

# Legal Opinion

for

## BALTIC LABOUR LAW PROJECT

CASE-RELATED INTERNATIONAL LEGAL BACKUP

**Case 46** Estonia no. 13

**Date: 27/08/01**

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**Matter: workers' representatives released from the service**

**International Expert-s: Legal Counsel Stellan Gärde**

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### *A. CASE SUMMARY*

Ly Kovanen was employed as the senior specialist in the Ownership Reform Department of the City of Tallinn since September 25, 1997 until January 31, 2000, when she was released from the service due to lay-off pursuant to Article 116 (1) of the Public Service Act. The release was done without any consent of the labour inspector.

The trade union claims that Ly Kovanen a trade union shop steward was dismissed by her employer despite that the labour inspector's consent was not asked for which is provided for by law and that the employer did not consult the trade union rotal (state and municipal employees' trade union federation) where the shop steward was a member-, as stipulated by the collective agreement.

The question in the case is if a shop steward that in fact is elected by trade union members at the founding meeting of the local trade union before the trade union according to Estonian law was a legal person and later when the legal capacity was achieved was in fact and by official statement accepted by the trade union as such, enjoy or ought to enjoy the same protection as those elected by a trade union with legal capacity. The question is also if it is possible to interpret the national law in accordance with the international standards regarding protection of shop stewards.

### **A Legal Background:**

#### **Applicable national law:**

1 Constitution of  
Estonian Republic

Chapter II Fundamental Rights, Freedoms and Duties  
§ 29.

{...} Everyone may freely belong to associations and unions of employees and employers. Associations and unions of employees and employers may uphold their rights and lawful interests by means which are not prohibited by law.

2 Trade Union Act of the  
Estonian Soviet  
Socialist Republic (in

**§ 7 Articles of Association**

force from 1989);

(1) Trade union draws up its articles of association independently. Drawing up, adoption and change of articles shall comply with democracy principles.

(2) .....

1) Provisions of articles of association should safeguard that the biggest possible amount of members would take part in formation of trade union's bodies and selection of its representatives. Articles of association shall also guarantee that members are informed about trade union bodies' activities as much as possible.

3 Shop stewards' Act  
Employees'  
Representatives Act

§ 2. Definitions

(1) A representative is an employee of an enterprise, agency or other organisation (hereafter enterprise) who is elected by the members of a union of employees or by a general meeting of employees who do not belong to a union of employees to represent the employees in labour relations with the employer.

(2) For the purposes of this Act, a union of employees is an association of employees formed to represent and protect the interests of employees in labour relations.

§ 3. Election and removal of representative

(1) A representative shall be elected:

1) by the members of a union of employees;

2) by a general meeting of employees who do not belong to a union of employees.

(2) All unions of employees and general meetings of employees who do not belong to a union of employees have the right to elect more than one representative if necessary. If more than one representative is to be elected, the number of representatives shall be agreed upon with the employer.

**(3) The procedure for election of a representative and his or her term of authority shall be determined on the basis of the statutes of the union of employees or by the general meeting of employees.**

(4) The employer shall be notified of the representative elected in writing.

(5) The procedure for premature removal of a representative shall be the same as the procedure for election.

4 Public Service Act

Article 116 (1) of the Public Service Act

§ 116. Release from service due to lay-offs

(1) An official may be released from the service due to lay-offs if the number of positions on the staff of an administrative agency is reduced, if the service is restructured or if an unlawfully released

official is reinstated in the service.

§ 133. Restrictions on timing of release from service

(3) An official elected, pursuant to procedure established by law or a regulation of the Government of the Republic, to an organisation representing public servants or as a representative of public servants may be released from the service due to lay-off, inadequate language or communication skills, health reasons, age, a violation of employment rules or on the basis of evaluation results at the time he or she acts as a representative and within one year thereafter only with the consent of the labour inspector of the location of the administrative agency.

**B**

**B1 Applicable international law:**

**B1.1 International laws in force in Estonia**

1 European Convention  
on Human Rights and  
Fundamental  
Freedoms

Article 11

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, 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. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

2 ILO Convention nr. 87  
on Freedom of  
Association

Article 3

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 5

Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

#### Article 7

The acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.

3 ILO Convention nr.  
135

#### Article 1

Workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements.

#### Article 3

For the purpose of this Convention the term *workers' representatives* means persons who are recognised as such under national law or practice, whether they are--

(a) trade union representatives, namely, representatives designated or elected by trade unions or by members of such unions; or

(b) elected representatives, namely, representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned.

#### Article 4

National laws or regulations, collective agreements, arbitration awards or court decisions may determine the type or types of workers' representatives which shall be entitled to the protection and facilities provided for in this Convention.

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### C. ILO Case Law

#### **Free functioning of organisations. Right to draw up constitutions and rules**

In ILO case law the principles relating to a. the free functioning of organisations and b. the right to draw up constitutions and rules and c. the limitation of interference by the authorities is applied in several cases that has been judged by the Freedom of Association Committee of the Governing Body of ILO.

The texts below in this part of the opinion are the text that has occurred in decisions of the Freedom of Association Committee.

Legislative provisions which regulate in detail the internal functioning of workers' and employers' organisations pose a serious risk of interference by the public authorities. Where such provisions are

deemed necessary by the public authorities, they should simply establish an overall framework in which the greatest possible autonomy is left to the organisations in their functioning and administration. Restrictions on this principle should have the sole objective of protecting the interests of members and guaranteeing the democratic functioning of organisations. Furthermore, there should be a procedure for appeal to an impartial and independent judicial body so as to avoid any risk of excessive or arbitrary interference in the free functioning of organisations.

[See 294th Report, Case No. 1704, para. 156.1]

On the other hand, any legislation adopted in this area should not undermine the rights of workers as defined by the principles of freedom of association. Overly detailed or restrictive legal provisions in this area may in practice hinder the creation and development of trade union organisations.

[See 294th Report, Case No. 1704, para. 146.1]

The regulation of procedures and methods for the election of trade union officials is primarily to be governed by the trade union's rules themselves. Indeed, the fundamental idea of Article 3 of Convention No. 87 is that workers and employers may decide for themselves the rules which should govern the administration of the organisations and the elections which are held therein.

[See 25M Report, Case No. 1403, para. 74.1]

### **Relations between first-level trade unions and higher-level organisations**

As a rule, the autonomy of trade unions and higher-level organisations, including as regards their various relationships, should be respected by public authorities. Legal provisions impinging on this autonomy should therefore remain an exception and, where deemed necessary by reason of unusual circumstances, should be accompanied by all possible guarantees against undue interference.

[See 294th Report, Case No. 1734, para. 468.1]

### **Right to elect representatives in full freedom**

Freedom of association implies the right of workers and employers to elect their representatives in full freedom.

[See the *Digest of 1985*, para. 293.]

An excessively meticulous and detailed regulation of the trade union electoral process is an infringement of the right of such organisations to elect their representatives in full freedom, as established in Article 3 of Convention No. 87.

[See 291st Report, Case No. 1705, para. 324.1]

Legislation which minutely regulates the internal election procedures of a trade union and the composition of its executive committees, fixes the days on which meetings will take place, the precise date for the annual general assembly and the date on which the mandates of trade union officers shall expire, is incompatible with the rights afforded to trade unions by Convention No. 87.

[See the *Digest of 1985*, para. 289.]

### **Trade union leaders and representatives**

One of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. The Committee has considered that the guarantee of such protection in the case of trade union officials is also necessary in order to ensure that effect

is given to the fundamental principle that workers' organisations shall have the right to elect their representatives in full freedom.

[See the *Digest of 1985*, para. 556.1

The Committee has drawn attention to the Workers' Representatives Recommendation, 1971 (No. 143), which recommends, as one of the measures that should be taken to ensure the effective protection of workers' representatives, the adoption of provisions for laying on the employer, in the case of any alleged discriminatory dismissal or unfavourable change in the conditions of employment of a workers' representative, the burden of proving that such action was in fact, justified.

[See the *Digest of 1985*, para. 566.1

## **D Other International law**

### **I European Social Charter Article 5 - The right to organise**

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

## **F. Claims by the Trade Union and the shop steward Ly Kovanen**

The legal grounds and claims that the Ownership Reform Department of the City of Tallinn relating to release of Ly Kovanen from service is illegal is argued by the Trade Union and the shop steward Ly Kovanen in broader terms as follows.

Ly Kovanen's release from service was executed without the one month's advance notice stipulated in Article 130 (1) of the Public Service Act and is on that ground illegal.

October 08, 1998 the trade union organisation (TU) of the Ownership Reform Department of the City of Tallinn was established and Ly Kovanen was elected the TU representative pursuant to the Employees' Representative Act. The TU notified the management of the Ownership Reform Department of the City of Tallinn of the election of the TU representative and the management board in writing October 12, 1998. December 10, 1999 a general meeting of the TU took place, which decided to maintain me on the post of the TU representative until next elections.

April 05, 1999 the Ownership Reform Department of the City of Tallinn and the TU concluded a collective agreement and pursuant to Clause 8.3. thereof the termination of the employment contract with the TU representative on initiative of the employer may be exercised upon the consent of the Association of Trade Unions of the Employees of State and Local Municipalities.

The Ownership Reform Department of the City of Tallinn failed to comply with Clause 8.3. of the collective agreement – the Department has not approached the Association of Trade Unions of the employees of State and Local Municipalities with the application asking for the consent for my release from service.

Pursuant to Article 133 (3) of the Public Service Act an official elected, pursuant to procedure established by law or a regulation of the Government of the Republic, to an organisation representing public servants or as a representative of public servants may be released from the service due to lay-off, at the time he or she acts as a representative and within one year thereafter only with the consent of the labour inspector of the location of the administrative agency. The Ownership Reform Department of the City of Tallinn did not even bother to refer with an appropriate application to the Labour Inspection of Tallinn and Harju County.

### **G. Decision from Tallinn Administrative Court**

Court of 1st instance declared the release from office lawful relying on the following argument:

According to § 3 p 3 of the Shop Steward Act, a trade union shop steward shall be elected according to the rules stipulated in the union's charter.

The court concluded that the union, acting on the basis on federation's rules, did not have its own charter; therefore the trade union officer (shop steward) was not elected according to the procedure prescribed by law. That is why the employee does not enjoy any guarantees for worker's representative, as stipulated by law or collective agreement.

The court argued as follows.

According to paragraph 116 point one of public service act the official may be released from office because of decreasing the number of officials change of service or reinstatement to work of an official who was released from office illegally. Kovanen was released from office upon lay off because of restructuring the activities of Tallinn property reform department.

According to paragraph 116, part 3 of public service act the official shall not be released if there is a possibility to give him another position. Tallinn property reform department informed Mrs Kovanen that there are no vacant work places in property reform department.

According to paragraph 133 part 3 of public service act an official who is elected according to the procedure established by law or regulation of government of Estonia, elected to organisation represented of workers or elected as workers representative, this official has extra guarantee from release from office.

Such an official may be released from office upon lay off during his being elected as workers representative and one year after that only with the written consent of labour inspector. Therefore labour inspector can examine the legality or the rightness of release from office of servants representative.

The management of Tallinn property reform department and Tallinn property reform department trade union concluded a collective bargaining agreement. According to point 8.3 of that the termination of labour contract with trade union shop steward is allowed only with consent of public servants city trade union federation management.

**As provided by minutes of general meeting of Tallinn property reform department trade union from 08 10 1998 it's clear that the property reform department trade union would established and Mrs Kovanen was elected as shop steward.**

**The same minutes state that the union decided to join their federation of public servants trade union as department of this union and they decided to adopt the statutes of public service trade union federation as the ground for their activities.**

The official registration of the local trade union and the affiliation was decided on later.

The court found that since the trade union of Tallinn property reform department had no statute in that time the election of shop steward representative was not carried out as provided by law.

The trade union became a member of public servants trade union federation only from October 12<sup>th</sup> 1998. That's why the statute of federation could extend to trade union organisation of work place only after they became members of the federation.

Therefore there is no ground to argue that elections were carried out according to paragraph 3 point one and point 3 of shop steward act. Only trade union members may take part in electing a shop steward of trade union.

Therefore Mrs Kovanen was not elected as representative of servant as provided by law and consequently she is not covered by extra guarantees as provided by paragraph 133 point 3 part 3 of public service act and Tallinn property reform department was not under obligation to receive a labour inspector consent to dismiss Mrs Kovanen.

A collective bargaining agreement provides the consent of public servants trade union federation and make reference to paragraph 133 point 3 of public service act. Consequently the court has a view that since Mrs Kovanen was not elected as shop steward provided by law and the collective agreement refers to paragraph 133 point 3 of the public service act, there is no ground to argue the breach of collective labour agreement. The collective bargain agreement was not breached.

#### **H. Petition For Appeal to Administrative Chambers of the Tallinn Circuit Court**

Mrs Kovanen applied for the partial annulment of the Tallinn Administrative Court of 09-05-2000 due to the incorrect application of law and violation of procedural rights.

08-10-1998, the Trade Union of the Ownership Reform Department (TU of ORD) of the City of Tallinn was founded pursuant to Article 29 of the Constitution and the Non-Profit Institutions Act. Pursuant to the minutes No. 1 of the meeting of the Trade Union of the Ownership Reform Department of the City of Tallinn all 16 founding members and members of the TU of ORD unanimously decided to select the management board and the TU representative and to act on the basis of the statutes of the Association of Trade Unions of the Employees of State and Local Municipalities (ATU ELSE) as a department thereof. Thus Article 33 of the Non-Profit Association Act (NPAA) was complied with.



Pursuant to Article 2 (1) of the Employees' Representatives Act interpreted by the court, in order to found a trade union organisation, the general meeting of the employees should be convened Pursuant to Article 2 (1) of the Employees' Representatives Act, the representative may be elected either by the general meeting of the employees or by the members of the employees' association (TU).

## **Conclusions**

### **The Independence**

It is clear that ILO Convention No. 87 Freedom of Association and Protection of the Right to Organise Convention, pursuant to Article 3 thereof, give a strong protection of the workers' and employers' organisations right to draw up their constitutions and rules, to elect their representatives in full freedom and for the independence and against involvement from the state.

The case law within ILO referred to above also give very little space for interference from the state by law or other measure that could be seen as obstructing and limit the normal democratic activities in the Trade Union.

It is also clear that the Constitution of Estonian Republic in Chapter II Fundamental Rights, Freedoms and Duties § 29 also give a protection for the independence of trade unions by stating that "Everyone may freely belong to associations and unions of employees and employers. Associations and unions of employees and employers may uphold their rights and lawful interests by means which are not prohibited by law".

Also in accordance with the Trade Union Act (from 1989) § 7 the Trade union draws up its articles of association independently.

In addition to that the Shop stewards' act in § 3 states that the procedure for election of a representative and his or her term of authority shall be determined on the basis of the statutes of the union of employees or by the general meeting of employees.

The overall law structure in Estonia gives a very strong position for the independence for the Trade Union as such and protection for the procedure the Trade union adopts for its internal decisions.

In this case it from the facts that has been presented to me can be concluded that the local Trade Union of the Ownership Reform Department was founded and at the same time decided to act on the basis of the statutes of the Association of Trade Unions of the Employees of State and Local Municipalities. The 16 founding members and members of the local trade union also decided to elect management board and the TU representative Kovanen.

I have also been informed about that the Trade Union Federation ROTAL after the local trade union affiliated has accepted Mrs Kovanen status as shop steward. Mrs Kovanen has also acted as shop steward within the trade union and has also represented the trade union officially in negotiations and meetings. The employer the Ownership Reform Department has neither during negotiations and meetings during the years not questioned her position as shop steward.

These facts that the basic structure was in place when the election was conducted and the fact that Mrs Kovanen has been accepted as a shop steward by all parties involved is a very strong argument

for the position that Mrs Kovanen was under the protection of the principles of international conventions referred to above.

The fact is also that the statutes of the local trade union do not give a clear position how and when a shop steward should be elected.

This fact must be a question that the trade union independently has to deal with.

According to the freedom stated in the Shop stewards' Act in § 3 the procedure for election of a representative and his or her term of authority shall be determined on the basis of the statutes of the union of employees.

If the trade union make the choice not to regulate the proceedings for elections in detail the meeting where the decision regarding a shop steward is taken must be free to develop the terms as long they are not obviously counter the members' interest of basic democracy. The lack of rules in this regard in the trade union statutes can not disqualify the statutes or the decision as such. A disqualification by court or any administrative authority in this regard would violate the independence of the Trade unions.

### **Consent of the labour inspector**

Article 1 of the ILO convention No. 135 concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking requires that Workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal

The Estonian state has by law regulated that a condition for release of a shop steward from the service due to lay-off the employer is that the employer has the consent of the labour inspector. This protection the state provides, if effective and fair, is very much in line with the standards given in international conventions referred to above.

The lack of registration of the local trade union and as a result of that the lack of legal capacity has been argued to be a legal ground to disqualify the position of Mrs Kovanen as a shop steward and also from the protection of the labour inspector.

In this case the fact has been establish that the local trade union had the basic structure in place when the election of Mrs Kovanen was conducted and the trade union ROTAL, that has and had legal capacity, has to me confirmed that ROTAL officially has accepted the election and recognised Mrs Kovanen as shop steward as from the establishment of the local trade union and before her release from the service due to lay-off.

The circumstances as described to me gives that the position of Mrs Kovanen is in a very clear shop steward position. The fact that ROTAL retroactively has accepted Mrs Kovanen as shop steward and the elections occurred in 1998 ought to be that kind of decision that falls within the freedom of trade unions to do.

This conclusion is based on the international standards mentioned above but it seems to be clear that this conclusion as well could be based on § 3 Shop Stewards Act (3) that state that the procedure for election of a representative and his or her term of authority shall be determined on the basis of the statutes of the union.

The Estonian constitution states that "Associations and unions of employees and employers may uphold their rights and lawful interests by means which are not prohibited by law". In this case the Shop Stewards Act or any other law do not explicitly exclude the right for the Trade Union to adopt procedures regarding elections in the way they did – retroactively accepting a decision taken by the 16 founders of the local trade union. According to the constitution any kind of limitation in this regard must be regulated by law.

Regarding the statutes of the trade union I have the information that they do not in detail regulate what procedure the trade union have to adhere to. In this situation the principle of independence of trade unions and the rule that the state ought to protect the position of shop stewards will lead to the conclusion that the Estonian law ought to be interpreted in favour of Mrs Kovanen.

All together the regulations if interpret in favour of Kovanen in this case will also be in line with the statement by the Freedom of Association Committee of the Governing Body of ILO

***"The regulation of procedures and methods for the election of trade union officials is primarily to be governed by the trade union's rules themselves. Indeed, the fundamental idea of Article 3 of Convention No. 87 is that workers and employers may decide for themselves the rules which should govern the administration of the organisations and the elections which are held therein".***

If Mrs Kovanen in Estonian courts will not be accepted as shop steward I will recommend Mrs Kovanen and the Trade Union to file a complain to the ILO and argue for violation of conventions No 87 and No 135.

Stockholm den 5 September 2000

Stellan Gärde

**Extract from the judgement of the Administrative Division of the Tallinn District Court made on 6<sup>th</sup> November 2000 in case No II-3-286/2000**

The Administrative Division of the Tallinn District Court found that the judgement must be partially nullified because of incorrect application of material law norms.

The court has correctly found out that the Trade Union of the Property Reform Department was established at 8<sup>th</sup> October 1998. At the founding general meeting the original members decided to become a member organisation of the ROTAL (Association of trade unions of state and local government civil servants) and act in line with the constitution of the ROTAL.

At the general meeting Ly Kovanen was elected for confidential person of the Property Reform Department. The board of the Property Reform Department was informed thereof. At the 12<sup>th</sup> October 1998 meeting of the board of the ROTAL the established organisation was accepted as a member of the ROTAL. During the period from 30<sup>th</sup> November 1999 until 10<sup>th</sup> December 1999 the Trade Union of the Property Reform Department gave temporarily up its membership in the ROTAL. The status of a full member was re-established on 10<sup>th</sup> December 1999.

At the general meeting of the Trade Union of the Property Reform Department it was decided that Ly Kovanen would continue as confidential person until next general meeting.

The court found that Ly Kovanen should not be acknowledged as confidential person because on the day of her election the trade union concerned had no constitution and the legal grounds of election of the confidential person were not mentioned in the minutes of the general meeting. Therefore the requirements established by paragraphs 1 and 3 of section 3 of the Act on confidential person of employees were not followed.

The position of the court is not grounded. Paragraphs 1 and 3 of section 3 of the Act on confidential person of employees do not foresee the procedure of election of the confidential person. According to the mentioned provisions the confidential person should be elected by members of a trade union in a way and for the term stated in the constitution of respective trade union.

At the 8<sup>th</sup> October 1998 general meeting the trade union accepted the constitution of the ROTAL and decided to become a department of ROTAL.

According to point 4.9.2. of the constitution of the ROTAL the procedure of election and the election of the confidential person of the department of the ROTAL should be decided and realised by the department.

In present case the 16 original members of the Trade Union of the Property Reform Department elected their confidential person according to the rules established by themselves and the constitution of the ROTAL. The ROTAL accepted the Trade Union of the Property Reform Department and the elected person as its confidential person.

The Administrative Division of the Tallinn District Court is of opinion that the non-acceptance of Ly Kovanen as the confidential person of the Property Reform Department is not justified because of the fact that the constitution of the ROTAL came into effect in respect of the Trade Union of the Property Reform Department since its acceptance as a full member of the ROTAL.

and lack of the procedure and term of election of the confidential person in the minutes of the first general meeting of the trade union concerned.

This consideration would not be in conformity with section 29 of the Constitution of the Republic of Estonia and relevant international instruments that give employees additional guarantees in realising their freedom of association.

According to Article 2 of the ILO Convention No 87 (ratified by the Republic of Estonia on 22 September 1993) the employers and employees are entitled to form and join organisations without previous authorisation on their own choosing without any exemptions according to the rules of the organisation concerned.

In line with Article 3 of the aforementioned convention the described organisations are entitled to elaborate their own rules and choose freely their representatives.

Article 3 of the ILO Convention No 135 established that for the purposes of the convention the representatives of employers are persons who are acknowledged as employees' representatives by laws or practice of the state concerned and who may be representatives of the trade unions.

Article 1 of the said convention states that the mentioned representatives will be protected against any harmful activity, *inter alia* against dismissal.

The court has groundlessly paid no attention to the fact that Ly Kovanen was acknowledged as confidential person of the Property Reform Department until her dismissal of duties. The mentioned facts are confirmed by the correspondence between the respective trade union and the Property Reform Department and the collective agreement which have been submitted to the court. Solely while dismissing Ly Kovanen the board of the Property Reform Department found that Ly Kovanen has not the status established in paragraph 3 of the section 133 of the Act on Civil Service.

Consequently the status of Ly Kovanen as confidential person of the Property Reform Department was acknowledged by the Property Reform Department, its trade union and the ROTAL for years after her being elected for the position.

Therefore the not guaranteeing of the additional warranties that she was entitled to by law was not in conformity with the aim of the mentioned act.

According to the facts and the obligation arising from paragraph 3 of section 133 of the Act on Civil Service the Property Reform Department should have asked for the assent of the labour inspector while making Ly Kovanen redundant.

Consequently when dismissing Ly Kovanen the provisions of the Act on Public Service were essentially violated and therefore the decree of 25<sup>th</sup> January 2000 on making Ly Kovanen Redundant must be declared invalid.

As Ly Kovanen has refused from reinstatement the Property Reform Department must pay her according to paragraph 2 of the section 135 of the Act on Civil Service her 6 months salary.

Taking into account the lawfulness of the redundancy of Ly Kovanen the claim of salary of 1 month on the grounds of non-following the obligatory term of previous notification in case of redundancy is considered irrelevant.

In accordance with point 2 of paragraph 1 of the section 46 of the Act on Administrative Judicial Procedure the Administrative Division of the Tallinn District Court

decided:

to declare partially invalid the judgement of the Tallinn Administrative Court from 9<sup>th</sup> May 2000 in Case 3-786/2000 in the part where the court did not satisfy the claim of Ly Kovanen to acknowledge the unlawfulness of her redundancy and for 6 months salary compensation.

To rule in the part anew - to declare invalid the decree No 38 of 25<sup>th</sup> January 2000 of the Property Reform Department on making Ly Kovanen redundant in line with paragraph 1 of section 116 of the Act on Civil Service.

To oblige the Tallinn Property Reform Department to pay Ly Kovanen compensation in the sum of her six months salary.

Not to satisfy the claim of Ly Kovanen for compensation in the sum of her one month salary for non-following of the obligatory term of previous notification in case of redundancies.

To leave other parts of the ruling of Tallinn administrative Court unchanged.