was approved by the major moral and

[1] Latvijas Pagaidu Valdības mērķi. No grām.: Latvijas valsts pasludināšana 1918.gada 18.novembrī. – Rīga, 1998, 153. lpp.
[2] Transcripts of the Constitutional Assembly of Republic of Latvia. Riga 1921, notebook 14, p.1304.

legal principle – the state shall recognize and protect fundamental human rights in accordance with this Constitution, laws and binding international agreements of Latvia.

Thus, in 2000 the Constitutional Court expressed the view that input interpretation under section 8 of the Constitution of the Republic of Latvia regulations, cannot be in opposition to section 1 of the Constitutional core values of democracy. [3]

But even before the accession of Latvia to the European Union courts have relied on international law and legal principles of the EU, as well as the case law of the Court of the European Community, but these links were not basis for judicial decisions.

Return to Europe for Latvia meant becoming a member state of the Council of Europe (1995), and later joining the European Union (2004). The Council of Europe has played an important role in the process of a full return of Latvia to the family of European nations after the restoration of independence. Membership in the Council of Europe has made a valuable contribution to the adaptation of Latvian legislations in the field of human rights, democracy and the rule of law closer to European standards.

After Latvia's accession to the Council of Europe and ratification of the country assumed the obligation to respect the rule of law. This principle, which is guaranteed by Article 3 of the Statute of the Council of Europe, is particularly reflected in Article 6 of the Convention, which guarantees the right to a fair trial and which detailed the necessary guarantees inherent in this notion as applied to criminal cases. Latvia is a full member of the Council of Europe, which is actively involved in promoting human rights, democracy and the rule of law in the European region.

Chapter 8 of the Constitution devoted to the rights and freedoms of man and citizen, has largely been formulated on the basis of the provisions of the International Covenant on Civil and Political Rights of 1966 and the European Convention, which confirms the comparative analysis of the texts of the Constitution and international instruments. The Constitution also strengthened the position that generally recognized principles and norms of international law are an integral part of the legal system of Latvia.

Latvia recognizes and protects fundamental human rights under the Constitution, laws and international agreements binding Latvia. Part one of Article 68 of the Constitution imposes on the Latvian government authorities, including the Saeima, the obligation to comply with international relations not only in the requirements set out by the Constitution and other national law but also international law.

[3] Dissenting Opinion of the Justice of the Constitutional Court Endziņš Aivars, Jelāgins Juris, Ušacka Anita in Case Nr. 2000-03-01 on 4 September 2000. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 2.8.2016.

The Republic of Latvia has recognized that the OSCE principles are compulsory for it, including Article 10 of the Helsinki Final Act , Article 10 [4], which requires these principles to be applied in aggregate: "The participating States will fulfil in good faith their obligations under international law, both those obligations arising from the generally recognized principles and rules of international law and those obligations arising from treaties or other agreements, in conformity with international law, to which they are parties."

Along with the ratification of the treaty of accession of Latvia to the European Union, EU law has become an integral part of the legal system of Latvia. Thus, the legal acts of the European Union are enshrined in the jurisprudence of the Court's interpretation of the European Community and should be taken into account when applying to the national legislation.[5]

The Constitutional Court of the Republic of Latvia in the past stated that the contents of the said article turns in conjunction with Article 89 of the Constitution, which defines that "the State shall recognize and protect fundamental human freedoms under the present Constitution, laws and binding international agreements of Latvia".[6]

The author refers to the decision made by the Constitutional Court of Latvia in paragraph 7 of the conclusions of the Constitutional Court from 9 January 2014 in the case Nr. 2013-08-01: "The international norms of human rights and their implementation at the level of constitutional rights are the means of interpretation in determining the content and the scope of fundamental rights and the rule of law to the extent that this does not lead to decrease or limitation of fundamental rights included in the Constitution." [7]

1.2. History of Finnish legislation and the impact of ECHR decisions to change the national laws

Finland is part of the Nordic legal family. The history of the Finnish state largely explains the features of its legal system, established to date. Since the XII century, when Finland became a province of Sweden, and over the next seven centuries on its territory observed the laws issued by the Swedish king and the local legal practices.

[4] The Final Act of the Conference on Security and Cooperation in Europe, Aug. 1, 1975, 14 I.L.M. 1292 (Helsinki Declaration). http://hrlibrary.umn.edu/osce/basics/finact75.htm. Viewed 12.11.2015.
[5] Judgment of 17 January 2007 by the Constitutional Court in Case Nr. 2007-11-03, para 24.2. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 5.11.2015.
[6] Judgment of 30 August 2000 be the Constitutional Court in Case Nr. 2000-03-01, para 5. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 5.11.2015.
[7] Judgment of 13 May 2005 by the Constitutional Court in Case Nr. 2004-18-0106, p. 11 and Judgment of 18 October 2007 in the case Nr. 2007-03-01, para 18. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 5.11.2015.

The most important role in the legal history of Finland is attributed to the Swedish state law of 1734; a fundamental set of laws the drafting of which the Swedish and Finnish authorities partook. It consisted of 9 chapters, which details many of the institutions of civil, commercial and family law, criminal law and procedure. In essence, the 1734 Act is the codification of previously published Swedish law and has served as a basis for the further development of legislation in Sweden and Finland, and some of its provisions continue to operate in these countries to this day. Legislative changes have been made in Finland, either by direct text alterations of the relevant sections of the 1734 Act or by issuing individual acts independently to regulate one or the other legal institution, or an entire industry.

In 1889, the Criminal Code was adopted in conjunction with the Finnish law on execution of punishments. It operates today, albeit with many changes. This Code of 1889 begins with the words "We, Alexander III, the Grace of God, Emperor and Autocrat of all Russia..." formally remains in force today. The words of the Russian Tsar remain in each new edition of the Law at the present time.

The most important rules of Finnish society are formulated in legal acts, the most complete collection of which is kept in the library of the Finnish Parliament. 15 meters of shelves house the library collection of a set of written regulations of Finland in 254 volumes. Delicate pages covered fine print containing all laws and decrees since 1860 with annual additions registering the abolition and entry into force of new laws. A grand total of 91,802 Act are kept safe in the library. Resolutions are stored on the shelves 42 meters long, of which the European Union legislations take up 29 meters in length.

Criminal Code for the most part corresponds to the moral concepts of modern citizens and brought into line with European legislation. The increasing influence of international law and the ECHR decision contribute to the improvement of legal regulation of human rights and freedoms in order to avoid any violation of the Convention for the Protection of Human Rights and Fundamental Freedoms. The legal position of the European Court expressed in the decisions and actions impact on the reform of the Finnish legislation. Courts in Finland directly refer to the European Court of Human Rights in support of its legal position.

Among the acts of current legislation crucial role is played by the Constitutional Act of 1919. In addition to this and other constitutional laws, the Parliament passes the so-called ordinary laws, which make up the bulk of the legislations in the country. Amendments to the Constitution came into force in 2000 and in 2007 were supplemented by the provisions of the

Constitutional Commission, the Ombudsman and the election of two vice-Ombudsmen and in 2011 the introduction into force of international obligations in terms of sovereignty Finland.[8]

By signing and ratifying the 1990 European Convention "On Protection of Human Rights and Fundamental Freedoms", according to the article 46 of the Convention, Finland recognized the jurisdiction of the European Court of Human Rights and the compulsory execution of judgments of the European Court in the case of recognition by the European Court of Human Rights violations of the applicant's rights under the Convention, it is obliged to take both individual measures and general measures.

In 1995, Finland joined the European Union, which prompted the change of the national legislation and amendment of the Constitution, along with regulations that came into force from 1.1.1998, for which the procedure of the courts of appeal instance should be performed according to the requirements of the European Declaration of Human Rights (HE 184/1997).[9]

From the Finnish Constitution and international legal acts, it follows that justice must meet the requirements of justice and to provide an effective remedy and judicial protection must be complete, which involves not only the opportunity for everyone to go to court, but also the duty of the court to make a fair and informed decision.

Immediately after the signing of the Convention "On Protection of Human Rights and Fundamental Freedoms", the Supreme Court referred to the articles of the Convention in a case KKO:1990:93 extradition to USSR authorities of suspect in the hijacking of an aircraft flight Riga-Murmansk, Supreme Court first referred to the ICCPR, Articles 5 13 and 14 of the Convention, and paragraph 2 of Additional Protocol 4.[10] Kozlov was suspected in violation of articles 78 and 214 of Part 2 of the Criminal Code of the Latvian Soviet Republic. Defender of Kozlov – lawyer Fredman referred to the need to fulfil the requirements of the European Convention by the Soviet Union.

The Supreme Administrative Court, on the issue of the deportation of a foreigner, and violation of the right to respect for family life, referred to article 8 of the Convention in 1992, 1993 and 1994.[11]

In 1991, in a case KKO:1991:84 the Supreme Court overturned the earlier verdict in the case of narcotic crime and returned the case for a new review of the trial court. The Court

[8] The Constitution of the Republic of Finland, 11 June 1999 (731/1999, amendments up to 1112 / 2011 included).www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf. Viewed 2.8.2015.
[9] Government proposal to Parliament of the Republic of Finland [HE 184/1977].www.finlex.fi. Viewed 23.11.2015.
[10] Judgment of Supreme Court of Finland, KKO:1990:93, 10 July 1990.Case of Kozlov. www.finlex.fi. Viewed 23.11.2015.
[11] Judgments of Supreme Court of Finland. KHO:1992-A-59. 4.3.1992. No 492/7/92. KHO:1993/3234. 7.9.1993, No 2248/7/93. KHO1994/1463, 12.4.1994. No 184/7/94. www.finlex.fi. Viewed 22.11.2015.

referred to Article 14, paragraph 3e of the ICCPR and paragraph 3d of Article 6 of the Convention on the right to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

It is also important to note that the Supreme Court of Finland in case KKO:1993:19, when considering a question for a sufficient time to prepare a defence, made reference to article 14, paragraph 3 b of International Covenant on Civil and Political Rights and article 6 of the European Convention 3 b. The Supreme Court ruled that the law should ensure that the defendant in criminal proceedings has the minimum benefits required under the applicable law in the framework of international agreements, including the right to have adequate time and facilities to prepare his defence. The Supreme Court has recognised the miscarriage of justice in the proceedings and the Court of Appeal overturned the decision.[12]

Significant impact on the law in Finland and consequent changes are a direct affect of European Court of Human Rights finding violations made by Finland. For example, Resolution 2009 ECHR Marttinen v. Finland, subsequently handed down by the Supreme Court decision to cancel an earlier Finnish criminal decisions (KKO:2009:80) marked the beginning of the revision of existing legislation in Finland and the amendment giving guarantees to criminal suspects in accordance with universally recognized norms of international law.

The new Constitution of Finland from 2000 guaranteed the provision of basic rights. The public authorities shall guarantee the observance of basic rights and liberties and human rights. (Section 22.)[13]

The author notes that the basis for the Constitution of Latvia and the Republic of Finland and the European Convention on Human Rights share same basic values. On this basis, the vast majority of cases avoid the conflict between the two documents. However, this conflict is possible if the ECHR will provide interpretation of the Convention, contrary to the Constitution of these countries.

1.3. Role of the Constitutional Court of the Republic of Latvia in the protection of Human Rights

The Constitutional courts are vested with powers to verify international treaties for compliance with provisions of the national constitutions. Many European Union countries

[12] Judgment of Supreme Court of Finland , KKO:1991:19, 22 February 1993. www.finlex.fi. Viewed 18.11.2015.
[13] The Constitution of the Republic of Finland, 11 June 1999 (731/1999, amendments up to 1112 / 2011 included). www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf. Viewed 18.11.2015.

faced this problem upon ratification of the Maastricht Treaty. According to the doctrine of supremacy of the constitution over international treaties, the majority of European Union member states made appropriate changes in the national constitution. These amendments set the constitutional mechanism of delegating certain sovereign powers of the state to supranational institutes of the European Union, which changed the substance of the state sovereignty of EU member states.

The Constitutional Court of Latvia plays an important role in the development of constitutional doctrine in Latvia. In accordance with the amendments in the Law of Administrative Procedure, made in 2004, the norms of international law are enforced, regardless of their source, in accordance with their position in the legal hierarchy of external regulatory acts. Upon statement of contradictions between the rule of international law and the legal rule in Latvia of the same legal force, the rule of international law is applicable. "The legal norms of international law regardless of their source shall be applied in accordance with their place in the hierarchy of legal force of external regulatory enactments. If a conflict between a legal norm of international law and a norm of Latvian law of the same legal force is determined, the legal norm of international law shall be applied.

(4) The legal norms of the European Union (Community) shall be applied in accordance with their place in the hierarchy of legal force of external regulatory enactments. In applying the legal norms of the European Union (Community), institutions and courts shall take into account European Court of Justice case law."[14]

Moreover, in establishing the content of the fundamental rights established in the Satversme, Latvia's international commitments in the field of human rights must be taken into consideration.[15]

Securing human rights is a fundamental principle of a democratic state and one of the elements of a law-bound state. The state has a primary responsibility for protecting human rights, for assessment and elimination of possible violations. The preamble to the Convention also states that respect of human rights and fundamental freedoms can best be achieved by means of effective political democracy.

The protection of fundamental rights is mainly provided by the court of general jurisdiction within the framework of its competence, which in itself is also a fundamental right. The function of the court proceeds from the constitutional duty of the state to enforce human rights. The task of the judiciary is to secure that, upon effectuation of justice, the due

[14] Latvian Administrative Procedure Law, Art.15.3.
http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN018406.pdf. Viewed 2.8.2016.
[15] Judgment of 20 December 2010 of the Constitutional Court in the case Nr. 2010-44-01, para 8.1.
http://www.satv.tiesa.gov.lv/en/cases/. Viewed 12.11.2015.

enforcement of the constitution, laws and other statutory acts of the state is provided; to observe the principle of legality and to protect human rights and liberties.[16]

The Constitutional Court has repeatedly emphasized in its judgements not only the possibility, but also the necessity to apply international norms in clarifying the substance of the fundamental rights established by the Constitution.

At the same time, the international statutes of human rights and the practice of their implementation at the level of constitutional law serve as a means of interpretation making it possible to establish the substance and scope of basic rights and principles of the law-governed state, to the extent that such interpretation does not lead to mitigation or limitation of the fundamental rights contained in the Constitution.[17]

This phrase was previously used in the judgement of the Constitutional Court of Germany. The German Federal Constitutional Court has established that EHRC guarantees influence interpretation of fundamental rights included in the Basic Law and the principle of the law-governed state. The text of the EHRC and the practice of ECHR serve as means of interpretation on the level of constitutional law to determine the contents and scope of fundamental rights and the principle of the law-governed state, as far as it does not lead to decrease or limitation of fundamental rights, included in the Basic Law, that is – to influence, which is precluded by Article 53 of the EHRC.[18]

The author draws attention to the position of the Constitutional Court in 2005, when it emphasized not only the possibility, but also the necessity to apply international standards in clarifying the substance of the fundamental rights established by the Constitution. The constitution inherently may not envisage a smaller scope of enforcement, i.e. protection of the fundamental rights, than the one provided for by any international act on human rights. A different conclusion would be contrary to the idea of the law-governed state as one of the main forms of manifestation of the law-bound state is the recognition of human rights and fundamental freedoms to be the supreme national value.[19]

The practice of the Constitutional Court is directly influenced by the provisions of the Convention on Human Rights and Fundamental Freedoms and the practice of the European

[16] Judgment of 18 October 2007 of Constitutional Court in the case Nr. 2007-03-01, para 26. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 12.11.2015.
[17] Judgment of 13 May 2005 of the Constitutional Court in the case Nr. 2004-18-0106 , para. 5 and Judgment of 18 October 2007 of the Constitutional Court in the case Nr. 2007-03-01, para 11. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 12.11.2015.
[18] German Federal Constitutional Court. October 14, 2004 Judgment in the case 2BVR 1481/04. http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2004/10/rs20041014_2bvr148104en.html. Viewed 12.11.2015.

[19] Judgment of 22 February 2002 of the Constitutional Court in the case Nr. 2001-06-02, para 3. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 12.11.2015..

Court of Human Rights that interprets this Convention and to which the Constitutional Court has been increasingly referring to in its judgements in recent years.

As early as in 2002, the Constitutional Court declared: To establish the content of the Satversme Article 91, one need not confine oneself only to the interpretation of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the practice of the European Court of Human Rights. The fact that Article 91 of the Satversme incorporates the second sentence, construction of which corresponds to Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms and is directed towards the rights, fixed in the document but also the first sentence – both indicate that the objective of the Latvian legislator has been to determine a wider range of the rights if compared with the Convention.[20] For instance, article 109 of the Constitution provides *expressis verbis* the right to social security; however no similar autonomous standards are contained in the European Convention. ECHR considers the right to social security as a matter included in article 1, Protocol 1 to the Convention.[21]

The author emphasizes the importance of the guarantees provided by the Constitution of Republic of Latvia regarding the right to fair trial, that are broader than the guarantees of the Convention. For instance, article 92 of the Constitution guarantees a wider scope of the right of appeal than the one specified in the Convention. That includes the right to appeal against a court judgement on any case of criminal character, and on the cases involving administrative offence. ECHR determined in its judicature that the following lies beyond the scope of the first part of article 6 of the Convention: tax disputes[22], except where a dispute concerns tax charges and other penal sanctions in cases against Finland.[23] Also, article 92 of the Constitution does not restrict the right to trial by certain areas or branches of law relating not only to criminal or civil cases, but also to the person's rights and legitimate interests.

The Constitutional Court considers the compliance of impugned norms of constitutional complaints with the articles of the Convention, in conjunction with the articles of the Constitution of the Republic of Latvia, and also refers to prejudications and analysis of conclusions formalized in ECHR's judgements. The Constitutional Court is the supreme defender of human rights in the state, being a body securing the supremacy of the Constitution

[20] Judgment of 14 September 2005 of the Constitutional Court in the case Nr. 2005-02-0106, para 10. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 12.11.2015..

[21] Judgment of 22 February 2002 of the Constitutional Court in the case No 2001-06-02, para 3. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 12.11.2015..

[22] Case of Ferrazzini v. Italy, No 44759/98, 12 July 2001, para 23. http://hudoc.echr.coe.int/eng#{"fulltext":["Ferrazzini"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-59589"]}. Viewed 12.11.2015..

[23] Case of Jussila v. Finland No 73053/01, 23 November 2006, para 31–36. http://hudoc.echr.coe.int/eng#{"fulltext":["Jussila"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-78135"]}. Viewed 14.11.2015.

and the constitutional justice; which is charged not only with the duty to enforce the fundamental rights, but also with the commitment to oversee the constitutional order in the state, including the control over the mechanism of compliance with the fundamental rights.

The Constitutional Court pointed out that the Convention and the Constitution rely on similar values and principles.[24] However, if the human rights enshrined in the Convention do not apply to the particular situation, this does not mean that such situation does not pertain to the scope of respective fundamental rights established in the Satversme. In such a case, the Constitutional Court is committed to investigate whether there are any circumstances proving that the Satversme provides a higher level of protection of the fundamental rights.[25]

It is important to note that the Constitutional Court has repeatedly emphasized in its judgements the need to enforce the international norms in clarifying the substance of the fundamental rights established by the Constitution. For instance, judgement Nr. 2014-09-01 as of 28 November, 2014 contains 53 pages of the judgement, references to articles 1 and 92 of the Constitution, 5 ECHR's judgements, article 6 of the Convention, judgement of the European Commission on Human Rights, international conventions, as well as 46 judgements of the Constitutional Court and case files volumes.

Article 92 of the Constitution does not limit the right to fair trial in civil and criminal proceedings and provides more extensive guarantees to an individual than those laid down in the Convention.

For instance, the Constitutional Court, when interpreting Article 91 of the Satversme has concluded: The principle of equality may be attributed also to legal entities as the body of physical persons; besides within the legal system it functions immediately".[26]

When considering a constitutional claim the applicant Andris Ternovskis stresses that Article 92 of the Satversme, Article 10 of the UNO Universal Declaration of Human Rights, Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (henceforth – the Convention) and Article 14 of the International Covenant on Civil and Political Rights establish that the state shall ensure "access to court" to every individual, but the challenged norms of the Law "On State Secrets" deny the possibility of reviewing the case at the objective and independent court.

The applicant points out that the procedure, under which the Procurator General reviews the case, does not ensure a fair review of the case. The case is not reviewed in the

[24] Judgment of the Constitutional Court in the case Nr. 2008-35-01 (07.04.2009), para 18.8. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 14.11.2015.
[25] Judgment of the Constitutional Court in the case Nr. 2010-71-01 (19.10.2011), para 12.1. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 14.11.2015.
[26] Judgment of the Constitutional Court in the case No 02-0106, 14.9.2005, para 9.1. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 14.11.2015.

presence of the person, besides the person has no possibility of submitting his/her evidence and expressing his/her considerations.[27]

It follows as well from that the Constitutional Court of the Republic of Latvia has set the protection of human rights and freedoms guaranteed by the Constitution, at a higher level than defined by the international documents.

There are many legal mechanisms at the disposal of the state using which it is possible, without violating the individual's rights fixed by the Constitution and the Convention, to achieve due protection thereof.[28]

International norms of human rights and the practice of applying them on the level of constitutional law serve as a means of interpretation for establishing the content and scope of fundamental rights and the principles of a judicial state, insofar this does not lead to decreasing or restricting the human rights that are included in the Satversme.[29] Thus, if interpreting an international norm of rights, it is concluded that the Satversme guarantees a more extensive protection of the particular fundamental right, then it is inadmissible to confine oneself to application of the norm, which is incorporated into international human rights acts; it is necessary to apply the norm of the Satversme.[30]

The Saeima stressed that the interpretation of the rule of article 92 of the Constitution, as far as possible, takes place in accordance with the interpretation applied in the practice of enforcement of internationally fixed human rights. The Court referred to the Resolution of ECHR in which ECHR recalled, that the principle of equality of arms, which is one of the elements of the broader concept of a fair hearing, requires each party to be given a reasonable opportunity to present its case under conditions that do not place it at a substantial disadvantage *vis-à-vis* its opponent. [31]. The same principle was repeated by ECHR in its judgements of Dombo Beheer B.V. v. Netherlands), § 33, 27 October 1993, Mukhutdinov v. Russia, No 13173/02, 10 June 2010, §112.

ECHR recognized, 6 votes to one, that in the case of Ternovskis v. Latvia there was a violation of article 6 of the Convention due to the fact that the applicant did not have a

[27] Judgment of the Constitutional Court in the case No 2002-20-0103, 23 April 2003. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 14.11.2015.
[28] Judgment of the Constitutional Court in the case Nr. 2003-02-0106, 5 June 2003. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 14.11.2015.
[29] Judgment of the Constitutional Court in the case Nr. 2004-18-0106, 13 May 2005, para 5 of the Findings. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 14.11.2015.
[30] Judgment of the Constitutional Court in the case Nr. 2005-02-0106 (14.9.2005), para 10, Judgment of the Constitutional Court in the case Nr. 2001-06-03, 22.2.2002, para 3. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 15.11.2015.

[31] Case of Krčmář and Others v. the Czech Republic, No 35376/97, 3 March 2000, para 33. http://hudoc.echr.coe.int/eng#{"fulltext":["35376/97"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-58608"]}. Viewed 15.11.2015.

remedy at the national level through which he could attain the exercise of his right to consideration of the case, as guaranteed by clause 1 of article 6 of the Convention.[32]

The Constitutional Court of the Republic of Latvia not only remedies the violations of human rights within the framework of cases considered by it, but also considers the cases that directly affect the mechanism of supervising the observance of human rights, established in the state.[33] The Constitutional Court has repeatedly found that, abiding by certain criteria, first and foremost "the concept of close connection", in certain cases the limits of a claim in an already initiated case may be broadened. To establish, whether in the particular case the limits of the claim could be and should be broadened, it must be, first of all, be established, whether the norm, with regard to which the claim is broadened, is so closely linked to the norm, which *is expressis verbis* contested in the case, that its examination is possible within the framework of the same grounds or is necessary for adjudicating the particular case, and, secondly, whether the broadening of the limits of the claim is necessary for abiding by the principles of the legal proceedings before the Constitutional Court (Judgement of 3 April 2008 by the Constitutional Court in Case Nr. 2007-23-01, Para 17, and Judgement of 20 October 2011 in Case Nr. 2010-72-01, Para 15). For instance, some amendments were made to the Civil Procedure Law, which entered into force on 1 January 2015, deemed as inconsistent with article 92 of the Constitution, invalid from the moment of infringement of the fundamental rights of the informer lodging the constitutional complaint.[34]

However, if the human rights enshrined in the Convention do not apply to the present situation, then this does not mean yet that the situation fails to fall within the scope of respective fundamental rights enshrined in the Satversme. In such a case, the Constitutional Court is committed to investigating whether circumstances proving that the Satversme establishes a higher protection level for the fundamental rights exist.[35]

The protection of fundamental rights can be effective only if the person is guaranteed the right to fair trial. Assessing the moment of infringement of right, the court is also considers the potential infringement of fundamental rights. Thus, the Constitutional Court excludes the formal approach to the real infringement demand, thus confirming the high level of protection of the rights. The Constitutional Court recognized the fact of infringement of the fundamental rights of a constitutional complaint lodger and considered the cases on the merits

[32] Case of Ternovskis v. Latvia, No 33637/02. 29 April 2014. http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-142670. Viewed 15.11.2015.
[33] Judgments of the Constitutional Court in the case Nr. 2009-11-01, 2009-111-01, 2010-06-01, 2012-15-01, 2012-05-01, 2012-03-01. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 15.11.2015.
[34] Judgment of the Constitutional Court in the case Nr. 2014-09-01, 28 November 2014. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 14.11.2015.
[35] Judgment of the Constitutional Court in the case Nr.2010-71-01, 19 October 2011, para 21.1 of the Findings. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 15.11.2015.

in several cases, when the contested provisions were not yet applied to a concrete individual through the act of application of legal norm. For instance, in the case on prohibition of judge's affiliation to a political party, the court accepted a constitutional claim from a judge who had not joined the party, since his joining the party would have presented a real offence and at the same time would have caused serious consequences for the applicant, that is, it would have become a ground for dismissal of the judge from his office.[36]

The Constitutional Court has repeatedly underscored that a uniform case law is important from the perspective of the right to a fair court. Courts have the obligation to adjudicate similar cases similarly, but different cases – differently, on the basis of the principle of equality. In the absence of measures that would ensure a consistent case law, the State violates a person's right to a fair court.[37]

However, the right to fair trial is not absolute; its restriction is permitted. ECHR also has come to conclusions that in certain cases deviation from the *principle of res judicata* is permissible. The applicants "Yelverton Investments B.V." and others request the Constitutional Court to recognise CPL Section 483 as being incompatible with Article 92 of the Satversme of the Republic of Latvia, insofar it envisage the right of the Chairperson of the Senate Department of Civil Cases to submit a protest against a judgement of a first instance court that has come into effect, which infringes upon the rights of persons, who have not been parties to the case. They noted, by referring to the case law of the European Court of Human Rights, that the institute of protest included in the contested norm essentially was incompatible with the rights to a fair court, guaranteed in Article 92 of the Satversme, since it served as the grounds for revoking court adjudications, which had already entered into effect.[38]

When considering the complaint to ECHR in the case of Yelverton Investments B.V. and others v. Latvia, with reference to the common law of the European Court, the Court established that as concerned the judgement of the Constitutional Court dated 14 May, 2013, the right of the Chairman of Department of Administrative Cases of the Senate of the Supreme Court to lodge a protest against a resolution taken by the first-instance court and consummated, contradicted to the right to fair trial, fixed in article 92 of the Constitution of Latvia and in article 6 of the Convention. The case under examination as to many facts of the case is in many ways similar to the case adjudicated by ECHR. As ECHR concluded that a

[36] Judgments of the Constitutional Court in the case Nr. 2002-01-03 (20.05.2002), No 2003-05-01 (29.10.2003), No 2009-45-01 (22.02.2010). http://www.satv.tiesa.gov.lv/en/cases/. Viewed 2.8.2016.
[37] Judgment of the Constitutional Court in the case Nr. 2010-01-01, 7 October 2010. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 15.11.2015.
[38] Judgment of the Constitutional Court in the case Nr. 2012-13-01, 14 May 2013. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 15.11.2015.

situation like this was incompatible with the right to an impartial court, also the rights of the Chairperson of the Senate Department of Civil Cases to submit a protest may collide with the right to an impartial court envisaged in Article 6 of the Convention.[39]

In considering similar complaint in the case Nr. 2013-08-01 dated 9 January, 2014 the Applicant VK Estate also refers to a number of Judgements by the European Court of Human Rights (hereinafter – ECHR) and underscore that the right to fair adjudication of case is incompatible with a legal system, where court adjudications that have entered into force are re-examined on the basis of an application or a protest submitted by a state official. Allegedly, ECHR has repeatedly recognised that the right to a fair hearing of a case has been violated in those cases, where a court ruling that has entered into force is revoked and re-examined on the basis of an application (protest) submitted by the prosecutor general, and has noted that in such cases the right to a fair hearing of a case becomes illusory.[40]

It is important to note that the Constitutional Court has repeatedly emphasized in its judgements the need to apply the international norms in clarifying the substance of the fundamental rights established by the Constitution. It was noted that the International norms of human rights and the practice of applying them on the level of constitutional law serve as a means of interpretation for establishing the content and scope of fundamental rights and the principles of a judicial state, insofar this does not lead to decreasing or restricting the human rights that are included in the Satversme.[i]

The ECHR judgement not only fixes the fact of violation by the state of the rights and freedoms guaranteed by the Convention and its Protocols, but also contains the position of the Court on legal issues the Court is guided by in considering similar cases. Therefore, it is necessary to ascertain the juridical nature of these legal positions. Many European lawyers, as well as Latvian legal experts, equate them to precedents.

Following the taken obligations, the Republic of Latvia has recognized the jurisdiction of ECHR in the sphere of protection of human rights and freedoms. The enforcement of international legal norms, the practice of the European Court of Human Rights, is not always sufficient, when considering the rights envisaged by the national legal system of Latvia. The state has many legal mechanisms at its disposal using which it is possible to secure this protection without violating individual's rights envisaged by the Constitution and the Convention.

[39] Case of Yelverton Investments B.V. and others against Latvia, 18 November 2014, Application No 57566/12, para 14.2.3. http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"fulltext": ["Application%20no.%2057566/12"]}. Viewed 15.11.2015.

[40] Judgment of 30 August 2000 by the Constitutional Court in the case Nr. 2000-03-01, para 5 of the Findings. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 16.11.2015.

Still if the international laws are not up to date or do not protect the rights of the citizens in full, the Constitutional Court of Republic of Latvia has an important role in protecting the human rights and fundamental freedoms.

It follows from the analysis of the practice of the Constitutional Court and that of ECHR, that the principle of justice as a guarantee of the constitutional human and civil rights to judicial protection includes the following constituent elements: the guarantee of access to justice, the guarantee of personal presence at the trial, the guarantee against self-incrimination, the equality and competitiveness of the parties, the guarantee of receiving a reasoned judgement.

The above provisions must apply in full to foreign citizens and stateless persons, as reported by ECHR in address to Latvia in the context of infringement of their rights. After fixing the human rights in chapter 8 of the Constitution of the Republic of Latvia in 1998, the country got integrated in the global legal framework, as evidenced by the formation of the law-governed, social, democratic state; as a consequence, the level of national security and the effectiveness of the mechanism for protection of human rights and freedoms by the Constitutional Court of the Republic of Latvia has increased.

1.4. Application of the Constitution and International law in the proceedings by the Republic of Latvia

Formed in 1918 the Provisional Government of Republic of Latvia in relation to political and civil values declared that its "purpose in relation to the welfare of the state is to provide to the residents of Latvia all the rights of a democratic state. With relentless persistence the Government will implement the rights of citizens, which are a norm enjoyed by all democratic states."[41]

On 11 October, 1921 at the session of the Constituent Assembly, a deputy Arveds Bergs noted that "every full citizen of Latvia has voting rights; this is a principle which allows only a few exceptions. Pursuant from this, significant restriction of the voting rights by introducing new restrictions is not desirable. It would not be consonant with the spirit of the Constitution, and no Saeima would wish to breach the spirit of the Constitution".[42]

The author notes that nearly 100 years ago, when developing and discussing the draft of the Constitution, the members of the Constituent Assembly repeatedly referred to the experience of democratic states of that time, thus confirming the organic link of the state

[41] Latvijas Pagaidu Valdības mērķi. No grām.: Latvijas valsts pasludināšana 1918.gada 18.novembrī. – Rīga, 1998, 153. lpp.
[42] Transcripts of the Constitutional Assembly of Republic of Latvia. Riga 1921, notebook 17, p. 1576.

system being created in Latvia with that of other progressive states. The deputies of the Supreme Council of the Republic of Latvia in restoring the Latvian state *de facto* and its Constitution used a similar approach.

The supremacy of law and the concept of fair trial are included in the Constitution of the Republic of Latvia. The concept "fair court", mentioned in Article 92 of the Satversme, contains two aspects, namely, "a fair court" as an independent and impartial institution of the judiciary, which reviews a case, and "a fair court" as a proper procedure, conforming with a state ruled by the rule of law, for reviewing a case. The first aspect is linked to the principle of the judges' independence included in Article 83 of the Satversme.[43]

The Constitutional Court repeatedly discussed the role of the Constitution. The Satversme does not directly envisage cases where the right to a fair court could be restricted; however, this right cannot be considered to be absolute.[44] The Satversme is a united whole, and the norms that it comprises should be interpreted in a systemic way. An assumption that particular fundamental rights cannot be imposed any restrictions at all would collide with the fundamental rights of other persons, guaranteed in the Satversme, as well as with other norms of the Satversme.[45]

The finding that the obligation of the State to abide by the international commitments in the field of human rights follows from Article 89 of the Satversme, which provides that the State recognizes and protects fundamental human rights in accordance with the Satversme, laws and international treaties binding upon Latvia, has been embedded in the case law of the Constitutional Court.[46] The interpretation of the right to a fair court, established in Article 92 of the Satversme, may be influenced by the norms of human rights included in international human rights documents. They can be of assistance in specifying the scope of particular human rights and establishing their content more accurately.[47] International norms of human rights and the practice of applying them on the level of constitutional law serve as a means of interpretation for establishing the content and scope of fundamental rights and the principles

[43] Judgment of 4 February, 2003 by the Constitutional Court in the case Nr. 2002-06-01, para 1 of the Concluding Part , and Nr. 2009-11-01, para 7.1 of the Findings. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 26.11.2015.
[44] Judgment of 4 January 2005 by the Constitutional Court in the case Nr. 2004-16-01, para 7.1 of the Findings. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 26.11.2015.
[45] Judgment of 22 October 2002 by the Constitutional Court in the case Nr. 2002-04-03, para 2 of the Findings. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 26.11.2015.
[46] Judgment of 30 August 2000 by the Constitutional Court in the case Nr. 2000-03-01, para 5 of the Findings. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 26.11.2015.
[47] Judgment of 3 June 2009 by the Constitutional Court in the case Nr. 2008-43-0106, para 10. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 26.11.2015.

of a judicial state, insofar this does not lead to decreasing or restricting the human rights that are included in the Satversme.[48]

The Satversme is a united whole, and the norms that it comprises should be interpreted in a systemic way. An assumption that particular fundamental rights cannot be imposed any restrictions at all would collide with the fundamental rights of other persons, guaranteed in the Satversme, as well as with other norms of the Satversme.[49]

As follows from the analysis of legal literature, the opinions of learned legal experts and lawyers on the role of the Constitution in the event of a conflict with some international rule of law frequently differ.

The authors of the Latvian Satversme and the constitutions of democratic states demand an independent judiciary and a special status of the judge not because some people just like it, but because it is an absolutely necessary constituent part of a democratic state, governed by the rule of law (Endziņš A. Tiesu sistēmas un politikas saskarsme un dinamika. Jurista Vārds, 2002. gada 7. maijs, Nr. 9).

The research undertaken by Professor Kalvis Torgāns pays much attention to the legal nature of the judicature, largely dictating the law enforcement practice in considering civil cases by the Latvian courts. An example is an article by Torgāns K. "The Theory of Judicature and the Applied Judicature". The Convention and the legal positions of ECHR based on it may not override the priority of the Constitution. Their practical enforcement in the national legal system is possible only through recognition of supreme legal force of the Constitution.

It should be noted, the analysis of legal literature shows that the lawyers' opinions relating to the priority of the Constitution over the international law and the prejudication of ECHR tend to differ.

For instance, Ineta Ziemele, a former judge of ECHR (2005-2014) and a judge of the Constitutional Court of the Republic of Latvia, claimed that the "Declaration on the Accession to International Instruments Relating to Human Rights" (hereinafter – the Declaration) had a constitutional status and that the instruments listed in Part I were legally binding within the framework of the national legal system and were applied by the courts." [50]

With reference to the above, Ineta Ziemele expressed her specific opinion on the judgement of the Constitutional Court: "The Court has always interpreted Chapter 8 of the

[48] Judgment of 13 May 2005 by the Constitutional Court in the case Nr. 2004-18-0106, para 5 of the Findings. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 26.11.2015.
[49] Judgment of 22 October 2002 by the Constitutional Court in the case Nr. 2002-04-03, para 2 of the Findings. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 26.11.2015.
[50] Ziemele Ineta "Incorporation and Implementation of Human Rights in Latvia" in Martin Scheinin (ed.) International Human Rights Norms in the Nordic and Baltic Countries The Hague, Martinus Nijhoff Publishers, 1996, pp. 86–87.

Satversme in close connection with Latvia's international commitments in the field of human rights, in particular, by taking into consideration the case law of ECHR and the fact that the interpretation of the European Convention for the Protection of Fundamental Human Rights and Freedoms provided. " [51]

Ineta Ziemele confirmed again the binding authority of the European Convention for Latvia: "The Latvian system of courts is characterised by openness to the binding norms and principles of international law. The Court has always interpreted Chapter 8 of the Satversme in close connection with Latvia's international commitments in the field of human rights, in particular, by taking into consideration the case law of ECHR and the fact that the interpretation of the European Convention for the Protection of Fundamental Human Rights and Freedoms provided by ECHR is binding upon Latvia."[52]

Former Judge of ECHR Egils Levits (1995–2004) also noted that the Convention treaties listed in the Declaration prevail over the laws adopted by the Parliament in the hierarchy of legal norms. [53]. Back in 1997, E. Levits wrote: "Meeting the provisions of articles 69 and 70 of the Association Agreement between Latvia and the European Union as of 12 June 1995, Latvia should not only agree on the texts of its regulatory acts with the texts of the European Union's legal norms, but also adopt the theory of Western law, namely, the legal thinking, because only then the legislation, coordinated at the level of wording, will be practically enforced in Latvia in the same way as in the European Union. Common understanding of the rights within the traditions of the European legal culture, forms a baseline for due functioning of the European Union."[54]

The former Chairman of the Constitutional Court Aivars Endziņš presented another point of view in 2004: "On the one hand, we can agree to a certain extent with the general opinion that in case of a conflict, the European Union's law takes precedence over the national laws, and the priority of applying the legal acts of the European Union is absolute. At the same time, it should be borne in mind that the national constitutional norms are not unified. Every Constitution contains the provisions that establish the constitutional foundations of the state. Usually, a much more complicated procedure is used to amend the

[51] Dissenting Opinion of the Justice of the Constitutional Court Ineta Ziemele in the case Nr. 2014-08-03. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 27.11.2015.
[52] Dissenting Opinion of the Justice of the Constitutional Court Ineta Ziemele in the case Nr. 2014-08-03. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 27.11.2015.
[53] Levits Egils. "Human Rights Norms and their Legal Rank in the Latvian Legal System".[Law Journal No 5 / Human Rights Quarterly No 6].
[54] Levits Egils. Latvijas un Eiropas Savienības tiesību sistēmu tuvināšana un tiesiskas valsts principu īstenošana // Latvija un Eiropas Savienība, 1997, Nr. 6, 30.–45. lpp.

rules, where some of them cannot be altered. These rules do not have and can not have inferior legal effect than the EU documents." [55]

And further, replying to the author's questions posed on 25.11.2015, Professor Aivars Endziņš adds: "The situation when ECHR finds violation of the Convention in legal consideration by the courts of Latvia is not uncommon. However, the limitation of rights guaranteed by the Constitution is not possible in principle, since the provisions of the Convention and the Charter of Fundamental Rights of the European Union suppose a wider spectrum of basic rights and freedoms than the Constitution of the Republic of Latvia." [56]

The author refers to the opinion of a former judge of the Constitutional Court of the Republic of Latvia, Juris Jelāgins. "Only the international rules that have the same legal effect as the provisions of the Constitution have higher priority than the norms of the Constitution of the Republic of Latvia. If a contradiction between some ratified norm of the Convention and the norms of the Constitution is detected, this collision may be eliminated either by changing the relevant article of the Constitution of the Republic of Latvia or by denunciation of the Convention's norm." [57]

The opinion of Vice-President of the Constitutional Court of the Republic of Latvia Uldis Ķinis is important as well: "The international rules are not more priority-oriented than the norms of the Constitution. Clause 2 of article 16 of the Law on the Constitutional Court of the Republic of Latvia stipulates that the Constitutional Court considers legal cases on the basis of the Constitutional provisions on compliance with international treaties signed or entered into by Latvia (including prior to approval of the relevant treaties by the Saeima). This is the so-called preventive control. In turn, clause 6 of the above article sets that the Constitutional Court considers legal cases on compliance of the national legal norms of Latvia with the international treaties concluded by Latvia, that are not in contradiction with the Constitution.

Limitation of rights guaranteed by the Constitution is not possible in principle, since the provisions of the Convention and the Charter of Fundamental Rights of the European Union suppose a wider spectrum of basic rights and freedoms than the Constitution of the Republic of Latvia." [58]

This position was introduced back in 2010 by Martins Mits, ECHR effective judge from Latvia – on the primacy of the Constitution over the international law.

[55] Endziņš Aivars, former Chairman of the Constitutional Court of the Republic of Latvia. The position of Constitutional Courts following integration into the European Union. Bled, Slovenia, 30 September – 2 October 2004. http://www.us-rs.si/media/zbornik.pdf. Viewed 28.11.2015.
[56] Endziņš Aivars, the replay from 25.11.2015 to the questions asked by the author in an interview.
[57] Jelāgins Juris, the replay from 9.2.2016 to the questions asked by the author in an interview.
[58] Ķinis Uldis, Vice-President of the Constitutional Court of the Republic of Latvia, the replay from 25.11.2015 to the questions asked by the author in an interview.

"It was concluded that the Constitution must be interpreted in line with the practice of application of international human rights standards because the Parliament had not intended to oppose the Constitution to the international standards, but had rather aimed at achieving harmony between them. This conclusion was based on Article 89 of the Constitution, which referred to binding international treaties in the area of human rights.

Therefore, it can be argued that with "the practice of application of international human rights norms" the Constitutional Court meant the practice of application of the provisions contained in the international treaties binding upon Latvia. At the same time the use of the phrase "as far as possible" indicated that the approach of harmonious interpretation has its limits which, in the light of the statement of non-superiority of international treaties to the Constitution, indicated that in case of a clear conflict between the Constitution and international treaties the Constitution **would prevail.**" [59]

This provides an argument that the Constitutional Court treated international treaties **as being inferior to the Constitution.**" [60]

Further Martins Mits makes the following conclusions: "Although the Constitution did not expressly provide for an obligation to interpret the Constitution in harmony with the binding international treaties, the Constitutional Court derived this obligation from Article 89 of the Constitution. It also stated that the notion of democracy in Article 1 of the Constitution required that the protection of human rights in the Constitution would not fall below the level of international treaties. As a result, the Constitutional Court introduced a new formula of seeking for harmonious interpretation without "as far as possible" clause. The case law of the Constitutional Court did not suggest that exclusion of "as far as possible" clause had a particular purpose, but it rather reflected the Constitutional Court's presumption that the Constitution had to be and could be interpreted as not falling below the minimum standard of the binding international treaties. When so understood, "as far as possible" clause became unnecessary. Such an approach opened a possibility for a strong influence of international treaties on shaping the constitutional provisions. However, this approach would be problematic if it were applied in cases of a clear contradiction between the Constitution and international treaties or of unjustifiably wide interpretation of the Constitution."[61]

On 10 December, 2015, ECHR judge Mits Martins gave the reply to the author: "From a perspective of the ECHR, its obligations cannot be set aside by referring to domestic law,

[59] Judgment of the German Federal Constitutional Court No 1481/04 (2 BvR), 14 October 2004, para 62. Available in English at http://www.bverfg.de/entscheidungen/rs20041014_2bvr148104e.html. Viewed 28.11.2015.
[60] Mits Martins. European Convention on Human Rights in Latvia. Lund. 2010. Chapter 5.2.2, pp. 134–135.
[61] Mits Martins. European Convention on Human Rights in Latvia. Lund. 2010. Chapter 5.2.2, p.143.

including the Constitution (Vienna Convention on the Law of Treaties).[62] At the same time in an interview Mits Martins replied that: "Your questions indicate that you need to do a basic study of the Latvian legal writings. For example, you can use my book "European Convention on Human Rights in Latvia: Impact on Legal Doctrine and Application of Legal Norms", Medya Trick, Lund, 2010".[63]

The former president of the Constitutional Court Gunārs Kūtris emphasizes the priorities and values of the sovereign state:

"If viewed from the position of "pure" theory of the rules of law hierarchy, the international norms need to be recognized as having a higher priority. At the same time, the issue is complicated by the norms of the European Union that are traditionally referred to as supranational, rather than international. Still I believe that the Constitution is above all, that is, it is more prioritized. The right to participate in international organizations and take on *the* obligation arising from the international obligations follows from the rules of the Constitution of a sovereign state. So, the Constitution allows to act according to the international norms on the territory of the state. It would be absurd if an international norm (possibly, improperly formulated and adopted by majority of votes) would challenge or threaten the values fixed in the Constitution of a sovereign state." [64]

The same position was repeatedly reflected in the resolutions of the Constitutional Court of the Republic of Latvia in clause 7 of the conclusions to a judgement of the Constitutional Court on 9 January 2014 in the case Nr. 2013-08-01: International norms of human rights and the practice of applying them on the level of constitutional law serve as a means of interpretation for establishing the content and scope of fundamental rights and the principles of a judicial state, insofar this does not lead to decreasing or restricting the human rights that are included in the Satversme (see, for example, Judgement of 13 May 2005 by the Constitutional Court in Case Nr. 2004-18-0106, Para 5 of the Findings).[65]

The author supports the view of the Chairman of the Constitutional Court of the Republic of Armenia G. Harutyunyan: The foremost task of the constitutional control globally is to ensure supremacy of the Constitution. Today, in 110 countries of the world, it is enforced according to the European model – through special bodies of judicial constitutional control,

[62] Mits Martins, the replay from 15.12.2015 to the questions asked by the author in an interview.
[63] Mits Martins. European Convention on Human Rights in Latvia: Impact on Legal Doctrine and Application of Legal Norms. Media Tryck, Lund, 2010, p. 296. ISBN 978-9984-49-011-3.
[64] Kūtris Gunārs, the replay from 15.12.2015 to the questions asked by the author in an interview.
[65] Judgment of 13 May 2005 by the Constitutional Court in the case Nr. 2004-18-0106, para 5 of the Findings and para 11 of the Judgment of 10 October 2007 by the Constitutional Court in Case Nr. 2007-03-01. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 28.11.2015.

and in 48 countries – according to the American model. However, the variations within the European model are so diverse that it is difficult to consider them on the same plane.[66]

It is also important to note, that the interpretation of the right to a fair court, established in Article 92 of the Satversme, may be influenced by the norms of human rights included in international human rights documents. They can be of assistance in specifying the scope of particular human rights and establishing their content more accurately.[67]

Also, the restriction of fundamental rights to fair trial in specific cases is envisaged by the Law on Civil Procedure adopted and made public in the manner as provided in the Constitution and in the Saeima Regulations.

It should also be recalled that as early as in the year 2000, a conclusion was fixed in the practice of the Constitutional Court of the Republic of Latvia for example, the finding that the obligation of the State to abide by the international commitments in the field of human rights follows from Article 89 of the Satversme, which provides that the State recognizes and protects fundamental human rights in accordance with the Satversme, laws and international treaties binding upon Latvia, has been embedded in the case law of the Constitutional Court.[68]

The same view is shared by the former Chairman of the Supreme Court of the Republic of Finland, ECHR judge Pauliine Koskelo (from 1 January, 2016), after completion of work in the Supreme Court from 2000 and as a President of the Supreme Court from 2006. In Finland, the supremacy of the Constitution is enshrined by article 106. In accordance with the constitutional norms, the Constitution defends the fundamental human rights and freedoms and promotes effectuation of justice in the society.[69] The consideration of claims for cancellation of the previously issued court judgements, on the basis of ECHR rulings stating violations of the Convention by Finland in that period, took place within the framework of the concept of priority of the Constitution and of the Code of Practice.

The peculiarity of the Finnish legal system is that there is no Constitutional Court in Finland. The Constitutional Law Committee shall issue statements on the constitutionality of legislative proposals and other matters brought for its consideration, as well as on their relation to international human rights treaties. If a law that is contrary to the Constitution is considered, the Supreme Court may reject it in some cases.

The German Federal Constitutional Court has established that EHRC guarantees influence interpretation of fundamental rights included in the Basic Law and the principle of

[66] Арутюнян Г. Особенности конституционных судов в условиях общественной трансформации. Москва. "Конституционное правосудие." 2011. №1 (51). С. 41–48.
[67] Judgment of 3 June 2009 by the Constitutional Court in the case Nr. 2008-43-0106, para 10. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 29.11.2015.
[68] Judgment of 30 August 2000 by the Constitutional Court in the case Nr. 2000-03-01, para 5 of the Findings. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 29.11.2015.
[69] Sajari Petri . The supremacy of law is under threat in Finland. Helsingin Sanomat. 10 January 2016.

the law-governed state. The text of the EHRC and the practice of ECHR serve as means of interpretation on the level of constitutional law to determine the contents and scope of fundamental rights and the principle of the law-governed state, as far as it does not lead to decrease or limitation of fundamental rights, included in the Basic Law, that is – to influence, which is precluded by Article 53 of the EHRC. The constitutional legal meaning of international human rights is the expression of favourableness (Völkerrechtsfreundlichkeit) of the Basic Law towards the international law, which strengthens the state sovereignty by an international legal norm and the aid of general principles of international law. Therefore the Basic Law shall be interpreted as much as possible in such a way that the conflict with international liabilities of the German Federative Republic does not arise (see the German Federative Constitutional Court October 14, 2004 Judgment in case 2BVR 1481/04).

The author notes that in Germany, for historical reasons, a strong federal structure of the Constitutional Court has taken shape, which sometimes has an impact on the development of the whole European policy. For instance, in autumn 2012, the Federal Constitutional Court of Germany considered and rejected the claim of the Eurozone Crisis Fund under European Stability Mechanism worth of 500 billion Euros that would contradict to the German Constitution. At the same time, the Constitutional Court took a decision on indirect support of the political development of the union.

The author emphasizes that the Constitutional Court of the Republic of Latvia has determined that International norms of human rights and the practice of applying them on the level of constitutional law serve as a means of interpretation for establishing the content and scope of fundamental rights and the principles of a judicial state, insofar this does not lead to decreasing or restricting the human rights that are included in the Satversme.[70]

These principles are reflected as well in the judgements of the Constitutional Courts of European states. The Constitutional Courts of the Federal Republic of Germany, Austria and Italy, as well as the Supreme Court of the United Kingdom of Great Britain and Northern Ireland, recognized the priority of the Constitution. Similar decisions to reject the legal position of the European Court because of its contradiction to the principles of the national Constitution were taken by the Constitutional Courts of France and Switzerland.

Recognizing the importance of the Convention and the ECHR rulings based on it, the Constitutional Courts in their decisions noted that the ECHR judgements in principle are not to be perceived as subject to unconditional enforcement, they should only be "taken into

[70] Judgment of 13 May 2005 of the Constitutional Court in the case Nr. 2004-18-0106, para 5 of the Findings. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 29.11.2015.

account"; following these judgements is possible only if they are not contrary to the fundamental substantive and procedural rules of the national law.

The conflict of the Grand Chamber in the UK reflecting disagreement with the resolutions of the European Court has aggravated, and, as asserted by the Minister of the Interior Theresa May, can result in withdrawal of the UK from the European Convention, and in case of particularly adverse developments - in complete collapse of the Council of Europe and the entire European system of human rights protection. According to the Minister, "by 2015, we'll need a plan for dealing with the European Court of Human Rights… And yes, I want to be clear that all options - including leaving the convention altogether - should be on the table."[71]

The prime minister David Cameron 20 February 2016 said he had secured a good deal with Brussels to give the UK a special status and leaving the EU would "threaten our economic and national security". David Cameron has called for his referendum on Britain's membership of the EU to take place on 23 June, after the cabinet formally agreed to campaign to stay in despite several ministers openly supporting Brexit.[72]

These changes in the European Union, of which Latvia and Finland are members, consequent to Brexit, as well as the position of the Constitutional Courts of the member states of the Convention, inevitably have had an impact on interpretation of the issues raised in the research and on the final conclusion of the Doctoral thesis.

1.5. Priority of Constitution in the national legal system and position of international treaties in sources system of national law

The supremacy of the Constitution of the Republic of Finland is consolidated in Article 106, which states that an international obligation shall not endanger the democratic foundations of the Constitution. If, in a matter being tried by a court of law, the application of an Act would be in evident conflict with the Constitution, the court of law shall give supremacy to the provision in the Constitution.[73] According Chapter 8 Section 94 (3) of the Constitution of the Republic of Finland an international obligation shall not endanger the democratic foundations of the Constitution.

[71] May Theresa: Tories to consider leaving European Convention on Human Rights // BBC. 9 March 2013.
[72] EU referendum to take place on 23 June, David Cameron confirms. The Guardian. 2o February 2016. http://www.theguardian.com/politics/2016/feb/20/cameron-set-to-name-eu-referendum-date-after-cabinet-meeting .Viewed 29.2.2016.
[73] The Constitution of the Republic of Finland, 11 June 1999 (731/1999, amendments up to 1112 / 2011 included).www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf. Viewed 2.12.2015.

According to article 6, the US Constitution and the United States laws passed within its framework, as well as all the treaties concluded or to be signed on behalf of the United States, represent the supreme law of the country. At the same time, the American constitutional and legal doctrine divides the international treaties into self-executing ones (the enforcement of which does not require changing the national legislation) and non-self-executing ones that assume changes in the national legislation. [6 U.S. (2 Cranch) 64, 118 (1804)]. In the event of collision of norms of a self-executing international treaty and a national US law, with regard to their equal legal force, the applied rule is the one that was issued the latest (last-in-time rule). In one of the judgements, the court of appeal found that "the rules of international agreement on extradition concluded between USA and France contradict to the Fourth Amendment to the US Constitution and therefore are not subject to enforcement."[74]

The criteria for limitations of international treaties were formulated later by the American judicial authorities within the framework of the doctrine of self-executing treaties, on the basis of interpretation of the relevant provisions of the US Constitution. The origination of the doctrine of self-executing international treaties in the legal practice of the United States has roots in the judgement made in 1829 by the Chairman of the Supreme Court of the United States John Marshall, with regard to Foster case, that concerned the enforcement of the Spanish-American treaty of 1819 which was specifying, inter alia, the legal consequences of transfer of Florida to the United States, alienated from Spain.

In particular, Professor Bederman David J. referred to the effectuation of international law norms in the legal system of the United States as follows: "Regardless of whether the matter of consideration is a legal dispute in connection with an air crash, which may involve the provisions of the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air for its resolution, ... or protection of human rights guaranteed by the Covenant on Civil and Political Rights of 1966, in all these cases, one of the key issues is the question of possible use of the relevant international treaties as the sources of legal norms, that impose legal obligations on the parties to a court process held within the United States". [Bederman David J. International Law Frameworks. New York, 2001. P. 158]

Other American researchers, upon consideration of the enforcement of the international law rules, also refer to the United States Constitution and the legal precedents that were used as a background for interpretation of a number of provisions of this document.

[74] Case of Giancarlo Parretti v.United States. 112 F.3d 1363. U.S.Court of Appeals, 9th Cir., May 6, 1997. http://www.uniset.ca/other/cs4/143F3d508.html .Viewed 2.12.2015.

One of the American courts of appeal confirmed this position in the judgement with regard to the case of Committee of United States Citizens Living in Nicaragua v. Regan [United States Court of Appeals, District of Columbia Circuit. Argued Nov. 13, 1987]. The Court noted that «not a single ruling of the Congress may be challenged only on the grounds that it violates the common international law». The Court also pointed out that the political and judicial authorities of the United States have the right to ignore the rules of customary international law in the process of enforcement of laws and other federal statutory acts.

In considering this case, the Court of Appeal referred to Professor L.Henkin, noting that in a number of European countries treaties take precedence over all inconsistent laws. [75]

Nevertheless, "the jurisprudence of the Supreme Court in respect of the treaties inevitably reflects certain assumed obligations of the international law and of the legislation of the United States of America...." [Henkin, United States Sovereignty, 100 Harv. L. Rev. at 870.]

A landmark in the international law of the United States was the consideration case of Filartiga v. Pena-Irala, Court of Appeals, Second Circuit, 30 June 1980. The court issued a precedent for US federal courts prescribing punishment to the USA aliens for tortious acts committed outside the United States, in violation of the international public law where the USA is a party. Thus the jurisdiction of the USA courts in respect of civil tort was extended.

The Court held that the extension of the international law also changed the principle of the internal law, when the acts of the Congress cannot be infringed, but it is possible to replace the earlier contradictory treaties or customary rules of international law.

The author emphasizes that the Italian judicial practice adheres to a dualistic conception, as concerns the relationship between the international and national law. The treaty, like in the USA, has the same legal status as the law. But in the event of collision between the constitutional provisions and the international treaty, the priority in enforcement is given to the Constitution. In one of the cases, the Constitutional Court of Italy recognized that "the covenant on extradition between the USA and Italy is unconstitutional and therefore can not be applied".[76]

The author also refers to the B.I. Osminin's data on domestic procedures required for expressing consent to the binding authority of international treaties.[77] The international

[75] Henkin L., International Law as Law in the United States, 82 Mich. L. Rev. 1555, 1565 n. 34 (1984).
[76] Italian Constitutional Court, June 27, 1996 , Venezia v.Ministero di Grazia e Giustizia. Judgement No 223. Rivista di Diritto Internazionale 815. (1996).
http://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S238_2013_en.pdf. Viewed 2.12.2015.
[77] Осминин Б. И. Заключение и имплементация международных договоров и внутригосударственное право. Москва. 2010. ISBN 978-5-9998-0005-3; С.134.

treaties concluded with prior consent of the Parliament, rank higher in the internal law of Span than ordinary laws, but are inferior to the Constitution and should not contradict to it.

In Portugal, the international treaties concluded with the approval of the Parliament, have priority over the ordinary law, but are inferior to the Constitution.

In Spain, according to article 96 (1) of the Constitution, the properly concluded and officially published international treaties form part of its national legislation. The international treaties concluded with prior consent of the Parliament, rank higher in the internal law of Span than ordinary laws, but are inferior to the Constitution and should not contradict to it.

According to the Constitution of France, conclusion of international treaties or covenants containing provisions contrary to the Constitution is possible only after its revision (Art. 54). If the Constitutional Council rules that an international obligation is contrary to the Constitution, then the permission to ratification may be given only after revision of the Constitution. In this respect, the provisions contrary to the Constitution may be interpreted in a broader sense, as affecting or jeopardizing the essential conditions of the national sovereignty.

In the Netherlands, in accordance with article 91(3) of the Constitution, any provision of the international treaty that is in conflict with the Constitution is subject to approval by the majority of not less than 2/3 of the votes of the States General.

In the UK, an international treaty, even ratified and consummated, does not become part of the national law and may not be applied by the national courts as far as it is not implemented into the national legislation as a separate law. After that, it gains the effect of ordinary act that may be changed by a subsequent act.

The Constitutional Court ruled, as early as in 2005, that international norms of human rights and the practice of applying them on the level of constitutional law serve as a means of interpretation for establishing the content and scope of fundamental rights and the principles of a judicial state, insofar this does not lead to decreasing or restricting the human rights that are included in the Satversme.[78]

The Constitutional Court secures protection of human rights as well in conformity with the norms of the Constitution, applying different articles for particular cases. For instance, the Constitutional Court recognized that article 92 of the Constitution in conjunction with article 90 of the Constitution envisage the legislator's duty to stipulate explicitly a procedure in the legal norms that will secure the individual's explicit and firm confidence of

[78] Judgment of 13 May 2005 of the Constitutional Court in the case Nr. 2004-18-0106, para 5 of the Findings. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 2.8.2016.

his ability to protect his fundamental rights (Judgment of 24 October 2013 by the Constitutional Court in Case Nr. 2012-23-01, para 14.4 of the Findings).

As an example, the author refers to a similar practice of defending the fundamental national rights by the Federal Constitutional Court of the Federal Republic of Germany, which relies on the legal position, worked out on July 13, 2010, regarding the "restricted judicial validity of ECHR's rulings". In particular, in considering the issue of enforcement of the ruling of the European Court of Human Rights as of 26 February 2004 with regard to case of Görgülü v. Germany (Case of Görgülü v. Germany, Application No 74969/01, 26 February 2004). ECHR accepted that the refusal to commit the child to the care of his father without sufficient scrutiny of the matter and depriving the father of the right to see the child was breaching the relevant article of the Convention.

In June 2004, the Court of Appeal in Naumburg (Oberlandesgericht Naumburg) resolved that complying with ECHR judgements is not mandatory for the German courts. The Court emphasized that ECHR is not a higher judicial authority for the German courts. In the opinion of the Court, the judgement of ECHR creates an obligation for Germany as a subject of international law, but not for its courts of law – "the authorities responsible for administration of justice, which are independent, according to art. 97.1 of the Basic Law".

The Federal Constitutional Court of Germany formulated the principle of the priority of the national constitution to the judgements of the European Court: The text of the EHRC and the practice of ECHR serve as means of interpretation on the level of constitutional law to determine the contents and scope of fundamental rights and the principle of the law-governed state, as far as it does not lead to decrease or limitation of fundamental rights, included in the Basic Law, that is – to influence, which is precluded by Article 53 of the EHRC.[79]

The Constitutional Court pointed out that in Germany the European Convention, as well as the protocols thereto, have only the status of federal law, so Germany's Basic Law "is not open to the international law to the maximum possible extent". The court stated that the Basic Law aims to integrate Germany into the legal community of peaceful and free states, but it does not waive the sovereignty ultimately provided for by the German constitution. That is, the Constitutional Court emphasized the importance of the German sovereignty, asserting that the Constitution takes precedence over international obligations.

[79] German Federal Constitutional Court, October 14, 2004 . Judgment in the case 2BVR 1481/04. http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2004/10/rs20041014_2bvr148104en.html. . Viewed 2.12.2015.

The Constitutional Court of the Italian Republic used a similar approach by rejecting the conclusions concerning the retirement payments that were formulated in the judgement of ECHR with regard to case of Maggio and Others v. Italy of 31 May 2011.[80]

The Constitutional Court of the Italian Republic stated in its ruling as of 19 November, 2012 with regard to case No 264/2012, that compliance with international obligations can not be the cause of lowering the level of protection of rights envisaged already in the internal legal order, and on the contrary, may and should represent an effective tool of extension of that defence; as a consequence, the contradiction between the protection provided by the Convention on Human Rights and Fundamental Freedoms and the constitutional protection of fundamental rights must be resolved in the direction of maximum extension of guarantees and with a view of securing proper conformity with other interests defended by the Constitution. The Constitutional Court of the Italian Republic took its final decision on the priority of constitutional norms on 22 October 2014. The resolution states that a decision of an international judicial body, in the event of conflict with the basic constitutional principles of the Italian law, makes any acceptation impossible in the context of article 10 of the Italian Republic's Constitution. The limits of the Constitutional Court's resolution on declaring a law unconstitutional are of erga omnes character. The retroactivity principle lies in that the law declared unconstitutional does not have legal consequences and becomes null and void from the day following the day of publication of the court's resolution (article 136 of the Constitution of the Italian Republic, in conjunction with article 1 of the Constitutional Law 1948 N 1 and article 30 (3) of the Law No 87/1953). [Case of Scordino v. Italy (No. 1) , pp. 51. 29 March 2006, No 36813/97].

The Constitutional Court of the Republic of Austria, recognizing the importance of the Convention on Human Rights and Fundamental Freedoms and ECHR rulings based on it, also came to the conclusion on inexpediency of enforcement of the Convention's provisions in the interpretation of ECHR, that are contrary to the national constitutional law (enactment as of 14 October, 1987 with regard to case No B267/86).

Importantly, the ECHR Judges noted in the case of Frodl v. Austria that any departure from the principle of universal suffrage risks undermining the democratic validity of the legislature thus elected and the laws it promulgates. Exclusion of any groups or categories of the general population must accordingly be reconcilable with the underlying purposes of Article 3 of Protocol No. 1. This standard of tolerance does not prevent a democratic society

[80] Case of Maggio and Others v. Italy.No 46286/09, 52851/08, 53727/08, 54486/08, 56001/08, 31 May 2011. http://hudoc.echr.coe.int/eng#{"fulltext":["Maggio%20and%20Others%20v.%20Italy"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-104945"]}. Viewed 2.12.2015.

from taking steps to protect itself against activities intended to destroy the rights or freedoms set forth in the Convention Article 3 of Protocol No 1.

The Court points out that Article 3 of Protocol No 1 does not, like other provisions of the Convention, specify or limit the aims, which a restriction must pursue. A wide range of purposes may therefore be compatible with Article 3 (for example, Podkolzina v. Latvia).[81]

For example, in the case of Podkolzina the Court considers that the interest of each State in ensuring that its own institutional system functions normally is incontestably legitimate. That applies all the more to the national parliament, which is vested with legislative power and plays a primordial role in a democratic State. Similarly, regard being had to the principle of respect for national characteristics enunciated above, the Court is not required to adopt a position on the choice of a national parliament's working language. That decision, which is determined by historical and political considerations specific to each country, is in principle one which the State alone has the power to make.[82]

The Supreme Court of the United Kingdom of Great Britain and Northern Ireland in its resolution of 16 October, 2013 (UKSC 63) pointed out the unacceptability for the British legal system of the conclusions and construction of the Convention on Human Rights and Fundamental Freedoms, as interpreted in the ruling of ECHR of 6 October, 2005, with regard to case of John Hirst v. the United Kingdom [83] relative to the problem of prisoners' electoral rights. The Court has had frequent occasion to highlight the importance of democratic principles underlying the interpretation and application of the Convention and it would take this opportunity to emphasise that the rights guaranteed under Article 3 of Protocol No 1 are crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law.

This standard of tolerance does not prevent a democratic society from taking steps to protect itself against activities intended to destroy the rights or freedoms set forth in the Convention. Article 3 of Protocol No. 1, which enshrines the individual's capacity to influence the composition of the law-making power, does not therefore exclude that restrictions on electoral rights could be imposed on an individual who has, for example,

[81] Case of Frodl v. Austria. No 20201/04. 8 April 2010, para 24. http://hudoc.echr.coe.int/eng#{"documentcollectionid2":["GRANDCHAMBER","CHAMBER"]}.Viewed 15.12.2015.

[82] Podkolzina v. Latvia, No 46726/99, 9 April 2002, para 34. http://hudoc.echr.coe.int/eng#{"fulltext":["Podkolzina%20v.%20Latvia,%20no.%2046726/99"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-60417"]}. Viewed 14.12.2015.

[83] Case of Hirst v. the United Kingdom (No 2). No 74025/01. 6 October 2005, para 71. http://hudoc.echr.coe.int/eng#{"documentcollectionid2":["GRANDCHAMBER","CHAMBER"]} http://hudoc.echr.coe.int/eng#{"fulltext":["Hirst"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-70442"]}. Viewed 2.12.2015.

seriously abused a public position or whose conduct threatened to undermine the rule of law or democratic foundations.

The author points out that in discussion of the case of Hirst v. the United Kingdom the Latvian Government were concerned that the Chamber's judgment would have a horizontal effect on other countries which imposed a blanket ban on convicted prisoners voting in elections. They submitted that, in this area, States should be afforded a wide margin of appreciation, in particular taking into account the historical and political evolution of the country and that the Court was not competent to replace the view of a democratic country with its own view as to what was in the best interests of democracy.

According to the Forfeiture Act 1870, all the prisoners were denied the right to vote. For 142 years the prisoners were not allowed to vote, but ECHR passed its own judgement and reminded the member-states once again that the tacit and indiscriminate deprivation of voting rights infringes the Convention. The author refers to the statistics given by the Court relative to the voting right granted without restriction to prisoners, adopted in 18 countries.

According to the Government's survey based on information obtained from its diplomatic representation, eighteen countries allowed prisoners to vote without restriction (Albania, Azerbaijan, Croatia, the Czech Republic, Denmark, Finland, "the former Yugoslav Republic of Macedonia", Germany, Iceland, Lithuania, Moldova, Montenegro, the Netherlands, Portugal, Slovenia, Sweden, Switzerland and Ukraine).[84]

In the case of Markin v. Russia, ECHR established violation of article 8 and article 14 of the Convention by Russia. In considering this case, the Constitutional Court of the Russian Federation announced its ruling with regard to the case of collision between its own judgements and the judgements of ECHR. In Russia, the RF Constitution has legal supremacy, while the exclusive right of interpretation and enforcement of the RF Constitution is the prerogative of the Constitutional Court of the Russian Federation; therefore its decisions have the inherent supreme legal effect as well.

According to article 15, the Russian Federation Constitution has the supreme legal force, immediate effect, and is enforced on the entire territory of the Russian Federation. The laws and other legal acts adopted in the Russian Federation must not contradict the Russian Constitution.

With regard for the best practices of the constitutional proceedings, including Germany, Britain, Italy and Austria, and the full compliance of the Constitution, the Constitutional Court of the Russian Federation on 14 July, 2015 recognized the supremacy of

[84] Case of Hirst v. the United Kingdom (No 2). No 74025/01. 6 October 2005, para 33. http://hudoc.echr.coe.int/eng#{"fulltext":["Hirst"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-70442"]}. Viewed 2.12.2015.

the Constitution of the Russian Federation in enforcement of ECHR judgements. At the same time, the participation of the Russian Federation in the international treaty does not imply waiver of the national sovereignty, but the Convention and the legal positions of ECHR based on it may not override the priority of the Constitution. The Constitutional Court enacted that if the Constitutional Court of the Russian Federation comes to the conclusion that an ECHR resolution based on the Convention on Human Rights and Fundamental Freedoms, interpreted contrary to the RF Constitution, may not be enforced, such resolution is not enforceable to this specific extent.

On 4 December 2015 the State Duma of the Russian Federation approved a law granting a right to the Constitutional Court of the Russian Federation to decide whether or not to enforce the verdicts of interstate bodies for protection of rights and freedoms, including Resolutions of ECHR passed within the framework of complaints against Russia. That is, the Constitution of the country has the absolute priority over other laws, including the international law, which is nothing more than its complementation.

The author points out that in all of the above references it is not a matter of contradiction between the Convention and the national constitutions, but a conflict of interpretation of the Convention's provision as given by ECHR in a particular case, the general principles of law recognized by civilized countries and the provisions of national Constitutions.

Recognition by the European Court of human rights violation in a particular case is a due practice. And a different thing is the demand on the part of ECHR to change the legislation in accordance with the general recommendations addressed by ECHR to a national legislation.

Accordingly, a conclusion of ECHR on incompatibility of any provisions of the member-state’s legislation with the obligations under the Convention – including with regard for the assessment given to these provisions earlier by the Constitutional Court of the Republic of Latvia and the Supreme Court of the Republic of Finland – may not be regarded as absolutely binding to take general measures to amend the legal regulation in these countries.

A different approach could lead to diminution of the importance of the Constitution as the act of supreme legal force valid on the territory of the country, and therefore – to undermining the foundations of the constitutional system and, in particular, the state sovereignty.

In the course of preparation of this Doctoral thesis, the author posed a number of questions, in particular, to the judges of the Supreme Court and the Supreme Administrative Court of the Republic of Finland.

The best comment to the position of the Supreme Court is contained in the answer to the questionnaire as of 28 December 2015 of the former President of the Supreme Court of the Republic of Finland Pauliine Koskelo and a ECHR judge from Finland since 1.1.2016. According to the ECHR Judge, the Supreme Court's position is based on 13 legal precedents of the court within the period 2009-2015, reported to the author of the Doctoral thesis in response to the questionnaire. In her reply Pauliine Koskelo states that the best answers to the posed questions may be found in the study of the above judgements. Many of them encompass the relationship between the national laws and the European Convention. Judge Pauliine Koskelo notes that this judgement list is not exhaustive.

On 10.1.2016, an article of the former President of the Supreme Court Pauliine Koskelo entitled "The Supremacy of Law in Finland is jeopardized" was published as well. In accordance with the Constitution, the national rules must protect human rights and promote justice in the society. ECHR has repeatedly stressed that the member states have an obligation to organize their judicial system in such a way that the courts might enforce any of its requirements under the conditions of fair trial.

"It is quite obvious that this approach has not been observed in Finland. First of all, we need to carry out reforms that will lead to cost reduction and streamline operation. In Finland, the Government has cut the funding, in the first place, therefore the requirements of fair trial are not always met."[85]

The fullest attention to the supremacy of the Constitution was given by the Supreme Court of the Republic of Finland in the judgement KKO:2015:14 (the author analyzes this solution in more detail in Chapter 2.2.) The Supreme Court noted that §106 of the Constitution does not provide for enforcement of the Constitution only in cases involving exceptional circumstances. The provision on fundamental rights of citizens is applied in the updated articles of the Constitution in terms of international obligations in the sphere of human rights, with the supremacy of the Constitution. §106 of the Constitution rules that if, upon consideration of a case by court, the enforcement of a provision of law would be in evident contradiction with the Constitution, then the court must give preference to the Constitution. This obligation applies to all judicial proceedings.[86]

[85] Sajari Petri . The supremacy of law is under threat in Finland. Helsingin Sanomat. 10 January 2016.
[86] Judgment of Supreme Court of Finland, KKO:2015:14, para 35. www.finlex.fi. Viewed 2.12.2015.

The research and analysis of legal practice make it possible to conclude that enforcement of laws at the state level is a prerogative falling under the competence of every sovereign state on the basis of the Constitution.

The author notes that the Constitutional Court of the Republic of Latvia has not always accepted the position of ECHR as well. For example the Constitutional Court of the Republic of Latvia disagrees with the opinion of the Saeima regarding the restricted freedom of action of the legislator. Consequently, there is no reason to apply the term of "freedom of action" in the meaning provided by the ECHR to the legislator in case if a constitutional court assesses lawfulness of activities taken by the legislator in the case of expropriation of real property.[87]

Brief summary of Chapter 1

After accession to the European Convention, significant changes were made in the national legislation of the member countries of the Convention; in particular, in 1998 the Constitution of the Republic of Latvia was supplemented by section 8 on the fundamental human rights, and in 2000 an opinion was expressed by the Constitutional Court that, in interpreting the regulations included in section 8 of Constitution of the Republic of Latvia, their opposition to the core values of democracy as contained in section 1 of the Constitution is impermissible.

The Constitution of the Republic of Finland of 1919 was complemented in 1999 with amendments on the supremacy of the Constitution. The Supreme Court and the Supreme Administrative Court of the Republic of Finland accept the interpretation of the Convention by the European Court as compulsory and are guided by it, when justifying their judgement - if it is not contrary to the Constitution as a statutory act of supreme legal force.

Also ECHR, particularly within the period 1979–2010, repeatedly recommended that the national authorities, in particular courts, gave priority to the interpretation and enforcement of internal legislation and to judgements based on issues of constitutionality.

A different approach could result in diminution of the role of the Constitution as an act of supreme legal force valid on the territory of the country, and therefore - in undermining the foundations of the constitutional order and state sovereignty.

The fight against terrorism is pushing European countries to take drastic measures to respect, protect and ensure the rights of the state to provide for the security of its citizens.

The author emphasizes that such measures should not restrict constitutional freedoms and respect for international law to a fair trial.

[87] Judgment of the Constitutional Court in the case Nr. 2009-01-01, para 12.2. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 2.12.2015.

The answer to the question explored in the research is confirmed as well by the response received from the former judges of ECHR and the constitutional law experts of the Republic of Latvia and the Republic of Finland, as well as by the conclusions based on judgements of the Constitutional Courts of the European countries, of the Supreme Court of the Republic of Latvia and the Supreme Court of the Republic of Finland.

2. THE RIGHT TO FAIR TRIAL BY A COMPETENT, INDEPENDENT AND IMPARTIAL TRIBUNAL ESTABLISHED BY LAW

2.1. Article 6 of the European Convention on Human Rights for the right to a fair trial

Article 6 of the Convention is the most common norm in the practice of considering cases by ECHR; it guarantees the right to fair trial. It enshrines the principle of the supremacy of law underlying the structure of the democratic society and the crucial role of the judiciary system in administration of justice, embodying the common heritage of the Contracting States. It guarantees the procedural rights of parties in civil proceedings (clause 1, Article 6) and the rights of the defendant (accused party) in criminal cases.

ECHR adheres to the view that the right to fair trial is respected if a person in question is entitled to receive a consistent court judgement on its rights and responsibilities and may be convinced that this resolution would ne not cancelled after a certain period of time.

ECHR in its judgements has repeatedly noted that the right envisaged in Article 6 of the Convention to having a fair hearing of a case at court should be interpreted in interconnection with the Preamble to the Convention, which, *inter alia*, declares the principle of justice as part of the common heritage of the European states. The principle of justice requires that the principle of legal certainty is complied with, and also that the final court rulings should not be subject to appeal.[88]

In the case of Brumarescu v. Romania European Court noted that the right to a fair hearing before a tribunal as guaranteed by Article 6 §1 of the Convention must be interpreted in the light of the Preamble to the Convention, which declares, among other things, the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, inter alia, that where the courts have finally determined an issue, their ruling should not be called into question.

The Court observes that, by allowing the application lodged under that power, the Supreme Court of Justice set at naught an entire judicial process which had ended in – to use the Supreme Court of Justice's words – a judicial decision that was "irreversible" and thus res judicata – and which had, moreover, been executed…The Supreme Court of Justice infringed the principle of legal certainty. On the facts of the present case, that action breached the

[88] Case of Brumărescu v. Romania, No 28342/95, 28 October 1999, para 61. http://hudoc.echr.coe.int/eng#{"fulltext":["Brum%03rescu"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-58337"]}. Viewed 5.12.2015.

applicant's right to a fair hearing under Article 6 §1 of the Convention. [89]

According to the "supremacy of law" concept which, along with the idea of democracy, is regarded as one of the foundations of the Council of Europe, the guarantee of effective remedy for everyone whose rights or freedoms were violated by the state should be specifically pinpointed in the Convention within a number of independent human rights and freedoms (Article 6, clauses 1, 2 and 3).

At the same time, it is obvious that the wording contained in Art. 13 of the Convention "whose rights and freedoms set forth in this Convention" does not establish such a general guarantee, though one may refer to this article in conjunction with references to one or more such rights and freedoms.

In proceedings before the Constitutional Court of the Republic of Latvia, a representative of the Saeima pointed out that ECHR recognized that article 6 of the Convention "overlaps" with the rights enshrined in article 13 of the Constitution assuming effective protection at public institutions.[90]

The right to fair trial is also provided by enforcement of articles 5, 7 and 13 of the Convention. The European Court and the Commission confirm the conclusion that art. 13 is in the subordinate position relative to art. 6.

It is also important to note that Article 6 is closely linked to Article 5 stating the right to liberty and personal integrity.

Before the Commission, the applicants maintained that, by reason of the same facts as gave rise to a breach of Article 5 para. 4 (art. 5–4), they had lacked an effective remedy before a national authority in respect of the alleged violation of their right to liberty under Article 5 para. 1 (Article 5–1). Accordingly, there had also, in their submission, been a violation of Article 13. The same point of view was expressed by the European Court in the case of de Jong, Baljet and van den Brink, [91] as regards interconnection of clause 4 of Article 5 and Article 13 clause 4 of article 5 should be considered as lex specialis in relation to the general principle of effective remedy for any victim of violation of the Convention.

For instance, clause 1 of article 6 strengthens and develops a number of guarantees provided by art. 13. First, the right to effective national remedies is applicable not only in case of alleged violation of one of the rights and liberties guaranteed in the Convention, but also in

[89] Case of Brumarescu v. Romania. No 28342/95. 28 October 1999, para 61-62. http://hudoc.echr.coe.int/eng#{"fulltext":["Brumarescu"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-58337"]}. Viewed 5.12.2015.

[90] Judgment of 23 April 2003 by the Constitutional Court in the case Nr. 2002-20-0103, para 6. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 5.12.2015.

[91] Case of De Jong, Baljet and Van der Brink. No 8805/79; 8806/79; 9242/81. 22 May 1984. http://hudoc.echr.coe.int/eng#{"fulltext":[",%20Baljet%20and%20Van%20der%20Brink"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-57466"]}. Viewed 5.12.2015.

the event of breach of any "civil right" within the meaning of clause 1 of art. 6.

Second, clause 1 of Article 6 guarantees the right of accessing court, while the term "remedies involving participation of national authorities" is so broad that it pertains to the procedures other than judicial. [92] Third, while it is commonly accepted that the provision of art. 13 may not be directly applied by national courts, such "application" is permissible within the framework of Article 6 which empowers one to use such a reference in national courts of the countries where the Convention is deemed to be a part of the internal law of the state.

The Court recalled in the case of Kontalexis v. Greece, that in accordance with clause 1) a of article 6, the court must always be established on a legal basis. This expression reflects the principle of supremacy of law inherent in the whole system of the Convention and its Protocols. In fact, a body, which was not duly formed in accordance with the Parliament's, will, normally lacks legitimacy needed in the democratic society for consideration of individuals' cases. The term "established by law" covers not only the legal basis for the very existence of the court, but the structure of court session in each case. [93]

The problem of illegitimate composition of the court with participation of lay judges was a subject of the case Posokhov v. Russia considered by ECHR.

ECHR passed an unprecedented judgement for Russia to acknowledge violation of the applicant's rights to consideration of his case by the court recognized by law. The Court reiterates that the phrase "established by law" covers not only the legal basis for the very existence of a "tribunal" but also the composition of the bench in each case.[94]

For the purpose of due comprehension of interpretation of article 13, the author refers to the judgement with regard to the case of Klass and Others v. Germany in which the Court held: Article 13 states that any individual whose Convention rights and freedoms "are violated" is to have an effective remedy before a national authority even where "the violation has been committed" by persons in an official capacity. This provision, read literally, seems to say that a person is entitled to a national remedy only if a "violation" has occurred. However, a person cannot establish a "violation" before a national authority unless he is first able to lodge with such an authority a complaint to that effect. Consequently, as the minority in the Commission stated, it cannot be a prerequisite for the application of Article 13 that the Convention be in fact violated. In the Court's view, Article 13 requires that where an

[92] Case of Golder v. the United Kingdom. No 4451/70. 21 February 1975. http://hudoc.echr.coe.int/eng#{"fulltext":["Golder%20v.%20the%20United%20Kingdom"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-57496"]}. Viewed 5.12.2015.

[93] Case of Kontalexis v. Greece. 3 May 2011, para 38. http://hudoc.echr.coe.int/eng#{"itemid":["001-104951"]}.Viewed 5.12.2015.

[94] Case of Posokhov v.Russia, No 63486/00, 4 March 2003, para 39. http://hudoc.echr.coe.int/eng#{"fulltext":["Posokhov%20v.Russia"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-60967"]} . Viewed 20.12.2015.

individual considers himself to have been prejudiced by a measure allegedly in breach of the Convention, he should have a remedy before a national authority in order both to have his claim decided and, if appropriate, to obtain redress. Thus Article 13 must be interpreted as guaranteeing an "effective remedy before a national authority" to everyone who claims that his rights and freedoms under the Convention have been violated. [95]

The principle of supremacy of law, one of the elements of the common spiritual heritage of the Council of Europe member states, underlies a most important guarantee fixed in cl.1 of article 6 of the Convention - the right to fair judicial trial.

This guarantee is frequently voiced by ECHR by using the notion "fair administration of justice". Although the concern to secure a fair balance between the interests of the society and the protection of the individual's fundamental rights permeates the entire Convention, the right to proper administration of justice is regarded to be particularly important for the democratic society.

ECHR repeated in the case of Lavents v. Latvia that the domestic law (including the rules applying to establishment and procedures for the courts) is dealt with in the first place by national courts, while the supervisory role of the European Court manifests itself only in cases of apparent non-compliance with the relevant laws. In this case, the Court reminded that, in accordance with clause 1 of article 6, "the court must always be set up on the basis of law". This expression reflects the principle of supremacy of law inherent in the entire system of the Convention and its Protocols.

In the case of Lavents v. Latvia ECHR acknowledged violation of the provisions of clause 1, Article 6 of the Convention (the right to consideration of a case by a court set up on the basis of law), pursuant to the fact that the press had published the statements of a judge chairing at the session considering a criminal case at Riga Regional Court; the statements criticized the applicant's legal remedy and openly excluded the applicant's full justification. The judge expressed her surprise at Lavents's consistently asserting his innocence for each charge count, and she suggested that the applicant would prove his innocence himself. In the opinion of the European Court, such judge's statements represent not only the "negative assessment of the applicant's case", but present formation of a final position in respect of the result of the case, with distinct indication of possibility to deem the applicant guilty. Leaving aside the reasons why the judge spoke in that manner on the applicant's case, ECHR notes that such statements of a judge are incompatible with the requirements of clause 1, Article 6 of the

[95] Klass and Others v. Germany. No 5029/71. 6 September 1978. para 64. http://hudoc.echr.coe.int/eng?i=001-57510#{"itemid":["001-57510"]}. Viewed 10.12.2015.

Convention. In this situation, the applicant had reasonable grounds to believe that the judge in his case was not impartial.

The judge also expressed her surprise at the fact that the applicant consistently asserted his innocence for each charge count. In particular, the judge drew the attention of the journalists and readers to one of the charges in respect of which the applicant's position seemed to be particularly strange and illogical. Such statement of a judge is tantamount to finding the applicant guilty. Moreover, the European Court may only express surprise at the fact that the judge invited the accused party to prove his innocence on his own. Proceeding from the character of the declaration, one may conclude that it was contradictory to the principle of the presumption of innocence.[96]

The Committee of Ministers, pursuant to Article 46 §2 of the Convention on exercising control over enforcement of the final Enactments of ECHR, on 3 December 2009 at the 1072nd meeting of the Ministers' Deputies, invited the government of the respondent state to inform the Committee on the measures taken within the framework of implementation of the obligations of Latvia in accordance with article 46, clause 1 of the Convention on compliance with judicial judgements: "La Cour rappelle qu'en vertu de l'article 6 § 1, un tribunal doit toujours être établi par la loi . Cette expression reflète le principe de l'Etat de droit, inhérent à tout le système de la Convention et de ses protocoles. En effet, un organe n'ayant pas été établi conformément à la volonté du législateur, serait nécessairement dépourvu de la légitimité requise dans une société démocratique pour entendre la cause des particuliers. L'expression établi par la loi concerne non seulement la base légale de l'existence même du tribunal, mais encore la composition du siège dans chaque affaire."[97]

Having regard to the judgment, transmitted by the Court to the Committee once they had become final and recalling that the violations of the Convention found by the Court in these cases concern the pre-trial detention of the applicants and, in the Lavents case, also the criminal proceedings brought against the applicant before the domestic courts (violations of Article 5, paragraphs 1, 3 and 4, Article 6, paragraphs 1 and 2, and Article 8).

The Jurjevs case concerns the irregularity of the detention of the applicant on remand between 31 January 2001 and 8 May 2001, his detention order having been extended automatically on expiry on the basis of a practice having no basis in law (violation of Article 5 §1).

[96] Case of Lavents v.Latvia. No 58442/00, 20 November 2002.
http://hudoc.echr.coe.int/eng#{"itemid":["001-65362"]}. Viewed 20.12.2015.
[97] Resolution CM/ResDH(2009)131. Adopted by the Committee of Ministers on 3 December 2009 at the 1072nd meeting of the Ministers' Deputies .
https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cffbe. Viewed 20.12.2015.

As regards the violation of Article 5 §1 in the case of Jurjevs, the article in the Latvian Code of the Criminal Procedure in force at the material time has been repealed by a new law of 20 January 2005, which entered into force on 1 February 2005.

In May 2003, the Human Rights Institute of the University of Latvia organised a seminar on detention issues for judges, prosecutors, practicing lawyers, government and parliament representatives.[98]

In the case of Gautrin and Others v. France the Court reiterates that the holding of court hearings in public constitutes a fundamental principle enshrined in Article 6 §1. This public character protects litigants against the administration of justice without public scrutiny; it is also one of the means whereby people's confidence in the courts can be maintained. By rendering the administration of justice transparent, publicity contributes to the achievement of the aim of Article 6 §1, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention.[99]

The principle of presumption of innocence requires, inter alia, that the judges, in performance of their official duties, do not commence proceedings with the prejudice that the accused party has committed the offence; the burden of proving rests on the prosecution, and any doubt is interpreted in favour of the accused party. For example, in the case of Barbera, Messegue and Jabardo v. Spain Court declared, what paragraph 2 (art. 6-2) embodies the principle of the presumption of innocence. It requires, inter alia, that when carrying out their duties, the members of a court should not start with the preconceived idea that the accused has committed the offence charged; the burden of proof is on the prosecution, and any doubt should benefit the accused. It also follows that it is for the prosecution to inform the accused of the case that will be made against him, so that he may prepare and present his defence accordingly, and to adduce evidence sufficient to convict him. [100]

The presumption of innocence is violated in case of transferring the burden of proof from the prosecution to the defence. The Court recalls that, as a general rule, it is for the national courts to assess the evidence before them, while it is for the Court to ascertain that

[98] Appendix to Resolution CM/ResDH (2009)131. Information about the measures to comply with the judgments in the cases of Lavents and Jurjevs against Latvia.
http://hudoc.echr.coe.int/eng#{"fulltext":["Lavents"],"languageisocode":["ENG"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER","DECISIONS","COMMUNICATEDCASES","CLIN","ADVISORYOPINIONS","REPORTS","RESOLUTIONS"],"itemid":["001-96973"]}. Viewed 20.12.2015.

[99] Case of Gautrin and Others v. France. Nos. 38/1997/822/1025–1028. 20 May 1998, para 42.
http://hudoc.echr.coe.int/eng#{"fulltext":["Gautrin%20and%20Others"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER","DECISIONS","COMMUNICATEDCASES","CLIN","ADVISORYOPINIONS","REPORTS","RESOLUTIONS"],"itemid":["001-58166"]} Viewed 20.12.2015.

[100] Case of Barbera, Messegue and Jabardo v. Spain, No 10590/83 , 7 Decembr 1988, para 77.
http://hudoc.echr.coe.int/eng#{"fulltext":["Barbera,%20Messegue%20and%20Jabardo%20v.%20Spain,"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER","DECISIONS","COMMUNICATEDCASES","CLIN","ADVISORYOPINIONS","REPORTS","RESOLUTIONS"],"itemid":["001-57429"]}. Viewed 20.12.2015.

the proceedings considered as a whole were fair, which in case of criminal proceedings includes the observance of the presumption of innocence.[101].

Besides, the author refers to the case of Capeau v. Belgium, where the Court noted, that the burden of proof cannot simply be reversed in compensation proceedings brought following a final decision to discontinue proceedings. Requiring a person to establish his or her innocence, which suggests that the court regards that person as guilty, is unreasonable and discloses an infringement of the presumption of innocence. [102]

Furthermore, Article 6 imposes an obligation on the state to achieve a result. The means provided by the national law must in any case be effective. The requirements of clause 2 - presumption of innocence - and of clause 3 - specific rights of the accused party – of article 6 represent the elements of the general concept of fair judicial trial.

In its practice, ECHR adheres to the so-called fourth instance doctrine and proceeds from the fact that, without prejudice to its power to verify the judgements taken at the national level for compliance with the Convention, it should not in principle assess the factual circumstances that brought the national courts to taking a particular decision. Otherwise, the European Court would act as a third or fourth instance court, which would serve as a neglect of limitations imposed on its activity.

In principle, and without prejudice to its power to examine the compatibility of national decisions with the Convention, it is not the Court's role to assess itself the facts, which have led a national court to adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of third or fourth instance, which would be to disregard the limits imposed on its action. [103].

Article 6 should be interpreted in view of the present-day conditions, with regard for the governing economic and social conditions, within the framework of the so-called concept "The Convention as a living organism" as defined in a ruling in the case of Marckx v. Belgium: However, the Court recalls that this Convention must be interpreted in the light of present-day conditions. In the instant case, the Court cannot but be struck by the fact that the domestic law of the great majority of the member States of the Council of Europe has evolved

[101] Case of Telfner v. Austria, No 33501/96. 20 March 2001, para 15. http://hudoc.echr.coe.int/eng#{"fulltext":["Telfner%20v.%20Austria"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-59347"]}. Viewed 20.12.2015.

[102] Case of Capeau v. Belgium, No 42914/98, 13 January 2005. http://hudoc.echr.coe.int/eng#{"fulltext":["Capeau%20v.%20Belgium"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-67961"]}. Viewed 20.12.2015.

[103] Case of Kemmache v. France (No 3), No 17621/91. 24 November 1994, para. 44. http://hudoc.echr.coe.int/eng#{"fulltext":["Kemmache"],"documentcollectionid2":["JUDGMENTS","DECISIONS","COMMUNICATEDCASES","CLIN","REPORTS","RESOLUTIONS"],"itemid":["001-57853"]} Viewed 20.12.2015.

and is continuing to evolve, in company with the relevant international instruments, towards full juridical recognition of the maxim "*mater semper certa est"*.[104]

It is in this judgement that ECHR recognized the real evolution of the national legislative framework of the overwhelming majority of member countries of the Council of Europe. Here ECHR interpreted the provisions of the Convention from the point of view of the present-day conditions.

By definition of the authors Jacobs F.G., White R.C.A. ECHR recognizes the system of legal sources practiced in a Convention member state as a "law", provided that their substance meets certain requirements. In this situation, referring to the case of Demir and Baykara v. Turkey of 12 November, 2008, interpreting the provisions of the Convention, the Court may also take into account the relevant rules and principles of the international law applicable in relations between the Contracting Parties.

In some contexts, the violation of national laws or obscure wording of some national provisions was used by the Court as an additional argument pointing at violation of Article 6. Furthermore the Court, to confirm its conclusion on Article 6, also referred to the national resolutions fixing violation of constitutional provisions identic to Article 6, for instance, in the case of Henryk Urban and Ryszard Urban v. Poland the Government argued, that the Convention laid down a certain minimum standard to be met, while the Polish Constitution, as the supreme act of domestic law, set out not a minimum but a maximum standard. In consequence, it could be possible for a measure that satisfied the Convention standard to be inconsistent with the constitutional standard. In conclusion, the Government noted that the constitutional standard of independence as laid down in the Constitutional Court's judgment was stricter than that enshrined in the Convention. The Government, referring to the Court's case-law, submitted that objections regarding the independence and impartiality of the first-instance court could not be upheld where the case had been examined by the court of second instance fully satisfying, as in the present case, the requirements of Article 6 §1 of the Convention. [105]

The author refers to similar decisions in Chapter 1.5 stating that in similar cases the Constitutional Courts of Germany, Austria, Italy and the Russian Federation took a decision on the priority of the national constitutional norms and impossibility to apply the provisions of the Convention as interpreted by ECHR, as contrary to the national constitutional law.

[104] Case of Marckx v. Belgium, No 6833/74. 13 June 1979, para 41. http://hudoc.echr.coe.int/eng#{"fulltext":["Marckx"],"documentcollectionid2":["JUDGMENTS","DECISIONS","COMMUNICATEDCASES","CLIN","REPORTS","RESOLUTIONS"],"itemid":["001-57534"]}. Viewed 20.12.2015.

[105] Case of Henryk Urban and Ryszard Urban v. Poland, No 23614/08. 30 November 2010. http://hudoc.echr.coe.int/eng#{"fulltext":["23614/08.%2030%20November%202010"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-101962"]}Viewed 20.12.2015.

Vice versa in the case of Cossey v. the United Kingdom, 27 September 1990, ECHR deemed that, although it was not formally obliged to follow its previous judgements, it should not depart without good reason from the precedents created in the previous cases – in order to ensure legal certainty, predictability of practice and equality before the law.

Therefore ECHR considers it possible to ignore the precedents fixed in its earlier judgements only if they are "obviously unreasonable and inappropriate", and for the interpretation of the Convention to reflect the actual social changes and meet the needs of the day.[106]

Article 6 should be interpreted in view of the present-day conditions, with regard for the governing economic and social conditions, within the framework of the so-called concept "The Convention as a living organism". [107]

Similar approaches are used for instance it states in Chapter 2 European Convention on Nationality, "internal law" means all types of provisions of the national legal system, including the constitution, legislation, regulations, decrees, case-law, customary rules and practice as well as rules deriving from binding international instruments.[108]

The right to fair trial includes a number of constituent rights, and violation of any of them is incompatible with fair trial. Article 6 is the most frequently applied provision of the Convention; for instance, from the total number of 151 cases of breach of the Convention by Finland between 1995 and 2015, ECHR found the violation of article 6 of the Convention in 98 cases. This article is of key importance in the Convention.

In its judgement with regard to the case of Delcourt v. Belgium ECHR stated that " In a democratic society within the meaning of the Convention, the right to a fair administration of justice holds such a prominent place that a restrictive interpretation of Article 6 para. 1 would not correspond to the aim and the purpose of that provision." [109].

ECHR recalled that the right to fair trial by court, guaranteed by clause 1 of article 6 of the Convention, must be interpreted in view of the Preamble to the Convention, which declares in the relevant part the principle of supremacy of law as a part of the common heritage of the High Contracting Parties. One of the fundamental aspects of supremacy of law

[106] Вильдхабер Л. Роль и значение прецедента в деятельности Европейского Суда по правам человека // Москва. Право и политика. 2001. №8. С. 103.
[107] Case of Marckx v. Belgium, No 6833/74. 13 June 1979. http://hudoc.echr.coe.int/eng#{"fulltext":["Marckx%20v.%20Belgium'"],"itemid":["001-57534"]}. Viewed 20.12.2015.
[108] ETS 166 – European Convention on Nationality, 6.XI.1997 , Chapter I, Article 2 d. https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007f2c8. Viewed 20.12.2015.
[109] Case of Delcourt v. Belgium, No 2689/65 , 17 January 1970, para 25. http://hudoc.echr.coe.int/eng?i=001-57467. Viewed 20.12.2015.

is the principle of legal certainty, which states, among other things, that if the courts have considered the matter definitively, their judgement may no longer be questioned.[110]

Article 6 of the Convention encompasses a broad complex of rights representing a minimum standard of guarantees for the participants in the judicial process. The analysis of these provisions makes it possible to single out, as a minimum, the following constituents of the right to fair trial:

1) the right to judicial defence and the right to access to justice;

2) the right to fair trial, which includes:

a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice;

3) the right to presumption of innocence;

4) the right to defence, which includes:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and the facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court;

5) the right to adversariality and equality of the parties.

The adversarial principle means that the parties to a criminal or civil process have the right to examine all the evidence or observations attached to the case, to comment them. In one of the first considered complaints against Finland in 1995, Kerojärvi v. Finland the European Court noted that, in the light of this practice: The Supreme Court could, moreover, assume that the applicant, who did not have the assistance of a lawyer, would not be aware of

[110] Case of Brumărescu v. Romania, No 28342/95. 23 January 2001. http://hudoc.echr.coe.int/eng#{"fulltext":["Brum%03rescu%20v.%20Romania"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-59159"]}. Viewed 21.12.2015.

the said practice. Despite these circumstances the Supreme Court, which was competent to examine the merits of the case, did not take any measures to make the documents available to him. It is not material to the resultant duty of the Supreme Court under Article 6 para. 1 (art. 6–1) either that the applicant did not complain about the non-communication of the documents mentioned in the Insurance Court's decision or that he had access to the case file such as it existed in the Supreme Court.[111]

In the case of Jasper v. United Kingdom [112] the Court recalls that the guarantees in paragraph 3 of Article 6 are specific aspects of the right to a fair trial set out in paragraph 1. It is a fundamental aspect of the right to a fair trial that criminal proceedings, including the elements of such proceedings, which relate to procedure, should be adversarial and that there should be equality of arms between the prosecution and defence. The right to an adversarial trial means, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party (see the Brandstetter v. Austria judgment of 28 August 1991).[113]

The European Court declared in the case of Gautrin and Others v. France (20 May 1998), that the right to an independent and impartial trial set up on the basis of law extends not only to the legal grounds of the "court " as such, but also to the composition of the court in each case. The Court reiterates that the holding of court hearings in public constitutes a fundamental principle enshrined in Article 6 §1. This public character protects litigants against the administration of justice without public scrutiny; it is also one of the means whereby people's confidence in the courts can be maintained. By rendering the administration of justice transparent, publicity contributes to the achievement of the aim of Article 6 §1, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention.

Article 6 §1 does provide that the press and public may, in certain circumstances, be excluded from all or part of the trial. However, it has not been suggested that either of the exceptions referred to in that provision applied in the present case.[114]

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[111] Case of Kerojärvi v. Finland. No 17506/90. 15 July 1995, para 42. http://hudoc.echr.coe.int/eng#{"fulltext":["Keroj%E4rvi%20v.Finland"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-57941"]}. Viewed 21.12.2015.

[112] Jasper v. the United Kingdom, No 27052/95, 16 February 2000, para 50. http://hudoc.echr.coe.int/eng#{"fulltext":["Jasper%20v.%20United%20Kingdom"],"languageisocode":["ENG"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-58495"]}. Viewed 21.12.2015.

[113] Case of Brandstetter v. Austria, No 13468/87, 28 August 1991, para 66. http://hudoc.echr.coe.int/eng#{"fulltext":["Brandstetter%20v.%20Austria"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-57683"]}. Viewed 21.12.2015.

[114] Case of Gautrin and Others v. France, Nos. 38/1997/822/1025–1028. 20 May 1998, para 42. http://hudoc.echr.coe.int/eng#{"fulltext":["Gautrin%208%20Others%20v.%20France"],"languageisocode":["ENG"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-58166"]}. Viewed 23.12.2015.

In the case of Al-Khawaja and Taher the Court notes that the guarantees in paragraph 3 (d) of Article 6 are specific aspects of the right to a fair hearing set forth in paragraph 1 of this provision which must be taken into account in any assessment of the fairness of proceedings. In addition, the Court's primary concern under Article 6 §1 is to evaluate the overall fairness of the criminal proceedings. It is also observed in this context that the admissibility of evidence is a matter for regulation by national law and the national courts and that the Court's only concern is to examine whether the proceedings have been conducted fairly. [115]

The European Court recalls that, while Article 6 (art. 6) of the Convention guarantees the right to a fair trial, it does not lay down any rules on the admissibility of evidence as such, which is therefore primarily a matter for regulation under national law.[116]

The European Court declared in the case of Buscarini v. San Marino, that the right to an independent and impartial trial set up on the basis of law extends not only to the legal grounds of the "court" as such, but also to the composition of the court in each case. [117]

In the case of Hornsby v. Greece the Court reiterates that, according to its established case-law, Article 6 para. 1 (art. 6-1) secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect.[118]

The Court reiterates that the Convention is intended to guarantee practical and effective rights. This is particularly so of the right of access to a court in view of the prominent place held in a democratic society by the right to a fair trial. It is central to the concept of a fair trial, in civil as in criminal proceedings that a litigant is not denied the opportunity to present his or her case effectively before the court and that he or she is able to enjoy equality of arms with the opposing side. Article 6 §1 leaves to the State a free choice of the means to be used in guaranteeing litigants the above rights. The institution of a legal aid

[115] Case of Al-Khawaja and Tahery v. the United Kingdom, Nos. 26766/05 and 22228/06. 15 December 2011. http://hudoc.echr.coe.int/eng#{"fulltext":["AlKhawaja%20and%20Tahery"],"documentcollectionid2":["GRAND CHAMBER","CHAMBER"],"itemid":["001-108072"]}. Viewed 23.12.2015.
[116] Case of Schenk v. Switzerland. No 10862/84. 12 July 1988, para 46. http://hudoc.echr.coe.int/eng#{"fulltext":["Schenk%20v.%20Switzerland."],"documentcollectionid2":["GRAND CHAMBER","CHAMBER"],"itemid":["001-57572"]}. Viewed 23.12.2015.
[117] Case of Buscarini v. San Marino. No 31657/96, 4 May 2000. http://hudoc.echr.coe.int/eng#{"fulltext":["Buscarini%20v.%20San%20Marino"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-58915"]}. Viewed 23.12.2015.
[118] Case of Hornsby v. Greece. No 18357/91, 19 March 1997, para 41. http://hudoc.echr.coe.int/eng#{"fulltext":["18357/91"],"documentcollectionid2":["JUDGMENTS","DECISIONS","COMMUNICATEDCASES","CLIN","ADVISORYOPINIONS","REPORTS","EXECUTION"],"itemid":["001-58020"]}Viewed 23.12.2015.

scheme constitutes one of those means but there are others, such as for example simplifying the applicable procedure.[119]

According to the European Court of Human Rights, it was clearly established in the case of Fredin v. Sweden under the Court's existing case-law that in proceedings before a court of first and only instance the right to a "public hearing" in the sense of Article 6 para. 1 may entail an entitlement to an "oral hearing". The Court was of the view that, in such circumstances at least, Article 6 para. 1 guarantees a right to an oral hearing. Accordingly, the refusal by the Supreme Administrative Court to hold an oral hearing in the applicant's case constituted a violation of Article 6 para. 1 of the Convention.[120]

In the case of Walston v. Norway (N1) the Court reiterates that according to its case-law the right to adversarial proceedings means in principle the opportunity for the parties to have knowledge of and to comment on all the evidence adduced or observations filed with a view to influencing the court's decision .[121]

In the case of Niderost-Huber v. Switzerland [122] the Court expressed the principle of equality of arms - one of the elements of the broader concept of fair trial - requires each party to be given a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent.

In the case of Rowe and Davis v. the United Kingdom in cases where evidence has been withheld from the defence on public interest grounds, it is not the role of this Court to decide whether or not such non-disclosure was strictly necessary since, as a general rule, it is for the national courts to assess the evidence before them. Instead, the European Court's task is to ascertain whether the decision-making procedure applied in each case complied, as far as possible, with the requirements of adversarial proceedings and equality of arms and incorporated adequate safeguards to protect the interests of the accused. [123]

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[119] Case of Steel and Morris v. the United Kingdom, No 68416/01, 15 February 2005, para 59. http://hudoc.echr.coe.int/eng#{"fulltext":["Steel%20&%20Morris"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-68224"]}. Viewed 13.12.2015.

[120] Case of Fredin v. Sweden (no.2). No 29346/95,. 23 February 1994, para 21. http://hudoc.echr.coe.int/eng#{"fulltext":["Fredin%20v.%20Sweden"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-57867"]}. Viewed 23.12.2015. http://hudoc.echr.coe.int/eng?i=001-57867. Viewed 23.12.2015.

[121] Case of Walston v. Norway (N1) No 37372/97, 3 June 2003, para 56., and case of K.S. v. Finland , para 21. 31 May 2001. http://hudoc.echr.coe.int/eng#{"documentcollectionid2":["GRANDCHAMBER","CHAMBER"]}.Viewed 23.12.2015.

[122]Case of Niderost-Huber v. Switzerland. 18990/81. 18 February 1997, para 23. http://hudoc.echr.coe.int/eng#{"fulltext":["Nider%F6st-Huber%20v.Switzerland."],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-58199"]}. Viewed 19.12.2015.

[123] Case of Rowe and Davis v. the United Kingdom. No 28901/95. 16 November 2000, para 62 . http://hudoc.echr.coe.int/eng#{"fulltext":["Rowe%20and%20Davis"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-58496"]} Viewed 23.12.2015.

In the case of Werner v. Austria the Court has several times had occasion to rule on the Article 6 §1 requirement that judgments must be pronounced publicly, holding that "in each case the form of publicity to be given to the "judgment" under the domestic law of the respondent State must be assessed in the light of the special features of the proceedings in question and by reference to the object and purpose of Article 6 §1". The Court reiterates that the principles governing the holding of hearings in public also apply to the public delivery of judgments and have the same purpose, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention.[124]

The Court has repeatedly emphasized that sub-paragraph (c) (art. 6-3-c) guarantees the right to an adequate defence either in person or through a lawyer, this right being reinforced by an obligation on the part of the State to provide free legal assistance in certain cases. The Court recalls that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective; this is particularly so of the rights of the defence in view of the prominent place held in a democratic society by the right to a fair trial, from which they derive [125].

The manner of application of Article 6 (art. 6) to proceedings before courts of appeal depends on the special features of the proceedings involved; account must be taken of the entirety of the proceedings in the domestic legal order and of the role of the appellate court therein. The Court notes at the outset that a public hearing was held at first instance. As in several earlier cases, the main question is whether a departure from the principle that there should be such a hearing could, in the circumstances of the case, be justified at the appeal stage by the special features of the domestic proceedings viewed as a whole.[126]

ECHR acknowledged infringement of article 6 of the Convention in the case of Sakhnovskiy v. Russia. [127] The applicant alleged that he had not been afforded effective legal representation and an opportunity to confer privately with counsel, his ability to actively participate in and follow the proceedings in the courtroom had been impaired by technical disruptions in the video transmission. An accused's right to communicate with his lawyer without the risk of being overheard by a third party is one of the basic requirements of a fair

[124] Case of Werner v. Austria, No 138/1996/757/956, 24 November 1997, para 54. http://hudoc.echr.coe.int/eng#{"fulltext":["Werner%20v.%20Austria"],"documentcollectionid2":["JUDGMENTS","DECISIONS","COMMUNICATEDCASES","CLIN","ADVISORYOPINIONS"],"itemid":["001-58114"]}

[125] Case of Artico v. Italy. No 6694/74. 13 May 1980, para 33. http://hudoc.echr.coe.int/eng#{"fulltext":["Artico%20v.Italy"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-57424"]}. Viewed 24.12.2015.

[126] Case of Helmers v. Sweden. No 11826/85. 29 October 1991, para 31. http://hudoc.echr.coe.int/eng#{"fulltext":["Helmers"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-57701"]} Viewed 24.12.2015.

[127] Case of Sakhnovskiy v. Russia. No 21272/03. 2 November 2010. para 98. http://hudoc.echr.coe.int/eng?i=001-101568. Viewed 24.12.2015.

trial in a democratic society and follows from Article 6 §3 (c) of the Convention. If a lawyer were unable to confer with his client and receive confidential instructions from him without such surveillance, his assistance would lose much of its usefulness, whereas the Convention is intended to guarantee rights that are practical and effective As regards the use of a video link, the Court reiterates that this form of participation in proceedings is not, as such, incompatible with the notion of a fair and public hearing, but it must be ensured that the applicant is able to follow the proceedings and to be heard without technical impediments, and that effective and confidential communication with a lawyer is provided for.

The restriction on contacts with defence counsel for a person who is already placed in detention on remand is an additional measure, which requires further arguments. The Court cannot find that the Austrian courts or the Government have furnished convincing arguments in this respect. [128]

The right of the accused party to contact with the lawyer without apprehension to be overheard is one of the basic requirements of the fair trial following from article 6 §3 (c) of the Convention. One of the key elements in a lawyer's effective representation of a client's interests is the principle that the confidentiality of information exchanged between them must be protected. This privilege encourages open and honest communication between clients and lawyers. The Court recalls that it has previously held that confidential communication with one's lawyer is protected by the Convention as an important safeguard of one's right to defence (see, for instance, Campbell v. the United Kingdom, judgment of 25 March 1992, Series A No 233, §46 and Recommendation Rec (2006) 2.[129]

As early as in 1971, in the Ringeisen v. Austria [130] ECHR redefined the wording of article 6, clause (1), extending it to cover the civil rights and obligations. For Article 6, paragraph (1) (art. 6–1), to be applicable to a case ("contestation") it is not necessary that both parties to the proceedings should be private persons, which is the view of the majority of the Commission and of the Government. The wording of Article 6, paragraph (1) (art. 6–1), is far wider; the French expression "contestations sur (des) droits et obligations de caractère civil" covers all proceedings the result of which is decisive for private rights and obligations. The English text "determination of ... civil rights and obligations", confirms this interpretation.

In the case of Jussila v. Finland the present case concerns proceedings in which the

[128] Case of Lanz v. Austria. No 24430/94. 31 January 2002, para 52. http://hudoc.echr.coe.int/eng#{"fulltext":["Lanz"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-60021"]} Viewed 24.12.2015.

[129] Case of Castravet v. Moldova, No 23393/05, 13 March 2007 , para 49. http://hudoc.echr.coe.int/eng#{"fulltext":["Castravet"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-79767"]}. Viewed 24.12.2015.

[130] Case of Ringeisen v. Austria. No 2614/65. 16 July 1971, para 94. http://hudoc.echr.coe.int/eng#{"fulltext":["Ringeisen"],"itemid":["001-57565"]}. Viewed 24.12.2015.

applicant was found, following errors in his tax returns, liable to pay VAT and an additional 10% surcharge. The assessment of tax and the imposition of surcharges fall outside the scope of Article 6 under its civil head. The Court's established case-law sets out three criteria to be considered in the assessment of the applicability of the criminal aspect. These criteria sometimes referred to as the "Engel criteria".

The Court must accordingly consider the proceedings in issue to the extent to which they determined a "criminal charge" against the applicant, although that consideration will necessarily involve the "pure" tax assessment to a certain extent.

The second and third criteria are alternative and not necessarily cumulative. It is enough that the offence in question is by its nature to be regarded as criminal or that the offence renders the person liable to a penalty which by its nature and degree of severity belongs in the general criminal sphere. The relative lack of seriousness of the penalty cannot divest an offence of its inherently criminal character.

The right to a public oral hearing is the basic principle established by clause 1, article 6 of the Convention. This principle is particularly important in the context of criminal domain whereby the applicant's hearing was concerned with serious charges classified as "criminal" under both domestic and Convention law, he was entitled to a first-instance tribunal which fully met the requirements of Article 6 para 1.[131]

An oral, and public, hearing constitutes a fundamental principle enshrined in Article 6 §1. This principle is particularly important in the criminal context, where generally there must be at first instance a tribunal which fully meets the requirements of Article 6 and where an applicant has an entitlement to have his case "heard", with the opportunity, inter alia, to give evidence in his own defence, hear the evidence against him, and examine and cross-examine the witnesses. That said, the obligation to hold a hearing is not absolute.

The Administrative Court gave such consideration with reasons. The Court also notes the minor sum of money at stake. Since the applicant was given ample opportunity to put forward his case in writing and to comment on the submissions of the tax authorities, the Court finds that the requirements of fairness were complied with and did not, in the particular circumstances of this case, necessitate an oral hearing.[132]

The author also notes that, taking the issue of the need for oral hearing, the fact that the outcome of proceedings is essential for the applicant in person or in general for cases

[131] Case of Findlay v. the United Kingdom. No 22107/93. 25 February 1997, para 79. http://hudoc.echr.coe.int/eng#{"fulltext":["Findlay%20v.%20United%20Kingdom"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-58016"]}. Viewed 27.12.2015.

[132] Case of Jussila v.Finland. No 73053/01. 23 November 2006, para 45-48. http://hudoc.echr.coe.int/eng#{"fulltext":["Jussila%20v.%20Finland"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-78135"]}. Viewed 27.12.2015.

involving insurance or benefits is not critical. The Court passed such a judgement upon consideration of another case versus Finland. [133]

As for the right of the accused party to defend himself on his own or through a counsel, here, according to the case law of ECHR, the aim of this provision is to prevent consideration of a case against the accused party "in the absence of properly organized defence" (case of Pakelli v. Germany).

The Court also explained, that the Article 6 para. 3 (c) guarantees three rights to a person charged with a criminal offence: to defend himself in person, to defend himself through legal assistance of his own choosing and, on certain conditions, to be given legal assistance free. To link the corresponding phrases together, the English text employs on each occasion the disjunctive "or"; the French text, on the other hand, utilises the equivalent – "ou" – only between the phrases enouncing the first and the second right; thereafter, it uses the conjunctive "et". The "travaux préparatoires" contain hardly any explanation of this linguistic difference. They reveal solely that in the course of a final examination of the draft Convention, on the eve of its signature, a Committee of Experts made "a certain number of formal corrections and corrections of translation", including the replacement of "and" by "or" in the English version of Article 6 para. 3 (c) (art. 6-3-c).

The Court identified, that a "person charged with a criminal offence" who does not wish to defend himself in person must be able to have recourse to legal assistance of his own choosing; if he does not have sufficient means to pay for such assistance, he is entitled under the Convention to be given it free when the interests of justice so require.

The Court would recall that the provisions of Article 6 para. 3 (c) represent specific applications of the general principle of a fair trial, stated in paragraph 1.[134]

The author refers to the case of Sannino v. Italy. The European Court reiterated that, while it confers on everyone charged with a criminal offence the right to "defend himself in person or through legal assistance", Article 6 §3 (c) does not specify the manner of exercising this right. It thus leaves to the Contracting States the choice of the means of ensuring that it is secured in their judicial systems, the Court's task being only to ascertain whether the method they have chosen is consistent with the requirements of a fair trial. In this respect, it must be remembered that the Convention is designed to "guarantee not rights that are theoretical or illusory but rights that are practical and effective" and that assigning a counsel does not in itself ensure the effectiveness of the assistance he may afford an accused.

[133] Case of Tuulikki Pirinen v. Finland. No 32447/02. 16 May 2006. http://hudoc.echr.coe.int/eng#{"appno":["32447/02"],"itemid":["001-66739"]}. Viewed 2.8.2016.
[134] Case of Pakelli v. Germany, No 8398/78. 25 April 1983, para 31. http://hudoc.echr.coe.int/eng#{"documentcollectionid2":["GRANDCHAMBER","CHAMBER"]}. Viewed 27.12.2015.

The Court also reiterated, that a State cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal-aid purposes or chosen by the accused. It follows from the independence of the legal profession from the State that the conduct of the defence is essentially a matter between the defendant and his counsel, whether counsel be appointed under a legal-aid scheme or be privately financed. The competent national authorities are required under Article 6 §3 (c) to intervene only if a failure by legal-aid counsel to provide effective representation is manifest or sufficiently brought to their attention in some other way.[135]

2.2. Implementation of the European Convention on Human Rights in the Supreme Court in the Republic of Finland

The right to fair judicial trial is central in the law-governed state. Article 6 of the European Convention guarantees the right to fair trial. It establishes the principle of supremacy of law underlying the democratic society, and the important role of the judiciary system in administration of justice, being a reflection of the common heritage of the Contracting States. The Convention guarantees the procedural rights of the parties in civil proceedings (clause 1, Article 6) and the rights of the defendant (the accused party) in criminal proceedings (Article 6, clauses 1, 2 and 3). With regard for the fact that the other participants to the proceedings (victims, witnesses, etc.) do not have a right to file a complaint under Article 6, their rights are often taken into account by ECHR. The Court also reiterated, that: "l'article 6 §1 de la Convention s'applique aux procédures relatives aux plaintes avec constitution de partie civile dès l'acte de constitution de partie civile, à moins que la victime ait renoncé de manière non équivoque à l'exercice de son droit à réparation. Se pose donc la question de savoir si l'article 6 de la Convention trouve à s'appliquer."[136]

According to the "supremacy of law" concept which, along with the idea of democracy, is regarded as one of the foundations of the Council of Europe, the guarantee of effective remedy for everyone whose rights or freedoms were violated by the state should be specifically pinpointed in the Convention within a number of independent human rights and

[135] Case of Sannino v. Italy, No 30961/03. 27 April 2006, para 48-49. http://hudoc.echr.coe.int/eng#{"fulltext":["Sannino%20v.%20I"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER","DECGRANDCHAMBER","ADMISSIBILITY","DECCOMMISSION","COMMUNICATEDCASES","CLIN","ADVISORYOPINIONS","REPORTS","RESOLUTIONS"],"itemid":["001-75213"]}.Viewed 28.12.2015.

[136] Case of Mihova v. Italy, No 25000/07. 30 March 2010. http://hudoc.echr.coe.int/eng#{"fulltext":["Mihova"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER","DECGRANDCHAMBER","ADMISSIBILITY","DECCOMMISSION","COMMUNICATEDCASES","CLIN","ADVISORYOPINIONS","REPORTS","RESOLUTIONS"],"itemid":["001-98314"]}. Viewed 28.12.2015.

freedoms (Article 6, clauses 1, 2 and 3).

The author refers to the case of Golder v. the United Kingdom: "One reason why the signatory Governments decided to "take the first steps for the collective enforcement of certain of the Rights stated in the Universal Declaration" was their profound belief in the rule of law. It seems both natural and in conformity with the principle of good faith (Article 31 para. 1 of the Vienna Convention) to bear in mind this widely proclaimed consideration when interpreting the terms of Article 6 para. 1 (art. 6–1) according to their context and in the light of the object and purpose of the Convention… This is all the more so since the Statute of the Council of Europe, an organisation of which each of the States Parties to the Convention is a Member (Article 66 of the Convention) (art. 66), refers in two places to the rule of law: first in the Preamble, where the signatory Governments affirm their devotion to this principle, and secondly in Article 3 (art. 3) which provides that "every Member of the Council of Europe must accept the principle of the rule of law..."[137]

The right to fair trial is also secured by the use of Articles 5, 7 and 13 of the European for the Protection of Human Rights and Fundamental Freedoms.

For instance, the wording contained in Article 13 of the Convention "whose rights and freedoms set forth in this Convention" does not establish such a general guarantee, though one may refer to this article in conjunction with references to one or more such rights and freedoms.

For the purpose of due comprehension of interpretation of article 13, the author refers to the judgement on Klass v. Germany, in which the Court held: "Article 13 (art. 13) states that any individual whose Convention rights and freedoms "are violated" is to have an effective remedy before a national authority even where "the violation has been committed" by persons in an official capacity. This provision, read literally, seems to say that a person is entitled to a national remedy only if a "violation" has occurred. However, a person cannot establish a "violation" before a national authority unless he is first able to lodge with such an authority a complaint to that effect. Consequently, as the minority in the Commission stated, it cannot be a prerequisite for the application of Article 13 that the Convention be in fact violated. In the Court's view, Article 13 requires that where an individual considers himself to have been prejudiced by a measure allegedly in breach of the Convention, he should have a remedy before a national authority in order both to have his claim decided and, if appropriate, to obtain redress. Thus Article 13 must be interpreted as guaranteeing an "effective remedy

[137] Case of Golder v. the United Kingdom. No 4451/70. 21 February 1975, para 33-34. http://hudoc.echr.coe.int/eng#{"fulltext":["golder"],"documentcollectionid2":["JUDGMENTS","DECGRANDCHAMBER","ADMISSIBILITY","COMMUNICATEDCASES","CLIN","ADVISORYOPINIONS","REPORTS","RESOLUTIONS"],"itemid":["001-57496. Viewed 28.12.2015.

before a national authority" to everyone who claims that his rights and freedoms under the Convention have been violated."[138]

ECHR and the Commission confirm the conclusion that art. 13 is in the subordinate position relative to art. 6.

The European Court in the case of De Jong, Baljet and Van der Brink expressed the same point of view [139], as regards the interconnection of clause 4 of art. 5 and art. 13. Clause 4 of article 5 should be considered lex specialis in relation to the general principle of effective remedy for any victim of violation of the Convention.

The Court also declared in the case of Golder: "Article 13 speaks of an effective remedy before a "national authority" ("instance nationale") which may not be a "tribunal" or "court" within the meaning of Articles 6 para. 1 and 5 para. 4 (art. 6–1, art. 5–4). Furthermore, the effective remedy deals with the violation of a right guaranteed by the Convention, while Articles 6 para. 1 and 5 para. 4 (art. 6–1, art. 5–4) cover claims relating in the first case to the existence or scope of civil rights and in the second to the lawfulness of arrest or detention. What is more, the three provisions do not operate in the same field. The concept of "civil rights and obligations" (Article 6 para. 1) (art. 6–1) is not co-extensive with that of "rights and freedoms as set forth in this Convention" (Article 13) (art. 13), even if there may be some overlapping. As to the "right to liberty" (Article 5) (art. 5), its "civil" character is at any rate open to argument. Besides, the requirements of Article 5 para. 4 (art. 5-4) in certain respects appear stricter than those of Article 6 para. 1 (art. 6–1), particularly as regards the element of "time".[140]

It is also important to note that Article 6 is closely related to Article 5 proclaiming the right to liberty and personal inviolability. These articles also guarantee that no one can be deprived of liberty without being granted the right to fair and public hearing of a case within a reasonable time by an independent and impartial court established on a legal basis. Article 5 (4), in particular, guarantees the right to prompt judicial assessment by court of lawfulness of detention and release from custody if the court deemed the detention unlawful.

Article 6 is also related with article 7, according to which no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal

[138] Case of Klass and Others v. Germany. No 5029/71. 6 September 1978, para 64. http://hudoc.echr.coe.int/eng#{"fulltext":["Klass"],"documentcollectionid2":["JUDGMENTS","DECISIONS","COMMUNICATEDCASES","ADVISORYOPINIONS"],"itemid":["001-57510"]}. Viewed 2.2.2016.

[139] Case of De Jong, Baljet and Van der Brink. Nos. 8805/79; 8806/79; 9242/81. 22 May 1984. http://hudoc.echr.coe.int/eng#{"fulltext":["De%20Jong,%20Baljet%20and%20Van%20der%20Brink"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-57466"]}.Viewed 2.8.2016.

[140] Case of Golder v. the United Kingdom. No 4451/70. 21 February 1975. http://hudoc.echr.coe.int/eng#{"fulltext":["Golder%20v.%20the%20United%20Kingdom"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-57496"]}. Viewed 30.12.2015.

offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

The guarantees of article 7 of the Convention apply to "criminal offence", the concept of which is similar to the autonomous concept of "criminal charge" developed by the European Court relative to article 6 of the Convention. Thus, they may also apply to certain offences entailing disciplinary or administrative liability as envisaged by the internal law of the Convention member states. [141]. At the same time, article 7 of the Convention does not cover the cases of enforcing preventive measures [142], as well as deportation [143] and extradition if the latter is effected on the basis of a special law on extradition that does not contain criminal-law provisions.

The principle of "supremacy of law", one of the elements of the common spiritual heritage of member countries of the Council of Europe, forms the basis of the most important guarantee enshrined in clause 1 Article 6 of the Convention - the right to fair trial.

For instance, clause 1 of Article 6 strengthens and develops a whole number of guarantees provided by Art. 13. First, the right to effective intra-national remedies is applicable not only in case of alleged violation of one of the rights and liberties guaranteed in the Convention, but also in the event of breach of any "civil right" within the meaning of clause 1 of Art. 6. Second, cl.1 of Art. 6 guarantees the right of accessing court, while the term "remedies involving participation of national authorities" is so broad that it pertains to the procedures other than judicial.[144] Third, while it is commonly accepted that national courts may not directly apply the provision of article 13, such "application" is permissible within the framework of Article 6, which empowers one to use such a reference in national courts of the countries where the Convention is deemed to be a part of the internal law of the state.

In the case of Morozov v. Russia the Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms, in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic

[141] Dijk P.van, Hoof G. J. H. van. Op. cit., Theory and Practice of the European Convention on Human Rights, 3rd edn., Kluwer Law International, The Hague 1998, p. 479.
[142] Case of Lawless v. Ireland, No 332/57. 14 November 1960. http://hudoc.echr.coe.int/eng#{"fulltext":["Lawless%20v.%20Ireland"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-57516"]}. Viewed 30.12.2015.
[143] Case of Moustaquim v. Belgium, No 1231/86. 18 February 1991. http://hudoc.echr.coe.int/eng#{"fulltext":["Moustaquim%20v.%20Belgium"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-57652"]}. Viewed 30.12.2015.
[144] Case of Gollder v. the United Kingdom. No 4451/70. 21 February 1975. http://hudoc.echr.coe.int/eng#{"fulltext":["golder"],"documentcollectionid2":["JUDGMENTS","DECGRANDCHAMBER","ADMISSIBILITY","COMMUNICATEDCASES","CLIN","ADVISORYOPINIONS","REPORTS,"RESOLUTIONS"],"itemid":["001-57496"]}. Viewed 2.1.2016.

remedy to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State.[145]

As to Article 13 of the Convention, the Court reaffirmed its opinion in the case of Menteş and Others v. Turkey. The Court recalls that, according to its case-law a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to such breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (restitutio in integrum). However, if restitutio in integrum is in practice impossible the respondent States are free to choose the means whereby they will comply with a judgment in which the Court has found a breach, and the Court will not make consequential orders or declaratory statements in this regard.[146]

ECHR has repeatedly proclaimed compliance of the national legislation of the member states to the principles of the Convention.

The author refers to the judgement passed by ECHR in the case of Giuseppe Mostacciuolo v. Italy. No 65102/01. 29 March 2006. The Court is therefore required to verify whether the way in which the domestic law is interpreted and applied produces consequences that are consistent with the principles of the Convention as interpreted in the light of the Court's case-law… Accordingly, a clear error in assessment on the part of the domestic courts may also arise as a result of a misapplication or misinterpretation of the Court's case-law. [147]

The author states that the violation of article 6 of the Convention is the most common recognized breach on the part of Finland. In total, ECHR found 98 cases of infringement of article 6 of the Convention in the period 1995–2015. Latvia violated the norms of article 6 of the Convention 27 times within the period 1997–2015.

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[145] Case of Morozov v. Russia. No 38758/05. 12 November 2015, para 48. http://hudoc.echr.coe.int/eng#{"fulltext":["Morozov%20%20v.Russia"],"documentcollectionid2":["JUDGMENTS","DECISIONS","COMMUNICATEDCASES","ADVISORYOPINIONS"],"itemid":["001-158484"]}. Viewed 2.1.2016.

[146] Case of of Menteş and Others v. Turkey, Nos. 58/1996/677/867. 28 November 1997, para 24. http://hudoc.echr.coe.int/eng#{"fulltext":["Mentes%20and%20Others%20v.%20Turkey"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER","DECGRANDCHAMBER","ADMISSIBILITY","DECCOMMISSION"],"itemid":["001-58206"]}. 2.1.2016.

[147] Case of Giuseppe Mostacciuolo v. Italy. No 65102/01. 29 March 2006, para.81. http://hudoc.echr.coe.int/eng#{"fulltext":["Giuseppe%20Mostacciuolo"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-72932"]}.Viewed 2.1.2016.

Undoubtedly, the demand of fair trial is one of the most important rights guaranteed by the European Convention of Human Rights. However, the issue of exercise of this right gives rise to controversy of the law enforcers.

The author adheres to the viewpoint of Jeremy McBride. ECHR judgements clearly demonstrate that no single correct approach guaranteeing fair justice does exist, and that the difference in approaches may continue subsequently. The second reason complicating the realization of the principle of fair judicial trial is the tendency to mix the equitableness of the court process with the equitableness of its result: when someone who is obviously guilty manages to evade the liability because of observance of all guarantees of fair trial, then, as a natural result, equitableness as the ultimate goal of justice is compromised.[148]

It is important to note that the right to fair trial also involves the right to fair result or equitable court judgement.

The author confirms the view of the former ECHR judge L.Loucaides, expressed in the judge's dissenting opinion: "I believe that the right to a fair hearing/trial is not confined to procedural safeguards but extends also to the judicial determination itself of the case. Indeed, it would have been absurd for the Convention to secure proper procedures for the determination of a right or a criminal charge and at the same time leave the litigant or the accused unprotected as far as the result of such a determination is concerned. Such approach would allow a fair procedure to end up in an arbitrary or evidently unjustified result. "[149]

[148] Jeremy Mc Bride, Monckton Chambers, practicing primarily before the European Court of Human Rights and the United Nations Human Rights Committee. http://sutyajnik.ru/rus/library/sborniki/echr2/echr_2.pdf. Viewed 2.1.2016.

[149] Case of Göktan v. France, No 33402/96, 2 July 2002. Partly dessenting opinion of judge Loucaides. http://hudoc.echr.coe.int/eng#{"fulltext":["G%F6ktan"],"documentcollectionid2":["JUDGMENTS","DECISIONS","COMMUNICATEDCASES","ADVISORYOPINIONS"],"itemid":["001-60555"]}. Viewed 4.1.2016.

2.3. The application of Article 6 of the European Convention on Human Rights in Constitutional Court of the Republic of Latvia

The European Convention and its Protocols became internally binding for the Republic of Latvia from 1997. This principle, which is guaranteed by Article 3 of the Statute of the Council of Europe, is reflected, in particular, in Article 6 of the Convention, which guarantees the right to fair judicial trial, and which expounds the necessary guarantees inherent in this concept relative to criminal matters.

Along with the ratification of the treaty on Latvia's accession to the European Union, the law of the European Union has become an integral part of the Latvian law. Thus, the legal acts of the European Union and the interpretation enshrined in the case law of the Court of Justice of the European Communities must be taken into account upon enforcement of the national statutory acts.[150] However, even prior to Latvia's accession to the European Union, the courts already referred to the international law and the legal principles of EU and to the judicature of the Court of Justice of the European Communities, but these references were not used as a basis for judicial rulings.

The first sentence of Article 92 the Constitution on Republic of Latvia sets: "Everyone has the right to defend his or her rights and lawful interests in a fair court". This provision is related with the rights declared in Article 10 of the UN Universal Declaration of Human Rights, the guaranteed rights to fair trial, Article 6 of the Convention and Article 14 - civil and political rights of the International Covenant.

The Convention has its own mechanism that includes mandatory jurisdiction of the European Court of Human Rights (ECHR) and systematic control of enforcement of the Court's judgments by the Cabinet of Ministers of the Council of Europe. According to Clause 1 of Article 46 of the Convention, these final judgements are binding on all authorities, including courts.

The author pays special attention to the problems arising in the course of enforcement of the Convention on Human Rights, in particular, referring to the case Čalovskis v. Latvia regarding the defendant's extradition to the United States. United States Attorney's Office charged three residents of Eastern Europe, including a Latvian citizen Denis Čalovskis, with infecting over a million computers with a virus Gozi, including about 40,000 computers in USA, causing losses of millions of dollars.

[150] Judgment of 17 January 2007 by the Constitutional Court in the case No 2007-11-03, para 24. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 4.1.2016.

ECHR ruled, four votes against three, that enforcing arrest with further extradition did not meet the requirements of Clause 1, Article 5 of the Convention. The Court also held unanimously that further control with regard for the fact of the applicant's arrest was ineffective and violated the provisions of Clause 4, Article 5 of the Convention. The Court also noted that, in accordance with Clause 34 of the Convention and Clause 39 of the Rules of the Court, the interim defence measures prescribed in the case, in particular, the ban on the applicant's extradition to USA, were to be maintained till the Court sentence entered into force or until such time when the Court took another decision. [Case of Čalovskis v. Latvia. Application No 22205/13. 24 July 2014, final 15 December 2014]. The Court also awarded compensation to the applicant for moral prejudice in the amount of 5,000 Euros.

On 15 December 2014, the Panel of the Grand Chamber of ECHR composed of five judges rejected Čalovskis' application for reconsidering the judgement of the Grand Chamber Court as of 24 July 2014 in the Čalovskis case. The Constitutional Court of the Republic of Latvia considered the complaint and also refused to meet it.

According to Article 98 of the Constitution of the Republic of Latvia, a citizen of Latvia may not be extradited to another state, except in cases stipulated by international treaties approved by the Saeima, when the extradition does not entail violation of fundamental human rights set by the Constitution.

The author also refers to the Criminal Procedure Law of the Republic of Latvia; according to Article 697, the reason for refusal to effect extradition is a person's being a citizen of Latvia.

According to the Constitutions of European countries (e.g. Finland §9, Article 16(2) of the Federal Republic of Germany, Sweden §7), the citizens of these countries may not be extradited to a foreign state, the same way as in accordance with the European Convention on extradition, the Contracting party shall have the right to refuse extradition of its citizens.[151] The Convention on extradition provides for extradition of fugitive criminals and suspects, signed by 47 members of the Council of Europe, Israel, South Korea and South Africa. The United States did not join this list.

The Constitutional Court recognized that the provisions for international human rights and the practice of their enforcement at the level of constitutional law serve as a means of interpretation allowing to establish the content and scope of the fundamental rights and principles of the law-governed state to the extent this interpretation does not lead to mitigation

[151] Council of Europe, European Convention on Extradition, ETS no. 024, 13 December 1957. Article 6 – Extradition of nationals . 1)a. https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800645 87. Viewed 4.1.2016.

or limitation of the fundamental rights, provided by the Constitution [Clause 5 of Conclusion of the judgement of the Constitutional Court as of 13 May, 2005 in re case Nr. 2004-18-0106].

However, on 9 February 2015, the Latvian law enforcement officers detained Denis Čalovskis accused of cyber-crimes, and further the citizen of Latvia was delivered to the Metropolitan Correctional Center in New York. During the detention of Čalovskis, FBI agents who presented the suspect with the detainee rights on the USA territory during the interrogation on the next day made the search in his apartment.

For comparison, on 3 December, 2015 the Supreme Court of the Republic of Finland authorized extradition of two Russians to USA for a trial on suspicion of organizing a contraband supply of cigarettes to the United States through the Internet from Ukraine, Moldova and Israel. The Court noted that the basis for extradition, in particular, was the fact that the suspects did not have the Finnish citizenship.

Also, on 17.02.2016 the Supreme Court of the Republic of Finland took a decision to extradite a Russian citizen Popov at the request of the General Prosecutor's Office of Russia. Popov lived in Finland, but did not have the Finnish citizenship.

The author brings for comparison another case of 2011, when Latvia refused to extradite a citizen of Latvia Karlis Karklinsh to USA. The Supreme Court of the Republic of Latvia did not approve Karlis Karklinsh's extradition, who was accused of participating in an international cyber-gang that robbed the customers of American banks for a total of 1,3 million US Dollars. The argument in favour of refusal to extradite Karklinsh at that time was the lawyers' doubts as to affiliation of the cyberspace in which the offence was committed; in that case the Court pointed at the problem of territorial jurisdiction.

Dulevskis, Karklinsh's defence attorney, assessed the decision to extradite Denis Čalovskis as "Latvia's unjustified abandonment of the state sovereignty".

At the same time, the Constitutional Court of the Republic of Latvia pointed out on 9 January, 2014 in the case Nr. 2013-08-01 that ECHR had repeatedly recognized the fact of infringement of the right to fair judicial trial in cases where the court judgement that entered into force was revoked and revised on the basis of a note (protest) of Attorney General, and emphasized that in such cases the right to fair trial was illusory. There is a statement in the same case, in Clause 7 of Conclusion to the Constitutional Court judgement: The international standards in the sphere of human rights and the practice of their enforcement at the level of constitutional rights serve as a means of interpretation in assessing the content and scope of

the fundamental rights and principles of the law-governed state to the extent this does not lead to mitigation or limitation of the fundamental rights provided by the Constitution.[152]

The Constitutional Court of the Republic of Latvia applied the same selective principle in interpretation of law in case Nr. 2002-08-01 as well. Thus, by interpreting Article 8 of the Satversme historically as well as in a systemic way – as read together with Article 6 and 116 of the Satversme, Article 25 of the Covenant and Article 3 of the Convention First Protocol – the Constitutional Court concludes that the voting or election rights may be restricted.

Neither the Declaration, the Covenant and the Convention, nor other international instruments assign the obligation of choosing just one and specific election system (proportional, majority or mixed).

In this case, the Constitutional Court of the Republic of Latvia stressed the priority of the constitutional norms of Latvia: Thus the State Constitution and the laws determine the election system – proportional, majority or mixed.

The author's study of judgements of the Constitutional Court of the Republic of Latvia makes it possible to come to a conclusion that in settlement of constitution-related conflicts that may arise in connection with the interpretation of the Convention for the Protection of Human Rights and Fundamental Freedoms as an international treaty, one should take into account the Vienna Convention on the Law of Treaties, where Latvia is a member.

In turn, Latvia's unconditional compliance with the decisions of the interstate body taken on the basis of such international treaty not consistent with the Constitution of Latvia in terms of interpretation, might lead to a breach of its provisions, which in this case is objectively evident to any subject of international law acting in this matter in good faith and in accordance with the normal practice (Clause 2, Article 46 of the Vienna Convention on the Law of Treaties).

Thus, the author concludes, proceeding from the provisions of the Vienna Convention on the Law of Treaties, that a ruling of the authorized interstate authority, including ECHR judgements, can not be enforced by Latvia in terms of measures of individual and general character assigned to it, if the interpretation of the international treaty rule underlying this enactment violates the relevant provisions of the Constitution of the Republic of Latvia.

According to this legal position, following the ECHR judgements is deemed possible only if they are not contrary to the fundamental substantive and procedural rules of the national law.

[152] Judgment of 13 May February 2005 by the Constitutional Court in the case Nr. 2004-18-0106, para 5 and Judgment of 18 October 2007 by the Constitutional Court in the case Nr. 2007-03-01, para 11. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 4.1.2016.

The author believes that Latvia, like the other European states, shall struggle for preservation of its sovereignty and at the same time for respectful interpretation of the European Convention, its protection from inappropriate, questionable judgements.

2.4. The role of the European Court of Human Rights to ensure the rights to fair trial in Supreme Court of the Republic of Finland

The structure of the European Human Rights system is ultimately founded on the co-operation between national authorities and the European Court. The European system and national authorities strive towards the same goal – protection of human rights and fundamental freedoms. In light of the current case-law it is obvious that the Strasbourg Court is not anxious to broaden its scope of review and override the position and function of national authorities if this is not absolutely necessary. There is ultimately a strong respect of the established division of competence between the national system and the Strasbourg organs.

According the Constitution of the Republic of Finland everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice [Section 21].[153] According the Constitution of Finland participates in international co-operation for the protection of peace and human rights and for the development of society. Wherein an international obligation shall not endanger the democratic foundations of the Constitution [Section 94 (3)]. The Constitutional Law Committee shall issue statements on the constitutionality of legislative proposals and other matters brought for its consideration, as well as on their relation to international human rights treaties.

Article 6 guarantees the right to a fair trial, which is of fundamental importance in a democratic society, occupying a central place in the Convention system. Their object and purpose enshrines the principle of the rule of law, upon which such a society is based and built, as well as reflects part of the common heritage of the States parties to the Convention, according to the Preamble of the Convention. Article 6 is the provision of the Convention most frequently invoked by applicants to the European Court of Human Rights. It is therefore hardly surprising that there is substantial case-law on the provision's application. In addition, consistent with the premise that the Convention is a living instrument, the Court's Article 6

[153] The Constitution of the Republic of Finland, 11 June 1999 (731/1999, amendments up to 1112 / 2011 included).www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf. Viewed 9.1.2016.

jurisprudence has developed progressively over the years to encompass an ever-increasing variety of legal proceedings.

Finland joined the European Convention on Human Rights after becoming a member of the Council of Europe in 1989 and ratified the treaty 10.5.1990. An Act of Parliament with the status of ordinary law, meaning that it is part of the Finnish legal order, has incorporated the Convention into Finnish law. The treaty provisions are in force with the status of a Parliamentary Act in respect of the parts, which are of a legislative nature. This obviously requires that the treaty provisions to be regarded in the practical application on law. However, the European Convention does not have a higher hierarchical status than normal legislation. But most importantly the Constitutional Law Committee of the Parliament emphasized in its opinion than in interpretative situations a human rights friendly option should be chosen. This phrase establishing the basic principle of human rights friendly interpretation is the foundation of Finnish doctrine of human rights law and is therefore absolutely essential in order to understand the fundamental change of Finnish law from May 1990 onwards. The application of this human rights friendly approach is evident not just in the legislative phase but also in Finnish case-law.

The Finnish Supreme Court and Supreme Administrative Court have taken a number of landmark decisions related to the European Convention on Human Rights and its application within the national legal system. These decisions have been essential in the transformation of Finnish legal culture. In the case of KKO:1993:19 reference was made to Article 6.3)b of the Convention. The Supreme Court determined that the Convention and the CP-Covenant are part of the law of the land and the lower court should have ensured the defendant's minimum rights provided for by these international treaties. Nor has the Supreme Court hesitated to use more elaborate references to the Convention and the Strasbourg case-law. These can be found e.g. in the cases of KKO:1994:26 and KKO:1995:7. In the case of KKO:1994:26 the cases of Feldbrugge (29.5.1986) and Kamasinski (19.12.1989) are mentioned. In the case of KKO:1995:7 the Supreme Court referred to the cases of Pakelli (25.4.1983), Monnell and Morris (28.3.1990), Granger (24.5.1991) and Quaranta (24.5.1991). The so-called basic (or human) rights friendly approach is also mentioned by the Supreme Administrative Court. In the case of KHO:2000:63 (27.11.2000, T 3118), the Supreme Administrative Court considered that Section 22 of the Finnish Constitution imposes an obligation for the national courts to apply law in a basic rights friendly manner.

Thus within just a few years the contemporary European human rights culture had made its mark on the Finnish legal system. The detailed analysis of the domestic jurisprudence will be examined later in this article.

The status of the Convention has developed from “a normal statute” into a more effective position in the Finnish legal order. Contrary to the normal principle of lex posterior, the principle of presumption has been approved by the majority of legal scholars regarding the situation where a later statute would supersede the Convention. According to the principle of presumption it would be inconsistent with the idea of a human rights friendly interpretation, if a later domestic statute were to be in conflict with the Convention and a parliament knowingly violated rights protected under the Convention. For example, former judge from Finland to the European Court of Human Rights Matti Pellonpää (1990–1999), has emphasized that a mechanistic application of the lex posterior principle would be in conflict with prevailing knowledge.

The first Finnish judgments related to the European Convention were connected to fair trial under Article 6 of the Convention. It meant that questions were related to evidentiary rules, public hearings, pre-trial proceedings, unfairness and biased compositions of the national authorities. The spectrum of cases has widened in recent years. The question of the limits of freedom of expression has been under constant review before the Supreme Court.

The largest category of judgments against Finland relates to the excessive length of domestic proceedings. The case of Kangasluoma v. Finland (20.1.2004) is one of the precedents concerning this problem. The case-law clearly refers to a need for individual and general measures. There is evidence of an attempt to solve the current incompatibility between the domestic application of law and the European Convention on Human Rights. The Finnish Supreme Court has reduced the sentencing in a couple of cases due to lengthy proceedings. In the case of KKO:2005:73, the Supreme Court reduced the sentence in the white-collar crime case as a result of the excessive length of the proceedings. The Supreme Court referred to the cases of Kangasluoma v. Finland, Pietiläinen v. Finland (5.11.2002), Beck v. Norway (26.6.2001) and Kudla v. Poland (26.10.2000). A similar type of reduction of the punishment was also decided in the case of KKO:2006:33. The Supreme Court reduced the sentence rendered by the Court of Appeal for malfeasance and the sentences of both defendants were waived.

For example in the case of Matti Kangasluoma v. Finland, the Court unanimously concluded that there had been a violation of Article 6 §1 of the Convention and noted that nor did the Government supply any example from domestic practice showing that, by using the means in question, it was possible for the applicant to obtain such relief.

This is in itself sufficient to demonstrate that the remedies referred to do not meet the standard of “effectiveness” for the purposes of Article 13 because, as the Court has already

said, the required remedy must be effective both in law and in practice. [154]

Article 6 has also been applied in cases not related to the length of proceedings. There are many examples of Strasbourg case-law related to the principle of equality of arms, which requires each party to be given a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent. In the case of M.S. v. Finland (22.6.2005), the Court found "that respect for the right to a fair trial, guaranteed by Article 6 §1 of the Convention, required that the applicant be informed that the Court of Appeal had received the letter of 26 November 1996 from the applicant's ex-wife and that he be given the opportunity to comment on it". The Court also noted that on 31 August 2004 the Finnish Supreme Court has reached a similar conclusion regarding the parties' right to proper participation in the proceedings. The Supreme Court issued a precedent on 31 August 2004 concerning the Court of Appeal's obligation to communicate to the parties a statement invited on the Court of Appeal's own motion (KKO 2004:79). In this precedent, the Court stated: "the court decision is based on only such files which have been available to the parties of the legal proceedings and which they have also had the opportunity to examine."

The author refers to the explored material of all cases filed in 2015. The court dismissed 1,150 claims requesting review of cases by the Supreme Court, including a prosecutors' suit with regard to Auer case claiming revision of cancellation of life imprisonment. [155] Taking the overall number of revised cases, the Supreme Court reversed the penalty and earlier charges in 5 cases, cancelled the judgements of the lower courts and returned 27 cases for retrial. In 8 cases it partially altered the term of sentence or the amount of damage and cancelled one case of extradition to another state. Not a single suit was considered that would revert the earlier court judgement pursuant to the judgement of ECHR on finding infringement of the Convention articles in 2015.

According to the author, the case KKO:2015:14 is most exemplary; it was referred to by Pauliine Koskelo, among the others, - the former President of the Supreme Court of Finland and ECHR judge since 1.1.2016, when she responded to the questions posed by the author in the questionnaire.[156] The Judicial panel of the Supreme Court composed of 18 judges overturned the verdict of the Court of Appeal as of 6.9.2012 regarding two serious tax crimes, grave offense in the sphere of accounting, felony crime of tax debtor and registration offence by Jan Atso Tervonen and returned the case for investigation by the district court in fullest detail.

[154] Case of Kangasluoma v. Finland. No 48339/99. 20 January 2004. http://hudoc.echr.coe.int/eng#{"fulltext":["Kangasluoma"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-61588"]} Viewed 9.1.2016.

[155] Judgment of Appeal Court of Vaasa on 19.2.2015. www.finlex.fi. . Viewed 9.1.2016.

[156] Judgment of the Supreme Court of Finland. KKO:2015:14. 17.2.2015. www.finlex.fi. Viewed 9.1.2016.

The most complete answer to the questions posed by the author to Pauliine Koskelo is represented by clause 20 of the Supreme Court resolution KKO:2015:14. The Convention on Human Rights in Finland has the validity of a customary law. When considering the Government's proposal that the Convention enters into force in the country, the Constitutional Commission stressed that, of the existing reasoned alternatives within the framework of the situational interpretations, one should choose the one that favours the exercise of human rights, i.e. is in the best line with the human rights through this definition. (a reference to the opinion of the Constitutional Commission PeVL 2/1990 p. 3).

The Supreme Court also noted that §106 of the Constitution does not provide for enforcement of the Constitution only in cases involving exceptional circumstances that if in a matter being tried by a court of law, the application of an Act would be in evident conflict with the Constitution, the court of law shall give primacy to the provision in the Constitution.[157]

The Constitutional Law Committee shall issue statements on the constitutionality of legislative proposals and other matters brought for its consideration, as well as on their relation to international human rights treaties.

When considering the case, the Court also referred to §21, clause 1 of the Constitution which stipulates that everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice, also article 6, clause 1 of the European Convention on Human Rights envisages everyone's right to fair trial. In the case, there are references to 8 ECHR Regulations of the period 2001–2015, including the case KKO:2011:30 considered by the Supreme Court, ECHR's rulings on the case of Kari-Pekka Pietiläinen v. Finland [158], examined by the author in more detail in Chapter 3.4.

§21 paragraph 2 of the Constitution on Republic of Finland provides that Provisions concerning the publicity of proceedings, the right to be heard, the right to receive a reasoned decision and the right of appeal, as well as the other guarantees of a fair trial and good governance shall be laid down by an Act.

According to the position of the Constitutional Commission and in accordance with §22 of the Constitution, the public authorities are obliged to secure enforcement of the

[157] Judgment of Supreme Court of Finland , KKO:2015:14, para 35.www.finlex.fi. Viewed 9.1.2016.
[158] Case of Kari-Pekka Pietiläinen v. Finland, No 12566/06 , 22 September 2009. http://hudoc.echr.coe.int/eng#{"fulltext":["Kari-Pekka%20Pietil%E4inen"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-93972"]}. Viewed 20.1.2016.

fundamental liberties and human rights. Referring to the case of Neziraj v. Germany [159] the Supreme Court recognized violation of Article 6, clauses 1 and 3c – the guarantee of fair judicial trial and the right to defend oneself with the help of the attorney. The Court emphasized that the provisions of the Constitution are intended and are in harmony and in line with the international treaties on human rights, for protection of the fundamental human rights; and clause 3 of article 6 of the Convention is an integral part of §21 of the Constitution of Finland in terms of securing fair trial.[160]

According to the author, this judgement does not contradict to the position of ECHR pronounced in the case of Kangasluoma v. Finland. As the Court has held on many occasions, Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; however, the remedy required by Article 13 must be "effective" in practice as well as in law.[161]

According the Chapter 31 Section 1 of the Code of Judicial Procedure of Finland [162] on the basis of a complaint on the basis of procedural fault, a final judgment may be annulled: (4) if another procedural error has occurred in the proceedings which is found or can be assumed to have essentially influenced the result of the case.

According the Section 2 (2) if the complaint is based on the circumstances mentioned in section 1(1) or (4), the complaint shall be filed within six months of the date when the judgment became final. In the case referred to in section 1(2), the period shall be calculated from when the person filing the complaint received notice of the judgment.

Defined in Section 2 (3) if a law enforcement or supervisory body competent in the supervision of international human rights obligations notes a procedural error in the consideration of a case, a complaint may regardless of subsection 2 be made within six months of the date when the final judgment of the supervisory body in question was given.

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[159] Case of Neziraj v.Germany. No 30804/07, 8 November 2012. http://hudoc.echr.coe.int/eng#{"fulltext":["Neziraj%20v.Germany"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-114267"]}.Viewed 20.1.2016.

[160] Judgment of Supreme Court of Finland . KKO:2015:14, 17.2.2015, para. 57. www.finlex.fi. Viewed 2.8.2016.

[161] Case of Kangasluoma v.Finland. No 48339/99. 20 January 2004, para. 46. http://hudoc.echr.coe.int/eng#{"fulltext":["Kangasluoma"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-61588"]}. Viewed 20.1.2016.

[162] Code of Judicial Procedure of Finland (4/1734; amendments up to 732/2015 included) http://www.finlex.fi/en/laki/kaannokset/1734/en17340004.pdf. Viewed 20.1.2016.

The list of grounds for reviewing the above court judgements on the basis of newly discovered evidence, and the preconditions for repeal of the sentence are specified in chapter 31, 8 §para. 4 of the Code of Procedure of Finland, which states that "a final judgment in a criminal case may be reversed to the benefit of the defend- ant: (4) if the judgment is manifestly based on misapplication of the law."

For instance, in the case KKO:2015:78, the Supreme Court referred not only to article 6 1) of the Convention and to 4 judicial precedents of ECHR, but also to a previously issued judgement of 1948 passed by the Supreme Court. The Court noted that in the judicial practice of Finland, cases were often returned to lower courts if the effectuated sentence contained a procedural error, as found in the subsequent judicial hearing on such a sentence, that must be taken into account and that was essential for passing the sentence (reference to the judgement KKO 1948). The case was returned for re-examination to the County Court.

During the period from 1995 to 1 January 2016, ECHR revealed 151 cases of violation by Finland of one or more articles of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols. Pursuant to the resolutions passed by the European Court, recognizing violation of the Convention articles, the applicants applied to the Supreme Court with claims requesting cancellation of the pronounced judgements.

The Supreme Court of Finland in 2015 did not consider a single suit that would revert the earlier court judgement pursuant to the resolution of ECHR on revealing infringement by Finland of the Convention articles or its Protocols.

It is also important to note that the resolution of the Supreme Court to reverse the judgement of the court of appeal and to return the case to the court of lower instance for revision does not mean complete repeal of the previously imposed criminal penalty or altering the amount of damage. The author refers to the judgement of Helsinki Court of Appeal as of 2.10.2015 pursuant to the full-scope investigation of the decision of a district court. The court reduced the term of sentence to one year, which had already been served by the convicted person from 4.7.2006 and left the damage repayment amount, as it was – 844,212 Euros. [163]

In the light of the findings made in this research it can be concluded that the case of Finland is an interesting example of internationalization of domestic law. The Supreme Court and Supreme Administrative Court demonstrated that they were ready to approach domestic law and international law as a harmonious system strictly following the principle of harmonious interpretation of the Constitution and the European Convention developed by the Supreme Court itself.

[163] Decision of Appeal Court of Helsinki, R 15/517, 2.10.2015. www.finlex.fi. Viewed 20.1.2016.

This development as well as joint application of provisions of domestic and international law and importing methodology for examination of validity of restrictions or for implied limitations from the European Court of Human Rights makes the borderline between the international and domestic law irrelevant.

2.5. Comparative analysis of casework by the Supreme Court of the Republic of Latvia and the Supreme Court of the Republic of Finland

In 2015 the author has studied 54 cases of the Department of Criminal Cases of the Supreme Court of the Republic of Latvia, 26 cases of the Department of Civil Cases as well as 51 cases of the Department of Administrative Cases. Also, 14 Reports by the Committee of Ministers of the Council of Europe on the reports of the Government of the Republic of Latvia for the implementation of ECHR decisions for the period from 20 June 2013 – 5 October 2015 we thoroughly investigated.

The author has studied and bases his research with references to legal precedents of handed down decisions and reviews of 172 cases the Supreme Court of the Republic of Finland for the period 2010-2015, 87 decisions of 2015 and 167 decisions of the Supreme Administrative Court of Finland from 2015.

Case-law of the Republic of Latvia Supreme Court shows that the European Convention refers to important legal instruments, which must be taken into account when deciding on the case. A good example is a report made by the Government of the Republic of Latvia on the implementation of ECHR decisions in a case of Deniss Čalovskis from 2 October 2015 DH-DD (2015) 1016.

The Government acknowledged that the lack of knowledge of the Convention standards by national judges has led to the violation of Article 5, paragraph 1, of the Convention. The Latvian authorities have worked hard to improve the knowledge and practice of the courts and 1 October 2015 Parliament adopted amendments to the relevant parts of the Criminal Procedure Act, including section dealing with the extradition of persons, and in particular the amendments to provide additional oversight mechanisms and the right to provide prosecutors the power to immediately release individuals from detention in the case of rejection of extradition.[164]

According to the report of the Committee of Ministers of the Council of Europe DH-

[164]Secretariat of the Committee of Ministers. DHDD(2015)1016. Communication from Latvia concerning the case of Čalovskis against Latvia (Application No. 22205/13). https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2813731&SecMode=1&DocId=2311842&Usage=2. Viewed 20.1.2016.

DD (2015) 1005 on the case of A.K. v. Latvia [165], noted that the Convention has a direct effect on the legal system of Latvia. In order to improve the understanding of the Court's findings and standards, analysis of this decision was included in the Latvian judicial program (Latvian Judicial Training Centre's programme) for judges of district courts and the Supreme Court. For example, judicial practice, found that the shortcomings identified by the court, in this case have individual character, and that in general the national courts apply the standards of the Convention on Human Rights, established by the case law of the ECHR.

The value of the European Convention in cases before the Supreme Court of the Republic of Latvia noted Martins Mits (ECHR Judge from Latvia in Strasbourg since 2015), who noted back in 2010, that the ECHR is an important legal instrument which has to be taken into account when deciding a case - this is a preliminary conclusion that follows from the analysis of the case law of all three departments of the Supreme Court. Above all, it is supported by the frequency with which each department has referred to the ECHR: the Department of Criminal Cases addressed the ECHR in the reasoning part of its decisions in 25 out of the total number of 42 decisions, the Department of Civil Cases addressed the ECHR in 42 out of 54 decisions and the Department of Administrative Cases - in 76 out of 96 decisions. All three departments have expressly acknowledged the decisive impact of the ECHR on the outcome of a case. [166]

The author conducted a comparative study of cases by the Supreme Court of the Republic of Latvia and the Republic of Finland in 2015, of which draws the following conclusion:

1. The Supreme Court of the Republic of Latvia considers a case with 3 judges, while the Supreme Court of the Republic of Finland considers cases by 5 judges. In Finland, the consideration of claims for the abolition of the previous judgment pronounced by considering the panel of judges composed of 12 judges and as an exception in the composition of the 18 judges.[167]

2. The content volume of decisions handed down by the Supreme Court of the Republic of Latvia in 2015 was, from 3 to 12 pages long. One solution contained 18 pages (SKK-303/2015), one solution composed of 2 pages. Judgments of the Supreme Court of Finland were more voluminous, for example, the case for consideration of claims for the abolition of the previous judgment pronounced consists of 23–46 pages.

[165] Case of A.K.v. Latvia, No 33011/08, 24 June 2014 .
http://hudoc.echr.coe.int/eng#{"fulltext":["A.K.v.Latvia,%20no.%2033011/08"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-145005"]}. Viewed 20.1.2016.
[166] Mits Martins. European Convention on Human Rights in Latvia: Impact on Legal Doctrine and Application of Legal Norms. Media Tryck, Lund, 2010, p.191.
[167] Judgment of Supreme Court of Finland, KKO:2015:14. 17 February 2015.www.finlex.fi. Viewed 20.1.2016.

3. Only one judgement (SKK-303/2015) contains a reference to the legal position of the European Court of Justice with reference to the 7 ECHR decisions not related to the interests of Latvia, but without reference to a specific article of the Convention;

4. 14 judgements contain one or more references to the case law of the Supreme Court of the Republic of Latvia. The decision SKK-46/2015 contains the maximum number of links – 7. The Supreme Court of the Republic of Finland on average refers 4-8 times to the earlier decision and from 2–6 to the draft law.

The author refers to the assessment of the Constitutional Court of the Republic of Latvia. The Constitutional Court has recognised that the Supreme Court has an important role in the interpretation and application of legal norms in a way that is compatible with the Satversme. The courts of general jurisdiction are the ones that have the best knowledge of the actual and legal facts of the case, which testify to the existence of such rights or interests of a person that should be protected. [168]

From published on the official website of the Supreme Court of the Republic of Latvia in 2015 in all three Departments – 122 cases reviewed by the Supreme Court in these cases only in 8 cases (with links in them for another three solutions) turned to the case law of the European Court on two decisions of the European Union Court of Justice. This data leads the author to a conclusion that the degree of influence of the legal positions of the ECHR and the Convention on the jurisprudence of the Supreme Court of Latvia is clearly not enough.

In comparison with the consideration of such cases in Latvia, the Supreme Court of the Republic of Finland is much more likely to apply numerous references to judicial precedent ECHR and legal positions, developed by the European Court of Justice to clarify or application of the rules of the Convention in matters relating to the provision of the right to a fair trial and to judicial Supreme Court precedent.

In the period 2010-2015 the Supreme Court of the Republic of Finland has considered 172 cases, of which:

- "Cancelled 1 sentence (2012);
- Cancelled 1 sentence with the direction of the case for a new trial;
- 5 rulings to change court decisions in 2010, 2011 and 2013;
- returned one case to review in 2011;
- Cancelled 25 sentences on the grounds of violation of the criminal procedure law in 2010–2015;

[168] Judgment of the Constitutional Court in the case Nr. 2011-21-01, 6 June 2012, para. 12. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 20.1.2016.

- 140 court verdicts cancelled on the basis of an incorrect application of the law from 2011–2015. "[169]

The Supreme Court of the Republic of Finland may cancel the final decisions of the courts, which have entered into force, on the grounds provided for in Chapter 31 Procedure Code.

In 2015, 105 decisions made by the Supreme Court of the Republic of Finland, only two of them had no references to the legal precedent of the Supreme Court. All the rest of the cases have links to the EU Directive, UNICE, EAT and the Court of the European Union.

The Supreme Administrative Court of the Republic of Finland is Finland's highest court in administrative cases and consists of three boards, each with 5 judges examining cases of state and municipal management, taxation, environmental protection, social protection, health care and immigration. In 2015, 189 decisions made by the Court referred to the judicial precedent of the Supreme Administrative Court, including draft laws submitted to the Government, the decisions of the Court of the European Union, or EU Directive of the Parliament and the Council.

The most meaningful reference to international agreements, directives and decisions of the ECHR and the Court of Justice of the European Union are the decisions of the Supreme Administrative Court of the Republic of Finland to review the decisions of the Migration Office. As an example, one of the last decisions of 2015 KHO:2015:113 on 28 pages, references to the Dublin agreement, the Association Agreement between the Republic of Turkey and the European Economic Community in 1963, 18 references to the decisions of the European Union Court of Justice and to the previously made by two decisions of the Supreme Administrative Court. In order to avoid wrong interpretation of the Court refers to the translation triple translating the terms of Article 14 of the Agreement on German, French and English with the reference to the decision of the European Union Court of Justice. [170]

The most meaningful example is the decision of the Supreme Administrative Court of the KHO:2014:145, which dealt with the presumption of innocence of the taxpayer in the commission of a tax offense in the Supreme Administrative Court.[171] In making a decision, the court referred to the decision made by the ECHR, including against Finland [172], as well as

[169] Author`s database inquiry from the Supreme Court of Finland. on 31.12.2015, secretary of Supreme Court of the Republic of Finland.
[170] C-37/98, Savas, ECLI:EU:C:2000:224. http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61998CJ0037. Viewed 22.1.2016.
[171] Judgment of Supreme Administrative Court of Finland, KHO:2014:145 on 2 October 2014.www.finlex.fi. Viewed 22.1.2016.
[172] Nykänen v. Finland, Glantz v. Finland, Häkkä v. Finland, Pirttimäki v. Finland, 20 May 2014. http://hudoc.echr.coe.int/eng#{"documentcollectionid2":["GRANDCHAMBER","CHAMBER"]}. Viewed 22.1.2016.

a violation of Article 6 of the Convention in the cases against Finland (Ruotsalainen v. Finland, 16.6.2009; Jussila v. Finland, 23.11. 2006). The court also referred to the §21 and 8 of the Constitution of the Republic of Finland, art. 4 of Additional Protocol number 7, with 17 precedents of the ECHR case law and 15 prior rulings by the Supreme Administrative Court's decision.[173] The Supreme Court has found a violation of the principle of *ne bis in idem* and quashed the decision of the administrative court and the taxation of the Commission related to the accrual of additional taxes and penalties.

On the other hand, in a decision of 14.12.2015, the Supreme Administrative Court overturned the decision of the administrative court on the payment of tax, referring only to the European Council Directive 2006/112 / EC [174] on the common system of value added tax, the decision of the European Union Court of Justice (C-8 / 01, C-62/12, Kostov) and two earlier decisions of the Supreme Administrative Court.[175]

As an example of compliance of proceedings with the practice of the ECHR and the requirements of the European Convention, the author refers to the decisions from 2015 by the Supreme Court of the Republic of Finland, viewed by the judicial panel of 18 judges. [176] At the trial on charges of two serious tax crimes, felony by tax debtor and the registration tampering crime, the Supreme Court found a violation of articles 21 and 106 of the Constitution and Article 1 of Article 6 3) to the Convention on the right to defend himself in person or through legal assistance of his own choosing in the proceedings.

§106 of the Constitution applied in the case in the proceedings before the court the application of the law would be in clear contradiction with the Constitution, in which the court is required to give preference to the Constitution.

In this judgment, the Court referred to the 8 precedents of the ECHR case-law [177], as well as 3 of the decisions by the Supreme Court (KKO:2011:30, KKO:2012:49, KKO: 2004:94). The court overturned the earlier ruling and returned the case for reconsideration to the Appeal Court of Helsinki.

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[173] Case of Rosenquist v. Sweden, 14.9.2004; Zolotukhin v. Russia, 10.2.2009; Case of Engel and others v. Netherlands, 8.6.1976; Case of J.B. v. Switzerland, 3.5.2001; Case of Morel v. France, 3.6.2003; Zigarella v. Italia ,3.10.2002; Muslija v. Bosnia and Herzegovina ,14.1.2014; Franz Fisher v. Austria, 29.5.2001. http://hudoc.echr.coe.int/eng#{"documentcollectionid2":["GRANDCHAMBER","CHAMBER"]}. Viewed 22.1.2016.

[174] Council Directive 2006/112/EC of 28 November 2006, Article 2 1a and 1c, and Title III art.9. http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32006L0112. Viewed 2.8.2016.

[175] Judgmenet of Supreme Administrative Court of Finland on 14 December 2015. KHO:2015:179, 3517/2/14. www.finlex.fi. Viewed 22.1.2016.

[176] Judgment of Supreme Court of Finland on 17 February 2015, KKO:2015:14. H2013/18. www.finlex.fi. Viewed 22.1.2016.

[177] Mihelj v. Slovenia 15.1.2015, Neziraj v. Germany, Kari-Pekka Pietiläinen v. Finland, 22.9.2009, Söderman v. Sweden, Lala and Pelladoah v. Netherlands, 22.9.1994, Van Geyseghem v. Belgia 21.1.1999 , Eliazer v. Netherlands, 16.10.2001. Viewed 22.1.2016. http://hudoc.echr.coe.int/eng#{"documentcollectionid2":["GRANDCHAMBER","CHAMBER"]}.

Comparing decisions made by the Supreme Court of the Republic of Finland, the author notes that in part of the reasoning of the Court's decision states the law applicable to this offense and the procedural rules, which have guided the Court, as well as take into account the norms of international law, including the case law of the ECHR, which is usually given detailed interpretation of the provisions of the Convention to be applied in the present case. As noted in Chapter 3.4, when considering claims for cancellation of in force decisions on the basis of the ECHR Resolution on the recognition of a violation by Finland of articles of the Convention, the Court refers to numerous decisions of the European Court of affecting the interests of Finland and the other member countries of the Convention, details examining and comparing the circumstances of each case. At the same time the final basis for a decision is based on the national Constitution and Procedure.

References to the provisions of the Convention and its Protocols and the decisions of the ECHR apply in the period 2010-2015 by an average of 4 to 26 times in the decisions of the Supreme Court of Finland to the appeal of regulations, decisions and actions of state bodies. Depending on the content of the contested act the courts use different articles of the Convention, but mostly it is a reference to Article 6 of the Convention and Article 4 (1) Protocol 7 of the Convention.

It should be noted that the presence of the commentary to the ECHR decision from the standpoint of the national law of Finland helps judges understand and correctly apply the standards of the European Convention.

As the most detailed examination of the case, by the Supreme Court of the Republic of Latvia, the author refers to a decision from August 8 2015 SKK-303/2015 which contains references to the legal position of the European Court of Justice with reference to the 7 ECHR decisions which are not related to the interests of Latvia, but without reference to a specific article of the Convention. [178]

In the case of SKK-549/2015 from 28.12.2015 referred to 6 ECHR judgments by the Constitutional Court and 4 decisions of the **Department of Criminal Cases** and concluded that the Latgale Regional Court did not take adequate measures to study of the evidence in accordance with the provisions of Resolution by European Court of Justice and the Supreme Court.

The basic principles of criminal law, including human rights guarantees and the right to a fair trial are considered in the decision of the Supreme Court SKK-21/2014 from

[178] Cases of Malininas v. Lithuania, Edwards and Lewis v. the United Kingdom, Sequeira v. Portugal, Pyrgiotakis v. Greece, Teixeira de Castro v. Portugal, Vanyan v. Russia, Ramanauskas v. Lithuania. http://hudoc.echr.coe.int/eng#{"documentcollectionid2":["GRANDCHAMBER","CHAMBER"]}.Viewed 23.1.2016.

February 12, 2014 and March 27 2014 in the case SKK-39/2014. European Court of Human Rights made the conclusions that can be attributed to a specific criminal case. In particular, that investigations may be initiated only in relation to a person on whom there is information about criminal activity. (A reference to the case Teixeira de Castro v. Portugal, Ramanauskas v. Lithuania, and Malininas v. Lithuania). The Supreme Court ruled that the preliminary evidence is sufficient means to justify acquittal for conviction on the basis of the practice and proceedings of the ECHR.

It is important to note that even in the case of a murder investigation 20.8.2015 Lietā Nr. SKK -279/2015 (Krimināllieta Nr. 11817004012) the inability to appoint an expert to determine the cause of death and evidence of expertise in the evaluation of the prosecution, the Supreme Court heard the case using only the national legislation. The court reversed the decision of the Latgale Regional Court from 22 November 2014 in connection with the acquittal, article 117, paragraphs 2 and 10, and sent it to a new trial.

In the case SKK -144/2015 apart from the references to the Customs Code, the Law on Excise Tax Act, are references to the European Council Regulation (Eiropas Padomes Regulas (EEK) Nr.2913 / 92) and two judgments of the European Union Court C-459 EU / 07 and C-230/08, as well as legal scholar Uldis Krastiņš.[179] When producing the decision for this case, the Court notes the controversy of the first paragraph of Article 6 of the Convention and Article 92 of the Constitution of the Republic of Latvia to a fair trial, as well as Part 2 of Article 6 on the right of a suspect to the presumption of innocence.

In a similar case by the Customs for Smuggling of tobacco SKK -58/2015 The Court referred to the same two judgments; C-459/07 and C-230/08 by Court of the European Union; as well as the EU Directive.

In the case SKK-27/2015 [180] report was drawn up without the presence of a lawyer and an interpreter. Translated by the same inspector who has registered the minutes. According to the defence this is a clear violation of the Criminal Law in particular of the rights of the accused and is also contrary to Article 6 of the Convention, the first paragraph, Article 92 of the Constitution of the Republic of Latvia and the 15 chapter of Code of Criminal Procedures.

In the case SKK -27/2015 Court referenced to the decision of Jasper v. United Kingdom, who connected to the interests of Latvia and the Convention with reference to Article 6 of Part 2 of the Convention, in which all doubts are resolved in favour of the accused and who does not need to prove his innocence. The Supreme Court referred to the decision of

[179] Krastiņš Uldis. Vērtējuma jēdzieni Krimināllikuma normās. Jurista Vārds. 2012 /nr. 24 (723)
[180] Judgment of Supreme Court of Latvia. Nr. SKK-27/2015. 20 February 2015. http://at.gov.lv/en/court-proceedings-in-the-supreme-court/archive-of-case-law-decisions/department-of-criminal-cases/chronological-order/. Viewed 23.1.2016.

the ECHR for Case of Jasper v. United Kingdom, in which the entitlement to disclosure of relevant evidence is not absolute. However, in accordance with paragraph 1 of Article 6 of the Convention only such measures are admissible which do not restrict the rights of the defendants.

In the case of drug crimes investigation SKK -46/2015 [181] Latvian Supreme Court referred to the decision of the ECHR without a single reference to a specific article: Baltiņš v. Latvia, in the decision which provides links to the case Teixeira de Castro v. Portugal, Ramanausks v. Lithuania. The author emphasizes that in this case, the Court also referred to SKK-27/2015, SKK-301/2014, SKK-402/2013, SKK-303/2013, SKK-296/2013, SKK-178/2013, SKK-122/2013.

In the case SKK -5/2015 [182] Supreme Court ruled that the Appeal Court examined witnesses in violation of article 92 of the Constitution, as well as the Convention on Human Rights and Fundamental Freedoms, Article 6, paragraph 3, d) the right to examine witnesses and articles of the Criminal Procedure law. Court appeals to the legal position of the European Court of Justice with reference to a specific decision Klimentyev v. Russia, with reference to the particular article 6, paragraph 3(d) of the Convention.

The Court did not specify the content of the article of the Convention or the circumstances of the case Klimentyev v. Russia, specifying only the link to ECHR and the ECHR decisions. The Supreme Court has just pointed out that the European Court of Human Rights in its decisions has repeatedly pointed out that the European human rights and fundamental freedoms refer to in Article 6 of the Convention in the third sub-paragraph d) determining the right to have adequate time and facilities to prepare his defence.

According to the author, the reference to paragraph 124 of the ECHR judgment in the case Klimentyev v. Russia (the content of which is not represented in the decision SKK -5/2015) most fully reveal the defendant's right: "At the outset the Court recalls that the admissibility of evidence is primarily a matter for regulation by national law and that, as a rule, it is for the national courts to assess the evidence before them, the task of the Court being to ascertain whether the proceedings considered as a whole, including the way in which evidence was taken, were fair. The Court further recalls that, according to its case-law, all evidence must normally be produced in the presence of the accused at a public hearing with a view to adversarial argument... As a rule, these rights require that the defendant be given an

[181] Judgment of Supreme Court of Latvia. Nr. SKK-46/2015. 20 April 2015. http://at.gov.lv/en/court-proceedings-in-the-supreme-court/archive-of-case-law-decisions/department-of-criminal-cases/chronological-order/. Viewed 23.1.2016.
[182] Judgment of Supreme Court of Latvia. Nr. SKK –5/2015. 10 February 2015. http://at.gov.lv/en/court-proceedings-in-the-supreme-court/archive-of-case-law-decisions/department-of-criminal-cases/chronological-order/. Viewed 23.1.2016.

adequate and proper opportunity to challenge and question a witness against him, either when he was making his statements or at a later stage of the proceedings".[183]

Department of Civil Cases of the Republic of Latvia Supreme Court considered in 2015 16 decisions, of which we can state the following:

As the most complete combination of compliance of the Constitution, the judicial precedents of the ECHR and the European Court of Justice the author cites a decision of the Supreme Court SKC-1427/2015 [184]. In this case, the Court used many references to the Constitution, decisions of the ECHR, the European Court of Justice and the European Parliament and the EU Council. In particular, the Supreme Court referred to article 105 of the Constitution, the 3 decisions of the ECHR [185], 6 times in the judicial precedent of the European Court of Justice, the Treaty on European Union [186], the Convention on jurisdiction and enforcement of judgments in civil and commercial matters, the Directive 2004/48 / EC of the European Parliament and the European Union for the protection of intellectual property rights, Council Regulation (EC) № 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, the European Parliament and Council Regulation number 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and Regulation (EC) Nr. 1206/2001, corresponding to the law of the European Union in accordance with the provisions of the banking law.

In the case SKC-1/2015, the Supreme Court relied on two judgments of the European Court of Justice C-348/98, C-166/02, Decision E-8/07 of Court of the European Free Trade Association Eiropas Brīvās Tirdzniecības Asociācijas and 5 Directives for period 1972-2009 of the Council of the European Union on the approximation of the laws relating to insurance against civil liability in connection with the use of motor vehicles.

Case SKC-1478/2015 has seen the use of 5 references to case law SKC-440, SKC-251, SKC-448, SKC-1480, SKC-507.

As a comparison, it can be concluded that the Department of Civil Cases employs with a higher frequency than the Department of Criminal Cases the case law of ECHR and European Court of Justice.

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[183] Case of Klimentyev v. Russia. No 46503/99. 16 November 2006. http://hudoc.echr.coe.int/eng#{"fulltext":["Klimentyev%20v.%20Russia."],"documentcollectionid2":["GRAND CHAMBER","CHAMBER"],"itemid":["001-78031"]}. Viewed 23.1.2016.

[184] Judgment of Supreme Court of Latvia. 2015. Nr. SKC-1427/2015. 13 May 2015. http://at.gov.lv/en/court-proceedings-in-the-supreme-court/archive-of-case-law-decisions/senate/chronological-order/.Viewed 23.1.2016.

[185] Wiggins v. United Kingdom, 1978, Case of Mellacher and Others v.Austria. 1989 , Case of Tre Traktorer AB v. Sweden. http://hudoc.echr.coe.int/eng#{"documentcollectionid2":["GRANDCHAMBER","CHAMBER"]}.

[186] Case-law of the Court of Justice. C-619/10 Trade Agency Ltd v Seramico Investments Ltd, C-7/98 Krombach, C-420/07 , Apostolides, C-38/98 Renault, , C391/95 Van Uden, C-104/03 Ste Paul Dairy Industries.

In 2015 the **Department of Administrative Cases** of the Supreme Court in the case of SKA-864-15 alone has referred to three citations of the articles of the Constitution and two decisions of the ECHR: case of K.U. v. Finland and case of Hannover v. Germany.

In the decision SKA-237-15 Court has referred to Article 8 of Convention and to case of Marper v. United Kingdom. In the case of SKA-241-15 the Court referred on 8 Article of Convention as well. In the case of Ryanair Ltd (SKA-622/2015) the Court referred to the three decisions of European Court C- 450/06, C-1/11 and C-416/10.

The author notes that shining examples of reaction to ECHR decisions are cases V.S. v Latvia and Slivenko v. Latvia. The Supreme Court overturned the previous court decisions and ruled on the resumption of the trial and sent the case to the Riga Regional Court as the appellate court. These decisions cannot be appealed.

In the case of Sergejs Talankovs v. Latvia Zemgale Regional Court found the applicant guilty of extortion with aggravating circumstances and sentenced him to seven years in prison. February 19, 2004, at the applicant's complaint, the Department of Criminal Cases of the Supreme Court upheld the decision of the court of first instance by reducing the applicant's sentence to five years in prison. The representative of the Government of Latvia Inga Reine offered to settle the case without consideration to the ECHR and to pay 4,000 Euros to the applicant in accordance with Article 37 §1 of the European Convention. The Court acknowledged that the settlement based on respect for human rights as defined in the Convention and its Protocols, to file the case and excluded him from the list of the complaint.

For example, in 2013 the Supreme Court of the Republic of Latvia twice applied Article 6 of the Convention, on 19 September 2013 to case SKK-449/2013 and on 18 June 2013 in the case SKK-208/2013, referring to a fair trial at national level.[187]

According to the author, the best example of cases and respect for the right to a fair trial are the decisions of the Constitutional Court of the Republic of Latvia. For example, a decision on the case No 2014-09-01 from November 28, 2014 contains a 53 page decision, references to Articles 1 and 92 of the Constitution, 46 decisions of the Constitutional Court or the case materials, 5 ECHR judgments, Article 6 of the Convention, one decision of the European Commission, the two decisions of the Department of Civil Cases of the Supreme Court SKC - 20/2013, SKC-1627/2014, the UNCITRAL 2012, as well as the outcomes of the Kurzeme District Court, the Riga Latgale Urban District, the court Vidzeme suburb of Riga and the Latvian decision of the arbitral tribunal.

[187] Judgment of Supreme Court of Republic of Latvia of 19 September 2013 in the case Nr. SKK-449/2013 and of 18 June 2013 in the case Nr. SKK-208/2013.
http://at.gov.lv/en/court-proceedings-in-the-supreme-court/archive-of-case-law-decisions/department-of-criminal-cases/chronological-order/. Viewed 23.1.2016.

This decision, as well as many others, which were previously shown in this study indicate a clear position of the Constitutional Court of the Republic of Latvia, the fundamental value of the European system of protection of the rights and freedoms of man and citizen, expressed in consistent implementation of the Convention and the European Court's decision in the legal system and to identify shortcomings of the national legal regulation and the proposal on ways to address them.

Of the 891 decisions handed down only in 2014 the Court found violations of the Convention by the respondent States to be at 85%, from which the largest percentage of violations established were of article 6 at 25%, article 5 at 17 % and article 12 at 10%.[188]

In 2015 the European Court of Human Rights found 7 violations of the European Convention by Latvia and 5 violations of the European Convention by Finland.

Therefore, for the Republic of Latvia and the Republic of Finland it is important that the legislator and the higher courts have developed a unique approach to the definition of the status of the decisions of the ECHR, and judges frequently used the decisions of the European Convention for norms of human rights and fundamental freedoms to ensure a fair trial.

Brief summary of Chapter 2

In the period 1959–2015 years of the Court in Strasbourg issued 15,570 Regulations, which established at least one violation of the Convention. The violations of Article 6 of the Convention were 10,145, of which 4,329 are set for violation of the right to a fair trial.

The analysis of judgements of the Latvian Constitutional Court demonstrates its definite position regarding the fundamental value of the European system of protection of the rights and freedoms, expressed in consistent implementation of the Convention provisions and ECHR resolutions by the Court in the legal system, and in respect of identifying weak points of the national legal regulation and proposing the ways to eliminate them.

The same conclusion follows the reports of the Cabinet of Ministers of the Republic of Latvia which note that the Convention has a direct impact on the legal system of Latvia. It was established, through examples of the judicial practice, that the shortcomings identified by the court, were of individual character in this case and that in general the national courts do apply the standards of the Convention on Human Rights established by the decisional law of ECHR.

[188] The ECHR in facts & figures 2014. http://www.echr.coe.int/Documents/Facts_Figures_2014_ENG.pdf. www.finlex.fi. Viewed 23.1.2016.

The position of the author coincides with the answers posed within the framework of the research to the former judges of the European Court, former Chairmen and judges of the Constitutional Court of the Republic of Latvia and the President of the Supreme Court of the Republic of Finland; it is also confirmed by the judgements of the Constitutional Court of the Republic of Latvia and the Supreme Court of the Republic of Finland.

3. REVIEW OF LAWSUITS IN THE SUPREME COURT OF THE REPUBLIC OF LATVIA AND THE REPUBLIC OF FINLAND

3.1. Application of the European Convention in a fair trial

It is important to note that as to the argument based on the backlog of cases in the appellate court, it must not be forgotten that Article 6 para. 1 (art. 6-1) imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements.[189] Undoubtedly, the demand for fair judicial trial is one of the most important rights guaranteed by the European Convention on Human Rights and Fundamental Freedoms. However, the issue of realization of this right is controversial among the legal scholars and law enforcers, which problem is only aggravated by the rulings of ECHR.

The author also emphasizes that as far as various legislative provisions of the European Union countries are challenged in terms of the European Convention on Human Rights, the Convention should be interpreted in accordance with other rules of international law, including the international obligations of the respondent state; one can not exclude the possibility that the Convention provisions may prevail over them. For instance, back in 1975 in the case of Golder v. the United Kingdom the Court held that the procedural guarantees laid down in Article 6 concerning fairness, publicity and promptness would be meaningless in the absence of any protection for the pre-condition for the enjoyment of those guarantees, namely, access to court. It established this as an inherent aspect of the safeguards enshrined in Article 6, referring to the principles of the rule of law and the avoidance of arbitrary power, which underlie much of the Convention.[190]

As an example, in Fogarty v. the United Kingdom the Court recalls that the Convention has to be interpreted in the light of the rules set out in the Vienna Convention of 23 May 1969 on the Law of Treaties, and that Article 31 §3 (c) of that treaty indicates that account is to be taken of "any relevant rules of international law applicable in the relations between the parties". The Convention, including Article 6, cannot be interpreted in a vacuum. The Court must be mindful of the Convention's special character as a human rights treaty, and it must also take the relevant rules of international law into account. The Convention should

[189] Case of Salesi v. Italy. No 13023/87, 26 February 1993, para 24. http://hudoc.echr.coe.int/eng#{"fulltext":["Salesi%20v.%20Italy"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-57814"]}. Viewed 2.2.2016.

[190] Case of Golder v. the United Kingdom. 21 February 1975, para 28-36. http://hudoc.echr.coe.int/eng#{"fulltext":["Golder%20v.%20the%20United"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-57496"]}. Viewed 2.2.2016.

so far as possible be interpreted in harmony with other rules of international law of which it forms part, including those relating to the grant of State immunity.[191]

Also in the case of Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland, The Convention must be interpreted in such a manner as to allow States Parties to comply with international obligations so as not to thwart the current trend towards extending and strengthening international cooperation.[192]

In these cases, varying provisions of the legislation of the European Union countries are challenged from ECHR's point of view.

In some contexts, the violation of national laws or obscure wording of some national provisions as such was used by the Court as an additional argument pointing to the breach of Article 6 (DMD Group, a.s. v. Slovakia, para. 62–72). The Court notes that in its analysis of the question of the independence of assessors the Constitutional Court referred to the Strasbourg case-law and observed that Article 45 of the Constitution was modelled on Article 6 §1 of the Convention. The Court reiterates that appointment of judges by the executive is permissible, provided that appointees are free from influence or pressure when carrying out their adjudicatory role . Sometimes, to substantiate its conclusion under Article 6, the Court also referred to national rulings revealing a violation of a constitutional provision similar in terms to Article 6 (Henryk Urban and Ryszard Urban v. Poland, para. 47–56).

The author accentuates the position of ECHR observes that in constitutional complaint proceedings the Constitutional Court has no jurisdiction to review the compatibility of legislation with international agreements, including the Convention (Para 51).[193]

This position totally contradicts to the Constitution of the Republic of Latvia and the earlier enactments of the Constitutional Court.

Article 6 of the European Convention on Human Rights is a provision of the European Convention which protects the right to a fair trial. Article 6 reads as follows: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ."

[191] Case of Fogarty v. the United Kingdom. No 37112/97. 21 November 2001, para.35. http://hudoc.echr.coe.int/eng#{"fulltext":["Fogarty%20v.%20the%20United"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-59886"]}. Viewed 2.2.2016.

[192] Case of Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland, No 45036/98, 30 June 2005, para 108. http://hudoc.echr.coe.int/eng#{"fulltext":["Bosphorus"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER","DECISIONS","CLIN","ADVISORYOPINIONS","REPORTS"],"itemid":["001-69564"]}. Viewed 2.2.2016.

[193] Case of Henrik Urban and Ryszard Urban v. Poland. No 23614/08. 30 November 2010. http://hudoc.echr.coe.int/eng#{"itemid":["001-101962"]}. Viewed 26.2.2016.

The ECHR has repeatedly pointed out in the decisions that the right to a fair hearing before a tribunal as guaranteed by Article 6 §1 of the Convention must be interpreted in the light of the Preamble to the Convention, which declares, among other things, the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, *inter alia*, that where the courts have finally determined an issue, their ruling should not be called into question. [194]

The Court reiterates that Article 6 §1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 §1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention.[195]

The author refers to the position of the Constitutional Court of the Republic of Latvia: "The principle of legal certainty imposes a duty on the state to secure stability of legal relations and to observe the principle of legal trust."[196] Thus, the judicial enactments that have become definitive after all available remedies were exhausted (along with all possibilities for appeal), or after expiration of the term of enforcement of these remedies, should no longer be subject to revision, and should be a subject of *res judicata* principle.

The Constitutional Court of the Republic of Latvia expresses the opinion , that the Saeima recognises that in accordance with the principle of legal security, *res judicata* principle also falls within the scope of the right to a fair trial. Allegedly, it provides that a binding court ruling that has entered into force is final, i.e., the re-examination of such rulings with the purpose of achieving that the case is examined de novo should be inadmissible. However, it is said that the right to a fair trial is not absolute and restriction of this right is

[194] Case of Brumărescu v. Romania, No 28342/95, 28 October 1999, para 61. http://hudoc.echr.coe.int/eng#{"fulltext":["Brum%03rescu"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-58337"]}. Viewed 2.2.2016.

[195] Case of Ryabykh v.Russia. No 52854/99. 24 July 2003, para 55. http://hudoc.echr.coe.int/eng#{"fulltext":["ryabykh"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER","DECISIONS","CLIN","ADVISORYOPINIONS","REPORTS"],"itemid":["001-61261"]}. 6.2.2016.

[196] Judgment of 25 October 2004 by the Constitutional Court in the case Nr. 2004-03-01, para 9.2. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 8.2.2016.

admissible. ECHR has also found that in some cases departures from res judicata principle were admissible.[197]

The author notes that in recent years the Supreme Court of the Republic of Latvia has had this practice of responding to ECHR judgements. A demonstrative example of this is V.S. cases. The Supreme Court overturned the previous judgements and ruled to resume the trial; it sent the case to Riga Regional Court being a court of appellate jurisdiction. These judgements cannot be appealed against.

In the case of Slivenko v. Latvia the Court considers that the aim of the particular measures taken in respect of the applicants cannot be dissociated from the wider context of the constitutional and international law arrangements made after Latvia regained its independence in 1991. In this context it is not necessary to deal with the previous situation of Latvia under international law. Having regard to all the circumstances, the Court considers that the Latvian authorities overstepped the margin of appreciation enjoyed by the Contracting Parties in such a matter, and that they failed to strike a fair balance between the legitimate aim of the protection of national security and the interest of the protection of the applicants' rights under Article 8. Therefore, the applicants' removal from the territory of Latvia cannot be regarded as having been "necessary in a democratic society".[198]

The author refers to as on separate dissenting opinion of Judge Maruste: "It has been an established principle in international law which is now also enshrined in the Statute of the International Criminal Court (Article 8) that the transfer, directly or indirectly, by the occupying power of parts of its own civilian population into the territory it occupies is not allowed. Indeed, according to the same Article 8, it is a war crime…According to generally recognised principles of international law, every internationally wrongful act of a State entails international responsibility and gives rise to the obligation of that State to restore the status quo ante." [199]

ECHR in its decisions, as pointed out, that legal certainty presupposes respect for the principle of res judicata, that is the principle of the finality of judgments. This principle underlines that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. Higher courts'

[197] Judgment of 9 January 2014 by the Constitutional Court in the case Nr. 2013-08-01. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 8.2.2016.
[198] Case of Slivenko v.Latvia. No 48321/99. 9 October 2003, para 111. http://hudoc.echr.coe.int/eng#{"fulltext":["Slivenko"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER","DECISIONS","CLIN","ADVISORYOPINIONS","REPORTS"],"itemid":["001-61334"]}. Viewed 5.2.2016.
[199] Case of Slivenko v. Latvia. Separate dissenting opinion of Judge Maruste. http://hudoc.echr.coe.int/eng#{"fulltext":["Slivenko%20v.%20Latvia"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-61334"]}.Viewed 8.2.2016.

power of review should be exercised to correct judicial errors and miscarriages of justice, but not to carry out a fresh examination. The review should not be treated as an appeal in disguise, and the mere possibility of there being two views on the subject is not a ground for re-examination. A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character.[200]

The European Court established in V.S. case as well that the domestic proceedings failed to provide the applicant's sufficient protection against the potential arbitrary deprivation of her liberty, and the court judgement on detention passed within the framework of the proceedings could not be considered as "made by court judgement in conformity with the law" within the meaning of sub-clause "b", Clause 1 of Article 5 of the Convention.

The opinion given by the Senate is a definitive ruling with regard to validity of the protest and limitation of the res judicata principle in each specific case. Only if significant violations are ascertained, the judgement is cancelled and referred to the court of first instance for retrial. Thus, the legislator, having adopted challengeable provisions, has created a mechanism that makes it possible to reciprocally compare the principle of equity and the principle of legal stability at several levels.

The Constitution of the the Republic of Latvia does not directly provide for cases where the right to fair judicial trial may be limited, however this right can not be deemed absolute. The Constitutional Court has repeatedly pointed out that the right to fair trial is one of the most fundamental human rights, therefore its restrictions can be established only in exceptional cases. In a particular case, the restriction of the fundamental rights is established by the Law on Civil Procedure adopted and annunciated in the manner envisaged by the Constitution and the Rules of Procedure of the Saeima.

The European Court recalls its judicial practice to the effect that the revocation of judgement that has entered into effect through supervisory review may impart illusory character to the rights of a party to litigation and infringes the principle of legal certainty.

ECHR in its decisions, as pointed out, that legal certainty presupposes respect for the principle of res judicata, that is the principle of the finality of judgments. This principle underlines that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. Higher courts' power of review should be exercised to correct judicial errors and miscarriages of justice, but not to carry out a fresh examination. The review should not be treated as an appeal in

[200] Case of Ryabykh. v.Russia. No 52854/99. 24 July 2003, para 52. http://hudoc.echr.coe.int/eng#{"fulltext":["ryabykh"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER","DECISIONS","CLIN","ADVISORYOPINIONS","REPORTS"],"itemid":["001-61261"]}. Viewed 6.2.2016.

disguise, and the mere possibility of there being two views on the subject is not a ground for re-examination. A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character.[201]

The author agrees that the guarantees of Article 7 of the Convention apply to the "criminal offence", the concept of which is similar to the autonomous notion of "criminal charge" developed by the European Court in relation to Article 6 of the Convention. Thus, they may also apply to certain offences envisaging disciplinary or administrative liability by the internal law of states – parties to the Convention. [202]. However, Article 7 of the Convention does not cover the cases of enforcement of preventive measures,[203], as well as deportation [204] and extradition, if the latter is effected on the basis of a special law on extradition that does not contain penal provisions.

Clause 1, Article 7 of the Convention allows conviction for a deed that was a crime under the "national or international law" in force at the time when it was committed. In this regard, a question arises: can the state engage in criminal prosecution only on the basis of its internal law, or is prosecution possible for a deed that is not a crime under the domestic law, but is punishable under the laws of other state – for instance, if it was committed on the territory of the latter, like in Čalovskis case? [205]

In addition, the verdict underlying a person's deprivation of freedom must comply with the provisions of the Convention. In particular, such a sentence should be imposed as a result of fair and public court proceedings within the meaning of Art. 6 of the Convention. Due to the fact that the sentence of a foreign state can also serve as a ground for lawful incarceration [206], a question arises of applicability of the above requirement in respect of a court verdict pronounced in a state that is not a party to the European Convention. Unlike the

[201] Case of Ryabykh. v.Russia. No. 52854/99. 24 July 2003, para 52. http://hudoc.echr.coe.int/eng#{"fulltext":["Ryabykh."],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-61261"]}. Viewed 8.2.2016.

[202] Dijk P. van, Hoof G. J. H. van. Theory and Practice of the European Convention on Human Rights, 2nd edn., Kluwer Law and Taxation Publ., Deventer 1990.

[203] Case of Lawless v. Ireland, Judgment of 14 November 1960. Series A. No. 1. http://hudoc.echr.coe.int/eng#{"fulltext":["Lawless%20v.%20Ireland,"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-57516"]}. Viewed 8.2.2016.

[204] Case of Moustaquim v. Belgium, No 12313/81, 8 February 1991. http://hudoc.echr.coe.int/eng#{"fulltext":["Moustaquim%20v.%20Belgium"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-57652"]}. Viewed 9.2.2016.

[205] Case of Čalovskis v. Latvia, No 22205/13, 24 July 2014. http://hudoc.echr.coe.int/eng#{"fulltext":["22205/1324"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-145791"]}.Viewed 9.2.2016.

[206] Case of X vs. Federal Republic of Germany. 1993, p.516. http://hudoc.echr.coe.int/eng?i=001-27875#{"itemid":["001-27875"]. Viewed 3.3.2016.

European Commission that has left that question without answer [207], the European Court has shown a tendency to accept and apply the said requirement as a general rule .[208]

For instance, many lawyers believe that the practice of the European Court and the European Commission on Human Rights does not give a univocal answer to this. For instance, in one of its decisions, the Commission deemed inclusion of a record on a crime for which a person was convicted in another state and which was not punishable in the other state, in the person's police file, as commensurate with the requirements of Article 7, pointing out that such acts are permissible if the offence committed was constituted as a crime where and when it was committed.

3.2. Consideration of claims cancellation of decisions by national courts that have entered into force by the Supreme Court of Finland

In 1995, Republic of Finland has joined the European Union, which influenced the change of the national legislation, amendments to the Constitution, entered into force on 1.3.2000 with the regulations by which the procedure of the courts of appeal instance should be performed in accordance to the requirements set by the European Declaration of Human Rights.[209]

In accordance with Article 1 of the Convention the High Contracting Parties shall provide to everyone, under their jurisdiction, the rights and freedoms defined in Section I of the Convention. This suggests that the "primary responsibility for the implementation and enforcement in the Convention for the Protection of Human Rights and Fundamental Freedoms (later Convention) lies with national authorities. Accordingly, the complaint mechanism to the European Court is supplementary to the national systems of human rights protection. This subsidiary character is clearly stated in Art. 13 and para. 1, p. 35 of the Convention. According to the Recommendation R (2000) 2 in exceptional cases, the most effective way to a new investigation of the case is for the applicant to return to an earlier stage. As an example, in particular, where the applicant after the decision Court of Human Rights is still suffering post sentence of a national court as a consequence of serious adverse effects that cannot be fixed without a new investigation at the national level. An example of

[207] Ibid. pp. 518-520.. http://hudoc.echr.coe.int/eng?i=001-27875#{"itemid":["001-27875"]. Viewed 12.10.2015.
[208] Case of Wemhoff v. Germany. No 2122/64. 27 June 1968, para 24. http://hudoc.echr.coe.int/eng#{"fulltext":["Wemhoff"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-57595"]}. Viewed 3.3.2016.
[209] Government proposal to Parliament of the Republic of Finland HE 184/1997. http://www.finlex.fi/fi/esitykset/he/1997/19970184. Viewed 2.3.2016.

the consequences specified in the recommendation of a long prison sentence, which the convicted person is still serving."[210]

Recommendation encouraged all Contracting Parties to ensure that their national legal systems have the necessary abilities to achieve, as far as possible, restitutio in integrum, and in particular to provide appropriate opportunities for case review, including the reopening of the case.

Although the Convention contains no provision imposing an obligation on Contracting Parties to provide in their national law for the re-examination or reopening of proceedings, the existence of such possibilities have, in special circumstances, proven to be important, and indeed in some cases the only, means to achieve restitutio in integrum. An increasing number of States have adopted special legislation providing for the possibility of such re-examination or reopening. In other States the courts and national authorities have developed this possibility under existing law.

The present recommendation is a consequence of these developments. It invites all Contracting Parties to ensure that their legal systems contain the necessary possibilities to achieve, as far as possible, restitutio in integrum, and, in particular, provide adequate possibilities for re-examining cases, including reopening proceedings.

The author emphasizes, that currently, the national law of many European countries provides for the review of judicial decisions, which have entered into force, in order to remedy the consequences of the violations found by the European Court. In Austria, Bulgaria, Germany, Greece, Lithuania, Luxembourg, Malta, Norway, Poland, Slovenia, the United Kingdom, France, Croatia and Switzerland, internal law establishes such a right. A number of states clearly allow for the possibility of judicial review of decisions by a broad interpretation of general constitutional or legal provisions, such as Belgium, Denmark, Spain, Slovakia, Finland and Sweden. The jurisprudence of the other member countries of the Convention contains sufficiently flexible provisions, which, if necessary, can be interpreted so that the review of final judgments in the appropriate situation was possible.

Republic of Finland has ratified the Convention on the Protection of Human Rights and Fundamental Freedoms and thereby recognized it as a part of its legal system, and the jurisdiction of the European Court of Human Rights (ECHR), by virtue of Article 46 of the Convention, ipso facto and without special agreement - obligatory for interpretation and application of the Convention and its Protocols in cases of alleged violation. Accordingly,

[210] Recommendation No R (2000) 2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgements of the European Court of Human Right. (Adopted by the Committee of Ministers on 19 January 2000 at the 694th meeting of the Ministers' Deputies). https://www.coe.int/t/dghl/monitoring/greco/documents/Rec(2000)10_EN.pdf. Viewed 4.3.2016.

since the decision of the ECHR implies acceptance by the respondent State of specific measures for its execution, the person against whom the violation of the Convention has occurred should be able to apply to the competent court for review of the judicial act, give rise to the complaint with the ECHR, and to be sure that his application will be considered.

The analysis of all the reviewed cases by the Supreme Court of Republic of Finland (later SC) to cancel the earlier decision of national courts allows author to conclude that the SC of Finland considers the cases of citizens' complaints on violation of constitutional rights and freedoms in a particular case and as an exception, digresses from performing the duties assigned by the ECHR judgments based on the provisions of the Convention, if such derogation is the only possible way to avoid violations of the fundamental principles and norms of the Constitution and chapter 31 of the Procedural Code.

The author believes that in spite of the commitments taken up by Finland to make every effort for the realization of the right to a fair trial, in practice, a formalistic approach has to be noted.

It is important to note, in particular, the Supreme Court often refers to the earlier decision KKO:2008:24 [211], which established that a conviction does not mean that the earlier made decision of the national court should be lifted. Using the example of the decision KKO:2008:24, the Court noted that the legislation of 1960, concerning the abolition of the sentence that came into force, does not fit into the situation relating to the decisions of the European Court of Human Rights. In the same decision, the court stated that the Finnish legislation does not include specific provisions for the abolition of national convictions and the grounds for re-examination of cases on the basis of a violation of the ECHR violations except those of Chapter 31 §2 sub-paragraph 3 of the Procedural Code for the submission of the claim deadline.

In practice, the Supreme Court of the Republic of Finland, for example, in the decision (KKO:2009:84)[212] found that the European Convention on Human Rights as such does not oblige participating States to engage in the cancellation or annulment of the sentences of national courts in the statement of the European Court of violations of Article 6 of the Convention for fair trial. Prerequisites for further appeal, I.e. claim for annulment of the verdict and complaint application for judicial error (in particular this new case was solely about the complaint regarding a procedural error), it is necessary to assess each situation on the basis of the national law of the convention participant State.

[211] Judgment of Supreme Court of Finland , case of Selistö on 14.03.2008. www.finlex.fi. Viewed 4.3.2016.
[212] Judgment of Supreme Court of Finland , case of Eino Laaksonen on 27.10.2009. www.finlex.fi. Viewed 4.3.2016.

The author emphasizes that on the one hand the Convention and its Protocols are important for Finland as a Participant State, as well as the case law of the ECHR, which the Supreme Court constantly refers to.

On the other hand, the Supreme Court applies current national constitutional and legislative provisions, in particular Procedure Code of 1960 with 2005 amendment to abolish the court order, which was previously imposed and has entered into force.

As a result of consideration of claims based on the decisions of the ECHR recognizing one or more violations of articles of the Convention - none of the earlier decisions by the national courts of Finland were immediately and completely abolished in all the articles of the allegations of coercive measures, the full amount of the damage or the size of the court costs.

At the same time the Supreme Court of the Republic of Finland decides to abolish all or part of the charges that came into force of the decisions handed down by national courts, complaints that have not been filed and reviewed by the ECHR in violation of articles of the Convention.

As such an example, the author cite the demonstrative decision made by the Supreme Court of Republic Finland in KKO:2011:109, the Supreme Court twice in 2011 returned the criminal case of Jippii Group Oyj for the review by the Court of Appeal of Helsinki. The Supreme Court referred to 21§ of the Finnish Constitution and article 6 of the European Convention, which guarantees everyone the right to a fair trial and judicial precedents of the European Court.

The conclusion in the investigation of suspicions from 2000-2011 in economic crimes has arrived in 21.12.2012 when, after 24 hearings, the Court of Appeal of Helsinki found 14 accused to be not guilty, abolished all 26 counts in the indictment and ordered the state to pay the defendants approximately 4 million euros legal costs. In reaching a decision the court took into account the earlier rulings of the ECHR in violation of Article 6 of the Convention [Foucher v. France. 18.3.1997; Kahraman v. Turkey, 31.10.2006; V.v. Finland, 24.4.2007].

Two of the acquitted, Ilpo Kuokkanen and Harri Johannesdahl filed a complaint with the ECHR on the 15.6.2012. The applicants complained under Article 6 of the Convention of the lack of a fair trial as the prohibition of reformatio in peius was not respected.

The court had acknowledged that this prohibition was valid in the Finnish legal system but it had still decided the case at hand in a manner that completely ignored this prohibition. The Court declares the application inadmissible.

According to the author of the criminal case of senior Inspector Keijo Suuripää most fully represents the real picture of the recognition of judgments of the ECHR and the

protection of human rights in Finland, the time frame of the proceedings compared to the size of the gained benefit and the final judgment.

For example, Keijo Suurpää was elected Chairman of the police rally driving club called Handcuff Team Police Finland ry. In May 1998, the applicant took part in a rally in Belgium with a car he had rented. As he was bringing the car back to Finland, the Customs Authorities took note of the fact that the registration of the car had been changed. They started a criminal inquiry into the matter. On July 7, 1998, the Office of the Prosecutor General decided that a police investigation should be carried out into whether the applicant had been aware of the change in the registration. The money 18,000 FIM (approximately 3,000 EUR) in question had been intended expressly as financial support for the applicant (the navigator) and another policeman (the driver) in the rally.

22.6.2000 Court of Appeal reversed the charges of taking bribes and unintended malfeasance presented by district public prosecutor. The public prosecutor appealed to the Supreme Court, in its decision from 13.6.2002 Suuripää was sentenced to a fine at the rate of 40-day incomes for bribery and payment received from the state crime of economic benefits in the amount of 3,027 euros. [213]

The applicant appealed to the ECHR. There has accordingly been a breach of Article 6 §1 of the Convention in respect of the lack of a verbal testimony and a violation of Article 6 §1 of the Convention in respect of the length of the proceedings.

After the judgment by the ECHR Case of Suuripää v. Finland on violation of Article 6 of the Convention the State Chancellor of Justice filed a lawsuit against the abolition of the Supreme Court decision from 13.6.2002 on the basis of procedural error, which could materially affect the final verdict. The Chancellor referred to a ruling by the ECHR from 12.1.2010 for recognition of Finland's violation of Article 6, paragraph 1, when considering criminal cases, the Supreme Court ruled that a verbal testimony of Keijo Suuripää is not necessary.

In a case from 24.5.2012 [214] the SC referred to the Recommendation of the Council of Ministers of the Council of Europe – Recommendation No R (2000) 2 [215] on the re-examination of cases in national courts when the injured party did not have the time or opportunity to prepare his defence in the criminal proceedings. The ECHR found that the Supreme Court could not come to a decision and deal properly with the case without conducting verbal testimonies: "…in the circumstances of the present case, the Supreme

[213] Judgment of Supreme Court of Finland. KKO:2002:51, 13.6.2002. www.finlex.fi. Viewed 4.3.2016.
[214] Judgment of Supreme Court of Finland. R2010/116 , 24.5.2012. www.finlex.fi. Viewed 2.3.2016.
[215] Recommendation No R (2000) 2. Art.12.
https://www.coe.int/t/dghl/monitoring/greco/documents/Rec(2000)10_EN.pdf. Viewed 2.3.2016.

Court could not adequately resolve the applicant's case without holding an oral hearing". [216] The decision from 24.5.2012 [217] of the Supreme Court en banc of 12 judges overturned the earlier decision of the Supreme Court from 13.6.2002 and referred the case to the Judicial Chamber of the Supreme Court of five judges.[218]

Trial Division of the Supreme Court consisting of 5 judges considered the case again on 08.10.2012. The state prosecutor demanded to sentence for receiving bribes and causing loss in economic benefits to the state by crime in the amount of 3,027 euros.

In the new trial State prosecutor also claimed the loss to the state resulting from the economic benefits by committed crime in the amount of 3.027 euros. Suuripää also demanded that the Supreme Court, based on the abolishment of the decision, paid back the state penalty, loss to the state, the cost of witnesses and lawyers in the amount of 15,964 euros plus interest.

The Supreme Court did not change the final result of the Court of Appeal as well as the demand for the return of Suuripää expenses previously paid to the state in a sum of 15,964 euros were left without review.

Also, according to the author an important example of the lawsuit in the Supreme Court and a decision is the case of the former tax service expert Anna-Liisa Mariapori. Acting as a witness for the defence in court of Lappeenranta on the 3rd of December 1997, which considered the case of tax offenses, Mariapori stated that senior tax inspectors Nissinen Grönroos has deliberately distorted the expert assessments in the tax decision not supported by the facts and that the inspectors are suspected of official crimes. The difference between the applicant's estimation of the defendant's taxable income and the estimation given by the tax inspectors was about 2,5 million Finnish Marks (about 494,000 euros).

According to article 24 of the Criminal Code §10 Finnish court sentenced Mariapori to 4-month suspended prison sentence for insulting the person, and also ordered the state to transfer Mariapori books, CD-ROMs, as well as the possible copies, if in books and on subjects of manufacturing did not have any changes, Nissinen also had to pay for the anguish a sum of 5,000 euros. The court ordered Mariapori to pay legal costs to employees and the State Tax Service in the amount of 36, 895.03 euros, excluding accrued interest.

The European Court of Human Rights in Mariapori v. Finland (37751/07) on 6 July 2010 ruled that Finland in the verdict of Mariapori violated the 10th article of the Charter of Human Rights and the 1st paragraph of Article 6 of the Charter at the excessive length of the process. ECHR decided to pay compensation to Mariapori in a sum of 49,390 euros.

[216] Case of Suuripää v.Finland, No 43151/02, 12 January 2010, para 48. http://hudoc.echr.coe.int/eng#{"fulltext":["Suurip%E4%E4%20v.Finland"],"documentcollectionid2":["GRAND CHAMBER","CHAMBER"],"itemid":["001-96583"]}. Viewed 4.3.2016.
[217] Judgment of Supreme Court of Finland. R2010/116, 24.5.2012. www.finlex.fi. Viewed 4.3.2016.
[218] Judgment of Supreme Court of Finland, KKO:2012:52, 24.5.2012. www.finlex.fi. Viewed 4.3.2016.

When considering a claim for an abolishment of the decision by the Supreme Court [219] that has entered into force on the verdict, referring to the application in practice of Article 46 of the Convention believed that the ruling by the ECHR on Mariapori v. Finland not only obliges the Member States of the Treaty by the final judgment of the Treaty obligations and to pay compensation to victims, but also an obligation under the supervision of the European Committee of Ministers by the final supervision of the implementation of the decisions and the impact of the elimination of violations. At the same time, the Supreme Court referred to the earlier decision KKO:2008:24, which established that a conviction does not mean that the earlier decision of the national court should be lifted anyway.

As part of the criminal prosecution, the Supreme Court did not abolish criminal penalties, but only a consequence of the sentence, that is, repealed the probation period, which ended back in 31.7.2005. Officially Finland has fulfilled its obligations on the basis of the Resolution of the ECHR and the recommendations of the EU Parliament "Towards decriminalisation of defamation" [220], in accordance with which Finland has pledged to repeal all decisions on the limits of freedom in cases of libel and freedom of speech.

Court ruled that because the prosecution of Mariapori has not been lifted, there is no reason to oblige the government to compensate the cost of the Supreme Court. The Supreme Court found no reason to cancel the sentence in particular compensation damages to Nissinen in the amount of 5,000 euros.

Court also ruled that designated compensation set by the European Court was sufficient for the state to cover legal expenses that Mariapori should compensate plaintiffs, due to there being no grounds for overturning a verdict in this part.[221] In other parts of the claim Court has ruled that there is no viable cause for the abolition of the sentence pursuant to article 31 8§ Procedure Code of Finland. Supreme Court noted that Court of Appeal reversed the decision only in part of the criminal sentence, which, as stated above, was conditional and validity ended more than 6 years ago.

This case clearly characterizes the State using the Supreme Court as a tool to evade execution of judgments of the European Court. This is just one of many such cases in which the SC of Finland adheres to this policy in the process of interpretation of the European Court.

According to the authors the most telling example in the application of constitutional or legislative rules, terms of cases, the size of the legal costs and the impact of the final

[219] Judgment of Supreme Court of Finland, KKO:2011:100, 22.11.2011. www.finlex.fi. Viewed 6.3.2016.
[220] Resolution 1577 (2007) and Recommendation 1814 (2007). Parliamentary Assembly of the Council of Europe (PACE). 4 October 2007.
http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17587&lang=en. Viewed 4.3.2016.
[221] Judgment of Supreme Court of Finland, KKO:2011:100, 22.11.2011, para. 36. www.finlex.fi. Viewed 4.3.2016.

decision of the Supreme Court of Finland for changes in legislation and the importance of this decision for the applicant to be considered at all stages of the national courts of Finland and of the ECHR From 1994 to 2010, is the criminal process of brothers Kari and Jussi Uoti.

The late 80's saw an investigation of economic crime, where LSP-bank suffered losses amounting to about 134 million euros from unpaid real estate investments. The suspect in this case was a businessman and lawyer Kari Uoti in December 1997 affidavit of liability for perjury did not report part of their property during the preliminary investigation on suspicion of serious tax crimes related to the sale of shares in 1993 of Interbank. Kari Uoti believed that during the criminal investigation into suspicions from the 90s, and also in the investigation of serious crime of the debtor he had no obligation to report his personal assets to their bankruptcy property manager and that the suspect had the right to remain silent.

Jussi Uoti was declared bankrupt in 1997 and ordered in December 1998 under oath to make an inventory of the bankruptcy estate. At the same time he was charged with the crime of tax debtor for the amount of the debt of 87 million euros and tax fraud under aggravating circumstances. Suspect affidavit of liability for perjury concealing from the bankruptcy administrator of the property, transferred to offshore companies.

In 1999, the district court of Helsinki sentenced Jussi Uoti to 5 years and 8 months, and Kari Uoti to 6 years in prison, which came into force in 2001, after consideration of the case by the Court of Appeal in Helsinki.

The author agrees with the conclusion of a professor and a former judge of the ECHR from Finland (1995- 2008) Matti Pellonpää and the reviewer's doctoral thesis by Kari Uoti (doctoral thesis on the subject of a fair trial before the Court written during his incarceration): "It should also be borne in mind that the national court should be aware not only of the European Convention on Human Rights, but also occurred on its base established legal practice because the law enforcer shall also comply with the legal norms arising from decisions of the European Court of Human Rights." [222]

21.3.2006 district Court of Salo rendered the decision which sentenced Kari Uoti for a grievous offense as the debtor to 6 months and 20 days in jail and former director of the Bank Interbank Juha Sorvisto to one year and 6 months in prison, as well as ordering payment of damages of more than 12 million euros to property bankruptcy management company Arsenal.

7.1.2007 ECHR found a violation of Article 6 of the Convention and pointed to the long-term of procedural time with the case of Kari Uoti starting in August 1994 and lasting 11

[222] Pellonpää Matti. European Convention on Human Rights. Euroopan Ihmisoikeussopimus. Talentum. 2005, p. 61.

years and 7 months and has ordered the respondent State to pay 5,220.24 Euros for legal costs compensation. October 23, 2007, the ECHR ruled that the case of Jussi Uoti holds that there has been no violation of Article 6 §§ 1 and 3 (d) of the Convention taken together; has been no violation of Article 6 § 2 of the Convention. The court of second instance commuted his sentence in Helsinki with Kari Uoti to serve 4 months in prison. Finland's Supreme Court in its judgment from 04.17.2009 indicated that Uoti had no right to evade testifying under oath, finding him guilty of the crime and sentenced to 5 months and 10 days imprisonment.

Four days later, on 21 April 2009 the ECHR found a violation by Finland of Article 6 §1 of the Convention similar to the case of Marttinen v. Finland. Four days later, on April 21, 2009, the Court delivered its judgment in the case Marttinen v. Finland (No 19235/03, 21 April 2009) in which it found that there had been a violation of the applicant's right to silence and his right not to incriminate himself guaranteed by Article 6 §1 of the Convention.

The Supreme Court of 20.10.2009, for the first time, with reference to the recognition of a violation by Finland in Marttinen v. Finland abolished criminal conviction of Kari Uoti, as well as freeing him from paying the bankruptcy mass of 2,189,982.62 USD and 3,006,754.91 DEM.

At the same time, this solution cannot be considered to have completely abolished the previous sentence. While cancelling a prior ruling by the Supreme Court in regards to the prison sentence of 5 months and 10 days, the court has not overturned decision that Kari Uoti previously imputed in terms of weight of the total Bankruptcy payments of 1,187,981.63 EUR and 1,557,181.76 USD (this ruling should not be confused with the verdict of the Court of Appeal of Helsinki from 30.03.2001 which defined a punishment of 6 years).

In December 2006, Salo district Court sentenced Jussi Uoti to 1 year and 2 months in prison. Turku Court of Appeal has determined criminal penalties of imprisonment for 11 months for tax fraud in a large scale (shares of the company housing and property valued at more than 11.4 million euros) in accordance with paragraph 1 of persecution. [223]

In 2008, Jussi Uoti submitted a claim for abolishment of the sentence the Court of Appeal of Turku and 2.12.2010, the Supreme Court ruled that the required information during an investigation of bankruptcy has been associated with a criminal case under consideration and based on the legal practice of the European Court of Human Rights of a crime suspect was not obliged, in this situation, to assist in clarifying his guilt when he was accused of a felony of the tax debtor.

[223] Decision of the Appeal court of Turku on 25.6.2008 No 1420. www.finlex.fi. Viewed 4.3.2016.

On 2.12.2010 in its decision the Supreme Court quashed the charge brought against Jussi Uoti as a felony tax debtor. [224] 2 count – forgery of a document – the sentencing court found sufficient and final penalty appointed by absorption of less severe by stricter punishment. The court freed Jussi Uoti from covering legal costs of bankruptcy estate in the district court and appellate court in the amount of 170,756.09 euros. The rest of the appellate court decision Supreme Court left unaltered.

Among those convicted by Turku Court of Appeal in 2006, together with Kari Uoti was the former director of Interbank Juha Sorvisto, sentenced to 1 year and 6 months imprisonment. The court also awarded damages to the Arsenal bank of 11 million euros.

In the case of Case of Sorvisto v. Finland [225] ECHR found a violation of Article 6 §1 and 13 of the Convention on account of the excessive length of civil court proceedings and the lack of effective mean of juridical protection in this respect. The Court also ordered the respondent State to pay non-pecuniary damage as well as for resulting costs and expenses.

When considering a claim for abolition of Sorvisto's sentence [226], SC pointed out that the recognition of a violation by the ECHR is not a valid reason to cancel the decision of the national court in accordance with section 4 §8 Chapter 31 of the Procedural Code for abolition of the previous sentence ruled by the court and as a result has dismissed the claim.

Also, in the case of the Uoti brothers the LSP Bank lawyer Ari Lehtonen was convicted for 4 years and 6 months imprisonment with an estimate damages of 23,5 million euros. On the 17.2.2003 The Supreme Court rejected his case review and Lehtonen filed a complaint with the ECHR.

The ECHR found that in the Case of Lehtonen v. Finland, No 11704/03. 13 June 2006. Holds that there has been a violation of Article 6 §1 and a violation of Article 13 of the Convention.

Despite the violations of the Convention, the Supreme Court examined the three claims made by Ari Lehtonen, two of which were dismissed and one is currently under consideration.

In the case of Kari Uoti, former professor of commercial law (stripped of his rank after the verdict) and Doctor of Law, Ari Huhtamäki, was convicted under article of non-confidence to the debtor for concealing assets of Kari Uoti during the bankruptcy.

When considering a claim from 22.6.2010 for abolition of the criminal conviction, the Supreme Court ruled that, although the case mentions the overturned verdict for Kari Uoti and

[224] Judgment of Supreme Court of Finland, No R2008/876 , 02.12.2010. www.finlex.fi. Viewed 12.2.2016
[225] Case of Sorvisto v.Finland, No 19348/04, 13 January 2009. http://hudoc.echr.coe.int/eng#{"fulltext":["Sorvisto%20v.Finland"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-90581"]}. Viewed 4.3.2016.
[226] Judgment of Supreme Court of Finland, H2009/174. 11 November 2011. www.finlex.fi. Viewed 6.3.2016.

the charges were dropped, this does not mean that the accusation directed at Huhtamäki can be dismissed.

September 29, 2009 Huhtamäki filed a complaint with the ECHR and on the 6 March 2012 European Court of Human Rights holds that there has been no violation of Article 7 of the Convention.

A particular important role in the jurisprudence of Finland was played by a decision from 2009 by ECHR Marttinen v. Finland and subsequent ruling by the Supreme Court to abolish an earlier criminal conviction of Kari Uoti, which marked the beginning of revisions in Finnish legislation and subsequent amendments, which provide guarantees for suspects in criminal cases in accordance with the universally recognized norms of international law.

The Ministry of Justice has recognized that the current system in which users of the law directly apply §21 of the Constitution of Finland, as well as the International Covenant on Civil and Political Rights, and orders relating to legitimate judicial practice agreements on civil rights, did not work so that the control procedure of Bankruptcy was sufficiently clear and predictable.

Ministry of Justice of Finland, in January 2010 has appointed a working group to amend the Law on Bankruptcy and renovate 17th chapter of the Procedural Code. Finnish Bankruptcy Law, as amended, came into force on 01.01.2013, the effect of the new article "Protection against self-incrimination" 5 a § [31.1.2013 / 86] entered into force on 31.1.2013: "If the debtor is a suspect in pre-trial investigation or accused of a crime, he is not obliged to give the bankruptcy administrator information on the facts on which the suspicion is based."

Nevertheless, the authors also stress that the case of Marttinen lasted for more than 9 years and under consideration of the application for abolition of the sentence the Court ruled that the grounds for the quashing of the final decision of the court stated in accordance with chapter 31 §8 are not available. Basis for refusal of Marttinen criminal conviction abolition by the Supreme Court are in reference to the case of Kari Uoti KKO:2009:80 and national legislation. Court pointed out in the decision that the court ruling on human rights with the delay shows that Marttinen should not have been sentenced to pay a court fine for failing to appear in court. Marttinen still has not paid his court fine imposed for failure to appear in court as well as not substitute the payment of a fine by serving a prison sentence. The Supreme Court determined that the amount of the fine imposed by the court expired five years after the decision of the court, so a decision on the payment of the fine is no longer enforceable. Subsequently Marttinen was not hurt, and no longer suffers from the negative consequences of a decision on the payment of the fine.

Thus, the Supreme Court held that in this case there are no grounds on which the court decision that has entered into force might be revoked in accordance with Chapter 31, §8 of the Procedural Code.

And further reference to the decision KKO:2009:80 in the case of Kari Uoti was applied by the Supreme Court more than 50 times, but this time as basis for not sufficient grounds to justify an abolition of the sentence.

During the study, 151 ECHR judgments against Finland in the period 1995-2015 year were analysed, which found violations of articles of the Convention. From this analysis, consideration of the grounds for rejection of claims absolving prior rulings by the national courts the authors make the following conclusions.

1. In accordance with the provisions of Article 46 of the Convention, interpreted by taking into account the recommendations of the Committee of Ministers of the Council of Europe NR (2000) 2 on January 19, 2000 "to review the cases and resumption of proceedings at domestic level following judgments of the European Court of Human Rights", the basis for judicial review of the act due to new circumstances is not only based of violation by Finland established in the European Court but also the Convention or the Protocols. In this regard, it should be appreciated that a judicial act is subject to review in the event that the applicant continues to suffer the adverse effects of such an act and paid compensation to the applicant awarded by the Court pursuant to Article 41 of the Convention does not provide a remedy and freedoms.

2. When a court considers whether to revise the judicial act a causal link between the breach of the ECHR Convention and the adverse consequences that the applicant continues to suffer should be considered.

3. The principle of the presumption of innocence, provisions of paragraph 2 of Article 6 of the Convention, is one of the main aspects of a fair trial in the criminal case law.

4. On the basis of Article 46 of the Convention, taking into account recommendations for revision in case of violation of the procedural rights of individuals found by the European Court, the Supreme Court in the revision of the judicial act must eliminate the violation of the Convention or the Protocols thereto. The Supreme Court must take the same stance as a court in Strasbourg and adopt a final judicial act, instead of taking the decision to return the case to the appellate court.

Based on the study of the Supreme Court of Finland's decisions, it is possible to make the following conclusions. The Supreme Court, after the decision by the ECHR against Finland in the review of cases and applications for cancellation of the sentence, makes decisions by applying national legislation. §106 of the Constitution rules that if, upon

consideration of a case by court, the enforcement of a provision of law would be in evident contradiction with the Constitution, then the court must give preference to the Constitution. This obligation applies to all judicial proceedings.

The European Court of Human Rights has repeatedly pointed out that the execution of the decision rendered by any court must be regarded as an integral part of a fair justice - otherwise, if the national legal system permits that a final, binding judicial decision may remain unfulfilled, "right to a court" becomes illusory (Case of Hornsby v. Greece). Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6 (art. 6).

Regarding the position of the ECHR on the implementation of their decrees, is it assumed that the specific means by which the national legal system will run, is placed on the respondent State in accordance with Article 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms, obligation are elected as a general rule, by the respondent State, provided that these means will be compatible with the findings of the relevant decision of the European Court of Human Rights; resolve the issues of interpretation and application of national legislation should be conducted by national authorities, namely the judiciary; such discretion as to the manner of execution of the European Court of Human Rights reflects the freedom of choice inherent obligation under article 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the fundamental obligation of States parties to ensure certain rights and freedoms. Case of Scordino v. Italy (No 1), No. 36813/97. March 29, 2006.

Since the national judicial act is not subject to revision in the international jurisdiction, the state made a commitment to adopt the final judgments of the ECHR, which require abolition of prior judicial decisions made in the framework of national jurisdiction and must be entered in the national legislation of a mechanism to restore the rights of applicants.

For example, in the case of Matti Kangasluoma v. Finland, the ECHR unanimously concluded that there had been a violation of Article 6 §1 of the Convention and noted that the respondent State has not brought any examples of legal practice, showing the ability to rectify this situation by means of such legal remedies. The Court found that the respondent State failed to demonstrate to the Court that the applicant's situation would be corrected with the help of preventive or compensatory measures after he would use these remedies. The author emphasizes that the Supreme Court has left the 9 claims by Kangasluoma without consideration.

Some countries have already developed and adopted the relevant legislation (for example, Slovakia, Bulgaria, France, Russia, Serbia, etc.), while others have gone through a broad interpretation of the existing rules on the review of cases.

The author concluded that despite numerous references to the case law of the ECHR, the Supreme Court of Finland decides by national legislation, in particular Procedure Code in 1960. Therefore, despite the fact that the first attempts were made for the implementation of the legal system of the Finnish judicial precedent as a source of law in the form of judgments and commitment of their decisions, and the mechanism for the functioning of judicial precedent requires improvement and amendments to the legislation.

According to the authors there a distinct lack of compatibility of Article 6 of the Convention with the regulatory provisions of the Finnish legislation, in particular in a Procedural Code of Finland having no grounds for overturning a verdict, based on the recognition by the ECHR, with violations of articles of the Convention, leading Supreme Court of Finland not making decisions on abolition of prior court decisions which have entered into force, thereby avoiding both the implementation of decisions made by the ECHR and severe need to improve and update the national legal system to guarantee opportunities restitutio in integrum for the injured party.

3.3. Position of the European Court on the implementation of decisions by national courts, which are in legal force

The right to a fair hearing before a tribunal as guaranteed by Article 6 §1 of the Convention must be interpreted in the light of the Preamble to the Convention, which declares, among other things, the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, inter alia, that where the courts have finally determined an issue, their ruling should not be called into question.[227]

The Court reiterates that Article 6 §1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that

[227] Case of Brumărescu v. Romania, No 28342/95. 28 October 1999, para 61. http://hudoc.echr.coe.int/eng#{"fulltext":["Brum%03rescu%20v.%20Romania"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-58337"]}. Viewed 6.4.2016.

Article 6 §1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law. [228]

It should be noted that ECHR in its judgements also pointed out that in some cases revision of judgements that have already entered into force was necessary. A departure from that principle of *res judicata* is justified only when made necessary by circumstances of a substantial and compelling character. [229]

On the other hand, Protocol 15 to the European Convention states that ECHR plays only a subsidiary role, while the states have a margin of appreciation and must in the first place protect the human rights in their jurisdiction. But it follows as well from Article 6 of the Convention that the right to fair judicial trial includes the right to timely enforcement of a court judgment.

In 2009 the ECHR has made a number of important legal positions: it should be pointed out that one of the most significant features of the Convention system is that it includes a mechanism for reviewing compliance with the provisions of the Convention. Thus, the Convention does not only require the States Parties to observe the rights and obligations deriving from it, but also establishes a judicial body, the Court, which is empowered to find violations of the Convention in final judgments by which the States Parties have undertaken to abide (Article 19, in conjunction with Article 46 §1). In addition, it sets up a mechanism for supervising the execution of judgments, under the Committee of Ministers' responsibility (Article 46 §2 of the Convention). Such a mechanism demonstrates the importance of effective implementation of judgments… In any event, respondent States are required to provide the Committee of Ministers with detailed, up-to-date information on developments in the process of executing judgments that are binding on them (Rule 6 of the Committee of Ministers' Rules for the supervision of the execution of judgments and of the terms of friendly settlements). In this connection, the Court emphasises the obligation on States to perform treaties in good faith, as noted, in particular, in the third paragraph of the Preamble to, and in Article 26 of, the Vienna Convention on the Law of Treaties 1969 .[230]

[228] Case of Hornsby v. Greece, case of Golder v. the United Kingdom, Philis v. Greece, case of Bodrov v. Russia. http://hudoc.echr.coe.int/eng#{"documentcollectionid2":["GRANDCHAMBER","CHAMBER"]} Viewed 6.4.2016.
[229] Case of Ryabykh v. Russia, 24 July 2003, para. 52. http://hudoc.echr.coe.int/eng#{"fulltext":["Ryabykh%20v.%20Russia,"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-61261"]}. Viewed 6.4.2016.
[230] Case of Verein Gegen Tierfabriken Schweiz (VGT) v. Switzerland , No 32772/02. 30 June 2009.

However, it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (Kopp v. Switzerland, judgment of 25 March 1998, Reports 1998-II, p. 541, § 59, and Kruslin v. France, judgment of 24 April 1990, Series A no. 176-A, pp. 21-22, § 29).

Since the appeal against conviction or punishment is a part of deliberation on a person's accusation of a criminal offence, the general plea for justice, as per Clause 1, Article 6 of the Convention, specified in respective provisions regarding the right to fair judicial trial, is applied as well to the hearing of appeal cases. The underlying principle is that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective.

In addition, whilst Article 6 para. 1 guarantees to litigants an effective right of access to the courts for the determination of their "civil rights and obligations ", it leaves to the State a free choice of the means to be used towards this end. [The Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective.][231].

The right to effective preparation of a case for review also supposes that a convicted person must be granted access to other documents, such as copies of minutes of court hearings, if this is necessary for effective exercise of his right to appeal. This also includes the duty of the state to preserve the evidence materials necessary for consideration of the appeal.

The practice of supervisory change of consummated court verdicts is realized in accordance with the international standard of legal certainty of judgment. The legal certainty requirement constitutes "one of the fundamental aspects of supremacy of law, represents its necessary consequence and a condition for realization". In the case of Marckx v. Belgium the Court emphasized that the principle of legal certainty, which is necessarily inherent in the law of the Convention as in Community Law, dispenses the Belgian State from re-opening legal acts or situations that antedate the delivery of the present judgment. Moreover, a similar solution is found in certain Contracting States having a constitutional court: their public law limits the retroactive effect of those decisions of that court that annul legislation.[232]

But, as is known, legal certainty implies certainty of legal rules, on the one hand, and inadmissibility of revision of a consummated court sentence, on the other hand.

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http://hudoc.echr.coe.int/eng#{"fulltext":["Verein%20Gegen%20Tierfabriken%20v.%20Switzerland"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-93265"]} .Viewed 6.4.2016.

[231] Case of Airey v. Ireland , No 6289/739. October 1979, para 24.
http://hudoc.echr.coe.int/eng#{"fulltext":["6289/739"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-57420"]}. Viewed 6.4.2016.

[232] Case of Marckx v. Belgium, No 6833/74. 13 June 1979.
http://hudoc.echr.coe.int/eng#{"fulltext":["Marckx%20v.%20Belgium"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-57534"]}. Viewed 6.4.2016.

The author notes that the position of the European Court not always is expressed quite definitely and is sustainable.

Thus, in the Judgment (*inter alia*, X. v. Austria, No 7761/77) the Court stated, the right to appear does not feature among the rights and freedoms guaranteed by the Convention, including those recognised under Article 6. According to the constant case-law of the Commission, Article 6 of the Convention does not apply to proceeding for re-opening a trial given that someone who applies for his case to be re-opened and whose sentence has become final, is not someone "charged with a criminal offence" within the meaning of the said Article. [233]

In 2004, the Court expressed a different position in the case of Nikitin v. Russia. The mere possibility of reopening a criminal case is therefore prima facie compatible with the Convention, including the guarantees of Article 6. However, certain special circumstances of the case may reveal that the actual manner in which it was used impaired the very essence of a fair trial. In particular, the Court has to assess whether, in a given case, the power to launch and conduct a supervisory review was exercised by the authorities so as to strike, to the maximum extent possible, a fair balance between the interests of the individual and the need to ensure the effectiveness of the system of criminal justice… In this case the Court has found above that the supervisory review in this case was compatible with the non bis in idem principle enshrined in Article 4 of Protocol No. 7, which is itself one aspect of a fair trial. The mere fact that the institution of supervisory review as applied in the present case was compatible with Article 4 of Protocol No. 7 is not, however, sufficient to establish compliance with Article 6 of the Convention.[234]

The Court reiterated that, as it was previously found, initiating a supervisory procedure may raise legal certainty issues, for instance, the judgements on civil cases were subject to supervisory review for an indefinite period, for relatively minor reasons. The situation with criminal cases is somewhat different, at least in respect of acquittals, because the demands of their revision may be claimed only for one year from the date the acquittal entered into force.

Moreover, the Court clarified that legal certainty demands are not absolute. In criminal cases, they can be viewed in conjunction, for instance, with Article 4 §2 of Protocol No 7 which explicitly allows the state to reopen the proceedings in the light of new circumstances or when there is a material breach in previous processes, which resulted in incorrect resolution of the case.

[233] Case of X.v.Austria. No 7761/77. 8 May 1978. http://hudoc.echr.coe.int/eng#{"appno":["7761/77"]}. Viewed 6.4.2016.
[234] Case of Nikitin v. Russia. No 50178/99. 20 July 2004, para 54. http://hudoc.echr.coe.int/eng#{"fulltext":["nikitin"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-61928"]}. Viewed 2.4.2016.

The author notes that the Court has consistently appealed to the modern interpretation of the Convention from the point of view of the present-day conditions, for instance in the case of Anthony Tyrer: "The Court must also recall that the Convention is a living instrument, which, as the Commission rightly stressed, must be interpreted in the light of present-day conditions."[235] The Court also recalled that the Convention is a living instrument that, as the Commission rightly stressed, must be interpreted in the light of present-day conditions. In the case now before it the Court cannot but be influenced by the developments and commonly accepted standards in the penal policy of the member States of the Council of Europe in this field "*mater semper certa est*".

3.4. The implementation of international legal standards in the revision of the judgments that are in force by Supreme Court of Finland

The Finnish Appeal Court in Kouvola referred for the first time to Article 6 3)b of the Convention voicing the suspect's right to have sufficient time and adequate facilities for preparation of his defence in 1991.[236]

In considering a case in the Supreme Court, the Court recognized a procedural error in the judicial proceedings at the Appeal Court, on the basis of Article 14 of the International Covenant on Civil and Political Rights and Article 6 of the Convention.[237]

Article 14 [Subclause g], of the International Covenant on Civil and Political Rights, provides for the individual's right "not to be compelled to testify against himself or to confess guilt" in any criminal charges. [238] The Supreme Court recognized that the suspect had a right not to testify against himself and not to accept the charges, and the court ordered payment of reasonable compensation for unlawful detention.

The district court of Helsinki in the case of Marttinen in 2000, considering the debtor's criminal case, sequestered the property.

Mikko Marttinen was suspected in 2000 of debtor's fraud, provision of non-reliable information about his assets and property, in debt recovery and bankruptcy procedures. His creditors, tax authorities and the bank served an application to the police requesting investigation of the crime. During the investigation, the suspect refused to provide testimony

[235] Case of Tyrer v. the United Kingdom. No 5856/72. 28 April 1978. http://hudoc.echr.coe.int/eng#{"fulltext":["Tyrer%20v.%20the%20United%20Kingdom"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-57587"]}.Viewed 7.4.2016.
[236] Judgment of Appeal Court of Kouvola on 7.3.1991. www.finlex.fi. Viewed 8.4.2016.
[237] Judgment of Supreme Court of Finland on 12.2.1993, KKO:1993:19, taltio 446. http://www.finlex.fi/fi/oikeus/kko/kko/1993/19930019.
[238] The International Covenant on Civil and Political Rights, article 14. http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx. Viewed 8.4.2016.

at the bailiffs' department office, arguing that his testimony would affect the preliminary investigation on suspicion of the debtor's fraud. On the same day, the bailiff issued a judgement ordering the applicant to provide this information under the threat of administrative fine in the amount of 33,638 EUR, as the applicant had received an order for recovery of debts in the amount of 9,7 million FIM. On the appointed day the applicant did not appear for interrogation and sent a message stating that he was not going to provide the sought information, referring to Article 6 of the Convention.

Helsinki Court of First Instance noted that the actions of the bailiffs department concerned not only the criminal case, but also the protection of creditors' rights and provision of remedies specified in chapter 3 §34 g of the Law on enforced recovery.[239] The court passed a decision according to which the convict did not have the right to refuse giving explanations to the bailiffs.

Helsinki Appeal Court referred to the case of Fayed v. United of Kingdom , which established that the procedural jurisdiction ensures application of preliminary investigation of economic and commercial activity in regulation of public interest, i.e. it must reflect the "fair balance" between the need to secure the public interest and the need to protect the basic human rights. For the same reasons, the Court of appeal also recognized that enforcement of the bailiffs' rights referred to in Chapter 3 §34 g of the Law on enforced recovery, subject to compliance with certain conditions relative to collection of necessary information for the authorities, can not be regarded as a valid reason for reviewing the lower court's judgement.

The Supreme Court of the Republic of Finland did not change the judgement of the Court of Appeal [240] and referred to the provisions of the national legislation (sections 33, 34, 34 and 40 (2) of the Law on enforced recovery).

When considering the complaint of Marttinen v. Finland [241] ECHR cited the example of Shannon v. United Kingdom, cited above, §§ 39–40, where the debtor may refuse to provide such information in the course of criminal proceedings. The obligation to report the amount of income and capital for tax purposes, for instance, is a common rule for tax authorities of the Contracting states, and it would be difficult to imagine their efficient functioning, for instance, in terms of obtaining due information for tax purposes with reference to the case of Allan v. the United Kingdom.[242]

[239] Enforcement Code of Finland. Oikeudenkäymiskaari. 1.1.1734/4. www.finlex.fi. Viewed 8.4.2016.
[240] The decision of Appeal Court of Helsinki. HelHO:2007:22. 9.3.2007. www.finlex.fi. Viewed 8.4.2016.
[241] Case of Marttinen v. Finland. No 19235/03. 21 April 2009.
http://hudoc.echr.coe.int/rus#{"appno":["19235/03"],"itemid":["001-92233"]} Viewed 3.4.2016.
http://www.echr.coe.int/Pages/home.aspx?p=home. Viewed 4.4.2016.
[242] Case of Allan v. the United Kingdom. No 45839/99. 5 November 2002.
http://hudoc.echr.coe.int/eng?i=001-60713#{"itemid":["001-60713"]} Viewed 8.4.2016.

The European Court stated in the Judgment, par. 60, the precedent-setting right to remain mute and not to testify against oneself, which reflects the international standards underlying the concept of fair judicial trial. The right not to testify against oneself supposes, in particular, that the prosecution in a criminal case shall seek to prove its rightness in respect of the accused without resort to evidence obtained by coercion or pressure, contrary to the will of the accused. In this sense this right is closely connected with the principle of presumption of innocence contained in §2 of Article 6 of the Convention. [see Saunders v. the United Kingdom; Serves v. France; Heaney and McGuinness v. Ireland.][243]

Accordingly, ECHR considered that the "degree of compulsion" imposed on the applicant by enforcement of Article 34 of the Law on enforced recovery, aimed to force him to provide information to the bailiffs, would have destroyed the very essence of his privilege not to testify against himself and the right to remain silent, with a reference to pre-trial investigation in the case of Shannon v. the United Kingdom, §41 [No 6563/03, 4 October 2005].

In the same year, on 20.10.2009, the Supreme Court passed a judgment unprecedented in the history of Finland - quashed a criminal penalty inflicted upon Kari Uoti, referring to the above ECHR judgment in Marttinen case. The Supreme Court of the Republic of Finland acknowledged that the suspect had no obligation to provide a report about his property to the bankruptcy manager and that the suspect had a right not to disclose information that could be used against him.

Following the ECHR ruling in re Marttinen v. Finland, and after revoking the Uoti sentence on the same basis, the Ministry of Justice of Finland set up a working group in January 2010 for developing a relevant bill and making amendments to the Bankruptcy Law, in particular as concerns the debtor's right to refuse testifying against himself. The Bankruptcy Law of Finland, as amended, entered into force from 01.01.2013; the new article "Protection against self-incrimination" 5 a § (31.1.2013/86) entered into effect on 31.01.2013: "If a debtor is a suspect in pre-trial investigation or an accused party of criminal charge, he is not obliged to provide the information to the bankruptcy administrator on the facts serving a ground for suspicion".

The adopted Bankruptcy Law matches perfectly the Constitution of the Republic of Finland and the assumed obligations under the international human rights, in particular "The right to fair judicial trial" guaranteed by Article 6 of the Convention on Protection of Human Rights and Fundamental Freedoms, according to which every person, upon lodging of any

[243] Case of Heaney and McGuinness v. Ireland, No 34720/97. 21 December 2000. http://hudoc.echr.coe.int/eng?i=001-59097#{"itemid":["001-59097"]} Viewed 8.4.2016.

criminal charges against him, has a right to fair and public trial within a reasonable time by an independent and impartial tribunal set up on the basis of law.

Brief summary of Chapter 3

Relations between international law and national law of the Member States of the European Convention is characterised by the fact that they complement and enrich each other.

According to Article 1 of the Convention, each Contracting Party shall ensure that everyone within its jurisdiction has the rights and freedoms defined by the Convention. European Court has repeatedly stated that one of the fundamental aspects of the rule of law is the principle of legal certainty, which requires *inter alia,* so that the final judgments by the courts do not cast even a shadow of doubt.

The Constitutional Court of the Republic of Latvia has repeatedly stated that the Saeima recognises the right to a fair trial not to be absolute and that certain limitations are permissible. The ECHR came to a similar conclusion that in certain cases derogation from the principle of *res judicata* is acceptable.

The Constitutional Court of the Republic of Latvia has repeatedly defined that international norms of human rights and their implementation at the level of constitutional law serve as means of interpretation, allowing to establish the content and scope of fundamental rights and the rule of law, to the extent that this interpretation does not lead to a reduction or limitation of the fundamental rights outlined in the Constitution.

The Supreme Court of the Republic of Latvia has developed a stable judicature in relation to the interpretation and application of constitutional norms. However, in some cases, lower courts did not comply with mentioned case law of the Supreme Court and at their own discretion apply the provisions of the law.

The Republic of Finland has enshrined the supremacy of the Constitution and in case a decision or any other by-law is in conflict with the Constitution or any other law, its application by the court or other authority is not allowed.

According to the principles of the case law the statement “in accordance with the law” is required not only as a measures for the legal bases in the national law but also to provide a certain level of quality of that law, providing accessibility by a persons involved and its subsequent affect. However, the ECHR has repeatedly stressed that in most cases it is up to national authorities, notably the courts, to interpret and apply national law.

As shown in the undertaken research, the greatest number of violations by national courts involves the infringement of Article 6 of the Convention. Judicial errors in imposing

sentences by national courts and the increasing number of cases considered by higher courts form the need to change the legislative procedure and make reforms in the judicial system.

After the comparative analysis of the European countries' Constitutions, the judgements of ECHR, the Constitutional Court of the Republic of Latvia and the Constitutional Courts of European countries, as well as the judgements of the Supreme Court of Latvia and of Finland, the author proposes amendments to the laws of the aforementioned countries in accordance with the Constitution and close consideration for the provisions of the European Convention.

4. EQUALITY OF PARTIES AND FAIR TRIAL GUARANTEES FROM THE POSITION OF EUROPEAN COURT OF HUMAN RIGTHS

4.1. Implementation of the presumption of innocence principle in European Court of Human Rights and legal proceedings of Finland

The presumption of innocence has a long history and is the most important principle of international law. Modern understanding in regards to the principle for the presumption of innocence requires a further in depth research of this particular terminology, taking into account both the previously known ideas of scholars about the content of the presumption of innocence and the advancements of the modern procedural science.

The prototype of the presumption of innocence in the literature refers to an ancient Roman formula "*praesumptio boni viri*", which means that a party involved in litigation is considered to be acting in good faith, until proven otherwise. This formula is supplemented by yet another Roman concept: "*ei incumbit probatio qui dicit (non qui negat*)" who claims – he proves.

Delving into disputes of property and rights to property, the judges of ancient Rome, would halt all attempts to obscure the essence of the case with unfounded reproaches of the opposing party to be in bad faith. However criminal cases were resolved completely different. Not even the rich and noble citizens of Rome were safe from the judicial tyranny of the Roman Empire. Only a suicide could relieve an innocent from a shameful death or an exile and confiscation of property.

Individual elements of the presumption of innocence are seen in the Petition of Right, filed to an English King, Charles I in 1628, which under article ten prohibited an arrest of anyone without a court order and in the famous "Habeas Corpus Act" of 1679, which pioneered a guarantee of immunity from prosecution by royal authority. [244]

The famous French philosopher Charles Louis Montesquieu, in 1748, wrote: "If an innocence of the citizens is not restricted, nor is the freedom. Knowledge of the best rules to be followed in criminal proceedings is the most important for mankind in the entire world. This knowledge is already acquired in some countries and must be implemented by others."[245]

Political freedom of citizens, by Montesquieu, to a large extent depends on respect for the principle that a punishment is at equilibrium with a committed offense. Freedom triumphs where criminal laws impose punishment in accordance with the specific nature of the crimes

[244] Act for the Better Securing the Liberty of the Subject, and for Prevention of Imprisonments beyond the Seas. http://www.bl.uk/learning/timeline/item104236.html. Viewed 2.5.2016.
[245] Montesquieu, "De l'Esprit des Lois". 1758. Édition établie par Laurent Versini, Paris, Éditions Gallimard, 1995. http://institutdeslibertes.org/wp-content/uploads/2013/09/Montesquieu_esprit.pdf . Viewed 2.5.2016.

themselves: the punishment here does not depend on the despotism and whim of the legislator, but on the merits of the proceedings. Such punishment is no longer a man on man violence.

An expression of the new principles in social relations was the Declaration of the Rights of Man and of the Citizen of 1789, which legislated the presumption of innocence. "No man can be accused, arrested or imprisoned except in the cases provided for by law and in the forms it prescribes..."[246] Although in this document the presumption of innocence is not formulated as a stand alone principle but only as an argument against undue coercion, it was the first legislative consolidation of the presumption of innocence, which in turn influenced the development of this legal concept. This declaration defined the presumption of innocence as an objective category, the essence of which is that, first most; the law considers a person to be innocent. Declaration of 1789 is an integral part of the French Constitution.

Later, the position of the presumption of innocence was implemented in the legislations of other countries: Norway (1814), Belgium (1831), Germany (1871), Russian Empire (1864).

On the 10th of December 1948, UN General Assembly adopted Universal Declaration of the Human Rights, which defined the principle of the presumption of innocence as follows: "Every individual charged with a penal offense, has the right to be presumed innocent until proven guilty with an accordance to the law by public trial during which he has had all the opportunities necessary for his defence." Such a definition for the presumption of innocence has not only combined the two entities: the general civil and criminal procedure, but also determined the process for establishing guilt through trial.

The relevance of this article in relation to the individual rights and judicial protection of the principle itself is also due to constant advances in the scientific knowledge and its impact on the practice of national courts.

The assumption of guilt is only a hypothesis to be scrutinised at a certain stage of the process, not necessarily of criminal nature. In reviewing the indictment version, courts of both the first and second instance, must be guided by the presumption of innocence.

Presumption of innocence - one of the fundamental principles of criminal justice. The right to the presumption of innocence is defined in paragraph 2 of Article 14 of the International Covenant on Civil and Political Rights and paragraph 2 of Article 6 of the European Convention, which states the right of everyone "to be presumed innocent until his guilt is proven according to law." The presumption of innocence is guaranteed not only by

[246] La Déclaration des droits de l'homme et du citoyen. 1789. Article 7. https://www.legifrance.gouv.fr/Droit-francais/Constitution/Declaration-des-Droits-de-l-Homme-et-du-Citoyen-de-1789. Viewed 2.5.2016.

those provisions of the ICCPR and the ECHR. It is also supported by two rights, which state that everyone has the right not to be compelled to testify against himself or to confess guilt. Concurrently they are referred to as a privilege not to testify against oneself. OSCE participating States declare that the presumption of innocence is one of the elements of justice, which are essential to the full expression of the inherent dignity of a person and of the equal and inalienable rights of all people.[247] This includes the presumption of innocence and the right not to be compelled to testify against oneself or to confess guilt. The Human Rights Committee does not leave any room for doubt in this regard. "A departure from the fundamental principles of fair trial, including the presumption of innocence, is prohibited at all times."[248] The Committee believes that the principles of legality and the rule of law conclude that fundamental requirements of fair trial must be respected even during a state of emergency "... the presumption of innocence must be adhered to."

International recognition of the presumption of innocence principle on the contemporary stage is attributed to the adoption of the Universal Declaration of Human Rights in 1948. From this point the position of the presumption of innocence is recognized at the international level and, as a consequence, is implemented in the laws of most developed countries.

Paragraph 8 of the Constitution of the Republic of Finland under the heading "No one shall be found guilty of a criminal offence or be sentenced to a punishment on the basis of a deed, which has not been determined punishable by an Act at the time of its commission. The penalty imposed for an offence shall not be more severe than that provided by an Act at the time of commission of the offence."[249]

However drawing a conclusion for presumption of innocence based on §8 of the Constitution of the Republic of Finland is inaccurate. The presumption of innocence is also derived from the meaning of 7§: "The personal integrity of the individual shall not be violated, nor shall anyone be deprived of liberty arbitrarily or without a reason prescribed by an Act. A penalty involving deprivation of liberty may be imposed only by a court of law. The lawfulness of other cases of deprivation of liberty may be submitted for review by a court of law. The rights of individuals deprived of their liberty shall be guaranteed by an Act."

The presumption of innocence is considered by the European Court of Human Rights, not only as a principle of criminal justice, but also as a "concrete and real", right of the

[247] Document the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE. Copenhagen from 5 to 29 June 1990. http://www.osce.org/odihr/elections/14304?download=true. Viewed 2.5.2016.
[248] The UN Committee on Human Rights, the International Covenant on Civil and Political Rights. General comment number 29 (2001). http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf
[249] The Constitution of Finland. 11 June 1999 (731/1999, amendments up to 1112 / 2011 included) http://www.finlex.fi/fi/laki/kaannokset/1999/en19990731.pdf. Viewed 3.5.2016.

defendant to be presumed innocent until procedural moment defined by paragraph 2 of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. As "requirement of impartiality of the court is a reflection of this principle", the European Court considers the presumption of innocence to be an integral element for the right to a fair trial. The decision in the case of Deweer v. Belgium (Application No 6903/75. 27 February 1980), says: "The presumption of innocence embodied in paragraph 2 is in addition to other rights, are the constituent elements of the concept of a fair trial in criminal cases."

Any person served with a criminal charge, at all stages of the criminal process and until a conviction, and has the right to be presumed innocent until his guilt is proven in accordance with the law. An example of the European Court of Human Rights position on this issue is a Minelli v. Switzerland case. The European Court has judged that there had been a violation of Article 6§ 2, since the "presumption of innocence is violated if the guilt of the accused previously has not been proven with an accordance to the law ... when his judgment reflects an opinion that he is guilty." The Court emphasized that the violation of the presumption of innocence "can occur in the absence of official conclusions; it is sufficient for any argumentation to be in existence, which says that the court finds the accused guilty." Presumption of innocence remains in force throughout the criminal proceedings, regardless of the persecution outcome. Thus, the standard application of paragraph 2 of Article 6 differs from the use of paragraph 1 of Article 6. A violation of paragraph 2 of Article 6 can occur even in absence of a final conviction.[250]

Paragraph 2 of Article 6 would be violated if a person acquitted during criminal proceedings, files a civil lawsuit claiming compensation for pre-trial detention, but has been denied compensation on the grounds that he was acquitted due to the "lack of sufficient evidence." In the absence of any reservations such a statement casts doubt on the innocence of the applicant (Tendam v. Spain, pp. 35–36). The Court has frequently held that neither 2 nor any other provision of the Convention gives a person "charged with a criminal offence" the right to the reimbursement of his costs or the right to compensation for lawful pre-trial detention where proceedings taken against him were discontinued or resulted in an acquittal. However, the Court has been led to find violations of Article 6 §2 in that the reasons given for refusing monetary compensation following the termination of criminal proceedings reflected an opinion that the accused was guilty of a crime, notwithstanding the absence of any actual conviction.

[250] Case of Minelli v. Switzerland, No 8660/79, 25 March 1983, para 30. http://hudoc.echr.coe.int/eng#{"fulltext":["minelli"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"], "itemid":["001-57540"]}.Viewed 3.5.2016.

At the same time, the refusal to reimburse legal fees after the dismissal of criminal charges on the grounds that due to the their behaviour defendants have themselves prompted the prosecution, does not violate the presumption of innocence (Ashendon and Jones v. The United Kingdom, Applications nos. 35730/07 and 4285/08) 15/12/2011, pp. 52–53). The Court considers, that the trial judge was entitled to treat these issues as distinct from the issue of the applicant's innocence of the offence. In the Court's view, the trial judge's reasons were carefully phrased. He stated that his decision was in no way meant to indicate that she was guilty of the offence. In fact, he went further and stated that the jury had rightly acquitted her. Therefore, it cannot be inferred that, in refusing to make the defendant's costs order, the trial judge must have had lingering suspicions as to her guilt.

The European Court reiterates "the relevant aspects of paragraph 2 of Article 6 of the Convention are aimed at preventing damages to a fair criminal trial and premature declarations of guilt made in close connection with these proceedings. The presumption of innocence stated in paragraph 2 of Article 6 of the Convention, is one of the elements of a fair hearing of the criminal case, required by paragraph 1 of the same article. Article prohibits the premature expression of opinion by the court itself that the person accused of committing a crime is guilty, prior to the verdict in accordance with the law... hence the presumption of innocence is violated if a judicial decision or an official statement against a person accused of a crime, reflects the opinion of his guilt until proven guilty in a manner prescribed by law. Fundamental distinction must be made between a statement that someone is suspected of committing a crime, and unambiguous statement that the person committed the crime in question, prior to its final judgment. The Court has consistently stressed the importance of the working used by officials in their statements made prior to a trial and a conviction of committing a specific crime."

Therefore, European Court specifies with reference to the case of Matijašević v. Serbia and to the case of Garytski against Poland affairs, the fact that the claimant was eventually found guilty, does not deprive him of the initial right to be presumed innocent until such time as his guilt is proven in accordance with the law.[251]

Encroachment on the presumption of innocence may come not only from the judge or the court, but alternate public authorities likewise. In the case of Allenet de Ribemont against France, the Court declared that a violation of Article 6 § 2 of the Convention has occurred, when a senior police officer stated at a press conference that the applicant is the instigator of the murder. The Court stressed, "It was clearly a statement of guilt, which, on one hand, has

[251] Case of Matijašević v. Serbia, 19 September, para 49; Case of Garycki v. Poland, 6 May 2007, para 72. http://hudoc.echr.coe.int/eng#{"documentcollectionid2":["GRANDCHAMBER","CHAMBER"]}. Viewed 6.5.2016.

formed a public opinion of it being true, and on the other – has subverted the assessment of the facts by the competent judges".[252]

In the case of Muller v. Germany, the Court has reminded that the presumption of innocence may be impaired if a statement of a public official with respect to a person charged with a criminal offense reflects an opinion that he is guilty, if he is not found as such in accordance with the law. However, there is a distinct lack of a universal approach to clarify the circumstances under which this article would be considered infringed in the context of the investigation after the conclusion of the criminal proceedings, and is largely dependant on the nature and the context in which the contested decision was made. Although the expression used by the decision maker, has played a pivotal role in assessing the compatibility of the decision and the motives in regard to paragraph 2 Article 6 of the Convention, taking into account the nature and the context of a particular case proceedings, even when the use of some unfortunate expressions can but does not play a decisive part.[253]

The Court reminded that the presumption of innocence is violated if a court order or a declaration of a public official with reference to a person charged with a criminal offense reflects an opinion about his guilt until proven guilty in a manner stated by law. Certain assumptions that the court or the official regards the accused as guilty, despite the absence of a formal sentencing are a sufficient cause. The Court has repeatedly emphasized the importance of correct choice of wording by government officials in statements released pending trial or until the person is convicted of a particular criminal offense. The Court stresses that there are fundamental differences between the statement speculating that someone is merely suspected of a crime, and unambiguous statement of the court – in the absence of a conviction – that the person has in fact committed an offense.

In the case of Daktaras v. Lithuania the complaint No 42095/98, §§ 35–38, ECHR 2000-X. The European Court found no violation of the presumption of innocence by the prosecutor's statement of proof of guilt by the claimant in the application by the defence to dismiss the case, since the contested statement was made in the context of the prosecutor and not independent of the trial, not as an official body at a press conference, but only in order to justify solutions at the preliminary stage of the process, as a response to the claimants' request to stop the prosecution. In contrast to paragraph 1 of Article 6, the violation of the presumption of innocence is not viewed as a part of the proceedings as a whole, but rather as a

[252] Case of Allenet de Ribemont v. France, No 15175/89, 10 February 1995, para 41. http://hudoc.echr.coe.int/eng#{"fulltext":["Allenet%20de%20Ribemont%20v.%20France"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-57914"]}. Viewed 6.5.2016.
[253] Case of Müller v. Germany. No 54963/08. 27 March 2014. http://hudoc.echr.coe.int/eng#{"fulltext":["M%FCller%20v.%20Germany"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-141947"]}. Viewed 6.5.2016.

separate procedural flaw. Attention focuses on the phrase under consideration as part of the complete analysis of the following three elements: a) the stage of proceeding and the context in which the statement was made, b) its formulation and c) its meaning.

A fact that a person has been convicted in a court of first instance does not deprive him of guarantees outlined by paragraph 2 of Article 6 for the appeal proceedings (Konstas v. Greece, 24/05/2011, Application No 53466/07. pp. 34–37). The Court considers that the presumption of innocence cannot cease to apply in appeal proceedings simply because the accused was convicted at first instance. To conclude otherwise would contradict the role of appeal proceedings, where the appellate court is required to re-examine the earlier decision submitted to it as to the facts and the law. It would mean that the presumption of innocence would not be applicable in proceedings brought in order to obtain a review of the case and have the earlier conviction set aside.

Violation of the presumption of innocence may also occur in the case of certain procedural presumptions under which a person is judged to be guilty without establishing his guilt in the adversarial process and in accordance with certain criteria of proof (Klouvi v. France, 30/09/2011, No 30754/03, Claim 48). The Court notes, that "La requérante se trouvait ainsi confrontée à une double présomption qui réduisait de manière significative les droits garantis par l'article 6 de la Convention, le tribunal ne pouvant peser les diverses données en sa possession et devant recourir automatiquement aux présomptions légales posées par l'article 226-10 du code pénal".

At the same time the principle of the presumption of innocence cannot be interpreted as imposing substantive rules of criminal responsibility. Therefore the Court does not require to provide a response, for example, in terms of Article 6, as to whether strict liability - or, conversely, regular assessment mens rea with actus reus – a more suitable solution by national legislation to a certain illegal act, or whether objective or subjective inquiry is required to characterize the establishment of mens rea (G. v. the United Kingdom, 30/08/2011, Application No 37334/08, pp. 28–29). In the instant case, the prosecution was required to prove all the elements of the offence beyond reasonable doubt. The Court notes, that Section 5 of the Sexual Offences Act 2003 does not provide for presumptions of fact or law to be drawn from elements proved by the prosecution.

In this case, the European Court found no violation of the presumption of innocence, if the authorities "stated grounds for suspicion, informed of the arrest of the persons concerned and the recognition by the persons of their guilt".

The presumption of innocence is seen as a fundamental element for the protection of human rights and requires a compliance with a number of rules in its practical application,

namely, the court should not forejudge the outcome of the court case, the prosecution must prove the guilt of a suspect beyond any reasonable doubt, except the permitted presumption of fact or law; the treatment of an accused should not indicate that he is already considered guilty; the media should avoid news coverage so that not to undermine the presumption of innocence, and the public authorities should likewise refrain from making public statements that would have similar effect.

As an example of violating the principle of presumption of innocence, the author presents a review of the criminal case of Larisa Lisitsyn which has featured at all levels of Finnish Courts during the time period through years 2007–2013. A televised news YLE release from 30.04.2006 reported that Finland's central criminal police has uncovered a major transaction relating to an accounting crime and money laundering of considerable magnitude, that one of the most wealthy entrepreneurs in Finland is suspected of numerous grievous economic crimes. The report features photographs of the suspect, Russian National Larisa Lisitsyn, the data showing her revenue was published, which in 2004 amounted to 2,7 million euros. The news was repeated twice during the evening newscasts. In related news, the company was named with claims that its accounts have received tens of millions of euros, bypassing the accounting department.

The News reported police claiming that the accounts of the company received substantial funds of criminal origin from Russia. It was also reported that Larisa Lisitsyn and her husband were suspected culprits, whose income in 2004 was among the eight highest incomes in Finland. An investigative body was publicly identified- the central criminal police of Finland, an exact amount of the transaction was stated and that a 5,000 pages preliminary investigation report was mentioned. The district Court of Lappeenranta in its decision of 21.12.2007 acquitted the accused of all charges. In 2008, the district court judged and sentenced the Helsinki news channel employees to heavy fines, ordered to reimburse the legal costs and demanded from the defendants to broadcast the decision on the Yleisradio airtime.

Convicted party have taken their case to the Court of Appeal which in turn upheld the decision of the district court as justified and thus not to be changed, however the wording of the judging has been altered to precisely indicate the nature of the offense as “disclosing and distributing information and degrading privacy”. The Supreme Court of Finland in the decision of 31.12.2013 has upheld the judgment made by the Court of Appeal, in process reducing the amount of fines and has ordered journalists to pay all the court costs.[254]

Application of the presumption of innocence in Finland is regarded not only in criminal proceedings, but at a much wider spectrum – in tax, environmental, migration,

[254] Judgment of the Supreme Court of Finland. KKO:2013:100. 31.12.2013. www.finlex.fi. Viewed 7.5.2016.

commercial law and these cases with consideration are then transferred to the administrative and commercial courts to be tackled on the bases of the principle of presumption of innocence.

The Supreme Administrative Court considered the presumption of innocence of the taxpayer in committing a tax offense. (KHO:2014:145) In making its decision, the court referred to the recent decision made by the European Court of Human Rights, including that made against Finland (Nykänen v. Finland, Glantz v. Finland, Häkkä v. Finland, made by 20.05.2014). The court referred to the Constitution of Finland, §21, and the additional protocol number 7 to the Declaration of Human Rights, as well as the obligations of paragraph 8 of the Constitution. Although the Court of Human Rights considered the case of tax increase to be a criminal matter, in their practice decision took into account the specific features of the practice of tax increase, assessing, for example, a value of "presumption of innocence" in the issue of tax increase (Case of Janosevic v. Sweden, 23.7.2002. Application No 34619/97). In Swedish law, this presumption (presumption of criminal liability) applies to tax offenses. Confirming its rightful bases of its use, the European Court of Human Rights noted that Article 6 §2 "does not ... regard presumptions of fact or of law provided for in the criminal law with indifference. It requires States to confine them within reasonable limits which take into account the importance of what is at stake and maintain the rights of the defence ... Thus, in employing presumptions in criminal law, the Contracting States are required to strike a balance between the importance of what is at stake and the rights of the defence; in other words, the means employed have to be reasonably proportionate to the legitimate aim sought to be achieved."

In decision of the case KHO:2014:145 Supreme Administrative Court also referred to the case of Jussila v. Finland, 23.11.2006 (Application No 73053/01). This Judgment takes into account the legislation of Finland. European Court of Human Rights has concluded that: tax offenses for which the tax penalties are set, do not nominally apply to criminal offenses, as part of the system of fiscal responsibility. However, they satisfy the second and third Engel criteria: the provisions of the law on liability for tax violations, as well as rules on criminal liability, apply to everyone. At the same time, tax penalties are not considered to be compensatory in nature, as the purpose of these penalties is not to cover the damage caused to the budget. They are punitive in nature and aimed at preventing new offenses – in other words, they perform the same function as a criminal punishment. For the application of Article 6 of the Convention it is adequate that the offense in question, by its nature is a crime and carries with it a punishment, with severity being determined by its degree and is universally criminal.

As a result of this analysis, the Court found that the court cases on tax penalties in the context of Article 6 of the European Convention should be equated to criminal cases, and because the participants of such cases should be provided to all enshrined in the European Convention guarantees, no matter how small the amount of the fine. The Supreme Administrative Court overturned the decision of the Administrative Court and the Commission on Taxation relating to additional taxes and penalties.[255]

In generalizing the practice of administrative courts cases related to the application of immigration legislation, consideration should be noted in proceedings with regard to the principle of presumption of innocence, in particular in cases of asylum and deportation of foreign nationals or stateless persons. For example, when considering the ruling by the Supreme Administrative Court (KHO:2014:35) appeal for the denial of asylum, the previous decision on the grounds of suspicion of committing a crime in Finland. Aliens Act in Finland in terms of paragraph 3, paragraph 2 of §88 is aligned with the European Directive 2004/83/EY 17 Art. 1 b. In accordance with this article of the Law the residence permit is not to be issued to a foreigner if there is reasonable cause to suspect that he had committed a serious crime. More so, based on the proposal by the Government and in accordance with this Directive taken not to issue a residence permit to an alien if there is reasonable cause to suspect of having committed a serious crime. What is meant by an expression "reasonable cause to suspect" in the presentation of the government or this directive is not specified. The applicant is suspected of committing rape. In deciding Immigration Service review of the crime was with the investigative bodies. The crime report has been submitted to the migration service of the registration department of the police and the case was at the stage of indictment by the prosecutor. Administrative Court applied the wording of the Aliens Act, contained in paragraph 2 of §88 "reasonable cause to suspect". According to the explanation of the Immigration office of the UK (Asylum Instruction: Exclusion: "Article 1 F of the Refugee Convention) section is intended to protect the reliability of the system of refugee citizens of different countries and it should always be used with great responsibility. The phrase "reasonable cause to suspect" means evidence, which should not be weak or uncertain."

In the legal literature (Refugee Law in Context: The Exclusion Clause, Peter J. van Krieken, 1999) considered that Article 1f, in which the phrase "there is a reasonable cause to suspect" is best understood in comparison with paragraph 2 of Article 33 of the treaty on refugees concerning the deportation issue of refugees from the country, according to which a refugee may not rely on paragraph 1 of this Article, if in respect of it there is reasonable

[255] Judgment of the Supreme Administrative Court of Finland. KHO:2014:145. 2.10.2014. www.finlex.fi. Viewed 7.5.2016.

reason to believe that he is a danger to the security of the country in which it is located or in which he has been convicted, entered by virtue of the law for serious crimes and danger to society of the country. The Supreme Administrative Court has found it to be in a direct violation of the presumption of innocence.[256]

When considering the case of damage to nature and the environment, the Supreme Court heard the case in the light of the principle rule of law and the presumption of innocence. The sanction for the release of oil or flammable substances in nature is punishable by a fine, the question of who is obliged to pay the fine, has the features of a particular method of the sum. The starting point of the decision of the Supreme Administrative Court for this case was to determine – who is responsible – the owner of the ship registered at Panama or the captain. Office of Border Guard cannot find out who is the owner or the captain, if the owner of the ship pointed to the culprit. In the end, the owner of the ship and the captain decide among themselves who is responsible for payment of the fine and the may even sign a preliminary agreement on the issue. Border control department has ordered the ship owner to pay a fine for the dumping of fuel during the return voyage of the vessel from Rotterdam to St. Petersburg. In accordance with paragraph 14 of Chapter 3 of the preservation of the environment associated with seafaring, the penalty for the release or discharge of fuel and other harmful materials into the sea shall be placed within for three-year period from the date of the petroleum products release.

Summary of Regulations MARPOL 73/78 (Marpol 73/78 is the International Convention for the Prevention of Pollution From Ships) of the European Union relating to emissions of oil and hazardous liquid products, as well as Finland signed international agreements and the law on protecting the environment punishes the discharge of fuel in the water space, but not provided, by whose negligence or fault did the contaminants enter the sea. Thus in this case the principle of the rule of law and the presumption of innocence or limitation of responsibilities to influence the course of events had no relevance as a whole in other criminal proceedings. Court of Appeal decision was reversed and the owner of the vessel was ordered to pay a fine.[257]

Appeal Court of Helsinki reviewed the case on 01.07.2014 for a permission to listen to the private phone's conversation of an individual suspected of a serious crime, specifically on two counts of fraud to obtain bank loans, dating back to 2008. After four years the police did receive the permission to conduct the requested action for the purpose of obtaining

[256] Judgment of the Supreme Administrative Court of Finland. KHO:2014:35. 18.2.2014. www.finlex.fi. Viewed 27.5.2016.
[257] Judgment of the Supreme Administrative Court of Finland. KKO 2014:37. 4.6.2014. www.finlex.fi. Viewed 2.8.2016.

information to uncover criminal activities in 2013. The data gathered in the process did not confirm any occurrence of the criminal activity or intent to conduct such activity. November 2013 saw police make a statement that the collection of technical data was irrelevant for the investigation. According to § 4 of Chapter 5a of the Law on coercive measures – all of the coercive measures can be applied but only if justified in accordance with the crime for which the punishment term is no more than 4 years. It is essential that intelligence data obtained through such interception has allegedly had extreme importance for the investigation. The court found that the police had violated the presumption of innocence principle, when during the course of an investigation they have knowingly commenced to illegally listen in to the phone conversations and access e-mails of a suspect. In this regard, the police have known prior to the court's decision about legitimacy of their actions, the information containing bank accounts data and money transfers made to the United States. The court has ruled on the illegality of the previously issued decisions to grant the permission to conduct the phone surveillance of the suspect and has revoked the judging made by the district court.[258]

When reviewing criminal proceedings KKO:2013:77, the Supreme Court noted that the fundamental principle of criminal justice is the presumption of innocence. All of doubt as to the guilt of the accused, which until the end of the trial has not been resolved in a lawful manner, must be interpreted in favour of the accused by the court. The Court noted that this principle is not unconditional, and in practice is applied differently in different member countries of the Convention and the punishment may be materially different. Also, decisions was made prior to the final ruling are not always applied in accordance with the general provisions for all countries, so that it could provide an equal protection of fundamental rights throughout the EU area.

During a routine visit, the doctor found that a two and a half months old infant had numerous broken bones that appeared 2–4 weeks earlier. He stated that the injuries to a child were caused by an application of considerable force. In addition to the written statement of the physician no other documents or evidence were presented other than the testimony of parents who challenged the claim of grievous bodily harm to their child.

The prosecutor demanded punishment for the parents, claiming cause of grievous bodily harm or an intention of inflicting grievous bodily harm to the child. County Court of Ylivieska-Raahe 24.2.2011 ruled that there is serious doubt that the parents could cause serious injury to a child and the court denied the accusation and claim for damages. The defendant in criminal proceedings has the right to testify but is not obliged to prove his innocence. In paragraph 8 of the Constitution of Finland under the name of “the principle of

[258] Judgment of Appeal Court of Helsinki, No 1431. 01.07.2014. www.finlex.fi. Viewed 2.8.2016.

legality of criminal law" stipulates that no person shall be convicted of a criminal offense and sentenced to punishment for an act which according to the current at the time of its commission legislation is not punishable and, in addition, the offense shall not be given a heavier punishment than the one at the time of the offense as defined by law.

On the basis of paragraph 2 of §1 of Chapter 17 of the Criminal Law in Finland charges the burden of proof and refutation of the arguments presented in the defence of the suspect or the accused lies with the prosecution. The defendant has the right to refuse to testify, and from an individual explanations where the refusal to give testimony and explanations of the individual are not grounds for a conviction. The obligation to collect and provide to the court evidence lies with the prosecution and conviction cannot be based on assumptions. The Supreme Court found no evidence of parent's guilt in grievous bodily harm or an intention to cause grievous bodily harm to the infant.[259]

The outlined circumstances indicate that the issue of implementation of the principle of presumption of innocence is still valid, and the current version of Art. 8 of the Constitution of Finland require further improvement.

4.2. The implementation of the *ne bis in idem*-principle in the Supreme Court and the Supreme Administrative Court of Republic Finland

Ne bis in idem, which translates literally from Latin as "not twice in the same", is a legal doctrine to the effect that no legal action can be instituted twice for the same cause of action. It is a legal concept originating in Roman Civil Law, but it is essentially the equivalent of the double jeopardy (autrefois acquit) doctrine found in common law jurisdictions. Article 14(7) of the International Covenant on Civil and Political Rights and Article 4 of Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms (further Convention) provide that no one can be liable to be tried or punished again for an offence in respect of which she has been finally convicted or acquitted in accordance with the law and penal procedure of each country. The principle encompasses two features: first, that no one should have to face more than one prosecution for the same offence (*nemo debet bis vexari pro una et eadem causa*); and, second, that no one should be punished twice for the same offence (*nemo debet bis puniri pro uno delicto*).

The interpretation of the principle has been uncertain, which resulted in a harmonization of all previous case law on the subject in the European Court of Human Rights drew in the case Nikitin v. Russia,[260] from Article 4 Protocol No. 7 to the Convention an

[259] Judgment of the Supreme Court of Finland, KKO:2013:77. 23.10.2013. www.finlex.fi. Viewed 24.5.2016.
[260] Case of Nikitin v. Russia, No 36410/02, 9 October 2008.

interesting distinction between three different guarantees provided by the ne bis in idem principle: the right not to be liable to be tried twice, the right not to be tried twice and the right not to be punished twice. This "threefold distinction" had been reiterated by the Grand Chamber in the leading case of Sergey Zolotukhin v. Russia [261] the existence of several approaches to the question whether the offences for which an applicant was prosecuted were the same. In the Zolotukhin case the Court thus found that an approach, which emphasised the legal characterisation of the two offences, was too restrictive on the rights of the individual. If the Court limited itself to finding that a person was prosecuted for offences having a different legal classification, it risked undermining the guarantee enshrined in Article 4 of Protocol No. 7 rather than rendering it practical and effective as required by the Convention. Accordingly, the Court took the view that Article 4 of Protocol No. 7 had to be understood as prohibiting the prosecution or trial of a second "offence" in so far as it arose from identical facts or facts that were substantially the same. It was therefore important to focus on those facts, that constituted a set of concrete factual circumstances involving the same defendant and inextricably linked together in time and space, the existence of which had to be demonstrated in order to secure a conviction or institute criminal proceedings. The Zolotukhin case represents a clear departure from the earlier jurisprudence of the Court.

During 2010–2016, the Supreme Court has handed down numerous rulings 43 cases concerning the question whether or not the Finnish sanctioning system breaches the tax legislation, as in compliance with Article 4 of Protocol No. 7 (*ne bis in idem*) of the European Convention of Human Rights (Article 4P7). In 2013, the Supreme Court changed its interpretation in above mentioned matters and ruled (KKO:2013:59)[262], in outline, that 4P7 Convention prohibits also parallel proceedings. According to the Supreme Court, Article 4P7 Convention forbids to bring charges of tax fraud already after the tax administration has used its power of decision concerning an administrative tax surcharge. New legislation, regarding the sanction system, is to be expected.

During 2011–2015 the Supreme Administrative Court of Republic of Finland has handed down 10 cases concerning the ne bis in idem principle.

Also in the first case, which decided that the Supreme Court has taken a stand on the *ne bis in idem* principle in its case KKO:2010:46[263] which concerned tax surcharges and aggravated tax fraud. In that case it was found, inter alia, that even though a final judgment in

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http://hudoc.echr.coe.int/eng#{"fulltext":["Nikitin%20v.%20Russia"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-61928"]}. Viewed 24.5.2016.

[261] Case of Zolotukhin v. Russia, No 14939/03, 10 February 2009. http://hudoc.echr.coe.int/eng#{"fulltext":["Zolotukhin%20v.%20Russia,"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-91222"]}. Viewed 25.5.2016.

[262] Judgment of Supreme Court of Finland. KKO:2013:59. 5.7.2013. www.finlex.fi. Viewed 25.5.2016.

[263] Judgment of Supreme Court of Finland.KKO:2010:46.29.5.2010. www.finlex.fi. Viewed 25.5.2016.

a taxation case, in which tax surcharges had been imposed, prevented criminal charges being brought about the same matter, such preventive effect could not be accorded to pending cases (lis pendens) crossing from administrative proceedings to criminal proceedings or vice versa.

In each cases the Supreme Court of Finland refers to international law. For example, the Supreme Court in the decision KKO:2011:84 [264] implemented the Schengen Agreement and Article 54 and the Article 50 of Fundamental Rights of the European Union which ban tried or punished twice in the same case (ne bis in idem).

On 20 September 2012 the Supreme Court issued another judgment (KKO:2012:79) [265] concerning ne bis in idem. It stated that in some cases a tax surcharge decision could be considered final even before the time limit for ordinary appeal against the decision had expired. However, it was required that an objective assessment of such a case permitted the conclusion that the taxpayer, by his or her own conduct, had intended to settle the tax surcharge matter with final effect. The assessment had to concern the situation as a whole, and it could give significance to such questions as to how logically the taxpayer had acted in order to settle the taxes and tax surcharges, to what extent he or she had paid taxes and tax surcharges, and at which stage of the criminal proceedings the payments had been made. The Supreme Court held that the charge of aggravated fraud was inadmissible as A had paid the taxes and tax surcharges before the charge became pending.

In its case law (KKO:2013:59) the Supreme Court reversed its earlier line of interpretation, finding that charges for tax fraud could no longer be brought if there was already a decision to order or not to order tax surcharges in the same matter. If the taxation authorities had exercised their decision-making powers regarding tax surcharges, a criminal charge could no longer be brought for a tax fraud offence based on the same facts, or if such a charge was already pending, it could no longer be pursued. The court assessed whether the preventive effect of the first set of proceedings had to be attributed to the fact that 1) tax surcharge proceedings were pending, 2) a tax surcharge issue was decided, or 3) to the finality of such a tax surcharge decision, and found the second option the most justifiable.

The legal principle has been adopted also in Finnish Supreme Court and Supreme Administrative Court. The European Court of Human Rights has issued several decisions regarding the interpretation of ne bis in idem in light of Article 4(1), Protocol 7 of the European Convention on Human Rights. In Finland, the Supreme Court and the Supreme Administrative Court have recently considered the implications of ne bis in idem and the

[264] Judgment of Supreme Court of Finland.KKO:2011:84. 21.10.2011. www.finlex.fi. Viewed 25.5.2016.
[265] Judgment of Supreme Court of Finland.KKO:2012:79. 20.9.2012. www.finlex.fi. Viewed 25.5.2016.

ECHR's views on it in two last judgments regarding tax liability that, along with their implications, are briefly analysed and commented on below.

According to Article 4(1), Protocol No 7 of the European Convention on Human Rights no one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State. According to the ECHR, cases shall be deemed as being the "same" if they arise from either identical or substantially identical facts. Therefore, a penalty rendered in a national administrative procedure can, under certain circumstances, be considered as being a criminal penalty referred to in Article 4(1). In respect of taxpayer's conduct, the ECHR has in its precedents drawn parallels between punitive tax increases and tax offences, whereas a punitive tax increase is not a criminal sanction under Finnish law. According to Finnish law, failure to comply with relevant provisions of tax law may result in (i) criminal liability (tax fraud), (ii) administrative consequences (a punitive tax increase) and (iii) liability for damages. These consequences are determined according to different procedures by different courts. Furthermore, in Finland, the instigation of criminal proceedings is prohibited if criminal (but not administrative or civil) proceedings regarding the same issue are already pending (lis pendens) or if a final judgment regarding the same factual circumstances has already been issued in previous criminal proceedings.

The author emphasizes, that in the decision KHO:2011:41, the Supreme Administrative Court went even further and, referring to the aforementioned decisions of the Supreme Court, ruled that the ne bis in idem principle does not prevent the rendering of a judgment in an administrative procedure regarding a punitive tax increase, even when a judgment rendered in criminal proceedings has previously become final, as long as the administrative procedure was pending before the judgment became final.

Moreover, it is important to note that, based on jet examined article the decision KKO: 2011:35 given by the Supreme Court, ne bis in idem does not prevent a procedure regarding liability for damages even if a final judgement regarding criminal liability issues based on the same factual circumstances has been rendered.

The author also cites as an example to 4 ECHR decisions against Finland from 20 May 2014. In two of them the ECHR found a violation of the principle of *ne bis in idem* and Article 4 of Protocol No. 7 to the Convention and ordered the respondent State to pay compensation for moral damages and all the legal costs. [Case of Glantz, Nykänen, Häkkä, Pirttimäki]. All four, as well as J. Kangasvieri T. Rintala with reference to the recognition of violations of the ECHR from 20.05.2014, have applied for abolition of the earlier decisions.

12.12.2014 The Supreme Court found in all 6 of the decisions that the conditions of revocation should be evaluated on the basis of national legislation, even if the basis of an application is a conviction of the ECHR.

When considering a claim Mikko Nykänen, the Supreme Court referred to the decision Pirttimäki v. Finland.

Even assuming that it had in fact been the applicant who was making the tax declaration in both cases, the circumstances were still not the same: making a tax declaration in personal taxation differs from making a tax declaration for a company as these declarations are made in different forms, they may have been made at a different point of time and, in the case of the company, may also have involved other persons.

According to the claim by Rintala H2013/244 from 12.12.2014 the Supreme Court refused to examine the allegations of the tax fraud on a large scale in other parts of the charges and referred the case to the judicial board composed of five judges.

When considering a claim for abolition of the sentence in the KKO:2014:95 Glantz from 12.12.2014 the Supreme Court pointed out that the decision of the ECHR does not imply that the finding of a violation of the Convention does not require the abolition of the sentence. In the jurisprudence of the Supreme Court there are many cases, which request dismissal of such decisions made by national courts.

Supreme Court noted that the decision of the case KKO:2009:80 concerning the circumstances (self-incrimination suspect in bankruptcy), which was not taken into account in the legislation adequately, but which was later rectified.

According to the Court it would be difficult to apply a fundamentally new trial prerequisites as an additional method of legal protection at the stage of appeal, putting the parties of process in difficult situation. Therefore, Supreme Court determined that the correction or cancellation of the final sentence could cause problems to the other parties of the process and make it difficult to determine the possibility for clarification of the case in the new proceedings.

Although the ECHR stated a violation of human rights, the Court felt it was irrelevant that the procedure in the Appeal Cout corresponded to the interpretation of the legislation active at that time, which had in the decisions of the Supreme Court of the cases KKO:2010:45; KKO:2010: 46, and the KKO:2010:82 on the contents of the principle of prohibition of *ne bis in idem.*

The Supreme Court decision in the case of Kaj-Erik Torsten Glantz consists of 34 pages and 26 references to the decisions of the ECHR and 12 references to the earlier

decisions of the Supreme Court, which provides a ground for refusal for abolition of the verdict by the national court.

The Supreme Court referred to Chapter 31 §8 of the Procedural Code, according to which the sentence in a criminal case can be revoked in favour of the defendant, if the decision was based on a clearly erroneous application of the law.

Supreme Court has revoked an action of only one of 8 counts in the rest of the claim and referred the case to the judicial board of the five judges.

The author refers to the dissenting opinion of Judge Huovila in this case. In 2005, amendments to Chapter 31 part 2 §3 of the Procedure Code of Finland came info force. Resolution refers to situations where the European Court of Human Rights or other international court or the supervisor in the proceedings pointed to a procedural error.

In many decisions, the Supreme Court established that the conditions of revocation should be evaluated on the basis of national legislation, even if the basis of an application is a conviction of the ECHR.

According to this estimated including the acknowledged whether Court of Human Rights recognized by the inaccuracies so great that in accordance with Chapter 31, § 1, paragraph 4 of the Procedural Code, could significantly affect the outcome of the case. The starting point is still determined by the fact of violation of human rights, procedural error, as well as a violation of the procedure in this position in the proceedings.[266]

When considering a claim for abolition of Jouni Kangasvieri's previous criminal convictions by Appeal Court [267], the Supreme Court in its decision from12.12.2014 referred to the ECHR ruling handed down in the recognition of Finland violation of Article 4 of Additional Protocol No 7 of the Convention.

In considering the general aspects of the assessment for legal remedies relating to the practice of estimated changes that came into force by the verdict, the Supreme Court referred to the judgment of the Court of the European Union. When referring to the verdict in the case Transportes Jordi Besora, C-82/12, EU:C:2014:108, the Court recalled the importance of the principle of the force of law and the legal order of the European Union and the national legal system. The Supreme Court noted that it is important to the stability of the law and legal relations to ensure a proper implementation of justice.

Kangasniemi in his claim demanded the abolition of the decisions by the district and appellate courts, as well as part of the damages awarded in four serious tax crimes. Court

[266] Case of Pirttimäki v.Finland. No 35232/11. 20 May 2014. http://hudoc.echr.coe.int/eng#{"fulltext":["Pirttim%E4ki%20v.Finland"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-144113"]}. Viewed 26.5.2016.

[267] Decision of the Appeal Court of Vaasa on 21.3.2013 No 380. www.finlex.fi. Viewed 2.8.2016.

determined that verdicts for serious tax offenses are not changed or cancelled. In fact there is also no reason for change or cancellation as part of legal redress sentence on the basis of these crimes. Supreme Court noted Kangasniemi requirements in this part.[268]

The author notes the inconsistency of the position by the Supreme Court and refers to one of the court-abolished sentences, not previously considered by the ECHR. The authors have already referred to the abolition of all charges for tax crimes in Jippii Group Oyj.

Also, the Supreme Court considered a claim for cancellation of Heikki Kotamaa's final judgment of the court in which Kotamaa demanded the abolition of the punishment of 4 counts of tax crimes on a large scale and accounting offenses, and the refund of expenses made to the lawyers and witnesses. Kotamaa referred to the earlier decision KKO:2008: 45, in which the verdict of the district and appellate courts has been cancelled under Chapter 31 § 8 point 3 of the Procedural Code. The Supreme Court referred to the decision Zolotukhin v. Russia on 10.2.2009 a violation of article 4 of the Protocol number 7 to the Convention: "The Court takes the view that Article 4 of Protocol No. 7 must be understood as prohibiting the prosecution or trial of a second "offence" in so far as it arises from identical facts or facts which are substantially the same."[269]

In that part, in which the Appeal Court sentenced Kotamaa to personal income tax on tax evasion, court determined that it is indisputable that the scheduled increase in the tax for the tax period 1998 and 1999 were finally assigned to the indictment on 18.2.2008. Then the Appeal Court had to leave the accusation without consideration. Therefore, the questionable circumstances of the proceedings are the basis of which a final judgment of the Court can be cancelled due to miscarriage of justice. Despite the fact that in accordance with Chapter 31, §2 point 2 of the Procedural Code the deadline has expired prior to Kotamaa submitting his claim to the Supreme Court.

Nevertheless, the Supreme Court ruled that the verdict of the Appeal Court is to be cancelled under Chapter 31 § 8 of the Procedural Code, because this verdict is based on clearly erroneous application of the law.[270]

The Supreme Court reversed the decision of the Appeal Court from 16.6.2009 regarding tax crimes on a large scale and in terms of the consequences of punishment, as well as part of the costs of defence and the witnesses, and sent the case back for a new trial in the Court of Appeal.

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[268] Judgment of Supreme Court of Finland H2013/152, on 12 December 2014, para 16. www.finlex.fi. Viewed 26.5.2016.

[269] Case of Zolotukhin v. Russia. No 1493903. 10 February 2009. http://hudoc.echr.coe.int/eng#{"fulltext":["Zolotukhin%20v.%20Russia"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-91222"]}. Viewed 28.5.2016.

[270] Judgment of Supreme Court of Finland. H2010/198, on 6 September 2011, para 12. www.finlex.fi. Viewed 28.5.2016.

Kari-Pekka Piettiläinen appealed to the Supreme Court, citing a ruling by the Court on 22.9.2009 and the final judgment of the ECHR from 18.11.2009, in which the Court found that the Court of Appeal had to allow the applicant's lawyer to represent him, even in his absence. The agenda of the Court did not indicate that one day of absence will be regarded as the absence of the entire hearing. The Court found that in violation of paragraph 1 of Article 6 of the Convention in conjunction with sub-paragraph “a” of paragraph 3 of Article 6 of the Convention.

According to § 31 Section 2, paragraph 2, of the Procedural Code a complaint may be filed within 6 months from the date when the verdict came into effect.

In accordance with § 31, chapter 2, paragraph 3 of the legal proceedings in Finland Pietiläinen had to refer the case for consideration no later than 22.3.2010. Pietiläinen submitted an appeal to the Supreme Court on 17.5.2010 or later. On this basis, the case was dismissed.

When considering a claim for abolition of the sentence in the KKO:2014:95 the Supreme Court pointed out that the decision of the ECHR does not imply that the finding of a violation of the Convention require the abolition of the sentence. In the jurisprudence of the Supreme Court there are many cases, which request dismissal of such decisions made by national courts.

Supreme Court noted that the decision of the case KKO:2009:80 concerning the circumstances (self-incrimination suspect in bankruptcy), which was not taken into account in the legislation adequately, but which was later rectified.

In many decisions, the Supreme Court established that the conditions of revocation should be evaluated on the basis of national legislation, even if the basis of an application is a conviction of the ECHR.

According to this estimated including the acknowledged whether Court of Human Rights recognized by the inaccuracies so great that in accordance with Chapter 31, §1, paragraph 4 of the Procedural Code, could significantly affect the outcome of the case. The starting point is still determined by the fact of violation of human rights, procedural error, as well as a violation of the procedure in this position in the proceedings.

It should be emphasized that in 2006 the Court noted, what it appears that in Finland the case law and the legislation have already been modified accordingly.

Importantly strict observance of the principle of *ne bis in idem* in the courts of Finland. Even though the Finnish tax authorities had received information on about 20 Finnish bank accounts in the Liechtenstein bank LGT, in July 2013 the Supreme Court made that procedure impossible by applying a ruling that is intended to make Finnish law consistent with

judgments from the European Court of Human Rights. The case showed large scale tax avoidance by Finnish citizens. Tax officials said some 50–60 million euros of investments were involved, with the account holders including "representatives of wealthy families, key employees at international companies and Finns enriched by selling their companies". The new interpretation is that if the Tax Administration in pursuit of back taxes has investigated a tax case, it cannot then be passed to the police for criminal charges.

When 21 Article of the Constitution § 2 paragraph has already been stated, considered to require interpretation, according to which ne bis in idem-principle ban, as well as the actual punishment that punitive other penalties also extends to simultaneously pending procedures, it is logical that the prohibition in this case is interpreted in a way that the purpose of preventing not only the two-fold punishment in general, double-criminal proceedings.[271]

Considered international law and case law governing the use of this ne bis in idem-principle as part of the legal system in Finland, which is increasingly being used in decisions of the Supreme Court and the Supreme Administrative Court.

Ne bis in idem-principle fully in perfect harmony with the 21st Article of the Constitution §2 paragraph Finnish Constitution and with the assumed obligations under international human rights instruments.

The reasoning of the Supreme Court and the Supreme Administrative Court is based on the wording of Article 4(1), Protocol 7 of the Convention, the ECHR legal precedent, and established interpretation of the principles of Finnish criminal law.

ECHR decisions affect the national legislation of Finland, which is constantly being brought into line with international standards. Adjudication of the ECHR, made by the Supreme Court and the Supreme Administrative Court of Finland greatly influenced and continues to influence the changes of the Criminal Code and the tax laws of Finland. In the summer of 2011 Ministry of Finance of Finland created the working group, and it´s purpose was to prepare the required legislative amendments to reconcile tax increases and criminal sanctions. It was also supposed to examine to what extent minor tax offences could be handled purely as administrative procedures.

The working group presented the amendments required in tax and customs legislation for an injunction on double prosecution and conviction for the same matter (*ne bis in idem* principle) in the European Convention on Human Rights. It was proposed that a provision be included in the Criminal Code of Finland that once a tax increase has become legally

[271] The Constitution of the Republic of Finland. (731/1999, amendments up to 1112 / 2011 included). www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf. Viewed 1.6.2016.

effective, no case could be made or sentence given unless evidence of new facts has been found since the tax increase was issued.

4.3. Practices of case proceedings by the Supreme Court of the Republic of Finland, suspect's right to defence by means of legal assistance

In most countries of the European Union, persons suspected of committing crimes are unaware of a full and unrestricted access to legal assistance during the initial stages of a criminal investigation. The suspects in criminal cases have the right to request legal assistance after an arrest, detention, or when a position is under significant influence of the circumstances, which they find themselves in. This is clearly and consistently defined in the jurisprudence of the ECHR, with examples of judgments and exerted influence on decisions made by the national courts of Finland, being one of the focal points of this chapter.

For the first time a suspect's right to legal counsel was implemented at a constitutional level in the 6th Amendment to the US Constitution of 1787. Main content of this right in most countries is reduced to the right to request the legal assistance during the court proceedings, especially criminal, as well as in the event of a threat of criminal prosecution. Furthermore, the constitutions and the law generally recognizes the right of the underprivileged and financially vulnerable to receive legal assistance free of charge.

The Council of Europe, the UN General Assembly and the European Court of Human Rights have established the right to protection of a suspect or accused of a criminal offense. All these international instruments lay down the right of the accused of a crime to a legal assistance.

The right to qualified legal assistance, in any democratic state, is one of the fundamental human rights enshrined in Article 6 of the European Convention on Human Rights and is one of the basic constitutional guarantees, designed primarily to provide reliable protection of human rights in criminal proceedings. The Convention confirmed the position that everyone charged with a criminal offense has the right to defend himself in person or through legal assistance of his own choosing or, if he has no sufficient means to pay for legal assistance, to be provided it free of charge when the interests of justice so require (p. 3 Article 6).

The International Covenant on Civil and Political Rights likewise determines the right to qualified legal assistance. The presence or absence of legal assistance often determines whether a person can access the relevant proceedings or participate in them in a meaningful way. Although paragraph 3 d) of Article 14 explicitly addresses the guarantee of legal

assistance in criminal proceedings, the state should provide free legal aid in other cases, to persons who do not have sufficient means to pay for it.[272]

The right to protection of the suspect or accused of a criminal offense is provided for by various international standards.

Article 48 of the Charter of Fundamental Rights of the European Union states:

"... 2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed."

Paragraph 3 of Article 52 of the Charter states that the rights guaranteed by Article 48 of the Charter, are included in the law, have the same meaning and application as the rights guaranteed by the European Convention on Human Rights. [273]

Rule 93 of the United Nations Standard Minimum Rules for theTreatment of Prisoners (the Nelson Mandela Rules [274], as well as Recommendation CM/Rec(2012)5 of the Committee of Ministers to member States on the European Code of Ethics for Prison Staff states [275]:

"For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official."

The wording of the International Covenant on Civil and Political Rights of International Covenant on Civil and Political Rights (hereinafter ICCPR) and the European Convention on Human Rights concerning the right to legal assistance in criminal proceedings somewhat differ but practical approaches of the Committee on Human Rights and the European Court of Human Rights to this issue are nearly identical. In the ICCPR the right to legal assistance in criminal proceedings mentioned in two contexts: first, in paragraph 3 (b) of Article 14 as the right to choose a legal defence counsel and to communicate with him in order to prepare defence; and secondly, in paragraph 3 (d) of Article 14 as the right to defend

[272] International Covenant on Civil and Political Rights. The Human Rights Committee, 90 session, Geneva, 9-27 July 2007, General Comment 32. Article 1. http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx. Viewed 1.6.2016.

[273] Charter of Fundamental Rights of the European Union. Art. 48. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:en:PDF. Viewed 1.6.2016.

[274] Standard Minimum Rules for theTreatment of Prisoners (the Nelson Mandela Rules). United Nations. https://www.penalreform.org/wp-content/uploads/2015/05/MANDELA-RULES.pdf. Viewed 22.5.2016.

[275] Recommendation CM/Rec(2012)5 of the Committee of Ministers to member States on the European Code of Ethics for Prison Staff. (Adopted by the Committee of Ministers on 12 April 2012 at the 1140th meeting of the Ministers' Deputies). http://pjp-eu.coe.int/documents/3983922/6970334/CMRec+(2012)+5+on+the+European+Code+of+Ethics+for+Prison+Staff.pdf/5ba75585-6e2f-4e80-bcd7-090ef0a1b08e. Viewed 1.6.2016.

himself in person or through legal assistance of his own choosing. The consequences of these provisions is that a person who is charged with a crime, should have the right to use the services of a legal assistant in the preparation of his defence and for the duration of the court proceedings. With regard to the European Convention on Human Rights, the right to legal assistance is mentioned only once, in paragraph 3 (c) of Article 6, as the right to defend himself in person or through legal assistance of his own choosing. European Court of Human Rights considered item 3 (b) and 3(c), Article 6 together implying the right to services of a legal assistant during preliminary phase of a trial.[276]

The Body of Principles was approved by UN General Assembly resolution 43/173 of 9 December 1988 for the Protection of All Persons under detention or imprisonment in any form. In accordance with the principle 17 of the Code, if the detainee does not have a lawyer of their choice, it is in all cases where the interests of justice so require, shall have the right to have one appointed for him by a judicial or other authority, without fees, if that person does not have sufficient funds.

The constitutions of many countries provide the right for legal assistance. In all circumstances, the accused shall have the assistance of a competent legal defence counsel; in the case where the accused is not able to do so himself, a legal assistant is appointed by the state[277]. Just as no one can be detained or subjected to imprisonment, if he is not immediately charged and given the right to contact a lawyer. Likewise, no one can be detained without due reason that, with the appropriate requirements present, shall be communicated immediately to the open court session in the presence of the detainee and his legal assistant. According to the Constitution of Finland, public authorities are obliged to ensure the implementation of fundamental and human rights.

It is important to note, that October 7, 2013, the EU Council of Justice and Home Affairs approved the Directive (PE -CONS 40/13) on the right to legal assistance.[278] Directive has established a minimum set of pan-European requirements on access to a lawyer during criminal investigations. These requirements, in particular provide for the right of suspects to legal assistance, the principle of confidentiality of communication between the suspect and the lawyer, the right of a suspect to inform third parties of his arrest, a suspect's right to communicate with third parties and representatives of the Consulate of the country. Directive on the right to legal assistance became a part of the "road map" for the introduction of pan-European minimum rights for suspects in criminal cases.

[276] European Convention on Human Rights, as amended by Protocols 11 and 14. http://www.echr.coe.int/Documents/Library_Collection_P14_ETS194E_ENG.pdf. Viewed 1.6.2016.
[277] The Constitution of Japan. Art. 37. http://anime.dvdspecial.ru/Japan/constitution.shtml. Viewed 10.2.2016.
[278] Council of the European Union. Luxembourg, 7 October 2013 , 14440/13 (OR.en) Presse 398 . Http://www.echr.coe.int/Pages/home.aspx?p=home. Viewed 2.6.2016.

Recommendation R (year 2000) of the 21st Committee of Ministers of the Council of Europe "On freedom of exercise of the profession of legal defence counsel" (adopted by the Committee of Ministers of the Council of Europe on 25 October 2000, in 727th meeting at the level of deputy ministers) [279] has established a number of fundamental general principles: States – members of the Council of Europe should take all measures to ensure that legal assistants can exercise their profession without discrimination and without obstacles, both from the public and the authorities. In its activities, a legal aid must enjoy freedom of speech, movement and association, should not be subjected to pressure, when they act in accordance with their professional standards. Legal assistants should be guaranteed access to their clients, as well as access to court and to the relevant documents relating to the actions of defence."

Paragraph 3 c of Article 6 entitles the accused to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice require. Paragraph 3(c) consists of four articulate components, namely: 1) the right to defend himself in person (Foucher v. France. 18/3/1997), 2), under certain circumstances, through legal assistance of his own choosing (Campbell and Fell v. the United Kingdom, 28/6/1884), 3) if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; (Murray v. the United Kingdom, 28/10/1994) and finally, 4) the right to practical and full legal assistance (Bogumil v. Portugal, 7/10/2008).

The author refers to the decision in 2016, in which the ECHR declared, that the requirement that an appellant be represented by a qualified lawyer before the court of cassation is compatible with the characteristics of the Supreme Court as a highest court examining appeals on points of law and it is a common feature of the legal systems in several member States of the Council of Europe.[280]

In discharging obligation to provide parties to civil proceedings with legal aid, when it is provided by domestic law, the State must, moreover, display diligence so as to secure to those persons the genuine and effective enjoyment of the rights guaranteed under Article 6 (Del Sol, R.D. v. Poland, Nos. 29692/96 and 34612/97, §44). It is also essential for the legal aid system to offer individuals substantial guarantees to protect those having recourse to it from arbitrariness (Gnahoré v. France, No. 40031/98, § 38).

[279] Recommendation No.R (2000) 21 of the Committee of Ministers to the members States on the freedom exercise of the profession of lawyer. 25.10.2000 . http://www.asianajajaliitto.fi/files/19/R2000-21_Freedom_of_exercise_of_the_profession_of_lawyer.pdf. Viewed 2.6.2016.

[280] Case of Tovmasyan v. Armenia, No 11578/08), 21 January 2016. http://hudoc.echr.coe.int/eng#{"fulltext":["Tovmasyan%20v.%20Armenia"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-160091"]}. Viewed 10.6.2016.

The author emphasizes, that in the case of Castravet v. Moldova the Court stated: "One of the key elements in a lawyer's effective representation of a client's interests is the principle that the confidentiality of information exchanged between them must be protected. This privilege encourages open and honest communication between clients and lawyers. The Court recalls that it has previously held that confidential communication with one's lawyer is protected by the Convention as an important safeguard of one's right to defence.[281]

The right to choose their own legal assistance is a privilege of those applicants who have the means to pay for it (Campbell and Fell v. the United Kingdom). The applicant receiving free legal assistance does not have the right to choose his own lawyer (Krempovskij v. Lithuania.). If a free lawyer explicitly fails in their responsibilities, authorities have a positive obligation to replace them (Artico v. Italy).

The right to choose a legal assistant is not absolute: a use of restrictions is possible for the purposes of proper administration of justice to the number of lawyers, their qualifications and rules of conduct when speaking in court (Ensslin and others v. Germany, 1978).

The accused, which is being tried in absentia, has to be represented by the legal representative of their choice (Karatas and Sari v. France), May 16, 2002, pp. 52–62).

The decision whether to allow or not to allow access to a legal assistant (free or paid) shall be under the control of the court and should not be taken by the executive authority, at its discretion (Ezeh and Connors v. the United Kingdom).

For the first time the value of a lawyer in the court hearing was assessed by European Court of Human Rights during the case review of Golder v. The United Kingdom (21.2.1975)[282], Airey v. Ireland (9.10.1979) [283] and Artico v. Italy (13.5.1980). [284]

Applicant Golder appealed to the European Commission on Human Rights in April 1970 with a complaint in which he claimed that the refusal to allow him to consult a legal assistant is a violation of Article 6 paragraph 1, which guarantees the right to access of justice for the determination of civil rights and obligations. He also insisted that there had been a violation of Article 8, expressed in the fact that he was denied the correspondence, which is an integral part of keeping contact with a lawyer.

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[281] Case of Castravet v. Moldova. No 23393/05. 13 March 2007. http://hudoc.echr.coe.int/eng#{"fulltext":["Castravet"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-79767"]}. Viewed 10.6.2016.

[282] Case of Golder against the United Kingdom, 21 February 1975. http://hudoc.echr.coe.int/eng#{"fulltext":["golder"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-57496"]}Viewed 10.6.2016.

[283] Case of Airey against Ireland . October 9, 1979. http://hudoc.echr.coe.int/eng#{"fulltext":["Airey%20Ireland.%20October%209,%201979."],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-57419"]}.Viewed 14.6.2016

[284] Case of Artico v. Italy. No 6694/74 , May 13, 1980 . http://hudoc.echr.coe.int/eng#{"fulltext":["6694/74"],"itemid":["001-57424"]}. Viewed 14.6.2016.

The applicant Airey tried to get a court order for separation, which is made by the High Court. Free legal assistance in cases of this kind is not available, and Mrs. Airey did not have sufficient funds to pay the cost of the trial. Article 6 para. 3 “c” applies only to criminal proceedings. However, despite the absence of such rules for disputes in civil cases, Article 6 para. 1 may in some cases can compel the state to provide assistance of legal aid when it is necessary to ensure effective access to justice or because of the fact that for certain categories of cases, legal representation is required under the domestic law of some countries - participants, or because of the complexity of the process.

To file a complaint in the Court of Cassation applicant Artico had been granted legal aid. However, officially appointed counsel informed the applicant that he was not able to carry on his work because of other commitments. After which the applicant Artico repeatedly appealed to the Court of Cassation and the prosecutor of the court to appoint another lawyer instead, arguing that it violated the right to protection. However, an alternative lawyer was never appointed and no steps were taken to make initial court-appointed lawyer fulfil his obligations. The Court recalled that the Convention is intended to guarantee not theoretical or illusory rights, but their practical and effective implementation; this is particularly true for the right to defence, which occupies a prominent place in a democratic society, as well as the very right to a fair trial, from which it follows. As rightly stressed by representatives of the Commission, Article 6 paragraph 3 “c” refers to “assistance” and not the “appointment of legal representative”. The appointment itself does not ensure effective assistance since appointed lawyer may die, become seriously ill for a long period, be deprived of the opportunity to act or shirk the responsibilities. Authorities, if they are notified of the arisen situation, must either replace him or force to perform his duties. Government's restrictive interpretation of this subparagraph leads to results that are not reasonable and do not correspond to the meaning of subparagraph “c”, and Article 6 as a whole, because in many cases, free legal aid may be futile.

The author emphasizes, that the Supreme Court in a case of Finland KKO:2012:45 on charges of aggravated narcotic crime, charges of negligent homicide and unintentional mutilation, considered the general rules and principles of appeals and the importance of the testimony during the preliminary investigation. After the detention of a foreign national on 11.12.2009, the suspect was appointed a legal assistant, who was not present at the interrogation. On the 12.12.2009 questioning was conducted in English, but the protocol made in Finnish, which the suspect did not understand. 15.12.2009 saw the suspect being appointed a new legal assistant, who was not present on the continuation of the interrogation. According to the protocol prior to questioning, the suspect was informed of the right to legal assistance,

but he was not informed of the right to remain silent and not to testify against himself. The police knew that the suspect did not met with an appointed lawyer prior to questioning.[285]

According to the Law on the preliminary investigation 10 § 1 Parties involved in the process have the right to use a services of a legal assistant during the preliminary investigation. Criminal suspects, arrested or detained shall immediately be notified of their right to an attorney. According to 29 § 2 of the Preliminary Investigation Law, the suspect, prior to questioning, has to be made aware of the right to use a lawyer during the preliminary investigation and when it is possible to assign a defence counsel. According to § 31 of the Preliminary Investigation Law, the legal assistant of the suspect has the right to be present at the interrogation, if the head of the investigation, for a good reason, does not prohibit it. In a criminal trial in accordance with Chapter 2, paragraph 1, §2, subparagraph 2, the suspect at their request must be appointed a legal assistant if he had been arrested or detained. The Supreme Court also referred to Article 6, paragraph 3 c) of the Convention, according to which each of the suspect has the right to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when it is required in the interests of justice. In practice, the ECHR decision to be the right for a defence counsel is considered necessary when the issue is a serious crime which constitutes a punishment by means of imprisonment or when a difficult legal or factual issue is present (for example in the case of Benham v. the United Kingdom, Katritsch v. France, 4.11.2010, p. 31).

The Supreme Court of Republic of Finland referred to the practical application of Article 6 paragraph 3 of the Convention, which emphasises the right of a suspect of a crime to legal counsel prior to the pre-trial investigation.[286]

The Criminal Procedure Code of Finland, Chapter 2, § 6 states that the legal defence assistant must act in accordance with the rules of professional conduct for legal assistants to follow the interests of their customers and complying with the law. According to § 7 of the same chapter a legal assistant must immediately hold talks with his client and start preparing for his defence and to take such measures, which require compliance with defendant's rights.

In accordance with Chapter 17, paragraph 32 § 2, of the Procedural Law, previously given testimony of witness to the court, prosecutor or police authorities, can be read out during the interrogation of a witness only when he, in his witness statement, eliminates what was previously said, or when the witness explained that he can not or does not want to say

[285] Judgment of Supreme Court of Finland. KKO 2012:45. R2011/704, 9.5.2012. www.finlex.fi. Viewed 10.6.2016.
[286] Salduz v. Turkey 27.11.2008, , Pishchalnikov v. Russia, 24.9.2009, , Leonid Lazarenko v. Ukraina, Stojkovic v. Belgia. http://hudoc.echr.coe.int/eng#{"documentcollectionid2":["GRANDCHAMBER","CHAMBER"]}. Viewed 10.6.2016.

anything on the case. In judicial practice in criminal cases, in accordance with the law, Chapter 6, § 7, paragraph 2, in questioning of case participant, in order to adhere to the appropriate parts of the evidence, the above previously mentioned provisions for the examination of witnesses. In accordance with chapter 17 § 2 of the Procedural Law must be "free to decide" what is considered to be true.

The Procedural Law of the Chapter 17 § 32, or in the Judicial Practice Law in criminal cases Chapter 6 §7 is not regulated, can an appeal to the testimony of a suspect in the preliminary investigation be interfered with in certain situations.

The author emphasizes, that the Supreme Court also referred to the application of Article 6 3c in the case KKO:2013:25.

As such an example, the author refers to the decision of the Supreme Court (KKO:2011:91)[287], where the Court stated that in the current legislation there is no general provision prohibiting the use of evidence or the so-called ban disposal. Only the fact that the evidence or the information contained in the proof, obtained through illegal or otherwise invalid method does not necessarily mean that such evidence cannot be used in court proceedings. If the preparation of the information contained in the proof point to serious violation of the law, the question may arise about banning the use of evidence in a particular case. At the end of the scale is, on the one hand, the seriousness of the offense and on the other hand, the interest in the investigation of the crime. When use of this evidence is allowed, the hearing shall determine in accordance with the principle of "free decision", did the illegal means or improper application method of procuring information affect the reliability of the evidence. It has long been considered to be clear that, for example, a statement obtained under torture can not be used as evidence at the hearing, despite the fact that the prohibitions on such evidence, the law is not settled.

The starting point in the jurisprudence of the court sessions on Human Rights considered being such that the evidence and issues relating to the admissibility of evidence are determined by national law (Al-Khawaja and Tahery v. the United Kingdom, 15.11.2011, paragraph 118). The use of illegally obtained evidence material as part of the overall evidence is not contrary to Article 6 of the Convention, if the process as a whole fulfils the requirements of a fair trial (Allan v. United Kingdom, 5.11.2002, paragraphs 42–43 and Gafgen v. Germany, 30.6.2008). In determining whether the proceedings as a whole were fair value, it is considered to be vital that the quality of evidence, which are the basis for a criminal conviction, does not pose a threat to the reliability of evidence under the

[287] Judgment of Supreme Court of Finland. KKO 2011:91. R2010/419, 2.11.2011. www.finlex.fi. Viewed 14.6.2016.

circumstances of their procurement (Lutsenko v. Ukraine, Violation of protection against self-incrimination of the suspect, during the procedure for obtaining evidence, can be a debilitating factor to its reliability).

The Supreme Court of Finland ruled that during the case proceedings the evidence presented on all three charges was not based on evidence obtained during the preliminary investigation, overturning the ruling made by the Appeal Court regarding all three parts of the accusations and subsequently has returned the case back to the Appeal Court for a re-trial.

At the appeal hearing for the case KKO:2013:25[288], the Supreme Court of Finland considered the question of the right of the accused to a legal defence assistant and examination of witnesses during the preliminary investigation. According to paragraph 10 § 1 of the Preliminary Investigation Law, the suspect has the right to access legal assistance during the preliminary investigation. Detained, arrested and jailed suspect, accused in the crime, should be immediately notified of his right to use a legal assistant. The Court referred to the application of the law in Salduz v. Turkki.[289] The Court fund that early access to a lawyer is part of the procedural safeguards to which the Court will have particular regard when examining whether a procedure has extinguished the very essence of the privilege against self-incrimination. In this connection, the Court also notes the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The Court finds that in order for the right to a fair trial to remain sufficiently "practical and effective". Article 6 § 1 requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right. Even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction – whatever its justification – must not unduly prejudice the rights of the accused under Article 6.

The author notes that after a case of Salduz, ECHR issued more than 100 decisions that constitute a clear and consistent line of jurisprudence on the use of evidence obtained from a suspect during interrogation or other investigative steps, when the suspect does not have the required legal assistance, is a violation of Article 6 of the ECHR. In this series of decisions contains a detailed explanation to when a person has the right to access legal assistance and when this right may be denied.

[288] Judgment of Supreme Court of Finland. KKO 2013:25. R2012/340, 10.4.2013. www.finlex.fi. Viewed 14.6.2016.
[289] Case of Salduz v.Turkey. No 36391/02, 27 November 2008, para 54–55. http://hudoc.echr.coe.int/eng#{"fulltext":["Salduz"],"itemid":["001-89893"]}. Viewed 14.6.2016.

According to paragraph 2 § 29 of Preliminary Investigation Law, prior to the interrogation, the suspect needs to be made aware of the right to use legal assistance during the preliminary investigation and then, when he may be provided with a legal defence assistant. According to paragraph 2 § 30 of the Preliminary Investigation Law at the request of the suspect a witness must be present during the interrogation process, in accordance with § 43 of Chapter 17 of the Procedural Law, prior to the interrogation a suspect needs to be informed of his right to invite a witness to the questioning. Procedural Law, Chapter 2, §1, Part 2, subparagraph 2, states that at the request of the suspect he must be provided with legal assistance if he had been arrested or detained.

The European Convention on Human Rights in Chapter 6, paragraph 3, subparagraph c), refers to the right of a suspect in a crime to legal assistance, according to which the accused has the right to defend themselves or through a legal assistance of his own choosing. And if he is unable to pay for the legal aid, it is available, on request, free of charge. A similar regulation exists in the Covenant on Civil and Political Rights of International Covenant on Civil and Political Rights, article 14, part 3 d.

As defined above in paragraph 9 of the Supreme Court decision KKO:2012:45, the European Court of Human Rights, 6 article, paragraph 3, subparagraph c), stressed the legal right to a legal assistance by a suspect, who was remanded in custody on suspicion of a crime, immediately at the start of the preliminary investigation. For example in the case of Salduz v. Turkey, 27/11/2008 the Court underlines, that: the importance of the investigation stage for the preparation of the criminal proceedings, as the evidence obtained during this stage determines the framework in which the offence charged will be considered at the trial. At the same time, an accused often finds himself in a particularly vulnerable position at that stage of the proceedings, the effect of which is amplified by the fact that legislation on criminal procedure tends to become increasingly complex, notably with respect to the rules governing the gathering and use of evidence. In most cases, this particular vulnerability can only be properly compensated for by the assistance of a lawyer whose task it is, among other things, to help to ensure respect of the right of an accused not to incriminate oneself. This right indeed presupposes that the prosecution in a criminal case seek to prove their case against the accused without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused.

Thus, from the above-mentioned decision of the Supreme Court, further conclusions are drawn, that according to the court hearing on Human Rights, Article 6 of the Convention on Human Rights does not prevent a suspect from not to exercise his right to a legal assistance. Refusal can only be considered effective if it is made voluntary and unequivocally,

and if it has a value, taking into account the comparable minimum guarantee of success in the case of Panovits v. Cyprus, 11/12/2008. The Court reiterates that a waiver of a right guaranteed by the Convention – in so far as it is permissible – must not run counter to any important public interest, must be established in an unequivocal manner and must be attended by minimum safeguards commensurate to the waiver's importance. Moreover, before an accused can be said to have impliedly, through his conduct, waived an important right under Article 6, it must be shown that he could reasonably have foreseen what the consequences of his conduct would be (see Talat Tunç v. Turkey, No 32432/96, 27 March 2007, § 59, and Jones v. the United Kingdom, No 30900/02, 9 September 2003).

The author emphasizes, that in the case KKO:2012:45 it was undetermined, whether the suspect was aware of the content of the suspicion of a crime. In fact there was no reference to the fact whether the suspect was fully aware of the consequences to the refusal of legal defence counsel and witness during the interrogation, or was forced, inclined or otherwise made to state circumstances unfavourable to him.

Based on the above facts, the Supreme Court ruled that in this case there are no grounds to suspect that during the preliminary investigation the suspect's rights had been violated in such a way that his testimony could not be used as evidence against him. The Supreme Court decided that in this situation there are no obstacles for the use of the suspect's testimony, procured during the preliminary investigation, as evidence in the case.

Furthermore, Directive 98/5 / EC of the European Parliament and of the Council of the European Union of 16 February 1998 and the practice of European Court of Justice with respect to this Directive should be taken into account, which stipulates that to ensure the continued functioning of the justice system Contracting States may establish special rules for access to the higher courts of the States, such as the involvement of a specialised lawyer.

The Supreme Court also referred to the decision of the ECHR 24.07.2007 V. v. Finland [290], in which the Court ruled that the principle adversity and equality of Parties were integral elements of a fair trial in criminal cases, and also referred to the above decision of the Supreme Court KKO:2012:45, recognising that the suspect's right not to incriminate oneself are generally recognised principles of a fair trial, which are included in the international human rights. Helsinki Court of Appeal acquitted all 11 previously convicted and the two companies. The state has paid compensation, to the accused that received acquittals, in a region of 4 million euros. All the participating judges have made decision unanimously.

[290] Case of V.v. Finland. No 34806 / 04. 19 November 2012 . http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-111938. Viewed 14.6.2016.

The right to professional, qualified legal assistance of a lawyer is an integral part of the rule of law, which is enshrined in the constitutions of many countries. The right to protection of the suspect or accused of a criminal offense is established by the Council of Europe, the UN General Assembly and the European Court of Human Rights and is one of the basic constitutional guarantees, designed primarily to provide reliable protection of human rights in criminal proceedings. The Constitution of Finland has no standalone article on the right to access a legal assistance of a lawyer. Results of the study enabled the author to offer principle improvements to the enforcement and improvement of legislation to bring it in line with the European Convention and the jurisprudence of the ECHR.

4.4. Right to free assistance of an interpreter and /or translator based on the example of Finland

The author notes, that the science and practice require a clearly defined procedural position and status of an interpreter, in identifying proficiency in specialised linguistic knowledge by an interpreter and his qualifications in accordance with international law, the recommendation of UNESCO and the Directive of the European Parliament and of the European Council 2010/64 / EU of 20.10.2010.

The author emphasizes, that the interpreter provides an additional guarantee of protection of rights and freedoms for the duration of legal proceedings, a guarantee of full and complete examination of the circumstances through all the stages of an investigation and court proceedings. Court interpreter acts as a link, normalising relations of criminal procedure and ensures equal conditions for all litigants.

The author's research has shown that the proportion of crimes committed in Finland by foreign nationals and people without citizenship is constantly increasing. The proportion of crimes committed by foreigners in Finland from 2002 to 2012 has grown by 56%. Additionally, The Finnish Immigration Service, the Administrative Court and the Supreme Court regularly consider cases of foreigners in Finland concerning residence permits, deportation, extradition or transfer to serve their sentences in the country of residence. The number of representatives from different language groups is increasing yearly due to the rise in migration processes that has an impact on the structure and growth of crime. Furthermore, there has been a constant increase in a number of students in Finnish education system, where a native language is not a state language. For example, in 2014 alone schools of Helsinki reported that the percentage of students whose native language was other than Finnish has

increased from 29% to 63%. A number of crimes in schools, committed by high school students from a migrant community has also increased.

In 2012, Finland's share of administrative court cases involving foreign nationals has accounted for 24%. At the end of 2014 Finland has had 219,675 registered foreign nationals or 4% of the total population. Residents of foreign origin speak around 55 different languages, amongst which the most common are Russian, Estonian, Somali, English and Arabic.

Statistics show an annual fluctuation in the number of foreigners due to a fact that settled individuals obtain a second citizenship, for example in 2013, 8,930 foreign nationals were granted Finnish citizenship. Meanwhile, the number of representatives of different language groups is steadily increasing every year due to an escalating migration.

During the time period from January to June 2014, Finland has registered 200,900 crimes and further 189,100 traffic accidents. In 2013, the county courts of Finland have registered 73,000 defendants in criminal cases and reviewed 491,700 civil cases.

During the period 2006–2014 the number of crimes committed by foreigners has tripled. In 2015 the Republic of Finland received more than 30,000 refugees from more than 30 countries, which affected the number of rapes by foreigners.[291]

However, many of the foreigners do not have an adequate knowledge of Finnish or Swedish and require an assistance of an interpreter.

Interpreters play an important role in the enforcement and protection of the rights and freedoms of a person who does not speak the language of the proceedings in criminal case. Without an interpreter, it is impossible to carry out investigative and judicial actions, as well as protection of the rights and freedoms of man and citizen in cases where any of the participants of the process do not speak or understand the language.

The legislation provides a complex mechanism for involvement of an interpreter in criminal proceedings, due to the gaps and discrepancies of the law there are no set requirement for authorized interpreters to participate. In practice, this causes problems with finding an interpreter, checking the competence, establishing the degree of proficiency, the knowledge of the legal and judicial terminology, as existing legislation does not adequately regulate these issues.

Studies show that the investigating officers, prosecutors and courts face difficulties in attracting an interpreter to participate in the criminal proceedings. In some cases, they do not apply adequate measures to bring authorized interpreters to participate in an investigative and

[291] MTV News. The crimes of foreigners in Finland. http://www.mtv.fi/uutiset/rikos/artikkeli/tuore-selvitys-tallaista-on-ulkomaalaisten-rikollisuus-suomessa/5288878. Viewed 17.6.2016.

judicial action conducted against persons who do not have an adequate knowledge or command of the language of the proceedings in the criminal case.

In practice, this causes problems with finding an interpreter, checking their competence and command of legal and judicial language of the proceedings in the criminal case, as the national law does not regulate these issues adequately.

The right to free assistance of an interpreter provided by Article 6 of the ECHR in relation to criminal proceedings.

Article 6 (e) declares: "Everyone, charged with a criminal offense has the following minimum rights: free assistance of an interpreter if he cannot understand the language used in court, or does not speak the language."

However, the UN Committee on Human Rights considers that in exceptional circumstances it may be required to provide free assistance of an interpreter in non-criminal proceedings by virtue of the principle of equality of the parties, including if indigent party would not otherwise be able to participate in the process on an equal footing or could not be heard by the invited witnesses.[292]

Only by ensuring efficient and effective representation of their rights can equal conditions be created for the involved parties. The right to a free assistance of an interpreter embodies another aspect of the principles of fairness and equality in criminal proceedings, implemented by the Human Rights Committee.[293] It regards to the citizens of the state as well as foreign nationals. However, persons charged with a criminal offense whose mother tongue is different from that used in the official language of the court, in principle, have no right to the free assistance of an interpreter if they know the official language sufficiently to defend themselves effectively. The accused must be in a position where he either independently or with the help of an interpreter, is able to understand the procedurals and participate in the trial, which would constitute a fair trial. Assistance of an interpreter should be such that would allow the defendant to understand the charges against him and to defend himself, in particular, being able to provide the court with his version of events.

Upon presentation of the prosecution in a criminal case, everyone has the right "to take advantage of the free services of an interpreter if he can not understand or speak the language used in the course of judicial proceedings". [294] Although the provisions of this article do not cover the right to a translation of documents and materials for the preliminary

[292] ICCPR, General Comment number 32, CCPR/C/GC/32, 23.08. 2007, p. 13. http://www.refworld.org/docid/478b2b2f2.html. Viewed 17.6.2016.
[293] Ibid, p. 40.
[294] Case of Luedicke, Belkacem and Koç v.Germany, 28 November 1978, para 48. http://hudoc.echr.coe.int/eng#{"fulltext":["6210/73%206877/75%207132/75"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-57530"]}. Viewed 17.6.2016.

investigation of the trial, Human Rights theorists are increasingly of an opinion that the right to engage the services of an interpreter shall also include a translation of the relevant court documents. Also, the right to an interpreter applies both to the suspect and the accused if these persons are involved in an investigation at a pre-trial stage. Interpretation Services are provided on a grant basis by the State and are not refundable. The right of the accused to a free use of an interpreter is not limited to the stage of the oral proceedings in the court. It also applies to "free assistance of an interpreter for the translation of all documents and statements during the indictment process as are necessary for an understanding of the purpose of ensuring a fair trial".[295]

Also according to article 5, paragraph 2 any person arrested shall be informed promptly, in language he understands, the grounds for his arrest and of any charge brought against him. Under paragraph 3 A, every person accused of a crime has the right to be informed promptly and in detail, in a language which he understands, of the nature and cause of the accusation against him. Article paragraph 3e states that everyone charged with a crime has the right to a free assistance of an interpreter if he cannot understand the language used in court, or does not speak the language.

The right to a free assistance of a competent interpreter and such translations as are necessary to ensure that at the stage of investigation and trial meet the requirements of fairness guaranteed by the Rome Statute of the International Criminal Court .[296]

Among the sources of the language institutional proceedings should be mentioned the European Charter for Regional or Minority Languages, adopted by the Council of Europe on 5 November 1992, and Recommendation NR (81) 7 of the Committee of Ministers on ways to facilitate access to Justice of 14 May 1981. European Charter for Regional or Minority Languages has extended above the regulatory requirements for the organization of the administration of justice states – participants of the EU on all kinds of legal proceedings (previously they were used exclusively in relation to criminal proceedings).

European Court of Human Rights considered an infringement of the right to an interpreter (case of Isop v. Austria, 1962, case of Luedicke, Belkacem and Koc v. Germany (1978), Oztürk v. The Federal Republic of Germany (1984), Lutz v. Germany, 1987, Kamasinski v. Austria (1989), Brozicek v. Italy (1989), Fox, Campbell and Hartley v. Great Britain (1990), the Quaranta decision (1991), case of Jecius v. Lithuania, 2000, Cuscani v.

[295] ICCPR, General Comment number 32 CCPR/C/GC/32, 23.08.2007, Art. 14 p. 3(f). http://www.refworld.org/docid/478b2b2f2.html. Viewed 17.6.2016.
[296] Rome Statute of the International Criminal Court, Art. 55) and 67 f. https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf. . Viewed 17.6.2016.

United Kingdom (2002) and Conka v. Belgium (2002), case of Lagerblom v. Sweden, 2003, case of Skalka v. Poland, 2003 .

These decisions were aimed at overcoming the consequences of a violation of fundamental human rights in the sphere of application of the language of proceedings that were made due to the imperfections of the national legislation of a number of European countries, in respect of which the Council of Europe human rights institutions have been adjudicated.

The author refers to the decision in 2016, in which the ECHR declared, that Furthermore, the requirement that an appellant be represented by a qualified lawyer before the court of cassation is compatible with the characteristics of the Supreme Court as a highest court examining appeals on points of law and it is a common feature of the legal systems in several member States of the Council of Europe.[297]

ECHR decision on Luedicke, Belkacem and Koc v. Germany pointed out that everyone charged under designated circumstances should receive a free assistance of an interpreter and not have to pay for any resulting legal costs. In fact, in this interpretation of the definition, the solution is given "for free" – this term does not refer to any exemptions under certain conditions, no time for payment of benefits, or suspension of payment but a general and complete exemption from having to pay.

The implementation of the principle of justice and national language requirement at short notice in a language that the person understands, the reason for the arrest, the nature and cause of the charge were considered in the decision Oztürk v. Germany, the complaint N 8544/79, 21 February 1984.

According to the author an issue of providing an oral translation in criminal proceedings is viewed at a different angle, ECHR judgment on Kamasinski against Austria, which indicated that the assistance of an interpreter shall be ensured so as to provide the defendant an opportunity to defend themselves and know the content of the case brought against him, in order to first of all to be able to present to the court his version of events:

"...an interpretation assistance provided should be such as to enable the defendant to have knowledge of the case against him and to defend himself, notably by been able to put before the court his version of events."

Talking about the degree of comprehension of the defence, by means of translation, with the procedural documents, the practice of the ECHR requires that the translation must

[297] Case of Tovmasyan v. Armenia, No 11578/08), 21 January 2016. http://hudoc.echr.coe.int/eng#{"fulltext":["Tovmasyan%20v.%20Armenia"],"documentcollectionid2":["GRAND CHAMBER","CHAMBER"],"itemid":["001-160091"]}. Viewed 21.6.2016.

provide the person with a capability of defending their rights without consideration given to qualified legal assistance from a lawyer.

For instance, in December 19, 1989 case of Brozichek against Italy an applicant, German by birth, was indicted in Italy. The ECHR ruled that the document containing the charges must be submitted in German, if the authorities cannot establish that the applicant actually knows the Italian language to a degree sufficient to understand the meaning of the letter notifying him of the charges against him. Court interpreter shall without delay bring to the attention of "recipient", in an easily accessible form, linguistically accurate and adequate information of verbal nature. UNESCO Recommendation on the Legal Protection of Interpreters and Translations and the Practical Means to improve the Status of Translators (adopted in Nairobi on 22.11.1976 19 session of the General Assembly of UNESCO) refers to a person as an addressee of the translation.

The author notes that the Constitution of Republic of Finland guarantees the right of everyone to conduct their case in court and other authorities by use of their language, Finnish or Swedish, as well as receive documents regarding the case drawn in that language as guaranteed by law.[298] Stated in § 6 of the Constitution guarantees the principle of equality before the law. No one should be without a good reason be put in an unequal position on the grounds of sex, age, origin, language, religion, belief, opinion, health, disability or other reasons related to the person.

Also in the Language Act (06.06.2003/423) defines the status of the national language and the right to its use by officials. The law provides for the protection of constitutionally guaranteed rights of individuals to use their own language in court proceedings and with other authorities. According to the Law on the language everyone has the right to use their own language and the authorities must provide free translation.

In criminal proceedings of bilingual Finland – Finnish or Swedish – if defendants are multilingual, or if the language of the defendant is not Finnish or Swedish, the court decides on the language with regard to the rights and interests of the parties in the proceedings. If the language selection cannot be made on this basis, the court uses the official language of the majority. This also applies to the representatives of the prosecution. In the preliminary investigation, the use of the language defined by the Law on the preliminary investigation.[299] In proceedings of the Court of Appeal and the Supreme Court the language of cases is applied with regard to the rights and interests of the parties involved.

[298] The Constitution of the Republic of Finland, 11 June 1999 (731/1999, amendments up to 1112 / 2011 included) . www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf. Viewed 21.6.2016.
[299] Language Act (148/1922. Kielilaki 6.6.2003/423. § 18.§ 14. http://www.finlex.fi/fi/laki/kaannokset/1922/en19220148.pdf. Viewed 21.6.2016.

Language Act, in addition to special legislation, also provides for the use of language in the preliminary investigation and trial. Judgment, decision and other documents of the criminal proceedings are drawn up in the language used during the process. Messages, invitations and letters that are sent to the parties of the process are made in the language of the defendant, regardless of the language of the proceedings. If the statement of claim, judgment, decision, protocol or other documents are not made by public officials in the language of the parties of the process, at the request of the party, these documents are to be ready available, free of charge, in an officially certified translation with regard to the rights, interests or obligations. The law provides for an official translation to be made by the official or an officially certified translator from Finnish or Swedish languages.

Qualification requirements for interpreters or translators of documents used in court for a criminal process have been established by Finnish Legislation and determine specific qualification requirements for interpreters or translators employed in criminal court proceedings 2007.

The right to act as a licensed interpreter is granted to interpreters in possession of a confirmed qualification set by Law of official interpreters (1231/2007).[300] National Board of Education of Finland is responsible for maintaining the official examination system, the development and qualification of licensed interpreters. Licensed interpreters are individuals who receive a formal degree of a licensed interpreter, giving them the right to act as an authorized interpreter for duration of a five-year period. Authorisation may be revoked if an interpreter does not fulfil the conditions stipulated by law, or if its actions were clearly unsuitable for an authorized interpreter.

Directive of the European Parliament and of the Council 2010/64 / EU of 20.10.2010 on the right to interpretation during the court session has obligated the states - members of the European Union before 10/27/2013 to take concrete measures to ensure interpretation and translation in criminal proceedings maintained the required quality standard [301]. In order to promote the adequacy of interpretation and translation as well as efficient availability, Member States should endeavour to establish a register or registers of independent qualified translators. After the creation of such a register, if necessary, they should be available to lawyers and relevant authorities.

Fulfilling the requirements of the Directive, the Ministry of Education of Finland 02.02.2011 added to the occupational structure the qualification diploma of professional qualification of a licensed interpreter and in 2013 Finland started training a special group of

[300] Law on the official translators (1231/2007).. www.finlex.fi. Viewed 21.6.2016.
[301] Directive of the European Parliament and of the Council of Europe 2010/64 / EU of 20.10.2010. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:280:0001:0007:en:PDF. Viewed 23.6.2016.

court interpreters. Prior to that in Finland there was no training or licensing of interpreters in legal proceedings, so almost everyone – both professional and amateur, may inform the court and act as an interpreter and translator of written documents.

Resolution of the Government to the Parliament of HE 63/2013 has also established the right of the suspect and the accused to interpretation and translation, which is based on Article 6 fair trial guarantees of the European Convention on Human Rights and Fundamental Freedoms.[302]

Interpretation of the Directive provides suspects and accused the right of interpretation and translation in criminal proceedings in order to ensure their right to a fair trial.

It is important to note, that victims of crime rights, support and protection are provided in accordance with the Directive of the European Parliament and of the Council 2012/29 / EU of 10.25.2012. Article 7 contains provisions on the right of the victim to interpretation and translation in criminal proceedings.[303]

The new Law on the preliminary investigation of Finland in Chapter 4, § 13 gives parties the right to translation of materials of the preliminary investigation. Article provides for the translation of documents of the preliminary investigation or parts thereof, the volume of the oral interpretation of Legislation must comply with the requirements of the Directive.

An essential document can be translated verbally, if one of the parties does not require the translation of legal documents in writing.

Preliminary investigation bodies must ensure that the side of the process gets enough information about the translation of documents. It is also assumed that the translation is available in reasonable time [304]. Full and effective participation of an interpreter in the fate of the accused or the victim is possible if they recognize the importance of the role of the interpreter in a criminal case. Sometimes the accused or any other participant of the process, whom an interpreter was invited to assist, can clearly exaggerate their language skills. In this case, the question of the participation of an interpreter should be decided by the peremptory decision of the investigator, inquiry officer or the court.

Senior Inspector of Crimes Pertti Sovelius said that the Helsinki Police Department notes a growing need for interpreters. More than half of the upcoming preliminary investigations of criminal offenses against property are involving suspects of foreign origin. Police requires assistance of interpreters on daily basis.

[302] Representation of Parliament HE 63/2013. http://www.finlex.fi/fi/esitykset/he/2013/20130063. Viewed 23.6.2016.
[303] Ibid. Art. 2.2 The quality of interpretation and translation.
[304] Ibid. Art. 3. Aims and the main proposals.

At this stage, the situation with the right to an interpreter in Finland falls short of the requirements set by the European Convention on Human Rights and Fundamental Freedoms and other international.

For example, only in the District Court of Helsinki up to seven interpreters of the Russian language are constantly working, none of whom are authorised translators and do not have certificates from the Finnish National Board of Education.

Due to a severe lack in the number of professional translators in Finland, foreign detainees may be offered an option to be questioned in English, so as not to be in the police custody awaiting a freelance translator with knowledge of their native language. Also, this constitutes considerable savings for the investigating authorities.

The author also cites as an example, a suspect with dual citizenship of the Russian Federation and the United States (USA citizenship received in 1998 and returned to Russia in 2007) accused of smuggling of illicit drugs to Finland, was offered to be questioned in English, which was not the native language for either the Russian citizen and especially not for the customs inspector. Transcript of an interrogation was read out without an interpreter in the investigator's own interpretation of English and written in Finnish, where the latter was not known by the suspect.[305] The suspect was not even offered a translation through an official interpreter by phone, as it is practiced by the Finnish Police, if the interpreter is not present during questioning. At the trial the case was heard in Finnish and in Russian languages through use of an interpreter, who also did not have a certified authorisation of a qualified translator.[306]

The author emphasizes, that in 2011, the costs of translation and interpretation services in the district and appellate courts of Finland amounted to 2,448,931 Euros.[307]

Finnish media often reports on sub par levels of translation in court. For example, a district court judge of Tampere, Kimmo Vaikiala, describes a situation where a person can speak for a minute or two, and then an interpreter translates it in 30 seconds.[308]

In Finland, the use of videoconference during the preliminary investigation and the trial, which often involves interpreters, is a common occurrence. Videoconferencing is capable of reducing the costs of witnesses, who are paid by the public funds. On the other hand, the principle of a fair trial is largely based on the physical presence of the parties in the courtroom during proceedings.

[305] Minutes of interrogation of 13/02/2014 9010 / R / 9022/13. www.finlex.fi. Viewed 23.6.2016.
[306] Judgment of the district court of Vantaa on 27.6.2014 R14 / 626. www.finlex.fi. Viewed 23.6.2016.
[307] Portal of newspaper Iltalehti. http://portti.iltalehti.fi/keskustelu/showthread.php?t=914553.Viewed 23.6.2016.
[308] Judgment of the district court of Porvoo R 09/404. 11.06.2010. www.finlex.fi.Viewed 25.6.2016.

The author notes, that Finland rejected a request for the extradition of the accused Rwanda Bazaramba on the grounds that he cannot get a fair trial in Rwanda and in the autumn of 2009 in the Finnish town of Porvoo's district court a high profile hearing has begun with use of videoconferencing.[309] A former pastor Bazaramba was charged with genocide in Rwanda, Tutsi, 800,000 people population. In the Court of Appeal of Helsinki 22.8–9.12.2011 the Prosecution was represented by a public prosecutor and two district attorneys, court sessions were held in Finland, Rwanda and Tanzania. 64 witnesses were heard from Rwanda and Tanzania; video recordings presented testimonies of 8 more witnesses. The defendant had the right to use their native language in the proceedings, attended by several interpreters. Questions were asked, first in French, then in the language of Kinyarwanda and translated into Finnish. During the court hearings numerous errors in the translations were made. Although the total cost incurred by the Ministry of Justice for a preliminary investigation and trial amounted to 5,3 million Euros, according to the Union of Finnish Translators, the quality level was of a very low standard.

For example, accused has explained the content of a written document presented in court. Bazaramba told the court that he saw a gun and inquired about acquisition permission from the mayor. The letter was written in May 1994:

"Jag skriver till Er för att informera Er om att under dessa dagar har jag sett ett vapen som tillhör kategori Kalshnikov."

An interpreter from Rwanda translated the written document from the language of Kinyarwanda into French and then his colleague from Guinea translated it from Swedish into Finnish and content of the letter was interpreted so that Bazaramba acquired a machine gun. An issue of the protection of evaluation doubtfulness of a translated document from Swedish and distorting the content of evidence of the accused, the presiding judge has promised to evaluate later.

The court judged Bazaramba to be guilty of arson in a settlement of Tutsi, propaganda and inciting murder through fomenting anger and contempt. Convicted, he received a life imprisonment sentence. Supreme Court of Finland has not issued decisions on review of the case.

Currently in Finland the interpreters employed by courts are not qualified to officially conduct this services at the required level of expertise. Translations of written documents for trial courts require a translation to be completed by an authorised interpreter and confirmed with an official rubber stamp. Authorised interpreters are defined by law and governed by the Act on authorised translators 7.12.2007 / 1231.

[309] Law on the preliminary investigation. 22.7.2011 / 805, 13 §. www.finlex.fi. Viewed 25.6.2016.

Finnish legislation clearly states when it is necessary to have an interpreter present and who is responsible for the costs of interpretation, but the laws relating to the interpretation in the Finnish legal sphere, contain very few provisions on the requirements for interpreters and their responsibilities. Law on administrative enforcement established that a person involved in legal proceedings as an interpreter or translator cannot have any involvement to parties in the case, or to the case itself, as such a relationship is a cause in which the credibility of the interpreter can be called into question. (Hallintolainkäyttölaki, 26.7.1996 / 586, 77§. Administrative judicial procedure act Finland).

The situation with the legal translation in Finland has changed in October 2013, when Directive of the European Union "on the right to interpretation and translation in criminal proceedings" (N Directive 2010/64 / EC of the European Parliament and of the Council of the European Union) entered into force.

In 2011, the Law on preliminary investigation has been implemented, with the addition of the translation and interpretation of documents for preliminary investigation based on the legal protection of the suspect. For the first time an amended legislation gives the right for a suspect to appoint a new interpreter if it involves legal protection of the suspect or any other compelling reasons. Also, messages, invitations and documents relating to the preliminary investigation will be sent in the language that the suspect may presumably understand sufficiently. These amendments entered into force on 1 January 2014.

The author believes, that the situation with oral legal translation in Finland is far from the requirements set by the European Union, as even fundamental issues with setting an authorised interpreters practice in Finland have not been solved, and the directive "on the right to interpretation and translation in criminal proceedings" is not properly executed.

In comparison, Germany has in excess of 22,000 translators, and only highly qualified authorised professionals are invited to perform oral and written translations in courts, as they are well aware that the legal interpretation and translation – is a responsibility, where its implementation is vital for provision of legal protection and human rights.

4.5. The right to protection against arbitrary or unlawful interference with privacy, family, home or correspondence based on an example of Finland

In the Report of the Office of the United Nations High Commissioner for Human Rights the governments reportedly have threatened to ban the services of telecommunication and wireless equipment companies unless given direct access to communication traffic, tapped fibre-optic cables for surveillance purposes, and required companies systematically to

disclose bulk information on customers and employees. Furthermore, some have reportedly made use of surveillance of telecommunications networks to target political opposition members and/or political dissidents. There are reports that authorities in some States routinely record all phone calls and retain them for analysis, while the monitoring by host Governments of communications at global events has been reported. Authorities in one State reportedly require all personal computers sold in the country to be equipped with filtering software that may have other surveillance capabilities. Even non-State groups are now reportedly developing sophisticated digital surveillance capabilities.[310]

Concerns have been amplified following revelations in 2013 and 2014 that suggested that, together, the National Security Agency in the United States of America and General Communications Headquarters in the United Kingdom of Great Britain and Northern Ireland have developed technologies allowing access to much global internet traffic, calling records in the United States, individuals' electronic address books and huge volumes of other digital communications content. These technologies have reportedly been deployed through a transnational network comprising strategic intelligence relationships between Governments, regulatory control of private companies and commercial contracts.[311]

The progressive development of society is impossible without legitimate application of human rights and without ensuring its unhindered development. At this stage, almost all of the legal, democratic states consolidated within their national legislations the priority and protection of human rights. The Finnish Constitution guarantees the inviolability of private life and home, honour and personal data. The law provides for actions, concerning the restrictions on privacy of information during a criminal investigation, the judicial investigation and monitoring of state safety: "Everyone's private life, honour and the sanctity of the home are guaranteed. More detailed provisions on the protection of personal data are laid down by an Act. The secrecy of correspondence, telephony and other confidential communications is inviolable. Measures encroaching on the sanctity of the home, and which are necessary for the purpose of guaranteeing basic rights and liberties or for the investigation of crime, may be laid down by an Act. In addition, provisions concerning limitations of the secrecy of communications, which are necessary in the investigation of crimes that jeopardise the security of the individual or society or the sanctity of the home, at trials

[310] Human Rights Council. A/HRC/23/40 . Report of the Office of the United Nations High Commissioner for Human Rights, para 3.
http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.40_EN.pdf. Viewed 2.7.2016.

[311] Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/23/40, para 4.
http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.40_EN.pdf. . Viewed 2.7.2016.

and security checks, as well as during the deprivation of liberty, may be laid down by an Act." (Section 10) [312]

The right to privacy of communication is considered to be an integral part of human rights – natural and imprescriptible rights of individuals recognized at an international level. Restrictions to this right shall be permitted only on the basis of a court decision. This principle does not only guarantee privacy of personal and family secrets but also confidential information, circulated in official and other public relations.

As recalled by the General Assembly in its resolution 68/167, international human rights law provides the universal framework against which any interference in individual privacy rights must be assessed. Article 12 of the Universal Declaration of Human Rights provides that "no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks." The International Covenant on Civil and Political Rights, to date ratified by 167 States, provides in article 17 that "no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation". It further states: "everyone has the right to the protection of the law against such interference or attacks." [313]

Other international human rights instruments contain similar provisions. Laws at the regional and national levels also reflect the right of all people to respect for their private and family life, home and correspondence or the right to recognition and respect for their dignity, personal integrity or reputation. In other words, there is universal recognition of the fundamental importance, and enduring relevance, of the right to privacy and of the need to ensure that it is safeguarded, in law and in practice.

Paragraph 2 of article 17 of the International Covenant on Civil and Political Rights explicitly states that everyone has the right to the protection of the law against unlawful or arbitrary interference with their privacy. This implies that any communications surveillance programme must be conducted on the basis of a publicly accessible law, which in turn must comply with the State's own constitutional regime and international human rights law. [314]

[312] The Constitution of the Republic of Finland. 11 June 1999 (731/1999, amendments up to 1112 / 2011 included). www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf www.finlex.fi. Viewed Viewed 2.7.2016.
[313] Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue .A/HRC/23/40, para 12. http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.40_EN.pdf. . Viewed 2.7.2016.
[314] International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, Article 17. http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx. Viewed 2.7.2016.

In its general comment No. 16, the Human Rights Committee underlined that compliance with article 17 of the International Covenant on Civil and Political Rights required that the integrity and confidentiality of correspondence should be guaranteed de jure and de facto. [315]

On the other hand the problem of combating extremism, the threat of terrorism, international crime and the increase in trafficking of narcotic substances had a significant impact on the evolution of telecommunication surveillance.

International cooperation in combating organized crime and terrorism is an integral part of the activities of many international organizations for a long time. A European Union summit was held in the city of Tampere, Finland, in 1999. The Heads of State and Government have confirmed that the existence of different national systems of justice hinders coordinated fight against international crime and terrorism. To implement the idea of a "European area of freedom, security and legal protection" was scheduled to strengthening the cooperation of all Member States.

This cooperation has become more intense since the terrorist attacks of September 11, 2001. In Europe, this cooperation was further strengthened after the terrorist attacks inflicted on Europe. First it was the explosion of a passenger train in Madrid in April 2004, and the following year an explosion in the London Underground. The Council of Europe strongly opposed international crime and terrorism. Examples of this reinforcement are the European Conventions for the Prevention of terrorism and cybercrime, which came into force in Finland on the 1.9.2007 (L 59/2007).

Government appetite for information about individuals has intensified in the twenty-first century, largely fed by three developments. The first is the appearance of new and dangerous threats to national security, demonstrated by terrorist attacks in New York, Washington, Madrid, London, Mumbai, and elsewhere and compounded by the rise in militant Islamic fundamentalism and increased concerns about chemical and nuclear weapons and cyber security vulnerabilities. The second is the explosion in the volume of digital data routinely generated, collected, and stored about individuals' purchases, communications, relationships, movements, finances, tastes—in fact, about almost every aspect of people's lives in the industrialized world— and the ever growing power of technologies to collect, store, and mine such data.[316]

[315] Official Records of the General Assembly, Forty-third Session, Supplement No. 40 (A/43/40), annex VI, para. 8. https://ccdcoe.org/sites/default/files/documents/UN-150324-SpecialRapporteurOnTheRightToPrivacy.pdf. Viewed 4.7.2016.

[316] Cate Fred H.,Dempsey James X. and Rubinstein Ira S., "Systematic government access to private- sector data", International Data Privacy Law, vol. 2, No. 4, 2012, p. 195.

International terrorism and crime, in contrast, have given rise to diverse forms of national and cooperative security strategies led by the United States and by the UN Security Council limited to policing immediate threats. The famous Decision of the European Court of Justice in Joined Cases C-402/05 P and C-415/05 P – Kadi [317] can be seen as one important reaction, in favour of human rights, to the self-constructed new legislative powers of the UN Security Council.

Interference with an individual's right to privacy is only permissible under international human rights law if it is neither arbitrary nor unlawful. In its general comment No. 16, the Human Rights Committee explained that the term "unlawful" implied that no interference could take place "except in cases envisaged by the law. Interference authorized by States can only take place on the basis of law, which itself must comply with the provisions, aims and objectives of the Covenant."[318]

The European Convention of human rights and fundamental freedoms has defined the limits of this right clearer. Article 8 (2) states: "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Under the European Convention, all persons have the right to privacy of correspondence, but this right can be limited "in accordance with the law" and if "necessary in a democratic society".

Also, many international human rights agreements refer to confidentiality of correspondence as a right. The International Covenant on Civil and Political Rights and the UN Convention on the Rights of the Child operate by the same concepts. At national level, the right to private and family life is enshrined by the Constitution, an integral part of this right is to respect the secrecy of private correspondence contained in correspondence, telephone conversations, postal, telegraph and other messages. The trend of a broad interpretation of the term "correspondence" in relation to the rights in question by the Court has found its logical continuation in Article 7 Charter of Fundamental Rights of the European Union, which states that "everyone has the right to respect for his or her private, family life, home and communications."

[317] Joined Cases C-402/05 P and C-415/05 P. Yassin Abdullah Kadi and Al Barakaat. 21 September 2005. http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62005CJ0402. Viewed 4.7.2016.
[318] Official Records of the General Assembly, para. United Nations. A/HRC/27/37. 30 June 2014. http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A.HRC.27.37_en.pdf. Viewed 4.7.2016.

According to the European Court of Human Rights, the protection of privacy should be considered during both the telecommunication monitoring and the wiretapping.[319]

Any capture of communications data is potentially an interference with privacy and, further, that the collection and retention of communications data amounts to an interference with privacy whether or not those data are subsequently consulted or used. Even the mere possibility of communications information being captured creates an interference with privacy, with a potential chilling effect on rights, including those to free expression and association. The very existence of a mass surveillance programme thus creates an interference with privacy. The onus would be on the State to demonstrate that such interference is neither arbitrary nor unlawful.[320]

On the other hand European Court of Human Rights also takes into consideration the fact that the authorities investigating cybercrime should be able to obtain data about the sender of the message from the service provider when it is necessary for solving the crime, which violated the privacy of the victim.

Any data acquisition obtained from communications is a potential invasion of privacy and the collection and preservation of communication data is a breach of privacy, regardless of whether the data is taken into account or used in the future. Even a faint possibility that this information can be registered constitutes an intervention into privacy, potentially constraining the exercise of rights, including the right to freedom of expression and association. Thus, the privacy of life is compromised by the very existence of the program of mass surveillance, where it is a responsibility of a state to prove that such interference is neither arbitrary nor unlawful.

The Constitution and the laws of the Republic of Finland enshrine only one fundamental rule that the restriction of the right to respect for his private life and correspondence is possible only on the basis of a court decision. The provisions of the Constitution of Finland (§ 10) and agreements on human rights as a legal interest to be protected cover the private or family life, reputation, shelter and information.

Search, seizure of postal and telegraph correspondence, their recess from the service providers, monitoring and recording of telephone and other conversations may be carried out only if there is sufficient evidence to establish the grounds for the conduct of investigations and the necessity of the court's decision on enforcement of action.

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[319] Case of P.G. and J.H. v. the United Kingdom. No 44787/98. 25 September 2001, para 42. http://hudoc.echr.coe.int/eng#{"fulltext":["44787/98"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-59665"]}. Viewed 4.7.2016.

[320] Case of Weber and Saravia v. Germany, para. 78; Case of Malone v. UK, para. 64. http://hudoc.echr.coe.int/eng#{"documentcollectionid2":["GRANDCHAMBER","CHAMBER"]}. Viewed 4.7.2016.

Under Article 3 of Chapter 10 of the coercive measures (Pakkokeinolaki 806/2011) preliminary investigation bodies can give granted permission for surveillance, if there is reason to suspect one of the 16 listed serious crimes or suspected in the business or professional activities related to the 9 listed serious crimes. In section 5 1§ of the Police Act (Poliisilaki, 7.4.1995 / 493, entered into force on 01.01.2014) requires the interception of telecommunications, data collection, monitoring, data collection on the location transmitters, systematic and covert surveillance, technical supervision, receiving personal data from telecommunications addresses or service providers, covert action, controlled purchases and deliveries for information in order to prevent the preparation of crimes, detection or prevention of danger. These methods of obtaining information can be used secrecy from the surveillance subject. During the investigation of criminal cases the investigating authorities can obtain information about the telecommunication monitoring and telephone conversations of suspects after receiving special permission from the court for a period of not more than 1 month.

According to the report, the police department of the Ministry of Internal Affairs of Finland for the collection of classified information and monitoring in 2014 the police received 1,428 permits for wiretapping and 1631 permits tracking of mobile phones.[321]

Infraction when considering the prerequisites of application for telecommunication control and wiretapping were established by the decision of the Court of Appeal of Helsinki 21.3.2014. The Court of Appeal stated that on the basis of § 5 (paragraph 2) (821/2011) and § 16 (paragraph 4) of the Act on the Transparency of proceedings in the courts of general jurisdiction in the case of basic information, documentation, and the court's decision shall be classified until the data regarding obtaining of the information, in accordance with the Law on the use of coercive means (Chapter 10, § 60, paragraph 1), is communicated to the suspect informing him of the crime.

Helsinki Court of Appeal overturned the decision handed down by the court permission for the surveillance and decided that under § 10 of the Constitution everyone has the right to privacy of correspondence, telephone conversations and other confidential communications, but the law can also be installed in compliance with the necessary restrictions to privacy of information in the investigation of crimes encroaching on security of the person or company, or to the inviolability of the home, at the trial, and safety control.

[321] Police report for the department of Internal Affairs of Finland, the collection of classified information and monitoring in 2014. 02/27/2015. SM 1523217 pp. 4–5. https://www.intermin.fi/download/58755_Selvitys_poliisin_tiedonhankinnnasta_ja_sen_valvonnasta_vuonna_2014.pdf?3be464c5e74ed288. Viewed 6.7.2016.

This right is enshrined in Article 8 of the Convention for the Protection of Human Rights and Freedoms and the jurisprudence of the European Court of Human Rights.[322]

However, the author indicates, that the cyber-attacks continue, compromising national security and violating freedoms and rights of citizens to correspondence and telephone conversations.

July 16th 2015 30-year-old Lauri Love arrested yet again, a Finnish and British citizen has been charged with hacking into various agencies, including the US army, Nasa, the Federal Reserve and the Environmental Protection Agency. The extradition warrant on behalf of the US alleges offences under the Computer Misuse Act for which he has been indicted in the districts of Virginia, New Jersey and New York between various dates in 2012 and 2013. Love was first arrested by officers from the UK's National Crime Agency under the act in October 2013 and released on bail.[323]

An evident link between cybercrime and organized crime, the professional level and decrease in the age of cyber criminals gaining access to personal data of users of the Internet for fraud with bank accounts should be noted.

On the basis of data provided by the operational department to combat cybercrime, in April 2015 the Helsinki district court ordered the prison sentence of 24-year-old Viljar Kivi for 11 serious crimes in the networks of the Internet, where he received the credit card codes to further money laundering through electronic payments. Earlier, in September 2014 the same court found Viljar Kivi guilty of 280 offenses of fraud and 51 instances of hacking information between the years 2011–2012.

July 7, 2015 City of Espoo District Court sentenced a 17-year-old Finnish teenager Julius Kivimäki to two years' probation for 50,700 information burglaries on the Internet of more than a hundred countries, including the server at MIT and Harvard University, he also managed to hack and capture the email of more than 15,000 University of Massachusetts users.[324]

While the offences were committed the cyber-criminal was 15–16 years old, however his activities have commenced at a tender age of **13 years** old. The teenager was sentenced for computer crime, money laundering and fraud: convicted has exchanged the credit card data with the third parties and used stolen data for online purchases, colluding with the persons who remain unknown.

[322] Judgment of Helsinki Appeal Court from 18.12.2012, HelHO:2012:21.www.finlex.fi. Viewed 2.1.2016.
[323] British man accused of hacking into US government networks arrested. The Guardian. 16 July 2015. http://www.theguardian.com/technology/2015/jul/16/british-man-lauri-love-accused-hacking-us-government-computer-networks-arrested. . Viewed 6.7.2016.
[324] Judgment of district court of Espoo 03.27.1997, R15/268 from 7.7.2015. www.finlex.fi. Viewed 6.7.2016.

As long as there is a risk of proliferation of weapons of mass destruction, terrorism, cyber crime, extremism, transnational crime, drug trafficking, within the framework of the problems of combating international terrorism, there is an issue of basic human rights in the context of the fight against terrorism, including having a form of manifestation of human rights to personal integrity, violation of the right to read personal correspondence and recording of the phone conversations.

In this regard, the issue of wiretapping and reading people's private correspondence in social networks by security services remains open. Within the framework of the fight against terrorism and crime, human rights, in particular on the correspondence, are violated. It is often the only way to reduce the number of victims of terrorist acts or avoid them altogether. Yet against the backdrop of the rule of law and respect for human rights in such cases it should go only to limit the rights of man, but not a directly violate them.

Violation of the individual's right to respect for private life, his home and his correspondence was repeatedly considered by the European Court of Human Rights. According to Article 8 of the European Convention, the Court has clarified the circumstances under which a state is permitted to violate this integrity and identified a number of requirements for the rules on wiretaps by the member countries of the Convention.

In conclusion, the author must showcase an example of the result provided by law on wiretapping in the investigation of crimes and for the purpose of a judicial investigation against criminal activities in Finland. As a result of a court of Helsinki permission for wiretapping investigation was initiated on suspicion of having committed a series of criminal cases in Finland. On the basis of this operational data November 15, 2013 the former chief of the Helsinki drug police was arrested on suspicion of 29 crimes, including serious drug offenses 8, organizing the supply of around 1,000 kilograms of hashish from the Netherlands and of involvement in drug sales in Finland.

As the defendants in the case are 12 suspects, among them Keijo Vilhunen, who is considered to be the leader of a large criminal group United Brotherhood, as well as the 4 drug police officers and a subordinate Jari Aarnio and former Estonian policeman accused of money laundering.

Prosecutor demands punishment for Jari Aarnio by means of imprisonment for a term of 13 years.

The investigation into former Helsinki Police Commissioner Jari Aarnio affected change in the law. The Government of Finland in September 2014 introduced a Parliamentary bill that extends the powers of the police.

The author conducted the analysis and came to the following conclusion that a system of legal protection in Republic of Finland which includes the permit issued by the court of first instance meet the requirements of the European Court of Human Rights and provides the legitimate right to persons, who are subject to coercive measures.

The author has concluded also, that the national legislation of the Republic of Finland corresponds to the Article 8 of the Convention and the principles established by the case law of the European Court of Human Rights. Nevertheless, national security, the fight against crime and international terrorism require the amendment of national legislation. National legislation should include clear rules to ensure the interests of citizens in an adequate definition of the circumstances and conditions under which public authorities are empowered to take such tacit coercive measures.

Significant place in the responsibility for the implementation of the control functions assigned to the Parliamentary Ombudsman, whose role in terms of legal protection becomes central.

Brief summary of Chapter 4

ECHR has repeatedly voiced that in accordance with its established practice, clause 1 of article 6 guarantees judicial consideration of disputes relating to any individual's civil rights and obligations; this way the «right to trial» is implemented, its most important aspect being the right of access to justice. However, this right would be illusory if the state's legal system let the final and binding judicial judgement remain inoperative to the detriment of one of the parties. It is hard to imagine that article 6, while describing in detail the procedural guarantees to fair trial granted to the parties, would have left the realization of judicial judgements without protection; which would lead to situations incompatible with the principle of the supremacy of law.

As early as in 1979, ECHR declared and repeatedly voiced that the Convention is a living instrument, which must be interpreted in the light of current conditions. The author refers to the statement of the former ECHR President Jean-Paul Costa:

"The Court's case-law is not laid down once and for all... In other words, while observing the force of precedents, our Court applies the "stare decisis" rule flexibly; since its earliest judgments, moreover, it has treated the Convention as a living instrument which must be interpreted in the light of present-day conditions."

In view of the modern conditions, amendments to the Constitution of Latvia and Finland have been made, that secure and guarantee a broader scope of rights than those specified in the Convention and in the international human rights instruments.

CONCLUSION

Roman justice formula *justitia est fundamentum regnorum* is the basis of the state and has become relevant in the XXI century. The indefeasible human rights and freedoms should not simply be recognized or officially declared but effective mechanisms to guarantee them should be created, including by means of international judicial organizations.

The conducted research shows a largest number of violations of all the confirmed violations of articles of the Convention – is due to deviations from Article 6 of the Convention, which provides everyone a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. After the Convention entered into effect in Latvia in 1997, ECHR took 107 resolutions in respect of Latvia. In 94 passed resolutions, only in 13 cases the Court did not find violations of the European Convention or the articles of its protocols.

In 2014, ECHR ordered Latvia to pay 1,33 million Euros of refund, of which Vistiņš taken alone was to pay off 1,21 million Euros.

In the period 1995–2015, ECHR admitted 151 violations of the Convention articles or its protocols by Finland, of which 98 cases constituted infringement of article 6 of the Convention, that is, 65%.

Presented in this study is a comparative practice of case review in the Constitutional Court in the Republic of Latvia Supreme Court in all three departments with the procedural practices of the Supreme and Supreme Administrative Courts of Finland suggest that earlier such comparative studies have not been conducted and that the conclusions drawn and approved proposals of the research, when implemented, can make a vital contribution to the protection of human rights in the Republic of Latvia and the Republic of Finland.

At the period of the author's work on the Doctoral thesis, major changes have affected some member states of the European Union and candidates for EU memberships. Consequent to Brexit vote in Great Britain, as well as the position of the Constitutional Courts of the member states of the Convention inevitably caused an increased trend of disagreements with separate decisions of the European Court of Human Rights, referring to the fundamental norms of the Constitution of the nation-state and have had an impact on interpretation of the issues raised in the research and on the final conclusion of the Doctoral thesis.

Catastrophic terrorism faced by France, Belgium and Germany is pushing the EU member states towards taking drastic measures to preserve their security and stability; for example, France introduced a state of emergency. Following the coup d'étatattempt Turkey implemented a 3 months state of emergency – a state that aspires to join the EU. In this

regard, the Finnish legal scholar Martin Scheinin recalled that the European Convention on Human Rights allows derogation from certain rights under extraordinary circumstances, but it does not allow non-compliance with all articles of the Convention. For example, the prohibition of torture, the death penalty and the prohibition of discrimination is one of the rights that must also be complied with in an emergency.

Similarly, there cannot be any derogation from the principle of punishment without law: No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed.

The challenges of the early 21st century, faced by the individual states in the past, does not make other states exempt from their reoccurrence. However international law clearly states that even in an emergency, any person under the jurisdiction of EU member states retain the right to a fair hearing of his case in the court and has guaranties against torture, discrimination and death penalty.

The fight against terrorism is pushing European countries to take drastic measures to respect, protect and ensure the rights of the state to provide for the security of its citizens.

The author emphasizes that such measures should not restrict constitutional freedoms and respect for international law to a fair trial.

The above-mentioned circumstances have allowed the author to touch on the topic of the human rights situation in a rapidly changing situation in the EU, as well as helping to derive additional arguments in formulating of the conclusions and the nomination of individual proposals to improve the legislation in Latvia and Finland.

Emphasizing the role of the international law and in particular the European Convention, as expressed in the judgements of European Court of Human Rights, the author considers the protection of basic human rights and freedoms to be a paramount factor, as well as compliance with the requirements of fair judicial trial in accordance with the provisions of the Constitution, unless this results in mitigation or limitation of the fundamental rights provided by the Constitution or creates a threat for the democratic and constitutional foundations of the state.

In order to achieve the goals defined during the Doctoral thesis the following research objectives were set and solved:

1. The role and the legal significance of the Constitution in the national proceedings the Republic of Latvia and the Republic of Finland was analysed.

In the judgements of ECHR, particularly within the period 1979–2010, the Court repeatedly recommended that the national authorities, in particular courts, gave priority to the

interpretation and enforcement of internal legislation and to judgements based on issues of constitutionality.

A different approach could result in diminution of the role of the Constitution as an act of supreme legal force valid on the territory of the country, and therefore – in undermining the foundations of the constitutional order and state sovereignty.

2. The place and role of the European Convention of Human Rights and practice of ECHR in a fair trial was defined.

The same basic values were laid down in the European Convention and the Constitution of Latvia and of Finland: the guarantee of the human and civil rights and freedoms – as integral components of the law-governed state, which contribute to effectuation of justice in the society. Most of the chapters in the Constitution of the Republic of Latvia and the Republic of Finland are close in wording and semantics to the Convention provisions.

Presented by the author is the analysis of judgements of the Latvian Constitutional Court and also the judgments of Supreme Court of Republic of Finland, which demonstrates its definite position regarding the fundamental value of the European system of protection of the rights and freedoms, expressed in consistent implementation of the Convention provisions and the judgments of the ECHR for the right to a fair trial.

3. The case review process in the Supreme Court of the Republic of Latvia and the Republic of Finland and the implementation of international standards of supervision of the judicial activities was investigated.

Considered in the study is a legal stance of the Supreme Court of Finland, suggest the supremacy of the Constitution in implementation of the law and the supreme legal force of the Constitution of Finland in case of a conflict with international law. In the national legal order the Convention for the Protection of human rights and fundamental freedoms, together with the Court's practice is only a guide for the interpretation of the fundamental rights and principles of the Constitution and only under the condition that this does not lead to the restriction or derogation of the fundamental rights of citizens guaranteed by the Constitution of the country.

4. The implementation and the right to protection of a fair trial was analysed.

The undertaken study has showed that despite the considerable differences between the national legal systems of the Republic of Latvia and the Republic of Finland, the both systems use a statutory method of implementation of the international norms into the legal system, those confirming the right to a fair trial.

Considering the decisions of the three departments of the Supreme Court of the Republic of Latvia and Supreme Court and Supreme Administrative Court of the Republic of

Finland as an example, the author concludes that the practice of application of the European Convention and judicature of ECHR has seen a more frequent use by the Republic of Latvia.

The author gives a comparative picture of the national judicature and the enforcement of ECHR judgements in the Republic of Latvia and in the Republic of Finland and puts forward some practical recommendations for discussion and approbation.

PRACTICAL RECOMMENDATIONS

As shown in the undertaken research, the greatest number of violations by national courts involves the infringement of Article 6 of the Convention. Judicial errors in imposing sentences by national courts and the increasing number of cases considered by higher courts form the need to change the legislative procedure and make reforms in the judicial system.

After the comparative analysis of the European countries' Constitutions, the judgements of ECHR, the Constitutional Court of the Republic of Latvia and the Constitutional Courts of European countries, as well as the judgements of the Supreme Court of Latvia and of Finland, the author the following changes to the Constitution of Republic of Latvia and the Republic of Finland:

1. The principle of the presumption of innocence is one of the basic principles of justice. The author proposes to make amendments to Article 8 of the Constitution of the Republic of Finland

and to present it as follows:

Everyone accused of committing a crime shall be considered innocent until his guilt is proved according to the rules fixed by law and confirmed by the sentence of a court, which has come into legal force.

The suspect or the accused is not obliged to prove his innocence.

Unremovable doubts about the guilt of a person shall be interpreted in favour of the accused.

2. The author proposes to amend article 17 paragraph 2 of the Constitution of the Republic of Finland

and to present it as follows:

Everyone charged with a criminal offence has the rights to have the free assistance of an interpreter if he cannot understand or speak the language used in court and receive the legal documentations of the case in their native language.

3. The author proposes to amend article 21 of the Constitution of the Republic of Finland

and to present it as follows:

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Everyone is entitled in accordance with the international treaties of the Republic of Finland to international bodies for the protection of human rights and freedoms, if exhausted all available domestic remedies, as is the generally recognized rules of international law.

In case of unjustified infringement of rights, everyone is entitled to an appropriate remedy.

4. The author proposes to amend article 22 of the Constitution of the Republic of Finland

and to present it as follows:

Everyone is guaranteed the right to qualified legal assistance. In cases stipulated by law, legal assistance is provided free of charge.

Everyone arrested, taken into custody or charged with a crime has the right to be assisted by a lawyer (defender) from the moment of arrest, detention or indictment.

5. The author proposes to amend article 74 of the Constitution of the Republic of Finland

and to present it as follows:

The duties of the Constitutional Commission include execution of reviews regarding constitutionality of bills and other matters brought for consideration, as well as conformity of bills with the norms of international conventions on human rights and conformity of resolutions of the European Court of Human Rights with the Constitution of Finland.

6. The most important element of a fair trial is the right of the accused to know the essence and nature of the charge against him. The author proposes to amend the 2 § of Chapter 4 of the Code of Judicial Procedure of the Republic of Finland (4/1734; amendments up to 732/2015 included)

and to present it as follows:

Use the free assistance of an interpreter at the stage of indictment, the preliminary investigation and in all stages of the proceedings.

7. The author proposes to amend paragraph 1 of Article 3 of Chapter 10 of the Coercive Measures Act of the Republic of Finland

and to present it as follows:

The investigative operations that limit the constitutional human and civil rights to privacy of correspondence, telephone conversations, postal, wire and other communications transmitted over the networks of electric and postal services, as well as the right to privacy of home, are permitted only on the basis of a court judgement and collection of sufficient information on indicia of being-prepared, being-committed or committed grave crime.

8. The author proposes to amend Chapter 3, Article 30 of the Police Act

and to present it as follows:

Coercive measures may be used, unless their application can be considered justified, taking into account the degree of the offense, the importance of the investigation and the extent of violated rights of the suspect or other persons, and only after obtaining a special permit for it issued by the court for a duration not exceeding one month.

9. In order to rectify the situation and to ensure the effective implementation of the rights of suspects and accused persons to legal aid, the author proposes to amend the Procedural Code of the Republic of Finland chapter 15 § 1 and for the Preliminary Investigation Law chapter 2 § 1 and bring them into line with Article 6 of the European convention

and to present it as follows:

Everyone charged with a crime has the rights to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.

10. The author proposes to amend Article 6 of Chapter 2 of Law on Preliminary Investigation of Finland

and to present it as follows:

Everyone charged with a criminal offence to be guaranteed the right to qualified legal assistance. In cases stipulated by the law legal assistance is provided free of charge.

Any detained person held in custody and charged with a crime has the right to legal assistance (legal counsel) from the moment of detention, arrest or accusation.

A person suspected or charged with a criminal offence has the right to legal counsel at all stages of the criminal process.

11. The author proposes to amend Article 2 of Chapter 4 Procedural Code of the Republic of Latvia

and to present it as follows:

Everyone arrested, taken into custody or charged with a crime has the right to have the free assistance of an interpreter from the moment of arrest, detention or indictment, if he cannot understand or speak the language used in court.

12. The author proposes to amend article 89 of the Constitution of the Republic of Latvia

and to present it as follows:

The State recognizes and protects the fundamental human rights provided by this Constitution, the laws and international treaties binding on Latvia.

The international statutes of human rights and the practice of their implementation at the level of constitutional law serve as a means of interpretation making it possible to establish the substance and scope of basic rights and principles of the law-governed state, to the extent that such interpretation does not lead to mitigation or limitation of the fundamental rights contained in the Constitution.

13. The author proposes to amend article 92 of the Constitution of the Republic of Latvia

and to present it as follows:

Everyone may defend their rights and lawful interests in the fair court.

Every individual shall be presumed innocent unless his guilt is established by the law. In case of unjustified infringement of rights, everyone is entitled to the appropriate remedy.

Every individual has the right to assistance of an attorney selected by him/her or, in case of insufficient means to pay for legal assistance, – to make use of appointed defence counsel free of charge, where this is required by the interests of justice.

14. The author proposes to amend article 96 of the Constitution of the Republic of Latvia

and to present it as follows:

Everyone shall have the right to the inviolability of his (her) private life, personal and family privacy, and protection of his (her) honour and good name.

Everyone shall have the right to privacy of correspondence, of telephone conversations and of postal, telegraph and other communications. This right may be limited only on the basis of a court order.

15. The author proposes to amend Section 16 (Matters to be Adjudicated in the Constitutional Court) paragraph 6 of the Constitutional Court Law of the Republic of Latvia

and to present it as follows:

Conformity of Latvian national legal norms with those international agreements entered into by Latvia that is not in conflict with the Constitution. If the Constitutional Court comes to the conclusion that a ECHR ruling based on the Convention on Human Rights and Fundamental Freedoms interpreted contrary to the Latvian Constitution may not be enforced, the ruling shall be not enforceable, as concerns this provision.

16. The author proposes the following amendments to Article 1 of Chapter 88 Criminal Code of the Republic of Latvia

and to present it as follows:

1) use of explosives, arson, chemonuclear, chemical, biological, bacteriological, toxic or other weapons of mass destruction, mass poisonings, spreading of epidemics, epizootic

(animal poisoning), kidnapping, hostage-taking, hijacking of air, land or water transport or other actions that have the purpose of intimidating a population, or aim to force the state, its agencies and international organizations to commit an act or refrain therefrom, or to harm the interests of the state, its people, or the interests of international organizations (terrorism), – shall be punished by life imprisonment or depravation of liberty for a term of nine to twenty years with confiscation of property or without confiscation of property and with supervision by a probation officer for up to three years.

17. The author proposes the following amendments and the supplementation to Article 88.[3] of the Criminal Code of the Republic of Latvia

and to present it as follows:

For a person who commits the recruitment and/or training of persons for the commitment of acts of terror, the applicable punishment is deprivation of liberty for a term from eight to fifteen years, with or without confiscation of property and with probationary supervision for a term of three years.

18. The author proposes to amend the Article 1 (5) of Chapter 34 (a) of Criminal Code of the Republic of Finland

and to present it as follows:

Deliberate infliction of grievous bodily harm, dangerous to human life, abduction and human trafficking, hostage-taking, arson, threat to health, theft or use of chemonuclear weapons as well as chemical, biological and bacteriological weapons – shall be punished by life imprisonment or depravation of liberty for a term from eight to twenty years with confiscation of property or without confiscation of property.

The Doctoral thesis is a comprehensive completion of a research study. The purpose of the study and answers to formulated research questions have been achieved and supported by the answers of the ECHR Judges from Latvia and Finland and recognized experts in the field of international and constitutional law.

LIST OF PRESENTATIONS AT CONFERENCES

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2. IV International young researchers and students´ scientific and practical conference "Time of Challenges and Possibilities: Problems, development and perspectives". Riga. 15–16 May 2014.
3. 3nd International Scientific Conference. "Transformation Process in Law, Regional Economy and Economic Policies: Topical Economic, Political and Legal Issues". BSA. Riga. 12 December 2014.
4. International Practical Conference in RSU. Topical Problems of Security Reinforcement: Political, Social, Legal Aspects. Riga, April 23 2015.
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484. Decision of Appeal court of Helsinki, 01.07.2014, 1.7.2014, No 1431.
485. Decision of Appeal Court of Vaasa from 1.7.2011, No 811.
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United States Court of Appeals

489. Committee of United States Citizens Living in Nicaragua v. Regan. United States Court of Appeals, District of Columbia Circuit. Argued Nov. 13, 1987.
490. Court of Appeals, Second Circuit, June 30, 1980, Filartiga v. Pena-Irala.

SUPPLEMENTS

Interviews with the former Judges of European Court of Human Rights and Constitutional Court of Republic of Latvia.

1. Martins Mits. Judge at the European Court of Human Rights. 10. December 2015, Strasbourg.

2. Professor Aivars Endziņš, former Vice-President of the Constitutional Court of the Republic of Latvia, 13 November 2015.

3. Gunārs Kūtris, former Vice-President of the Constitutional Court of Republic of Latvia. 15 December 2015.

4. Uldis Ķinis, *Dr. iur*., assoc. professor, Vice-President of the Constitutional Court of the Republic of Latvia, 29 November 2015.

5. Juris Jelāgins, former Vice-President of the Constitutional Court of the Republic of Latvia, 10 February 2016.

6. Pauliine Koskelo, Judge at the European Court of Human Rights (Finland), former President of Supreme Court of the Republic of Finland, 10 January 2016, Strasbourg.

10.12.2015 18.55

Dear Vladimir Jilkine!

Your questions indicate that you need to do a basic study of the Latvian legal writings. For example, you can use my book "European Convention on Human Rights in Latvia: Impact on Legal Doctrine and Application of Legal Norms", Medya Trick, Lund, 2010.

Vitolds Zahars might have a copy of this book.

Due to my position I cannot comment on how the Latvian courts must deal with the ECHR.

From a perspective of the ECHR, its obligations cannot be set aside by referring to domestic law, including the Constitution (Vienna Convention on the Law of Treaties).

Wishing you best of success,
Martins Mits

God. Jilkine kungs,

Atbildot uz Jūsu jautājumiem:

1. Starptautiskās normas nav prioritārākas par Satversmes normām. Satversmes tiesas Likuma 16.panta 2.punkts nosaka, ka Satversmes tiesa izskata lietas par "Latvijas parakstīto vai noslēgto starptautisko līgumu (arī līdz attiecīgo līgumu apstiprināšanai Saeimā) atbilstību Satversmei". Tā ir tā saucamā preventīvā kontrole. Savukārt šā panta 6.punkts nosaka, ka Satversmes tiesa izskata lietas par "Latvijas nacionālo tiesību normu atbilstību tiem Latvijas noslēgtajiem starptautiskajiem līgumiem, kuri nav pretrunā ar Satversmi". Savukārt Satversmes tiesas likuma 32.panta "Satversmes tiesas sprieduma spēks" ceturtā daļa nosaka, ka "Ja Satversmes tiesa par neatbilstošu Satversmei atzinusi kādu Latvijas parakstīto vai noslēgto starptautisko līgumu, Ministru kabinetam ir pienākums nekavējoties gādāt par grozījumu šajā līgumā, šā līguma denonsēšanu, tā darbības apturēšanu vai pievienošanās atsaukšanu".
Ja ir kolīzija starp nacionālo tiesību normu un Latvijai saistošu starptautisku līgumu (kas nav pretrunā ar Satversmi), tad augstāks juridiskais spēks ir starptautiskai normai.

2. Atbilde uz otro jautājumu izriet no atbildes uz pirmo jautājumu.

3. Principā situācija, ka Eiropas Cilvēktiesību tiesa konstatētu EP Cilvēktiesību aizsardzības konvencijas pārkāpumu lietas izskatīšanā Latvijas tiesā nav retums, bet, ka šāds spriedums varētu ierobežot Satversmē garantētās tiesības principā nav iespējams, jo EP Konvencijas, kā arī Eiropas Savienības Pamattiesību Hartas normas paredz plašāku Cilvēka pamattiesību un pamatbrīvību spektru, nekā Satversme.

4. Atbilde uz šo jautājumu izriet no iepriekš teiktā.

Ar cieņu,
Prof. A. Endziņš

A.god. Jilkine kungs!

Labdien!

Ievērojot Jūsu izteikto lūgumu sniegt atbildes uz konkrētiem jautājumiem par konstitucionālo un starptautisko tiesību normu hierarhiju, sniedzu savu viedokli.

1. Vai, Jūsuprāt, starptautiskās normas ir prioritārākas par Latvijas Republikas Satversmes normām, vai otrādi?

Ja ievērotu tikai "tīro" teoriju par tiesību normu hierarhiju, starptautiskās normas būtu jāuzskata par prioritārākām. Turklāt šo jautājumu sarežģītāku padara arī Eiropas Savienības normas, kuras tiek sauktas par pārnacionālām, bet ne starptautiskām.

Tomēr uzskatu, ka valsts konstitūcija (tās normas) ir pāri visam, t.i., prioritārāka. Tiesības piedalīties starptautiskās organizācijās un uzņemties starptautisko dokumentu (normu) radītās saistības izriet no suverēnas valsts konstitūcijas normām. Tātad konstitūcija atļauj valstī darboties šīm starptautiskajām normām. Būtu absurdi, ja starptautiska norma (iespējams – neveiksmīgi formulēta vai ar balsu vairākumu pieņemta) varētu apdraudēt vai aizskart suverēnas valsts konstitucionālās (konstitūcijā ierakstītās) vērtības.

Vienlaikus jāpiebilst, ka šādai situācijai nevajadzētu rasties, jo arī starptautiskos dokumentus pieņem korektā procedūrā. Otrkārt, valstij var rasties arī nepatīkamas sekas, ja neizpildītu starptautisko normu prasības, bet tas ir kā jebkurā līgumā – ja neizpildi, ko pats apņēmies, tad arī maksā.

2. Vai Latvijas Republikas Satversmes tiesai saistošākas ir starptautisko tiesību normas vai Latvijas Republikas Satversmes normas?

Satversmes tiesas praksē nav bijusi nepieciešamība vērtēt normas šādā aspektā. Tiesa uzskatīja, ka Satversme (vismaz cilvēktiesību jomā) vienmēr personai paredz plašākas tiesības un mazāk ierobežojumus. Starptautiskās tiesību normas tika piemērotas tikai divos gadījumos: (1) Satversme konkrēto jautājumu vispār neregulē, (2) starptautisko normu piemērošanas prakse palīdz pilnīgāk izprast Satversmē noteikto tiesību saturu.

Satversmes tiesa starptautiskās tiesību normas ir piemērojusi kā spēkā esošas. Nav bijusi nepieciešamība vērtēt to iespējamo pretrunu Satversmei.

Papildus varu norādīt, ka Satversmes tiesas likumā ir paredzēts risinājums situācijai, ja tiesa atzītu starptautisku normu par neatbilstošu Satversmei. Proti, tādā gadījumā Tiesa šo normu nevar atzīt par spēkā neesošu, bet uzdod gādāt par šīs neatbilstības novēršanu. Konkrēti Likuma 32.panta 4.daļa:
"Ja Satversmes tiesa par neatbilstošu Satversmei atzinusi kādu Latvijas parakstīto vai noslēgto starptautisko līgumu, Ministru kabinetam ir pienākums nekavējoties gādāt par grozījumiem šajā līgumā, šā līguma denonsēšanu, tā darbības apturēšanu vai pievienošanās atsaukšanu."

3. Kāda būs Latvijas Republikas Satversmes tiesas pozīcija, ja Eiropas Cilvēktiesību tiesa tās spriedumā konstatēja Eiropas Cilvēktiesību konvencijas pārkāpumu lietas izskatīšanā Latvijas tiesā, bet šāds spriedums kolizē (ierobežo) Latvijas Republikas Satversmē garantētās tiesības?

Grūti atbildēt uz jautājumu par Tiesas pozīciju. Tiesas tiesneši vienmēr uzskatīja, ka nacionālie normatīvie akti vienmēr piešķir personai plašākas tiesības (starptautiski vienošanās parasti tiek panākta par minimālo apjomu). Interpretējot Satversmes normas, Tiesa vienmēr skatījās uz ECT sniegtajiem Konvencijas normu satura skaidrojumiem un vienmēr pieņēma plašāko.

Ir bijusi atšķirība tiesību izpratnē vienā lietā par pensiju piešķiršanu nepilsoņiem (Andrejevas lieta). Spēkā, protams, palika ECT spriedums, taču citā līdzīgā lietā Satversmes tiesa argumentēja savu pozīciju, ka tomēr ir cits faktisko apstākļu kopums un līdz ar to ir atšķirīgs normatīvā regulējuma vērtējums.

4. Vai Latvijas Republikas Satversmes normas ir prioritāras, Augstākajā tiesā izskatot prasību atcelt zemāka līmeņa tiesas nolēmumu, pamatojoties uz Eiropas Cilvēktiesību tiesas atzinumu par Eiropas Cilvēktiesību konvencijas pārkāpumu?

Šāda situācija nav bijusi. ECT spriedumi tiek izpildīti, lai arī ne vienmēr tiem gribas piekrist

(zinot faktisko apstākļus un konkrētās personas). Satversmes normas (vai to interpretācija) nav bijušas pretrunā ar Konvencijas normām.

Personīgi varu piebilst, ka šāda situācija varētu būt skaidrojama ar to, ka Satversmē ir ļoti lakoniskas normas. Nosakot personas pamattiesības, Latvijas konstitūcija nesniedz detalizētu to satura izklāstu. Saturu "piepilda" likumi, Satversmes tiesas spriedumos un ECT spriedumos sniegtā interpretācija. Un tas ir loģiski, jo sabiedrība attīstās un tiesību saturs pilnveidojas ļoti strauji.

Ar cieņu,
Gunārs Kūtris,
Latvijas Republikas Saeimas deputāts,
bijušais Satversmes tiesas priekšsēdētājs

2015. gada 15. decembrī

1. Vai, Jūsuprāt, starptautiskās normas ir prioritārākas par Latvijas Republikas Satversmes normām, vai otrādi?

Atbilde: Latvijas Satversmes normas ir prioritārākās par jebkuru starptautisko tiesību normu. Satversmes tiesa, pamatojoties uz Satversmes 89. pantu, ievērojot Latvijas starptautiskās saistības, protams, ievēro ECT un EST judikatūrā paustās atziņas tiktāl, ciktāl, tās nenonāk pretrunā ar Satversmi.

2. Vai Latvijas Republikas Satversmes tiesai saistošākas ir starptautisko tiesību normas vai Latvijas Republikas Satversmes normas?

Atbilde: atbilde, nē, jo Satversme ir augstākais Latvijas republikas normatīvais akts un jebkurš starptautiskais līgums, ja tās pārkāpj Satversmes normas, ir atzīstams par spēkā neesošu.

3. Kāda būs Latvijas Republikas Satversmes tiesas pozīcija,ja Eiropas Cilvēktiesību tiesa tās spriedumā konstatēja Eiropas Cilvēktiesību konvencijas pārkāpumu lietas izskatīšanā Latvijas tiesā,bet šāds spriedums kolizē (ierobežo) Latvijas Republikas Satversmē garantētās tiesības?

Atbilde: Šāda situācija, Latvijā nav bijusi, bet Lietuvas KT ir divas reizes saskārusies ar šādu situāciju. Lietuvas Konstitucionālā tiesa neskatoties uz šiem ECT nolēmumiem, stingri ir nostājusies Konstitūcijas sardzē un neatzina ECT nolēmumu saistošo spēku. Latvijā Satversmes tiesa visticamāk rīkotos līdzīgi un šāda ECT sprieduma secinājumus, Satversmes tiesa atzītu tiktāl, cik tie nenonāktu pretrunā ar Satversmes normām. Taču šāda situācija mums nav bijusi.

4. Vai Latvijas Republikas Satversmes normas ir prioritāras, Augstākajā tiesā izskatot prasību atcelt zemāka līmeņa tiesas nolēmumu, pamatojoties uz Eiropas Cilvēktiesību tiesas atzinumu par Eiropas Cilvēktiesību konvencijas pārkāpumu?

Atbilde: Protams, taču manuprāt ir jāņem vērā ECT competence izvērtējot nacionālo tiesu spriedumus. Proti lielākā mērā tās kompetence ir vērtēt vai nacionālā tiesa ir pareizi interpretējusi nacionālās tiesību normas konvencijas kontekstā. Par cik ECT pieņem pieteikumus tikai tad, kad ir izsmelti visi nacionālā līmeņa tiesību aizsardzības līdzekļi un nolēmums ir stājies spēkā (res judicata) līdz ar to es nevaru iedomāties, ka ECT būtu apstrīdēts zemākas instances tiesas spriedums. Taču tāpat kā Satversmes tiesa, arī pārsūdzot spriedumu nacionālās tiesību sistēmas ietvaros, neapšaubāmi tiesām ir jāievēro Satversme un piemērojot tiesību normas, ECT un EST atziņas ir jāizmanto normu interpretācijas procesā.

Uldis Ķinis
Dr. iur., assoc. professor,
Vice President of the Constitutional Court of the Republic of Latvia

Atbildes uz jautājumiem par Satversmes un starptautisko normu piemērošanu

1. Vai, Jūsuprāt, starptautiskās normas ir prioritārākas par Latvijas Republikas Satversmes normām, vai otrādi?

Atkarībā no normatīvā akta juridiskā spēka Latvijā ir noteikta normatīvo aktu hierarhija. Līdzīga hierarhija pastāv arī starp normatīva rakstura starptautiskiem tiesību aktiem.

Likuma par starptautiskajiem līgumiem 13. pants noteic, ka: Ja starptautiskajā līgumā, kuru Saeima ir apstiprinājusi, paredzēti citādi noteikumi nekā Latvijas Republikas likumdošanas aktos, tiek piemēroti starptautiskā līguma noteikumi.

Savukārt Administratīvā procesa likuma 15. panta 3.daļa noteic, ka:
Ja konstatē pretrunu starp starptautisko tiesību normu un tāda paša juridiskā spēka Latvijas tiesību normu, piemēro starptautisko tiesību normu.

Secinājums: Par Latvijas Republikas Satversmes normām prioritārākas ir tikai tās starptautisko normas, kurām ir tāds pats juridiskais spēks kā Satversmes normām.

2. Vai Latvijas Republikas Satversmes tiesai saistošākas ir starptautisko tiesību normas vai Latvijas Republikas Satversmes normas?

Latvijas Republikas Satversmes tiesai tāpat, kā citām tiesām Latvijas Republikas Satversmes normas un starptautiskās tiesību normas ir vienādi saistošas, ja tām ir vienāds juridiskais spēks. Piemēram, Latvijas Republikas Satversmes normām un Eiropas Cilvēktiesību konvencijai tiek atzīts vienāds juridiskais un līdz ar to saistošais spēks. Cita lieta, ja starp tām tiek konstatēta kolīzija, tad pamatojoties uz minēto kolīzijas normu tiek piemērota Konvencijas norma.

3. Kāda būs Latvijas Republikas Satversmes tiesas pozīcija, ja Eiropas Cilvēktiesību tiesa tās spriedumā konstatēja Eiropas Cilvēktiesību konvencijas pārkāpumu lietas izskatīšanā Latvijas tiesā, bet šāds spriedums kolizē (ierobežo) Latvijas Republikas Satversmē garantētās tiesības?

Latvijas Republikā ir saistošas tikai tās starptautisko tiesību normas, tostarp arī Cilvēktiesību konvencijas normas, kuras tās ir ratificējusi, t.i. atzinusi par tādām, kas nav pretrunā ar Latvijas Satversmi. Ja tiek konstatēts, ka kāda ratificētās konvencijas norma ir pretrunā Satversmei, kolīzija ir novēršama vai nu grozot attiecīgo Satversmes pantu vai arī denonsējot Konvencijas normu.
Satversmes 89. pants noteic, ka: Valsts atzīst un aizsargā cilvēka pamattiesības saskaņā ar šo Satversmi, likumiem un Latvijai saistošiem starptautiskajiem līgumiem.
Satversmes tiesa savā spriedumā nr. 2000-03-01 ir norādījusi, ka no šā panta redzams, ka likumdevēja mērķis nav bijis pretstatīt Satversmē ietvertās cilvēktiesību normas starptautiskajām cilvēktiesību normām, bet ir bijis gluži pretējs – panākt šo normu savstarpēju harmoniju. Gadījumos, kad ir šaubas par Satversmē ietverto cilvēktiesību normu saturu, tās tulkojamas pēc iespējas atbilstoši interpretācijai, kāda tiek lietota starptautisko cilvēktiesību normu piemērošanas praksē.

4. Vai Latvijas Republikas Satversmes normas ir prioritāras, Augstākajā tiesā izskatot prasību atcelt zemāka līmeņa tiesas nolēmumu, pamatojoties uz Eiropas Cilvēktiesību tiesas atzinumu par Eiropas Cilvēktiesību konvencijas pārkāpumu?

Nē, nav prioritāras.

(Pamatojumu skatīt atbildēs uz iepriekšējiem jautājumiem)

Cerībā, ka Jums kaut kas no atbildēs minēta noderēs

J. Jelāgins

Supplement 6

Hyvä Vladimir Jilkine,

Viittaan kirjeeseenne, joka on osoitettu korkeimman oikeuden presidentti Pauliine Koskelolle ja päivätty 28.12.2015. Vastaan tiedusteluunne presidentti Koskelon pyynnöstä.

Kirjeessä tiedustelette korkeimman oikeuden oikeusneuvosten mielipidettä tietyistä lain soveltamiseen liittyvistä kysymyksistä. Korkeimman oikeuden kanta ilmenee korkeimman oikeuden ratkaisuista. Näitä ratkaisuja tutkimalla löydätte parhaiten vastauksen kysymyksiinne. Ratkaisut ovat vapaasti luettavissa valtion säädöstietopankki Finlexissä suomeksi tai ruotsiksi. Päätöksiä ei käännetä vieraille kielille.

Hain tähän esimerkiksi Finlexistä viimeaikaisia täysistuntoratkaisuja. Monissa niistä on pohdittu kansallisen lainsäädännön suhdetta Euroopan ihmisoikeussopimukseen. Tämä lista ei ole tyhjentävä. Ihmisoikeussopimusta koskevat korkeimman oikeuden päätöksen löytyvät hakutermillä Euroopan ihmisoikeussopimus.

Tämän enempää emme valitettavasti pysty teitä auttamaan. Jos kaipaatte apua tiedonlähteiden kanssa, suosittelen, että otatte yhteyttä eduskunnan kirjaston tietopalveluun. Sen sähköpostiosoite on kirjasto.tietopalvelu@eduskunta.fi - kirjaston sivulla on myös lomake kysymyksen esittämistä varten.

KKO:2015:14
Oikeudenkäyntimenettely - Pääkäsittely hovioikeudessa
Perustuslaki - Perusoikeudet - Perustuslain etusija
Euroopan ihmisoikeussopimus
Ylimääräinen muutoksenhaku - Kantelu

KKO:2014:95
Ylimääräinen muutoksenhaku - Lainvoiman saaneen tuomion purkaminen
Veropetos - Törkeä veropetos
Ne bis in idem - Veronkorotus
Perustuslaki - Perusoikeudet
Euroopan ihmisoikeussopimus

KKO:2014:94
Ylimääräinen muutoksenhaku - Kantelu - Ihmisoikeusloukkaus
Veropetos - Törkeä veropetos
Ne bis in idem - Veronkorotus
Perustuslaki - Perusoikeudet
Euroopan ihmisoikeussopimus

KKO:2014:93
Ylimääräinen muutoksenhaku - Kantelu
Veropetos - Törkeä veropetos
Ne bis in idem - Veronkorotus
Lis pendens
Perustuslaki - Perusoikeudet
Euroopan ihmisoikeussopimus
KKO:2014:92
Tuomari
Esteellisyys
Veropetos - Törkeä veropetos
Ne bis in idem - Veronkorotus

KKO:2014:14
Isyys - Isyyden vahvistaminen
Perustuslaki - Perusoikeudet - Perustuslain etusija
Euroopan ihmisoikeussopimus
Yksityiselämän suoja - Yhdenvertaisuus

KKO:2014:13
Isyys - Isyyden vahvistaminen
Perustuslaki - Perusoikeudet - Perustuslain etusija
Euroopan ihmisoikeussopimus
Yksityiselämän suoja

KKO:2013:59
Veropetos - Törkeä veropetos
Ne bis in idem - Veronkorotus - Lis pendens

KKO:2012:70
Muutoksenhaku - Kantelu - Valituslupa
Pakkokeino - Vangitseminen

KKO:2012:52
Ylimääräinen muutoksenhaku - Kantelu - Ihmisoikeusloukkaus
Lahjusrikkomus
Virkarikos - Tuottamuksellinen virkavelvollisuuden rikkominen

KKO:2012:11
Isyys - Isyyden vahvistaminen
Perustuslaki - Perusoikeudet - Perustuslain etusija
Euroopan ihmisoikeussopimus
Yksityiselämän suoja

KKO:2010:41
Ylimääräinen muutoksenhaku - Tuomion purkaminen rikosasiassa
Kätkemisrikos - Törkeä kätkemisrikos - Itsekriminointisuoja

KKO:2009:80
Ylimääräinen muutoksenhaku - Tuomion purkaminen rikosasiassa - Ihmisoikeusloukkaus
Itsekriminointisuoja

Toivotan teille onnea tutkimustyössä kiinnostavan aiheen parissa!

10.1.2016

Pauliine Koskelo

ACKNOWLEDGEMENTS

I would like to acknowledge Professor Vitolds Zahars for his supervision of my doctoral study and Doctoral thesis writing, always found a time for comments that raised the quality of my study.

I would like to express sincere gratitude to the Dean of Faculty of Law, Riga Stradins University, Professor Andrejs Vilks and the Chief of Doctoral studies programme "Law Sciences" Professor Osvalds Joksts for encouragement and support during my work on the Doctoral thesis.

I am very grateful for the answers provided by Mārtiņš Mits, Gunārs Kūtris, Aivars Endziņš, Uldis Ķinis, Juris Jelāgins, Pauliine Koskelo and the staff of chancery of the Supreme Court of the Republic of Finland.

I would like to take this opportunity to express my deep gratitude and appreciation to all the individuals, not only for contributing to the substance of my research but also morale support and guidance.

The Professors and Members of the Faculty of Law at the Riga Stradins University have always been friendly and willing to assist whenever such a need arose.

I also want to express my appreciation of everyone who has supported and encouraged me throughout my studies in Latvia and also in Finland, especially the lawyer Kari Korhonen from law office Kari Korhonen Oy.

I am sincerely grateful to my family for understanding and support provided during the research and writing of my Doctoral thesis.

[i] Judgment of 13 May 2005 by the Constitutional Court in the case Nr. 2004-18-0106, para 5 of the Findings. http://www.satv.tiesa.gov.lv/en/cases/. Viewed 16.11.2015.