THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

JUDGEMENT
ON BEHALF OF THE REPUBLIC OF LATVIA
in Case No. 2012-23-01
24 October 2013, Riga

The Constitutional Court of the Republic of Latvia, comprised of: chairman of the court sitting Gunārs Kūtris, Justices Kaspars Balodis, Aija Branta, Uldis Ķinis and Sanita Osipova

with the secretary of the court sitting Elīna Kursiša,

with the participation of the submitter of the constitutional complaint Liene Vegnere,

and the authorised representatives of the institution, which adopted the contested act, – the Saeima of the Republic of Latvia, sworn attorney-at-law Lauris Liepa and assistant to a sworn attorney-at-law Matīss Šķiņķis,

on the basis of Article 85 of the Satversme of the Republic of Latvia and Para 1 of Section 16, Para 11 of Section 17(1), Section19^2 and Section 28 of Constitutional Court Law,

on 24 and 25 September 2013 examined at an open court sitting the case

"On Compliance of the First Part of Section 257 of the Latvian Administrative Violations Code with Article 105 of the Satversme of the Republic of Latvia."

The Facts

1. On 7 December 1984 the Supreme Soviet of the Latvian SSR adopted Administrative Violations Code of the Latvian SSR, which entered into force on 1 July 1985. The Supreme Council of the Republic of Latvia by its decision of 29 August 1991 "On Applying Legal Acts of the Latvian SSR in the Territory of the Republic of Latvia" provided that until an appropriate code of the Republic of Latvia or another legal act was adopted, Administrative Violations Code of the Latvian SSR would be continued to be applied in the territory of the Republic of Latvia, but it was renamed "Latvian Administrative Violations Code" (hereinafter also – LAVC). Whereas on 15 October 1998 the Saeima of the Republic of Latvia (hereinafter – the Saeima) adopted the law "On Terminating Application of the Legal Acts of the Latvia SSR", Section 1 of which provided that after 1 January 1999, when, in accordance with this law, the laws of the Latvian SSR, decisions by the Supreme Soviet of the Latvian SSR and the decrees and decisions by its Presidium that were adopted prior to 4 May 1990 became invalid, the Latvian Administrative Violations Code retained its legal force.

The regulation of LAVC 257 (1) (hereinafter – the contested norm) was introduced into this code by the law of 15 September 2005 "Amendments to the Latvian Administrative Violations Code", envisaging, *inter alia*, that property, which had been an instrument for committing a violation and found at the moment of detecting the violation, was removed and transferred for storage until the moment when a decisions in the administrative violation case came into force, but, if an administrative violation envisage in LAVC Section 149^{4} (7), Section 149^{5} (5) or – as it is in the case under review – Section 149^{15} (except the violation envisaged in the sixth part of this Section), – until the implementation of the imposed fine. Until 14 October 2005, when the aforementioned amendments to the law entered into force, LAVC Section 257(1) envisaged that property of this kind was removed and transferred for storage only until the moment when the decision in the administrative violations case entered into force.

Currently the following wording of LAVC Section 257(1) is in force:

"Section 257. Removal of Property and Documents and Storage Thereof

Property and documents which are an object of violation or an instrument for the committing of a violation, and which are found during detention, during inspection of a person, property or site, shall be removed by the officials of the authorities referred to in Sections 254, 256 and 256^{1} of this Code, as well as by the Director General of the State Revenue Service, officials authorised by the Director of the territorial office of the State Revenue Service or the Director of the Consumer Rights Protection Centre or persons authorised by the general-director of the State Environmental Service or State Plant Protection Service authorised officials or the Director of the Food and Veterinary Service and the persons authorised by him or her, or authorised representatives of the Ministry of Transport, persons authorised by the Director of the Maritime Administration of Latvia, the head of the Coast Guard Service of the Naval Forces of the National Armed Forces or officials authorised by him and harbour masters. Institutions (officials), which have the right to remove property and documents, shall hand in the removed property and documents for storage, according to the procedures specified by the Cabinet, until the decision in the administrative violation matter comes into force [if such administrative violation has been committed, which is provided for in Section 149^{4}, Paragraph seven; Section 149^{5}, Paragraph four or Section 149^{15} of this Code (except for the violation provided for in Paragraph six) up to the implementation of the fine applied]. If the property removed is fast perishable and it may not be transferred for storage or the prolonged storage thereof may cause losses to the State, the institution (official), which has the right to remove the relevant property, shall transfer it for realisation or destroying. The procedures by which the institution (official) shall take a decision regarding transfer of property for realisation or destroying and by which realisation or destroying of property is to be made, shall be determined by the Cabinet."

2. The applicant – **Liene Vegnere** (hereinafter – the Applicant) – holds that the contested norm is incompatible with Article 105 of the Satversme of the Republic of Latvia (hereinafter – the Satversme).

2.1. The Applicant explains that in this particular case, in connection with an administrative violation in road traffic, committed by another person, the liability for which is envisaged in LAVC Section 149^{15}, the State Police removed and transferred

for storage to the Provision State Agency (hereinafter – the Agency) a vehicle owned by her. I.e., this violation – driving a vehicle under the influence of intoxicating substances (alcohol) – had been committed by the Applicant's husband. Pursuant to the court's decision, the vehicle was removed and transferred for storage until the monetary fine imposed to the person, who committed the violation, would be paid. Thus, the Applicant's possibility to regain her vehicle depended upon the offender's willingness to pay the imposed fine voluntarily. Hence, the Applicant's right to own property, guaranteed in Article 105 of the Satversme, has been violated.

2.2. In substantiating the incompatibility of the contested norm with Article 105 of the Satversme, the Applicant does not doubt that the restriction to the right to own property, established by the contested norm, has been defined by law, adopted in due procedure, and that it has a legitimate aim. I.e., in those cases, where a person commits the violations envisaged in LAVC Section 149^{15} by a vehicle owned by this person, the removal of the vehicle until the fine imposed upon this person is paid, serves a strong motivating factor for paying this fine as soon as possible.

Whereas in cases similar to the Applicant's legal situation, the contested norm, allegedly, lacks a legitimate aim, since a person, who has committed a violation with a vehicle belonging to another person, is not even interested in regaining the vehicle that does not belong to him or her. In a case like this the legitimate aim – ensuring the payment of the imposed fine – allegedly is not reached.

It is also alleged that the contested norm is not commensurate, as in a case, where a violation with the vehicle has been committed by another person, not the owner, and the fine has been imposed upon this person, but the owner of the vehicle does not wish to or cannot wait until this person pays the fine, the only possible action for him or her is to pay the fine instead of the person upon whom the fine was imposed, to prevent losses incurred both in connection with the storage of the vehicle, which costs eight lats per day, and also by the idletime of the vehicle, which may damage it. Moreover, in this particular case the restriction that the contested norm comprises is said to hinder significantly the Applicant's possibilities to engage in business activities and provide for her family – as this exactly is the purpose for which the vehicle had been used, thus, causing her additional losses and inconvenience.

2.3. The Applicant notes that to protect her rights she submitted an application to court, requesting that the removed vehicle were returned to her, irrespectively of the payment of the fine imposed upon the person guilty of committing an administrative violation. However, her request was not satisfied, reference was made to the provision of the contested norm that the vehicle was to be returned to its owner only after the payment of the fine. The Applicant holds that in this way the payment of a fine imposed upon one person – her husband, is secured by property belonging to another person – to her. Allegedly, this situation is incompatible with Article 105 of the Satversme.

2.4. At the court sitting the Applicant specified that she recognised as admissible removal of the vehicle and transferring it for storage until the administrative violation is examined by court. However, allegedly, it was not quite clear, what the benefit to society was from transferring the vehicle for storage by the Agency until the fine is paid. The Applicant holds that society does not benefit from this situation in any way.

3. The institution, which adopted the contested act, – the **Saeima** – holds that the contested norm complies with Article 105 of the Satversme.

3.1. The Saeima recognises that the aforementioned norm comprises restriction to a person's right to own property, which the legislator established intentionally to protect other persons' rights and public safety. It should be taken into consideration that a vehicle is a source of increased risk. Pursuant to Section 2347(2) of the Civil Law, an owner of a vehicle carries special responsibility for losses caused by a vehicle as a source of increased risk. A similar duty of care can be imposed upon vehicle owners also in administrative law relationships.

3.2. It is alleged that the removal of the vehicle until the fine is paid has the nature of general and special prevention, however, in no way it could be considered to be an administrative penalty. This regulation should deter vehicle owners from transferring vehicles to persons, regarding whose ability to abide by road traffic rules and, *inter alia*, abstain from using alcoholic drinks could be questioned. Likewise, this should make vehicle owners pay more attention and care to what kind of persons and in what way use vehicles belonging to them.

The Saeima holds that Section 20 (2) of the Road Traffic Law (hereinafter also – RTL) clearly defines the obligations of a vehicle owner. However, this legal norm does not refer to a case, where a person has come under the influence of intoxicating substances after the vehicle had been transferred into his or her use. However, it should be considered that Section 20(2) of RTL imposes the obligation upon the vehicle owner to verify continuously, whether the person, to whom the vehicle has been transferred to, is not driving it while being under the influence of intoxicating substances. A conclusion to the contrary would not facilitate reaching the aims of RTL.

3.3. The Saeima underscored that the contested norm had been worded in compliance with the second sentence in Article 105 of the Satversme, which envisages an owner's social obligation before society, i.e., that property may not be used contrary to public interests. Allegedly, this legal norm requires that a rational balance between, on the hand, the owner's private interests and, on the other hand, the interests of society, is ensured. I.e., an owner, utilising his or her property in accordance with one's own wishes and gaining benefit from it, may not by selfish actions place public interests at risk.

3.4. In the context of the case under review, it should be taken into consideration that the person, who committed an administrative violation with the vehicle owned by the Applicant, was her husband. In view of the basic principles of the personal and material relations between spouses established in the Civil Law, allegedly, it should not be doubted than one spouse should take into consideration the possible consequences that might occur by transferring his or her property into the use of the other spouse. Moreover, in the actual circumstances the vehicle owner could immediately find out what kind of administrative violation had been committed and what the consequences that followed from it were.

3.5. The Saeima notes, in addition, that it should be verified, whether the Applicant had no possibility to contest or appeal against the decisions adopted in this case. Likewise, it should be taken into consideration, whether the Applicant has submitted to the court an application requesting return of the vehicle, irrespectively of whether the fine had ben paid. As regards this application, the judge has noted that it was received after the case of administrative violation, deciding on actions with regard

to the removed vehicle, had been already heard. Likewise, if a vehicle owner considers that in the particular situation the vehicle had been removed unfoundedly, he or she may turn to the prosecutor's office. If it were established that the actions taken against the vehicle owner had no grounds, then the third sentence of Article 92 of the Satversme would have to be applied, i.e., in this case the vehicle owner would be entitled to commensurate compensation.

3.6. At the court sitting the representative of the Saeima characterised the procedure for adopting the contested norm and noted that it had been intended to apply the contested norm predominantly in those cases, where the vehicle owner and the offender were the same person. Whereas the Applicant's situation was said to be a very rare case of exception.

In analysing general legal remedies available to the Applicant, the representative of the Saeima asserted that these had not been exhausted before turning to the Constitutional Court. I.e., allegedly, a stable judicature has evolved in Latvia, pursuant to which the Applicant had the right to turn independently to the court, requesting that her vehicle were returned to her, irrespectively of the payment of the fine. Therefore he requested termination of legal proceedings due to the fact the Applicant had failed to abide by the principle of subsidiarity.

Assessing the contested norm on its merits, the representative of the Saeima linked the adverse consequences for the vehicle owner envisaged in this norm both to the actual circumstances of this particular constitutional complaint – mainly to the fact that this vehicle should be considered as the joint property of spouses, as well as with the special obligations of all vehicle owners established in Section 20 of RTL. The representative of the Saeima holds that an owner of a vehicle as a source of increased risk has an additional duty of care to ensure that a person, who has been entrusted with the vehicle, would not allow illegal actions. If a vehicle owner transfers the vehicle to other person for use, then he should take into consideration all possible consequences.

4. The summoned person – **the Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) – holds that the contested norm is incompatible with Article 105 of the Satversme.

4.1. The Ombudsman holds that the contested norm restricts the right to own property. Allegedly, a vehicle is a moveable object involved in free civil law circulation, and its owner has the right to use it. Whereas the contested norm allegedly envisages that an owner is denied this right for a certain period of time.

4.2. The Ombudsman holds that the contested norm has a dual legitimate aim; i.e., initially, to prevent the threat to public safety, by prohibiting a vehicle driver, who is under the influence of alcohol, to continue driving, but following that – to use the removed vehicle to ensure that the fine is paid. Therefore the Saeima's opinion that the legitimate aim of the contested norm is the protection of other persons' rights and public security can be upheld.

The Ombudsman, admitting that a restriction like this is appropriate and could facilitate payment of the fine, nevertheless notes that his restriction cannot be recognised as being proportional, especially in view of the fact the contested norm is applied, irrespectively of the fact who owns the vehicle – the person, who has been made administrative liable, or another person. This restriction is said to be unnecessary, since measures that are less restrictive to a person's right could be used to reach the legitimate aim.

4.3. The Ombudsman holds that in assessing the compatibility of the contested norm with the Satversme with regard to the particular constitutional complaint, it is import to differentiate, whether the person, who committed the administrative violations, is simultaneously also the vehicle owner or another person.

A person can be made administratively liable only if he or she has committed an administrative violation. In applying the contested norm in those cases, where the vehicle owner is also the person, who has committed an administrative violation, with regard to him administrative liability sets in and an administrative penalty is applied. Whereas in the particular situation the Applicant did not commit an administrative violation, therefore it cannot be considered that in this case the removal of the vehicle fulfilled the function of an administrative penalty with regard to the vehicle owner.

The Ombudsman upholds the point made in the written reply by the Saeima that a vehicle owner must take into consideration the possible risk that the vehicle might cause and should choose with sufficient care the driver who is entrusted with it. The

legislator could envisage a vehicle owner's administrative liability for, for example, transferring the vehicle as a source of increased risk for driving by a person who is in a state of alcohol induced intoxication. However, currently legal acts do not envisage this kind of liability for a vehicle owner.

4.4. The Ombudsman holds that at the moment when the Applicant found out about the removal of the vehicle and its transfer for storage, she had the right to turn to court and request that she were recognised as a third party in the particular case of administrative violation, on the basis of the fact that the court decisions could affect her right to own property. Moreover, the party to the aforementioned case – the Applicant's spouse – also had this right. Likewise, the court also had the right to recognise, on its own initiative, the Applicant as being a third party. However, the Ombudsman recognises that LAVC norms do not directly envisage the rights of a person, who is not a party to a particular case, to express objections regarding the security established in an administrative act of an institution or a judge's decision with regard to enforcing the penalty. However, the absence of appropriate legal regulation in the Latvian Administrative Violations Code should not turn into an obstacle hindering a person's possibility to request elimination of any right infringement, if such existed.

Hence, if the contested norm has been applied to the Applicant in a case, when a violation committed by a vehicle belonging to her was committed by another persons, the Applicant has the right to submit to court a separate request to examine, whether the vehicle should be returned to her, irrespectively of the payment of the fine.

4.5. At the court hearing, the Ombudsman's representative – **Raimonds Koņuševskis, legal advisor from the Ombudsman's Division of Social, Economic and Cultural Rights** – underscored that the Ombudsman held that the adverse consequences to a vehicle owner, who had not committed the administrative liability, envisaged in the contested norm legally could not be recognised as an administrative penalty, however, substantially could be equalled to a penalty.

He does not uphold the argument advanced by the Saeima that the legal issues highlighted in the constitutional complaint were successfully dealt with in court practice. A uniform case law has not been established.

5. The summoned person – **the Ministry for Interior** – holds that the contested norm complies with Article 105 of the Satversme.

The Ministry of Interior upholds the opinion that the contested norm comprises a restriction to a person's right to own property and that the restriction has been established by law in due procedure, which the legislator had established intentionally to protect other persons' rights and public safety.

Allegedly, the legitimate aim of the contested norm is, firstly, to deter, preventively, persons from driving a vehicle while being under the influence of intoxicating substances, secondly, prohibit them from driving a vehicle under the influence of such substances, and, thirdly, raise the vehicle owners' level of responsibility, making them consider, to who they transfer their vehicle for use. Thus, allegedly, safe driving conditions are created for other participants of the traffic.

The Ministry of Interior holds that the contested norm is not the only means for preventing administrative violations linked to driving vehicles while being under the influence of intoxicating substances. However, allegedly, possible alternative measures (for example, awareness raising campaigns dedicated to road traffic safety issues) are not as effective for reaching the legitimate aim in the same quality. Hence, it is alleged that the restriction to a person's right to own property that the contested norm contains is necessary.

It is alleged that the benefit granted to society by the restriction established in the contested norm and that manifests itself as safeguarding of the lives and health of participants in road traffic, as well as ensuring public order, exceeds the restriction to a vehicle's right to own property. Moreover, it is alleged that the fact of who owns the vehicle used to commit an administrative violation, carries no importance. In order to raise the safety level of road traffic and to reach the aims of the administrative violations procedure, the vehicle should be removed irrespectively of its ownership. Allegedly, this is the only way to ensure that the violation of law is not immediately continued or repeated within a short period of time.

However, the Ministry of Interior holds that the vehicle owners have the right, pursuant to LAVC Section 297, after removal of the vehicle, to turn independently to court and request to asses, whether the vehicle belonging to him or her should not be returned, irrespectively of the payment of the fine imposed upon the offender.

During the court hearing the representative of the Ministry for Interior – **Mārtiņš Rāzna, Director of the Legal Department of the Ministry of Interior** – substantiated the need for removing and storing a vehicle not only until the particular case of administrative violation had been reviewed, but until the payment of fine, by noting that until the fine was paid neither the offender, not the owner had the possibility to commit new road traffic violations with the particular removed vehicle. At the same time he admitted that it was impossible to prevent a situation, where the offender used another vehicle and continued violating road traffic rules.

6. The summoned person – **the Ministry of Transport** – upholds the arguments provided by the Saeima in its written reply and is of the opinion that the contested norm complies with Article 105 of the Satversme.

The Ministry of Transport underscores that the contested norm was included into the Latvian Administrative Violations Code upon its request. Driving a vehicle while being under the influence of intoxicating substances is one of the most severe offences in road traffic. Therefore in addition to the provisions of Section 20(2) of RTL that a vehicle may not be transferred to a person, who is under the influence of such substances, the Latvian Administrative Violations Code envisages that, if a person nevertheless drives a vehicle while being in such a state, the vehicle is detained until the imposed monetary fine is paid. The Ministry of Transport admits that in this way, substantially, a person's right to act freely with his or her property is temporarily restricted. However, it should be taken into consideration that the contested norm does not envisage confiscation of a vehicle, even in the process of drafting the norm a proposal like this had been analysed and in some countries this is exactly the penalty envisaged for driving a vehicle while being under the influence of intoxicating substances.

The Ministry of Transport also notes that since the adoption of the contested norm the number of fatalities in road traffic accidents has significantly decreased. Therefore it can be concluded that the contested norm, in interconnection with other sanctions established in the Latvian Administrative Violations Code for driving a vehicle while being under the influence of intoxicating substances increases the

responsibility of drivers, it also envisages co-responsibility of the vehicle owner, which in this case is manifested as removal of the vehicle.

At the court hearing the representative of the Ministry of Transport – **Jānis Golubevs, board member of the state owned stock company "Road Traffic Safety Directorate" and the deputy head of its Legal Department** – noted that one of the aims of the contested norm was preventing the situations that had been observed prior to its adoption, where the vehicle owner sat as a passenger in a vehicle driven by a person, who was intoxicated by alcohol, and immediately after the offence had been detected the owner might again allow the offender to drive the vehicle, thus putting road traffic safety at risk. The representative of the Ministry of Transport, upholding the points made by the representative of the Saeima, expressed the belief that the vehicle owner's responsibility was manifested throughout the whole time of using a vehicle as a source of increased risk, not only at the moment of transferring it to another person.

7. The summoned person – **the Ministry of Justice** – holds that the contested norm, insofar it applies to those cases, where the vehicle driver and owner is not the same person, is incompatible with Article 105 of the Satversme.

The Ministry of Justice also notes that the vehicle owner may not be made administratively liable, if he or she has not committed an administrative violation, since a vehicle owner is not listed as a person to be made administratively liable in the sanctions of LAVC Section 149^{15}.

The Ministry of Justice does not uphold the opinion expressed in the written reply by the Saeima that the contested norm could be linked to the responsibility of the owner of a source of increased risk to compensate for the losses caused by this source, enshrined in the first sentence of Section 2347(2) of the Civil Law. Allegedly this norm of the Civil Law cannot be applied in this particular case, since the duty of liability enshrined in it is applicable to losses caused to third persons; however, a road traffic accident cannot be considered a loss in the meaning of Section 2347 of the Civil Law. Allegedly it is legally incorrect to construe liability in this way also because in the case, where the person, who commits an administrative violation, is also the vehicle owner, the removal of vehicle until the imposed fine is paid serves as a tool for

ensuring enforcement of penalty, whereas if the vehicle owner is not the person, who commits an administrative violation, the removal of vehicle is considered as the projections of the owner's civil law liability into the administrative violations procedural law. Thus, the Ministry of Transport holds that the contested norm does not envisage any kind of legal liability for a vehicle owner, who has not committed an administrative violation; however, it envisages restrictions to the right to own property that follow from the law.

Allegedly, the contested norm equally applies to those cases, where the person, who commits an administrative violation, is also the vehicle owner, and also to cases, where these are two different persons. The removal of a vehicle, i.e., stopping the violations, is necessary and proportional, irrespective of whether the offender is also the vehicle owner or not, since it improves road traffic safety. Likewise, the removal of a vehicle is substantiated and useful also to secure enforcement of punishment, if the offender is also the vehicle owner. However, in those cases, where the administrative violation has been committed by one person, but the vehicle belongs to another person, the removal of the vehicle until the imposed fine is paid is not proportional, since neither the contested norm, nor any other legal norms envisage any kind of mechanism for the protection of the owner's rights, for example, the right to join the administrative violation case.

At the court hearing the representative of the Ministry of Justice **Anda Smiltēna, the head of Division of Administrative Law, State Law Department of the Ministry of Justice** – drew attention to the fact that the aim of the contested norm referred to by the Saeima – the inevitability of punishment – as liability for an administrative violation was a personal liability obligation. In the procedure of administrative violations the most essential thing is not the payment of the imposed fine *per se*, but the fact that the fine is paid by the person, who has been recognised, in a procedure established by law, as being guilty of committing an offence.

The representative of the Ministry of Justice also noted that the other aim referred to by the Saeima – to accustom to discipline vehicle owners – in accordance with the provisions of the contested norm is manifest only in the stage of enforcing the administrative punishment, whereas other legal norms do not clearly envisage this legitimate aim.

8. The summoned person – **the Provision State Agency** – draws attention to the fact the detailed regulation on transferring a vehicle for storage and storage thereof is provided by the Cabinet Regulation of 7 December 2010 No. 1098 "Regulation on Handling Property and Documents Removed in Cases of Administrative Violations" (hereinafter – Regulation No. 1098). I.e., a vehicle owner, who wishes to remove the vehicle from Agency's storage, must cover the costs of moving ands storing the vehicle, as well as submit a document proving that the fine imposed for the administrative violation has been paid. Pursuant to Para 1.1 of Annex 4 to Regulation No. 1098, the cost of storage is eight lats per day. Whereas the costs of moving the vehicle are determined in accordance with the actual expenditure.

At the court hearing the representative of the Agency – **Jānis Vonda, deputy director of the Provision State Agency** – stated that in practice a vehicle owner, who was not the person that committed the administrative violation, was not asked to cover the costs of moving and storing the vehicle. Usually in situations like this, vehicle owners pay the fine instead of the offender and after the proof of payment has been received the vehicle is returned to its owner. The Agency is trying to collect the cost of moving and storing from the person, who actually committed the administrative violation.

9. The summoned person – **Dr. iur. Jānis Načisčionis** – noted at the court hearing that, to his mind, the contested norm complied with Article 105 of the Satversme.

J. Načisčionis expressed the opinion that, whatever rights and obligations were included in the norms of private law or public law, these could not be examined as being included in two isolated systems of law, since all legal norms had to be examined as a whole. Moreover, any subject of law must implement all legal norms that apply to him or her. Thus, in all cases all subjects of law must be responsible for their actions and, in realising his or her rights or obligations in civil law relationships, must at the same time consider the consequences of their actions in public law relationships.

The owner of the vehicle as a tool for committing an administrative violation is indirectly affected by the application of the contested norm, placing him in such a position of responsibility that the administrative punishment imposed upon the offender affects also this owner. This, as J. Načisčionis admitted, is not the objective of the contested norm. I.e., no legal norm envisages an owner's liability for the fact that another person has committed an administrative violation with his vehicle. However, the model of the vehicle owner's liability that the contested norm comprises is justified by public safety considerations, which are said to always prevail over a restriction that a private person suffers regarding his right to own property.

10. The summoned person – **Dr. iur. Erlens Kalniņš** – at the court hearing expressed the opinion that the contested norm was incompatible with Article 105 of the Satversme.

E. Kalniņš is of the opinion that at present the possibilities of a vehicle owner are rather unclear, irrespectively of the development of case law. No clear criteria exist that would allow deciding, in which cases a vehicle should be returned to its owner and which cases it would not be returned and what the grounds for the refusal are.

When requested to express his opinion regarding the statement made by the Saeima in the case under review that the particular vehicle should be considered as joint property of spouses, E. Kalniņš underscored that in the framework of administrative violations procedure the main criterion to be taken in consideration was the means of publicity, i.e., in this case, an entry into the public register. In the case under review the entries into the register *per se* point to the fact that the Applicant should not provide any special proof that she is the sole owner of the vehicle.

As regards the possibility to link the adverse consequences for the vehicle owner to the special duty of care as the owner of a source of increased risk, E. Kalniņš noted that from the vantage point of civil law, the owner carries responsibility for the loses caused in connection with damage inflicted as the result of using a vehicle, irrespectively of the fact, whether he himself uses this vehicle on daily basis or has entrusted another person with it for a shorter or longer period of time. However, an administrative penalty imposed upon another person cannot be considered as this type of loss.

E. Kalniņš holds that from the vantage point of administrative law, at least at present, legal norms do no envisage a vehicle owner's administrative liability for administrative violations committed by other persons with his or her vehicle.

The Findings

11. LAVC Section 257 (1), which regulates removal of property and documents in administrative violations procedure, covers a broad range of different situations and objects to be removed, as well as different grounds for and terms of removal. Whereas the constitutional complaint, which has been the basis for initiating the case under review, is linked to the removal of particular property – a vehicle – in connection with committing an administrative violation envisaged in LAVC Section 149^{15} (4), and this complaint was submitted by a natural person, who is the owner of the respective vehicle, but has not committed the aforementioned violation.

In reviewing a case that has been initiated with regard to a constitutional complaint, the Constitutional Court, on the one hand, must take into consideration the requirements of the Constitutional Court Law and must examine the situation to the extent that is necessary to protect the fundamental rights of a person, who has submitted the constitutional complaint; but, on the other hand, it must abide by the principle of equality and examine the situation of all those persons, who are under similar and comparable circumstances with the ones of the person submitting the constitutional complaint. If the legal norm that is contested in the constitutional complaint applies to a broad range of different situations, the Constitutional Court specifies the extent to which it is going to review the contested norm (*see, for example, Judgement of 28 May 2009 by the Constitutional Court in Case No. 2008-47-01, Para 6; and Judgement of 28 March 2013 in Case No. 2012-15-01, Para 9).* In view of the abovementioned, also in the case under examination the scope of review and the persons with regard to whom the contested norm must be reviewed must be specified.

11.1. Even though the Applicant has *expressis verbis* contested the compatibility of the whole LAVC Section 257(1) with Article 105 of the Satversme, it, nevertheless, follows from the application that the Applicant is not contesting the

removal of property and documents in the administrative violations procedure as an institute. Essentially, only the provision regarding return of the property to owner, established in the second sentence of LAVC Section 257 (1) is contested. The aforementioned sentence provides: "Institutions (officials), which have the right to remove property and documents, shall hand in the removed property and documents for storage, according to the procedures specified by the Cabinet, until the decision in the administrative violation matter comes into force [if such administrative violation has been committed, which is provided for in Section 149^4, Paragraph seven; Section 149^5, Paragraph four or Section 149^{15} of this Code (except for the violation provided for in Paragraph six) up to the implementation of the fine applied]."

Moreover, it follows from the Applicant's opinion expressed during the court hearing, that the Constitutional Court is requested to examine the compatibility of the second sentence in LAVC Section 257(1) only to the extent it envisages the removal and storage of particular property – a vehicle – in the period from the adoption of a decisions in the respective case of administrative violation to the payment of fine imposed by this decision. I.e., the Applicant sees a violation of her fundamental rights in the fact that if the administrative violation envisaged in LAVC 149^{15} (4) has been committed by a person, who does not own the tool with which this violation was committed – a vehicle, the contested norm prohibits returning this vehicle to the owner also after the decision in the administrative violation case has been adopted, but the fine imposed upon the offender has not been paid yet.

Hence, in the case under review there are no grounds to examine the compatibility of the whole second sentence of LAVC Section 257 (1) with norms of higher legal force.

11.2. The second sentence in LAVC Section 257(1) contains an enumeration in square brackets of a number of administrative violations in the case of which this legal norm is not applicable. The constitutional complaint pertains to a case, when an administrative violation envisaged in LAVC 149^{15} (4) was committed. During the court hearing the participants in the case and the summoned persons predominantly assessed those situations, which occur in connection with administrative violations envisaged in the first five parts of LAVC Section 149^{15}, i.e., violations linked to driving a vehicle or teaching to drive it while being under the influence of narcotic,

psychotropic, toxic or intoxicating substances (hereinafter – driving a vehicle while being under the influence of intoxicating substances).

However, other vehicle owners are in similar and comparable circumstances with the Applicant also in those cases, when administrative violations envisaged in the seventh and eights part of LAVC Section 149^{15} have been committed, i.e., when a person performs actions, the aim of which could be hiding the fact that person has been driving a vehicle while being under the influence of intoxicating substances.

Also LAVC Section 149^{4} (7) and Section 149^{5} (5) are mentioned in the text in square brackets in the second sentence of LAVC Section 257 (1). These norms envisage administrative liability for failure to comply with a repeated or recurrent request to stop a vehicle (fleeing) by a person, who is authorised to inspect the vehicle driver's documents, as well as for repeatedly driving a vehicle without a driving licence within a year or if the prohibition to use the driving licence is in force.

At the court hearing the representative of the Saeima drew attention, in particular, to the case law, which has evolved after the Ruling of 12 December 2008 by the Department of Administrative Cases of the Supreme Court Senate (hereinafter – the Senate) in Case No. P131040908, SKA – 794/2008 (hereinafter – Ruling in Case No. SKA-794/2008), the actual facts of which were linked to an administrative violation envisaged in LAVC Section 149^{4} (7), not with the driving of a vehicle while being under the influence of intoxicating substances. In case law references to this ruling are included not only in rulings in cases of administrative violations envisaged in LAVC Section 149^{4} (7), but also in rulings in cases regarding administrative violations envisaged in LAVC Section 149^{15} (4) *(see, for example, Decisions of 18 April 2012 by Riga City Zemgale Suburb Court in Case No. P131009512, and in Decisions of 25 June 2012 in Case No. P131014712)* and administrative violations envisaged in other parts of Section 149^{15} *(see, for example, Judgement of 17 October 2012 by Riga City Zemgale Suburb Court in Case No. P131026112, and Judgement of 24 October 2012 in Case No. P131027512).*

It must be also taken into consideration that the administrative violations envisaged in LAVC Section 149^{4} (7) and Section $149.^{5}$ (5) and Section 149^{15} (except the sixth part of this Section) are the only ones, where the property removed after these have been committed is returned to the owner only after the offender has paid the

imposed fine, and these violations have been included into the Latvian Administrative Violations Code by the same law.

Thus, simultaneous examination of the situation with regard to all administrative violations referred to in the text in square brackets of the second sentence in LAVC Section 257 (1) ensures the protection of rights of all those persons, who are in similar and comparable circumstance with the Applicant, and comprehensive and unbiased review of the case, as well as procedural economy, since it prevents the possibility that the Constitutional Court might have to initiate new cases with regard to the same issues of constitutional law that have been dealt with in the case under review.

11.3. In the case under review the Saeima attaches great importance to the fact that the Applicant is married to the person, who committed the administrative violation. Thus, it must be verified, whether the claim should be narrowed and the text in the square brackets of the second sentence in LAVC section 257(1) should be examined only insofar it applies to spouses. Moreover, the participants of the case have different opinions on whether the removed vehicle is the joint property of spouses or the Applicant's separate property. To verify, whether the claim should be narrowed and whether the Constitutional Court must establish the property relations of the Applicant and her spouse, the Constitutional Court must consider, whether this relationship is significant in examining the contested norm.

In examining a case that has been initiated with regard to a constitutional complaint, usually particular importance must be granted to the actual circumstances of the case, in which the contested norm infringed upon the applicant's fundamental rights (*see Judgement of 25 October 2011 by the Constitutional Court in Case No. 2011-01-01, Para 12).* However, in the case under review the status of the removed vehicle as the joint or separate property of spouses cannot influence the scope of the contested norm, because it, firstly, does not envisage a specific regulation with regard to spouses and, secondly, it has been applied without taking into consideration the Applicant's special status as a spouse.

I.e., if the status of a spouse were of significance for the understanding and application of the contested norm, then the court of general jurisdiction would have had to indicate that the offender was the owner's spouse and also that the vehicle was

the spouses' joint property. However, in the decisions of 14 June 2012 by Riga City Ziemeļu District Court in Case No. 132023712/1 attached to the constitutional complaint (*see Case Materials, Vol.1, pp. 13–15)* these facts are not referred to. Likewise, also in the rulings by other courts in cases, where an administrative violation had been committed with a vehicle owned by another person, it was not established, whether the person, who was indicated in the vehicle's registration certificate as the owner, was or was not married to the person, who committed the administrative violation (*see, for example, Judgement of 4 September 2012 by Riga City Zemgale Suburb Court in Case No. P131018612).*

Since the status of the removed vehicle as the joint or separate property of spouses does not affect the scope of the contested norms, there are no grounds for narrowing the claim and it is not necessary to establish the property relations between the Applicant and her spouse.

11.4. In accordance with information provided by the Ministry of Interior, in many cases, when the text in square brackets of the second sentence in LAVC Section 257 (1) has been applied, the administrative violations had been committed with vehicle that have been transferred to the holder on the basis of leasing relationship *(see Letter of 5 April 2013 by the Ministry of Interior No. 1-59/902, Case Materials, Vol.1, p. 138).*

If an owner transfers a vehicle to another person for use, legal acts envisage the possibility for the vehicle owner to register the actual user of the vehicle, indicating him as the holder in the registration certificate of the vehicle. An owner, who has transferred a vehicle to another person for permanent holding may not be in similar and comparable circumstances with the Applicant, since the right of such vehicle owner to use the vehicle is, first and foremost, restricted by transferring the vehicle to another person in holding, and the contested norm no longer affects it. In cases like these, persons, who are in similar and comparable circumstances with the Applicant, are the holders of the vehicle, indicated in the registration certificate of the vehicle, if the vehicle in their holding has been used to commit an administrative violation by another person, i.e., a person who is neither the owner if the vehicle, nor its holder indicated in its registration certificate.

Hence, in the framework of the case under review the Constitutional Court will examine the text in square brackets of the second sentence in LAVC Section 257 (1) –"if such administrative violation has been committed, which is provided for in Section 149^4, Paragraph seven; Section 149^5, Paragraph four or Section 149^{15} of this Code (except for the violation provided for in Paragraph six) up to the implementation of the fine applied" (here and hereinafter – the contested norm), insofar it applies to the removal and transferring for storage such vehicle, the owner or the holder, indicated in the registration certificate thereof (hereinafter – owner), is not the person, who committed this offence.

12. The Saeima has requested termination of legal proceedings in the case, asserting that the Applicant had not met the requirement set out in Section 19^2 (2) of Constitutional Court Law to exhaust all possibilities for defending her rights by general legal remedies. I.e., the Applicant, in submitting the constitutional complaint, did not abide by the principle of subsidiarity.

If a request to terminate legal proceedings in a case has been expressed, then the Constitutional Court in its ruling usually, first, decides on it, insofar the examination of some aspects of the case on their merits is not necessary in order to adopt the decision regarding the request (*see, for example, Judgement of 19 October 2011 by the Constitutional Court in Case No. 2010-71-01, Para 11–14).*

13. In the case under review, first of all it must be established what kind of legal consequences the contested norm envisages and whether the statement by the Saeima is true, i.e., that such interpretation and application of the contested norm has been established in case law that allows a vehicle owner, if he or she is not the person that committed the respective administrative violation, to regain the vehicle also before the fine imposed upon the offended has been paid.

13.1. The participants in the case and all summoned persons are of the same opinion that even though the contested norm has been included in the Latvian Administrative Violations Code, it has not been worded in a way to envisage a vehicle owner's administrative liability for allowing a situation, where a vehicle in his or ownership has been involved in a violation of road traffic rules and, thus, threatens

other persons' safety and property. The Constitutional Court has already noted that the legislator may envisage a person's liability for threat to public safety and other persons' property caused by a source of increased risk in his ownership also in the case, where the owner has transferred his property into another person's possession. However, in such a case the concrete liability of the vehicle owner must be unequivocally and clearly defined (*see Judgement of 28 March 2013 by the Constitutional Court in Case No. 2012-15-01, Para 15).*

Whereas all LAVC Sections enumerated in the contested norm provide that administrative penalty for an administrative violation is imposed upon the driver of a vehicle. Thus, a vehicle owner, who has not been driving it at the moment when the violation was committed, is not the person who is made administratively liable pursuant to the Latvian Administrative Violations Code.

13.2. The fact that the legislator in the special norms of RTL has defined additional duties for a vehicle owner, *inter alia,* the duty not to transfer the vehicle for driving to persons, who are under the influence of intoxicating substances, *per se* does not collide with the Satversme. A vehicle is a source of increased risk, and the State may impose special obligations upon its owner and envisage penalty for failing to meet these obligations. LAVC Section 9 (3) also *expressis verbis* allows the possibility to envisage in a special law the administrative liability of the owner of a source of increased risk. However, both the obligation of this kind and the appropriate penalty for failing to meet it should be sufficiently clearly defined, in order to comply with the principle *nullum crimen, nulla poena sine lege* (a person can be recognised as being guilty and penalty applied only for such action by the person, which is to be recognised as punishable in accordance with law), and a fair procedure must be ensured for deciding on the issue of this person's liability (*see Judgement of 28 March 2013 by the Constitutional Court in Case No. 2012-15-01, Para 15.4 –15.5).* Moreover, the liability for failing to meet an obligation should be linked to the action of the person to be punished, not that of another person. However, RTL does not comprise regulation on a vehicle owner's administrative liability drafted in this way.

Thus, a vehicle owner, who has not been driving the vehicle at the moment when the violation was committed, is not the person, who is made administratively

liable as envisaged in law, but the consequences envisaged in the contested norm cannot be regarded as being an administrative punishment.

13.3. When answering the question, what kind of legal liability is realised with regard to vehicle owners in case of applying the contested norm and which legal acts establish this liability, both the Ministry of Transport and the Ministry of Interior refer to Section 2347(2) of the Civil Law (*see Case Materials, Vol.1, pp. 137 and 139*). Whereas the Constitutional Court has already noted that Section 2347(2) of the Civil Law envisages liability for the owner of a source of increased risk for losses of civil law nature inflicted by this source and it cannot be applied by analogy in administrative violations law (*see Judgement of 28 March 2013 by the Constitutional Court in Case No. 2012-15-01, Para 15.3).* Thus, the adverse consequences for a vehicle owner envisaged by the contested norm cannot be substantiated by the Civil Law rules on the liability of the owner of the source of increased risk for losses caused to third persons.

13.4. The Saeima holds that it follows from the Civil Law, in interconnection with Section 20 of RTL, that a vehicle owner has a duty of increased care, which comprises also the obligation to follow constantly where the vehicle is and who is driving it, as well as to ensure that the respective person does not commit actions that are contrary to legal norms (*see transcript of the sitting of the Constitutional Court of 25 September 2013, Case Materials, Vol.2, p. 114).* Allegedly, in the Applicant's case, the duty to verify constantly, whether the person to whom the vehicle had been handed over was not driving it while being under the influence of intoxicating substances also followed from Section 20 of RTL (*see additional information in the case submitted in writing by the Saeima, Case Materials, p. 148*). At the court hearing the representative of the Saeima underscored that the norm envisaged adverse consequences if this obligation was not met *(see transcript of the sitting of the Constitutional Court of 25 September 2013, Case Materials, Vol.2, p. 117*). Allegedly, in the framework of an administrative case not only the violation itself is examined, i.e., the severity of punishment, but also the issue, whether the vehicle should or should not be returned to its owner, moreover, the courts of general jurisdiction were said to perform this duty in high quality and responsibly (*see transcript of the sitting of the Constitutional Court of 24 September 2013, Case Materials, Vol. 2, p. 19*).

Whereas the Applicant holds that the obligations defined in the second and third part of RTL Section 20 should not be given a broader interpretation than the verbal meaning of the norm, i.e., a vehicle owner must verify only that the person to whom he hands over the vehicle is not under the influence of intoxicating substances and whether he has a driving licence (*see transcript of the sitting of the Constitutional Court of 24 September 2013, Case Materials, Vol. 2, p. 10*).

Hence, the Constitutional Court must establish, what kind of vehicle owner's obligations follow from the second and third part of RTL Section 20 and whether the adverse consequences envisaged by the contested norm are applied in court practice by examining, whether these obligations have or have not been met.

13.4.1. The second and the third part of RTL Section 20 provide:

"(2) A vehicle owner, possessor and holder may not allow a person to drive the vehicle, which is under the influence of alcoholic, narcotic, psychotoxic or other intoxicating substances.

(3) The vehicle owner, possessor and holder may not allow a person to drive a vehicle, who does not have the right to drive of the relevant category, except for the cases when a driver training or check of driver skills are being carried out in accordance with the procedures specified in the Road Traffic Regulations."

A vehicle owner's obligations that follow from the second and third part in RTL Section 20 as restrictions to a person's rights and liberties may not be interpreted broader than what has been provided in these norms. The second and third part of RTL Section 30 prohibit a vehicle owner to allow a person drive a vehicle without a driving licence or while being under the influence of intoxicating substances.

At the same time the second and third part of RTL Section 20 also imposes an obligation upon a vehicle owner not to fail to act, if it is possible to deter a driver of a vehicle from committing the aforementioned violations. For example, the obligation of a vehicle owner, who is an employer, to implement with sufficient care all measures for preventing possible violations of law follows from the second and third apart of RTL Section 20.

However, the obligation of a vehicle owner to be responsible for further possible actions by the driver of the vehicle does not follow from the second and third part of RTL Section 20, if this person at the moment of handing over the vehicle was

not under the influence of intoxicating substances and did not express the intention to use intoxicating substances or hand over the vehicle for driving to a person who does not have a driving licence.

It must be also taken into consideration that the second and third part of RTL Section 20 were included in the Cabinet Regulation of 7 April 1997, adopted in procedure defined by Article 81 of the Satversme, No. 135 "Regulation on Road Traffic" and in the initial wording of RTL, but LAVC at that time did not envisage norms that were similar to the contested norm. If the contested norm had to be linked to the failure to meet the obligations established in RTL Section 20, the legislator would have drafted a norm analogous to it simultaneously with the adoption of RTL.

13.4.2. The opinion expressed by the representative of the Saeima at the court hearing – that courts, in applying the contested norm examine, whether the vehicle owner has met the obligations that follow from the second and the third part of RTL Section 20 and adopt decision on returning or not returning the vehicle to its owner irrespectively of whether the fine imposed is paid on the basis of this examination – is unfounded.

In the rulings that the representative of the Saeima referred to at the court hearing the courts have not referred to RTL Section 20 at all and have not examined, whether the vehicle owner has met the obligations envisaged by this legal norm.

I.e., it is only noted in the rulings by Riga City Zemgale Suburb Court that in the administrative violation case a vehicle belonging to another person had been removed, which should be returned to the owner, irrespectively of the penalty imposed upon the driver, "to prevent violation and infringement upon the rights of the aforementioned company". This was the reasoning of the Riga City Zemgale Suburb Court in deciding on returning the removed vehicle both to a legal person, which had rented it, as well as to a mother, whose son had committed a violation, likewise, to other natural and legal persons, without establishing the relationship between the vehicle owner and driver and without examining whether the vehicle owner had met the obligations defined in the second and third part of RTL Section 20 (*see, Decision of 18 April 2012 by Riga City Zemgale Suburb Court in Case No. P131009512, Decision of 25 June 2010 in Case No. P131014712, Judgement of 17 October 2012 in Case No. P131026112 and Judgement of 24C October in Case No. P131027512).*

In the case reviewed by Alūksne District Court, referred to by the representative of the Saeima during the court hearing, the court did not *expressis verbis* refer to RTL and did not examine, whether the obligations included in it were met, but examined the restrictions to the vehicle owner's rights and took into consideration the fact that the owner as an employer had the possibility by exercising the rights defined in Section 58(3) of Labour Law, through due control prevent a situation when a vehicle was driven by an intoxicated person (*see Decision of 8 September 2010 by Alūksne District Court in Case No. 108014810).*

Moreover, the case law is not uniform. For example, Sigulda Court in the descriptive part of the judgement has noted that the driver of the vehicle "had come to the forest in a company's car", i.e., had been driving a vehicle owned by the employer, but further on in the judgement does not even indicate who the vehicle owner was, and does not examine the possibilities that this person had to prevent the violation, nor restrictions to its rights, but decided that the vehicle was to be returned to the owner only after the fine had been paid *(see Judgement of 5 September 2012 by Sigulda Court in Case No. 135008212).* Similarly, Ogre District Court, having established that the vehicle owner was a legal person, examined neither the possibilities of this person to prevent the violation, nor the restrictions upon its rights, but decided to return the vehicle to the owner only after the fine was paid (*see, Decision of 11 August 2009 by Ogre District Court in Case No. 124067509).* Courts have taken similar actions also in other cases.

Thus, there are instances in case law, when the court assesses the actions taken by the vehicle owner, and instances, when the court examines, whether the application of the contested norm will not cause and infringement of the person's right to own property, but there are also cases, where the court is not dealing with any of these issues. Thus, case law is not uniform. Therefore, the opinion by the representative of the Saeima that a uniform understanding of the contested law has become enshrined in case law, which prohibits applying it to a vehicle owner, who has met obligations defined for him with sufficient care, is unfounded.

Thus, the adverse consequences for the vehicle owner envisaged by the contested norm is neither administrative, nor civil law, nor any other kind of liability and may set in irrespectively of the fact, whether the vehicle owner has or

has not met obligations established for him with sufficient care. I.e., the setting in of the aforementioned adverse consequences and their duration depends upon the actions of another person, not of the vehicle owner.

14. The Constitutional Court must examine the request by the Saeima to terminate legal proceedings in the case because in submitting the constitutional complaint, allegedly, the principle of subsidiarity has not been complied with. I.e., the Saeima has pointed to legal remedies that the Applicant had failed to use. Whereas the Applicant notes that no legal remedies had been available to her that would ensure to her the right to a fair court enshrined in Article 92 of the Satversme.

Section 19^2 (2) of the Constitutional Court Law envisages: "A constitutional complaint (application) may be submitted only if all the options have been used to protect the specified rights with general legal remedies (a complaint to the higher authority or higher official, a complaint or statement of claim to a general jurisdiction court, etc.) or if such do not exist."

The following practice has become consolidated at the Constitutional Court – in order to comply with the principle of subsidiarity the real and effective possibilities to protect one's fundamental rights that have been infringed must be exhausted, this does not mean using any theoretically possible legal remedies that could in any way apply to the Applicant's situation (*see Judgment of 19 October 2011 by the Constitutional Court in Case No. 2010-71-01, Para 14).*

The European Court of Human Rights has also noted that the requirements of the subsidiarity principle must be applied flexibly and without excessive formalism (*see, for example, Judgement of 19 March 1991 by the European Court of Human Rights in Case "Cardot v. France", Application No. 11069/84, Para 34).* The requirement to use general legal remedies is not absolute, and it cannot be applied automatically. I.e., in examining, whether this requirement has been met, the particular facts of each case should be taken into consideration (*see, for example, Judgement of 6 November 1980 by the European Court of Human Rights in Case "Van Oosterwijck v. Belgium", Application No. 7654/76, Para 35).* This means, *inter alia*, that it is not enough to establish the existence of formal legal remedies, the whole context, where these remedies operate, must be taken into consideration (*see, Judgement of 16*

September 1996 by the European Court of Human Rights in Case "Akdivar and Others v. Turkey", Application No. 21893/93, Para 69, and Judgement of 17 April 2012 in Case "Grudić v. Serbia", Application No. 31925/08, Para 48).

The finding that in order to comply with the subsidiarity principle, real and effective possibilities to protect the infringed fundamental rights must be exhausted means, first, that actual possibility exists to achieve, by using the particular legal remedy, such substantive law outcome that prevents the possible infringement on fundamental rights. If an imperative norm has been defined unequivocally, the applicant is in a situation typical of the scope of this norm and no doubt exists regarding application of the norm in the particular case, then the Constitutional Court Law does not require exhausting such formally existing possibilities to appeal against an administrative act, the use of which, obviously, would not lead to a decision favourable for the person.

Secondly, the requirement to exhaust real and effective possibilities to protect the infringed fundamental rights included in Section 19^2 of the Constitutional Court Law applies to such legal remedies that are available to a person in a procedural sense. If the legal remedy is linked to turning to court, it must ensure to a person the right to a fair court both in the institutional and the procedural aspect of it.

Thus, to adopt a decision with regard to the request made by the Saeima, i.e., to examine, whether the Applicant had such possibility to defend her fundamental rights, which could be recognised as being general legal remedies in the meaning of Section19^2 (2) of the Constitutional Court Law, it must be established:

1) whether the Applicant had at her disposal such legal remedies, the use of which is usually considered by the Constitutional Court as a pre-requisite for initiating a case on the basis of a constitutional complaint;
2) whether the contested norm has been worded unequivocally as an imperative legal norm and whether the Applicant is in typical situation envisaged by the contested norm;
3) whether those legal remedies, which the Saeima considers to be pre-requisites for submitting a constitutional complaint, open to the Applicant real possibilities to defend her rights and ensure the right to a fair court.

14.1. The adverse consequences for a person envisaged in the contested norm are established not in separate proceedings, but within the framework of proceedings that are predominantly aimed at examining the administrative violation committed by the driver of a vehicle. If the vehicle owner is not the person, who is made administratively liable, then he does not have at his disposal such legal remedies that are envisaged by the Latvian Administrative Violations Code for a person, who has committed an administrative violation.

The court has not been imposed the duty to hear the vehicle owner in reviewing a case of administrative violation, which has been committed with a vehicle that belongs to another person. In difference to the regulation included in the Civil Law and the Criminal Procedure Law, which envisages an owner's right to acquire a certain procedural status in those cases, when decisions are taken with regard to property in his ownership, LAVC does not envisage such regulation, which the Applicant could use to get involved in the proceedings on her own initiative and express her opinion regarding returning the tool for committing the administrative violation – a vehicle – irrespectively of whether the fine imposed upon the offender has been paid. Also Riga City Ziemeļu District Court did not give the Applicant the possibility to be hears during legal proceedings that examined the respective administrative violation and at the same time decided, when the vehicle owned by the Applicant should be returned to her.

Thus, the Applicant did not have at her disposal such legal remedies that in the case law of the Constitutional Court are regarded as the possibilities to defend one's fundamental rights envisaged in Section 19^2 of the Constitutional Court Law.

14.2. The representative of the Saeima underscored during the court hearing that the Applicant's situation was an exceptional case, but not the basic case envisaged in the contested norm (*see transcript of the sitting of the Constitutional Court of 24 September 2013, Case Materials, Vol. 2, p. 18*). Allegedly, the contested norm was intended to define the actions by state institutions in a typical situation, i.e., in a case, where the vehicle owner is simultaneously the person, who has committed the administrative violation. Moreover, it was alleged that the contested norm was based upon the assumption that if a person has committed a violation with a vehicle that is owned by another person, he would immediately pay the fine voluntarily. Whereas the

Applicant's situation was said to be an atypical case, where the court, by exercising its discretion, could decide not to apply the norm that has been defined as imperative.

The Constitutional Court has noted: justice must be ensured in a democratic judicial state and it is inadmissible to apply legal norms formally, ignoring the actual circumstances, which make a particular case significantly different compared to other cases, where the legislator has established a certain form of exercising the state power. In atypical cases, the court must have the right to derogate from implementing legal consequences. However, such derogation must be substantiated by special, reportable and convincing arguments (*see Decision of 28 February 2007 by the Constitutional Court on terminating legal proceedings in Case No. 2006-41-01, Para 15).*

The debates that occurred in the Saeima regarding the contested norm allow concluding: even though the contested norm predominantly was aimed at a situation, where the vehicle owner is also the same person, who has committed the particular administrative violation, the legislator, nevertheless, was aware that the adverse consequences envisaged by the contested norm would affect also such vehicle owners, who have not committed the respective administrative violations. For example, member of the Saeima P. Kļaviņš said at the sitting of Saeima Legal Affairs Committee of 25 July 2005: "The owner should also think, who should be given the vehicle to drive and who – not" (*see Case Materials, Vol. 1., p. 65*). Moreover, both in the written reply and also during the court hearing the Saeima has expressed the opinion that the contested norm had a legitimate aim – ensuring the vehicle owners' duty of care and meeting the obligations defined in Section 20 of RTL.

According to the information provided by the Ministry of Interior, the situation that has evolved in practice, though, differs from the statements made by the Saeima. Thus, in 2012 of 4210 recorded violations that had been committed by driving a vehicle in a state of intoxication, only in 1428 or 34 per cent of cases the drivers, who committed violations, were also the owners of these vehicles (*see Letter of 5 April 2013 by the Ministry of Interior No. 1-59/902, Case Materials, Vol. 1, p. 138).*

Thus, the opinion expressed by the Saeima – that the Applicant's situation should be considered as an exceptional case and therefore a court of general jurisdiction could derogate from applying to her the adverse consequences envisaged in the contested norm – is unfounded.

14.3. The representative of the Saeima at the court hearing pointed to LAVC Section 274^1 "Actions with Removed Objects and Documents" as a legal norm that ensured to the Applicant possibilities to defend her rights at court. Allegedly, this Section defines the rights and obligation of a court to decide on what should be done with the removed property.

The legal norm, which was referred to, regulates some situations, where the legislator has restricted the discretion of a court, for example, envisaging that the instrument used to commit the violation and belong to the offender must be confiscated. However, it also envisages cases, where the issue of removed objects is left at the court's discretion. For example, valuables and property that have been acquired as the result of the violation or had been intended for or used to commit a violation are to be confiscated or returned to their owners.

Thus, even though LAVC Article 274^1 sets out the obligation of a court to decide on removed property, it does not, however, regulate a person's right to be heard regarding the issue, whether an object should be returned to her as the owner.

14.3.1. The Senate has concluded that LAVC norms, which regulate removal of property and returning it to owner in cases of administrative violations, do not directly define the actions by an institution or the court in case, where the owner of removed property is not the same person, who has committed an administrative violation. Whereas the contested norm directly envisages return of the removed vehicle to its owner only after the fine imposed upon the offender has been paid. Removal of property in a case of administrative violation is said to serve as a security for enforcing the decisions, i.e., paying the fine. Therefore there are grounds to examine, whether the fact that the court adopts a decision on returning the vehicle to its owner only after the fine has been paid, does not infringe the rights of the owner of property by linking the regaining of this person's property to the enforcement of an administrative penalty imposed upon another person. Moreover, pursuant to LAVC Section 297, a vehicle owner has the right to turn to court requesting it to assess, whether the vehicle in his or her ownership should not be returned irrespectively of the enforcement of the fine applied in the case of administrative violation (*see Ruling in Case No. SKA-794/2008, Para 11 and Para 14).*

However, the actual circumstances of case No. SKA-794/2008, examined by the Senate, applied to a situation, where the vehicle that was used to commit an administrative violation had, possibly, come at the disposal of the offender against the will of the vehicle owner. As already stated in this Judgement, the case law that has evolved in connection with this ruling by the Senate is not uniform.

14.3.2. LAVC Section 297 provides that issues that are linked to the enforcement of administrative penalties are decided by the institution (official) that adopted the decision. The institution, which adopted the initial decision, controls correct and timely enforcement of the decision on applying administrative penalty. The Saeima holds that the court would have resolved the issue of returning the removed vehicle to the Applicant, if she had submitted to the court an appropriate procedural document in due time (*see transcript of the sitting of the Constitutional Court of 24 September 2013, Case Materials, Vol. 2, p.20*).

The opinion expressed by the Saeima cannot be upheld, since the judge of Riga City Ziemeļu District Court, by providing an answer in the form of a letter to the Applicant's application regarding the return of the vehicle, irrespectively of whether the fine has been paid, notes that pursuant to LAVC Section 257(1) the issue regarding actions with the removed vehicle had been decided in the decision on applying the administrative penalty. The fact that the Applicant had submitted the respective document only after the case of administrative violation had been heard, is noted by the judge only as a remark, following the word "moreover" (*see Document of 18 June 2012 by Riga City Ziemeļu District Court No. 1-8/21, Case Materials, Vol. 1, p. 17).*

Thus, the answer provided by the judge leads to the conclusion that even if the Applicant had submitted the request before the case of administrative violation was heard, the court, anyway, would have chosen the action set out in the contested norm. The judge's answer does not refer to whether the findings expressed in Ruling in Case No. SKA-794/2008 regarding the right to submit a respective application would be applicable to the Applicant.

In view of the abovementioned, as well as the fact that a uniform case law with regard to the application of the contested norm has not evolved, the opinion expressed by the Saeima is ungrounded – that as the result of reasonable interpretation, application of the legal norms and development of legal norms, permanent judicature

had established in Latvia that would ensure the Applicant's procedural rights, by submitting an appropriate request to a court, to recover the removed vehicle before the fine has been paid.

Thus, the submission of such a request cannot be recognised as a possibility to protect one's rights by general legal remedies in the meaning of Section 19^2 (2) of the Constitutional Court Law.

14.4. The representative of the Saeima, by referring to the judgements by the Constitutional Court in Cases No. 2001-07-03 and No. 2010-60-01, expressed the opinion that the Applicant had the right to turn to court by referring directly to Article 92 of the Satversme.

A finding has been established in the case law of the Constitutional Court that Article 92 of the Satversme imposes a positive obligation upon the State, pursuant to which it must not only create and maintain institutional infrastructures that are necessary for realising fair court, but also promulgate and implement legal norms that guarantee that the procedure itself is fair and unbiased (*see Judgement of 5 March 2002 by the Constitutional Court in Case No. 2001-10-01, Para 2 of the Findings).*

In interconnection with Article 90 of the Satversme, this obligation means the legislator's duty to envisage clearly in legal norms a procedure that would create in an individual clear certainty about his or her possibilities to defend one's fundamental rights. A situation, where all persons would have to turn to court by referring directly to Article 92 of the Satversme, would be incompatible with an understanding of a duly organised court system.

The Constitutional Court has underscored repeatedly that all courts have the obligation to ensure in all cases protection of a person's right, when examining cases that fall within its jurisdiction, also if the legislator has not established or has not yet established a procedure. However, this duty of the court does not impose an obligation upon a person, prior to submitting a constitutional complaint, on all occasions, where law does not envisage legal remedies, turn to court, by directly referring to Article 92 of the Satversme.

The situations dealt with in both the Judgement by the Constitutional Court in Case No. 2001-07-03 and the Judgement in Case No. 2010-60-01 differed from the circumstances in the case under review and did not pertain to the issue of exhaustion

of legal remedies at the disposal of a person as a pre-requisite for examining a constitutional complaint. Moreover, the Judgement of the Constitutional Court in Case No. 2001-07-03 predominantly applied to the applicability of the third sentence in Article 92 of the Satversme.

In view of the abovementioned, a person's right to turn to court by referring to Article 92 of the Satversme cannot be considered as being a legal remedy that has been directly and unequivocally envisaged in the legal system and in the meaning of Section 19^2 (2) cannot be considered as a possibility to defend one's rights by general legal remedies.

14.5. The Saeima notes that the Applicant had had the right to contest and appeal against the decisions adopted by the State Policy and the Agency in this case.

Pursuant to LAVC, the issue regarding actions with the removed vehicle falls with the jurisdiction of a court. The jurisdiction of the State Police and the Agency covers only enforcement of the decisions adopted by a court.

Thus, in the particular case, appealing against the decisions by the State Policy and the Agency cannot be considered as a possibility to defend the infringed fundamental rights with general legal remedies in the meaning of the Constitutional Court Law (*compare to Judgement of 19 October 2011 by the Constitutional Court in Case No. 2010-71-01, Para 14.3).*

Thus, the Applicant did not have at her disposal such real and effective possibilities for defending her fundamental rights, the exercise of which would be a pre-requisite for meeting the requirements of Section 19^2 (2) of the Constitutional Court Law. Therefore the request of the Saeima regarding termination of legal proceedings in the case is to be rejected.

15. The Applicant holds that the contested norm is incompatible with the Article 105 of the Satversme as a whole. Whereas the Saeima holds that only the compatibility of the contested norm with the first sentence of Article 105 of the Satversme should be examined and that the scope of the first sentence is influenced by the second and third sentence in the same Article of the Satversme.

Article 105 of the Satversme provides: ""Everyone has the right to own property. Property shall not be used contrary to the interests of the public. Property

rights may be restricted only in accordance with law. Expropriation of property for public purposes shall be allowed only in exceptional cases on the basis of a specific law and in return for fair compensation."

15.1. The finding has been consolidated in the case law of the Constitutional Court that in those cases, where the compatibility of a legal norm with the whole Article 105 of the Satversme is contested, but the contested norm does not envisage enforced expropriation, the compatibility of this norm with only the first, the second and the third sentence of Article 105 of the Satversme must be examined (*see, for example, Judgement of 3 November 2011 by the Constitutional Court in Case No. 2011-05-01, Para 15.1).*

In accordance with Para 35 and subsequent paragraphs of Regulation No. 1098, in certain cases the removed vehicle is expropriated (sold or destroyed) against the wish of its owner. The contested norm envisages only removing and storing a vehicle in accordance with the procedure established by the Cabinet of Ministers, but not its expropriation. The Applicant's vehicle, as confirmed at the court hearing by the Agency's representative, is still being stored (*see transcript of the sitting of the Constitutional Court of 24 September 2013, Case Materials, Vol. 2, p. 82).*

Therefore the Constitutional Court will examine the compatibility of the contested norm with the first three sentences in Article 105 of the Satversme only.

15.2. An interpretation of Article 105 of the Satversme that envisages an owner's right to act freely with his property has been consolidated in the case law of the Constitutional Court. I.e., the right to own property, defined in the first sentence of Article 105 of the Satversme, comprises also the owner's right to use his property according to his own opinion and also gain benefit from it (*see, for example, Judgement of 14 April 2011 by the Constitutional Court in Case No. 2010-62-03, Para 6).* Every vehicle owner also has this right (*see Judgement of 30 January 2012 by the Constitutional Court in Case No. 2011-09-01, Para 8.1).*

Pursuant to the second sentence in LAVC Section 257(1), if an appropriately authorised state institution established that an administrative violation envisaged in LAVC Section 149^{15} (except sixth part of it). Section 149^{4} (7) or Section 149^{5} (5) was occurring, this vehicle should be removed and handed over for storage to the Agency. Moreover, it remains in storage until the fine imposed upon the driver has been paid.

The owner may not use his vehicle during this period, since it has been removed against his will and handed over for storage until appropriate payment is made.

Thus, the contested norm denies an owner the right to use his vehicle according to his wishes and, hence, envisages a restriction to the vehicle owner's fundamental rights.

16. The finding that the legislator may adopt necessary laws to control that property is used in accordance with public interests has been consolidated in the judgements by the Constitutional Court. However, any restriction to the right to own property that has been established in this way must ensure a fair balance between the general interests of society and protection of a person's fundamental rights. In a democratic judicial state the right to own property, which the State guarantees to a private person, is not absolute. Namely, the right to own property may be restricted, however, it must be assessed, whether such restriction is justifiable, i.e.: 1) whether it has been established by law; 2) whether it has a legitimate aim and 3) whether it is proportional (*see, for example, Judgement of 20 May 2002 by the Constitutional Court in Case No. 2002-01-03, the Findings).*

17. The contested restriction has been established by law, i.e., it is included in a regulatory enactment – the Latvian Administrative Violations Code. The case contains no materials creating doubts as to the fact that the contested norm was adopted and promulgated in due procedure (*see also Para 1 of this Judgement*).

18. Any restriction to fundamental rights must be based upon facts and arguments regarding its necessity, i.e., the restriction is established due to important interests – a legitimate aim *(see Judgement of 22 December 2005 by the Constitutional Court in Case No. 2005-19-01, Para 9, and Judgement of 15 April 2009 in Case No. 2008-36-01, Para 12).*

In establishing the restriction to rights, the obligation to present and substantiate the legitimate aim of this restriction in the proceedings before the Constitutional Court lies upon the institution, which adopted the contested act (*see Judgement of 7 October 2010 by the Constitutional Court in Case No. 2010-01-01, Para 12.2, and Judgement*

of 27 January 2011 in Case No. 2010-22-01, Para 12.3), in the case under review the – Saeima.

The Saeima notes that LAVC Section 257(1) belongs to a set of measures, which in addition to administrative penalties ensure individual and general prevention of violations in road traffic, to deter persons from driving vehicles while being under the influence of intoxicating substances. Allegedly the contested norm at the same also facilitates vehicle owners' control over the way other persons drive vehicles belonging to them. Moreover, this norm is said to ensure enforcement of fines imposed for administrative violations. Thus the legitimate aim of the restriction to the fundamental right is protection of other person's rights and public safety in road traffic. However, it must be taken into consideration that the Saeima has defined the legitimate aim in respect to the first part of LAVC Section 27 as a whole.

Whereas the Applicant underscores that the only legitimate aim of the contested norm is to ensure payment of the fine imposed upon the driver of the vehicle, which cannot be a legitimate aim for restricting the fundamental rights of a vehicle owner.

18.1. The participants in the case and the summoned persons are of the same opinion that the restriction to the fundamental right established by LAVC Section 257(1), insofar it applies to removal of a vehicle at the moment of committing the violation and for the period of time from this moment until a decision is adopted in an administrative violation case, has legitimate aims – protection of other persons' rights and public safety. The removal of a vehicle in a situation, where it is driven by a person who is under the influence of intoxicating substances, has no driving licence or is fleeing, is aimed at preventing danger to other persons and protecting the rights of a vehicle owner. Whereas by keeping the vehicle in Agency's storage until a decision is adopted in the administrative violation case, effective possibilities to establish the circumstances of the respective administrative violation are ensured.

However, after a decision has been adopted on making the guilty person administratively liable and it has been established that the vehicle owner is not the person, who committed the respective administrative offence, the aforementioned circumstances are no longer present.

18.2. It follows from the opinions of the participants in the case and the summoned persons expressed in writing and during the court hearing that the contested norm further that: 1) the offender would serve the punishment and as the result in the future would be motivated to refrain from committing new violations in road traffic (special prevention) 2) other drivers would refrain from committing new violations in road traffic (general prevention) 3) the vehicle owner, who handed over his vehicle to the person, who committed a violation, would experience the adverse consequences established by the contested norm and in the future would choose with greater care the person who he entrusts with his vehicle; 4) other vehicle owners, being aware of such consequences, would choose with greater care the persons who they entrust their vehicles with.

Thus, it must be assessed, whether each of these aims can be a legitimate aim for restricting a vehicle owner's fundamental right in case he is not the person, who committed the violation.

18.3. Already at the moment when the draft law, which comprised the contested norm, was submitted, it was noted in the annotation to it that "the respective amendments to LAVC were necessary, because the analysis of situation shows that the principle of the inevitability of punishment is not functioning (the imposed fines are not paid)", whereas if the draft law was adopted the State budget revenue "could increase, since the amount of paid fines could increase" (*annotation to the draft law "Amendments to the Latvian Administrative Violations Code", Vol.1, pp. 77 and 78*). It is also noted in the letter of the Ministry of Transport to the Saeima Legal Affairs Committee while the draft law was discussed: " [..] confiscation or detention of a vehicle until the fine is paid is the only way to realise the principle of the inescapability of punishment" (*Letter of 1 August 2005 by the Ministry of Transport No. 01-07.2/73, Case Materials, p. 83).*

The principle of inevitability of punishment is aimed at achieving that the punishment is served by the offender and as the result would be motivated to refrain from committing new violations in the future. Thus, the aim *per se* – to promote that the guilty person would serve the punishment himself or herself, i.e., would pay the fine, – is aimed at the protection of other persons' rights and public safety, and thus is to be recognised as being a legitimate aim for restricting fundamental rights.

The principle of inevitability of punishment is not realised in public law if another person serves the punishment instead of the guilty person. Thus, the aim of the contested norm, insofar it is only to achieve that a certain sum of money is paid into the State budget in connection with the committed administrative violation, not to achieve that the fine is paid the person, who is guilty for committing this violation, cannot be recognised as being legitimate.

18.4. The above-mentioned opinions that were expressed at the time it was adopted, as well as its grammatical wording may cause doubts as to whether the contested norm has aims that are beyond the limits of a particular administrative violation.

In a similar case the Constitutional Court of the Republic of Lithuania assessed the norms of the Lithuanian Administrative Violations Code *(Lietuvos Respublikos administracinių teisės pažeidimų kodekso)*, which envisaged removal and transferring for storage a vehicle for different types of administrative violations, *inter alia*, driving a vehicle while being under the influence of intoxicating substances, until the imposed fine was paid (*see Judgement of 10 April 2009 by the Constitutional Court of the Republic of Lithuania in the combined cases No. 27-08, 29-08 and 33-08, available http://www.lrkt.lt/dokumentai/2009/r090410.htm, accessed on 25.09.2013)*. In this case the defendant – the Seimas of the Republic of Lithuania – had noted that the contested norm had the legitimate aim to decrease the number of those cases, where persons drove vehicles while being under influence of intoxicating substances and to achieve that until the fine was paid the owners of these vehicles could not participate in road traffic with the particular vehicle (*see Section III and V in the part of the facts in the aforementioned Judgement*). However, the Court did not recognise this aim as being legitimate and noted that, in fact, the contested regulation only attempted to ensure that the imposed fines were enforced (*see Para 6- 9 in Section III in the part of findings in the aforementioned Judgement).* The Court recognised the contested norms as being incompatible with the Constitution of the Republic of Lithuania.

The Constitutional Court takes into consideration that the Saeima has pointed, with good reason, to the regulation included in the contested norm as a part in the totality of such measures and sanctions which make drivers and owners of vehicles, being aware of the existence of such regulation, consider the possible consequences of

their actions in case if it is established that a person is driving a vehicle while being under the influence of intoxicating substances or commits other administrative violations referred to the contested norm. If a person is aware that the consequences of his or her actions might deny the possibility to use the vehicle not only to this person, but also, for example, a family member, who is the owner of the vehicle, it serves as an additional impetus to refrain from committing a violation. It follows from the information provided by the Agency that in many cases the administrative fine is paid by the vehicle owner, but in many other cases the offender himself immediately pays the fine in order not to hinder the vehicle owner to use his vehicle.

Thus, even though other aims of the contested norm referred to by the Saeima and the summoned persons are rather conditionally linked to the contested norm, undeniably, these can be recognised as being legitimate for restricting fundamental rights. Moreover, the Constitutional Court has recognised previously that some measures, envisaged in a particular legal norm, which the State implements to prevent violations of road traffic rules may be recognised as being such that together with measures envisaged in other legal norms serve to reach one legitimate overall objective – road traffic safety *(compare Judgement of 28 March 2013 in Case No. 2012-15-01, Para 18.2).*

Thus, the aim of the contested norm is to promote a situation where the offender refrained from committing new violations in road traffic, as well as that other drivers would refrain from committing violations, and to motivate a vehicle owner, who has handed over his vehicle to a person, who has committed a violation, and other vehicle owners to choose with greater care persons, who they entrust their vehicles with. **This aim is to facilitate the protection of other persons' rights and public safety, thus it is a legitimate aim for restricting fundamental rights.**

19. To establish, whether the principle of proportionality has been complied with, it must be examined: 1) whether the measures chosen by the legislator were appropriate for reaching the legitimate aim; 2) whether more lenient measures are not available for reaching this aim and 3) whether the benefit that society gains by restricting a person's fundamental rights exceeds the loss caused to a person's rights and lawful interests.

If, in examining a legal norm, it is recognised that it is incompatible with even one of these criteria, then it is incompatible with the principle of proportionality and is unlawful (*see, for example, Judgement by 19 March 2002 by the Constitutional Court in Case No. 2001-12-01, Para 3.1 of the Findings, and Judgement of 20 April 2012 in Case No. 2011-16-01, Para 12).*

19.1. The measures chosen by the legislator are appropriate for reaching the legitimate aim, if this aim is reached by the particular legal regulation (*see, for example, Judgement of 7 October 2010 by the Constitutional Court in Case No. 2010-01-01, Para 13).*

19.1.1. The participants of the case are of the same opinion that the contested norm reaches the legitimate aim in those cases, where the vehicle owner is also the person, who has committed the administrative violation. In a situation like this, the removal of the vehicle until the imposed fine is paid is an important motivations for the offender to pay this fine in order to regain his vehicle. At the same time in this case the contested norm functions as individual and general prevention of administrative violations in road traffic, since a person is aware of the consequences of his or her violation.

The contested norm establishes identical regulation in cases, where the person, who commits an administrative violations, and the vehicle owner is the same person, and cases, where these are two different persons. However, a driver, who has committed the violation with a vehicle belonging to another person, may not be sufficiently interested in regaining a vehicle that does not belong to him. Thus, one of the aims of the contested norm – to make the guilty driver serve the punishment (payment of fine) – is not reached in such cases.

In accordance with the information that was provided by the Agency's representative at the court hearing, the Agency does not have at its disposal precise data on, whether in each particular case the fine had been paid by the offender or it was paid instead of him by the vehicle owner; however, it was said that the cases, where the vehicle owner pays the fine instead of the offender were far from infrequent (*see transcript of the sitting of the Constitutional Court of 24 September 2013, Case Materials, Vol.1, pp. 88 – 89).*

Thus, the contested norm reaches the legitimate aim only if the guilty person has adequate financial possibilities and he is not evading paying the fine. If the person is evading paying the fine, then usually the fine is paid by the vehicle owner instead of the offender. In such a case, the State does not need to enforce the fine by using coercive measures at its disposal. Whereas if the vehicle owner wants to regain the money that he has paid, he has to submit a claim in civil law procedure, the court must adjudicate this claim and only afterwards the coercive measures that are at the State's disposal may be turned against the actual offender. In such a case the moment, when the guilty person experiences the negative consequences of punishment retreats even further away from the moment of committing the violation than in the case of failing to pay the fine on time, when the coercive measures that are at the State's disposal are turned against the guilty person immediately, by enforcing the imposed administrative penalty. "Abiding by the principle of inevitability of punishment, the practice, where the received punishment is significantly removed from the violation that has been committed, is inadmissible. It decreases the impact of the penalty upon developing law-abiding attitude in a person (*The Conception of Developing the System of Administrative Penalties, approved with Order of 4 February 2013 by the Cabinet of Ministers No. 38, available polsis.mk.gov.lv/LoadAtt/file2478.doc, accessed on 16.10.2013).*

Thus, if the fine is paid by the vehicle owner instead of the offender, then the legitimate aim of the restriction to fundamental rights is not reached.

Moreover, in the case referred to above, courts of general jurisdiction may become overburdened with cases that could be prevented by entrusting to sworn bailiff the collection of administrative fine immediately after it has been established that the decision that has been adopted in an administrative violation case is not implemented voluntarily.

19.1.2. The contested norm provides equal regulation with regard to a situation, where a vehicle has left its owner's possession legally, i.e., with the owner's consent, and also a situation, where the vehicle has been taken into possession by, for example, committing a crime. It is questionable whether the contested norm can succeed in preventing a person, who has committed a criminal offence to take a vehicle into his

possession, from driving it under the influence of intoxicating substances, driving without a driving licence or fleeing.

Without denying that in the judicial practice a situation like this is dealt with in accordance with Ruling in Case No. SKA-794/2008, the Constitutional Court draws the Saeima's attention to the fact that some legal norms, for example, Section 43^6 (7) of RTL, regulate cases, when the particular legal consequences may not apply to such vehicle owner, whose vehicle had left his possession as the result of illegal actions. An equal, clear regulation with regard to such vehicle owner would save the resources of both the judicial power and the Agency, and would be favourable for a person, who has suffered from a vehicle illegally leaving his possession.

19.2. The restriction to rights included in the contested norm is necessary, if no other measures exist that would be as effective and by choosing of which the restriction to the particular fundamental right would be lesser (*see, for example, Judgement of 1 November 2012 by the Constitutional Court in Case No. 2012-06-01, Para 13.2).*

The Constitutional Court has already concluded in its Judgements a number of times that it must not examine the extent to which any alternative measures would or would not be better suited for resolving a situation (*see, for example, Judgement of 8 March 2006 by the Constitutional Court in Case No. 2005-16-01, Para 15.8, and Judgement of 13 February 2009 in Case No. 2008-34-01, Para 22).* However, the examination of whether, in restricting a person's fundamental rights, alternative measures to be used in the particular case that would be less restrictive upon a person's fundamental rights enshrined in the Satversme, falls within the jurisdiction of the Constitutional Court.

19.2.1. The Ombudsman has mentioned as an alternative measure such solutions that could be analogous to the possibility envisaged in Section 14(2) of RTL to register prohibition of vehicle alienation, as well as the possibility envisaged in Section 43^2 (5) and Section 43^6 (7) of RTL to make a note in the Register of Vehicles and Drivers regarding the prohibition to perform the sate technical inspection of a vehicle and to register the vehicle until the payment of the fine.

However, at the court hearing reasoned arguments were provided that the aforementioned solutions would not be significantly more favourable for the vehicle

owner, since they have similar deficiencies as the contested norm. Moreover, the Constitutional Court has already pointed to deficiencies of the solution envisaged by RTL Section 43^6 (7) *(see Judgement of 28 March 2013 by the Constitutional Court in Case No. 2012-15-01, Para 18, in particular, Para 18.3.3.2).* Thus, such solutions cannot be recognised as alternative measures that would be less restrictive to fundamental rights.

19.2.2. The Ombudsman has indicated as an alternative measure also the possibility of enforcing the decision on imposing a fine, envisaged in LAVC Section 300. As the situation referred to by the Applicant proves, the fine imposed upon the actual offender has not been paid for more than a year, but the enforcement of it by applying coercive measures that are at the State's disposal has not been started yet. Thus, the possibilities envisaged in LAVC Section 300 are not sufficiently realised. Moreover, this measure could reach the legitimate aim only insofar this aim is enforcing the imposed penalty.

19.2.3. Insofar the legitimate aim of the restriction the fundamental rights is making vehicle owners more disciplined, by ensuring that they meet the obligations defined in the second and third part of RTL Section 20 and would choose with sufficient care the persons who can be entrusted with a vehicle and who – cannot, an alternative measure exists for reaching this aim. I.e., it is possible to envisage in legal norms a vehicle owner's liability for failing to meet the obligations defined in the second and third part of RTL Section 20. The Constitutional Court draws the legislator's attention to the fact that currently no administrative liability is envisaged also in cases, where an owner has handed over a vehicle for driving to a person, who is under the influence of intoxicating substances or does not have a driving licence.

Other states have found different solutions to the situation. For example, Section 21(1) in German Road Traffic Law envisages the same liability – deprivation of liberty for up to year or a monetary fine – both to the person, who drove a vehicle without a driver's licence, and to the holder of a vehicle, who made or allowed this person to drive a vehicle *(see Straßenverkehrsgesetz, available http://www.gesetze-im-internet.de/stvg/__21.html, accessed on 17.10.2013.).*

At the court hearing the summoned persons expressed the opinion that it was not always possible to detect this offence and to prove the owner's guilt; however, this

alternative measure would allow to deal more effectively with situations, where a person without a driving licence or while being under the influence of intoxicating substances drove a vehicle in the presence of its owner. Moreover, the Constitutional Court has noted that if an appropriate procedure for protecting a person's rights was ensured, then in some cases it would be admissible to envisage the legal presumption of a fact or even the strict liability of a vehicle owner (*see Judgement of 28 March 2013 by the Constitutional Court in Case No. 2012-15-01, Para 15.1, 15.2 and 18.2).*

However, this alternative measure would allow reaching the legitimate aim only partially, but would not allow reaching it in the same quality.

Thus, no sufficiently reasoned alternative measures exist in the case allowing to reach the legitimate aim on all occasions in the same quality.

19.3. In examining the compatibility of a restriction to fundamental rights with the legitimate aim, it must be verified, whether the adverse consequences caused to a person as the result of restricting fundamental rights do not exceed the benefit that society in general gains from this restriction (*see, for example, Judgement of 20 May 2011 by the Constitutional Court in Case No. 2010-70-01, Para 17).* Thus, the Constitutional Court must establish, what the interests to be balanced in this case are and which of the interests should be given priority.

In examining these interests, it must be taken into consideration that the benefit to society from the fact that the vehicle is not returned to its owner and is stored also after a decisions in a case of administrative violation has been adopted is minimal. In particular, if a violation envisaged in LAVC Section 149^{15} (4) has been committed and deprivation of a driver's licence must be imperatively applied to the person, thus, the vehicle owner legally may not hand over the vehicle to this person to drive.

Society might benefit from the restriction upon fundamental rights insofar the legitimate aim is reached with regard to all those groups of persons, who might be affected by the contested norm. The contested norm targets three different groups of addressees, i.e.:

1) vehicle drivers, who have committed administrative violations and who should be taught to be law-abiding with the help of a monetary fine. In this respect society gains any direct benefit from the contested norm only in those cases, where it is an impetus for a person to pay the fine voluntarily.

Whereas, if the person is unable or unwilling to pay the fine and the fine is paid by the vehicle owner instead of this person, then society gains no benefit from it;

2) vehicle drivers, who use vehicles belonging to other persons and have not yet committed administrative violations, to deter them from committing violations. However, in this respect the public benefit from the contested norm is not big, since in the majority of cases the penalty envisaged for violations creates more adverse consequences for the driver than the fact that another person will be hindered to use a vehicle belonging to him;
3) the owner of the particular vehicle, as well as other vehicle owners, so that they would meet the obligations defined in the second and third part of RTL Section 20, as well as would be more careful in choosing a person who they entrust their vehicle with.

Insofar the public benefit is forcing a vehicle owner to meet obligations defined for him, it must be taken into consideration that the contested norm provides an identical regulation regarding situations, where a vehicle owner has different possibilities to influence the driver's actions, for example, cases, where an entrepreneur hands over the vehicle to another person on the basis of a rental contract, and cases, when he hands over a vehicle to his employee.

Whereas in examining the severity of adverse consequences envisaged for a vehicle owner, it should be taken into consideration that:

1) adverse consequences for a person set in not in connection with violations of law committed by this person, but by another person;
2) a due procedure for assessing the severity of the adverse consequences caused by the application of the contested norm in court, nor any other legal remedies have been envisaged that could reduce the severity of these consequences for some groups of persons.

19.3.1. In the examination of public benefit and the losses caused to a person, first of all it should be taken into consideration that the contested norm creates a

situation, where adverse consequences are defined for a person, who is not guilty of unlawful actions. A situation like this may cause doubts about fairness of law.

Moreover, the contested norm allows a situation, where the adverse consequences for a vehicle owner, who has not violated legal norms, envisaged in it are more adverse than for a person, whose guilt has been proven in procedure established by law. I.e., a term has been established for paying an administrative fine – 30 days, but in certain situations a person may request postponing enforcement of it for a period up to six months from the date of adopting the decision, on the conditions that the imposed fine is collected in instalments. Whereas the vehicle owner, to avoid adverse consequences, i.e., so that he would be able to use his vehicle immediately, must ensure that the guilty person pays the fine immediately, i.e., before the set term. If the vehicle owner wants to pay the fine instead of the offender, but is unable to do it immediately, he has not ben grated the right to request postponing payment of the fine and permission to pay it in instalments. Moreover, the payment for storing the vehicle (eight lats per day), envisaged in Regulation No. 1098, which constantly increases, creates substantial additional costs.

In the case under review the Agency has expressed contradictory opinions on whether the payment of these costs is a pre-requisite for the owner to regain his vehicle. I.e., it is noted in the written opinion that the owner, if he wishes to take out the vehicle from Agency's storage, must cover the costs of moving and storing the vehicle (*see Letter of 4 April 2013 by the Provision State Agency No.17-3/2354, Case Materials, Vol. 2, 132),* whereas at the court hearing the Agency's representative underscored that if the owner wanted to take out the vehicle from the Agency's storage, then only the imposed fine had to be paid *(see transcript of the sitting of the Constitutional Court of 24 September 2013, Case Materials, Vol.2, p. 88*).

19.3.2. No procedure has been envisaged for the implementation of the contested norm, in the framework of which the vehicle owner could be heard and assessment could me made, whether the indirect losses, which occur, if the vehicle is kept in storage, do not exceed several times the fine imposed upon the guilty driver.

Likewise, no procedure has been envisaged for hearing the vehicle owner, examining the situation, where inaccessibility of a vehicle could significantly restrict the rights of those persons, whose needs are provided for with the help of the particular

vehicle, and to compare these consequences with the benefit to society from keeping the vehicle in storage.

Thus, the contested norm can create disproportionally large losses exactly because no procedure has been established for the vehicle owner to defend his or her rights, and no cases have been envisaged allowing the courts not to apply the contested norm.

19.3.3. The severity of consequences envisaged by the contested norm can significantly differ, depending upon whether free monetary resources are or are not available to persons. If the vehicle owner is able to pay the fine immediately instead of the offender, he regains the vehicle immediately, but, if the vehicle owner is unable to pay the fine, he might even lose the vehicle. The contested norm does not envisage special regulation with regard to those vehicle owners, who belong to socially vulnerable groups.

19.3.4. The State has taken upon itself the control over driver's qualification, by establishing not only a system for verifying the necessary knowledge, skills, abilities and health in those cases, when a person obtains for the first time the right to drive a vehicle, but also a system, in the framework of which both regular health checks are conducted, but also possibilities are envisaged to deprive of a driving licence for a definite period of time. A vehicle owner has the right to expect that a vehicle can be entrusted to a person, who has a driving licence, unless he has at his disposal information proving the opposite.

A lessor of a vehicle has no concrete measures at his disposal, apart from envisaging sanctions of civil law nature in the agreement, to influence the way the leassee is handling the rented vehicle. Moreover, severe sanctions have already been envisaged for a person, who drives a vehicle while being under the influence of intoxication substances, without a driving licence or flees.

Thus, the public benefit from the contested norm cannot be considered as being significant as regards general prevention. Likewise, the gains for special prevention are not big, since the keeping of the lessor's vehicle in storage cannot create particular interest for the leassee to pay the fine sooner. However, the fact that the rented vehicle

remains in Agency's storage until the fine is paid can create significant losses for the entrepreneur.

In view of everything mentioned above, a person may incur significant adverse consequences, whereas the public benefit is small.

Thus, the contested norm, insofar it applies to those cases, where the restriction to fundamental right established by Article 105 of the Satversme is caused to a vehicle owner, who at the same time is not the person, who committed an administrative violation, is incompatible with the principle of proportionality. Therefore, the contested norm is incompatible with Article 105 of the Satversme.

20. Pursuant to Section 32(3) of the Constitutional Court Law, a legal norm that has been recognised by the Constitutional Court as being incompatible with a legal norm of higher legal force is to be recognised as being invalid as of the day when the judgement by the Constitutional Court is published, unless the Constitutional Court has provided otherwise. Whereas in accordance with Para 11 of Section 31 of the Constitutional Court Law, if the Constitutional Court recognises a legal norm as being incompatible with a norm of higher legal force, it must set the date, as of which the respective norm becomes invalid.

Section 32(3) of Constitutional Court Law establishes the discretion of the Constitutional Court to decide, by taking into consideration all facts of the case, the moment, as of which a contested legal norm, which is incompatible with a norm of higher legal force, becomes invalid. If the Constitutional Court considers that it must be established with regard to all persons or a group of persons that the contested norm should be recognised as being invalid not as of the date when the judgement by the Constitutional Court is published, but as of another date, it must provide reasoning for its opinion in the judgement.

In setting a concrete date, as of which the contested norm becomes invalid, the Constitutional Court, abiding by its previous case law, will examine, whether recognising the contested norm as being invalid retroactively is necessary for the protection of the Applicant's fundamental rights and whether any considerations exist, according to which the contested norm should be recognised as being invalid

retroactively only with regard to the Applicant (*see Judgement of 21 December 2009 by the Constitutional Court in Case No. 2009-43-01, Para 34).*

20.1. The Constitutional Court, in deciding on the date, as of which a contested norm, which is incompatible with a legal norm of higher legal force, becomes invalid, is not bound by the opinion expressed in the Application. The date, as of which the contested norm should be recognised as being invalid, is not indicated in the Application. Neither did the Applicant directly express a request to recognise the contested norm as being invalid as of the date of its adoption or any other date retroactively at the court hearing; however, it follows from the facts of the case that the only possibility to defend the Applicant's fundamental rights and, thus, reach the main aim of the case initiated on the basis of a constitutional complaint, is to recognise the contested norm as being invalid with regard to the Applicant as of the date when the decision by Riga City Ziemeļu District Court was adopted in case No. 132023712/1, i.e., as of 14 June 2012.

20.2. Law not only grants authorisation to the Constitutional Court, but also imposes responsibility to ensure that its judgements would ensure in social reality legal stability, clarity and peace (*see, Judgement of 21 December 2009 by the Constitutional Court in Case No. 2009-43-01, Para 35.1*). The Constitutional Court, to the extent possible, should refrain from adopting decisions that were difficult to implement financially or organisationally (*see Judgement of 20 December 2010 by the Constitutional Court in Case No. 2010-44-01, Para 17.2).*

The contested norm has been in force for many years, and it is not possible to unmake the situation, where vehicles were stored at the Agency and then returned to their owners or the owners abandoned them and vehicles were sold or destroyed. Thus, the contested norm cannot be recognised as being invalid from the date of its coming into force. Moreover, vehicle owners have the possibility to claim compensation of losses from the guilty person in civil law procedure.

20.3. Those persons, with regard to whose vehicles a court decision has been already adopted regarding returning them to owner after the administrative fine is paid, but whose vehicle at the moment when this judgement is published are still stored by the Agency, are in similar and comparable circumstances to those of the Applicant. Thus, with regard to these persons the contested norm should be recognised as being

invalid as of the day when a court adopted a decision that the vehicle should be returned to its owner only after the fine was paid.

20.4. The Constitutional Court has already noted that in difference to the regulation in other European states, which *expressis verbis* grants to the constitutional courts the right to determine also the way and procedure of enforcing their judgements, Para 12 of Section 31 of the Constitutional Court Law provides only that the "other rulings" may be included in a judgement by the Constitutional Court. However, pursuant to the aforementioned paragraph, the Constitutional Court has the right to regulate also issues that are essential for preventing new violations of the fundamental rights enshrined in Satversme occurring after the contested act has been recognised as being invalid (*see Judgement of 16 December 2005 by the Constitutional Court in Case No. 2005-12-0103, Para 25).* Hence, the Constitutional Court must verify, whether legal norms comprise regulation that allow effective enforcement of the judgement by the Constitutional Court.

Pursuant to Para 6 of LAVC Section 289^{23}, the recognition of the contested norm as being incompatible with a norm of higher legal force would be a newly discovered fact and the basis for resuming legal proceedings in cases of administrative violations, where alongside the issue of making the person guilty of committing an administrative violation administratively liable also the decision regarding returning a vehicle to its owner only after the fine has been paid is decided, irrespectively of the fact that the owner has not committed the respective violation.

LAVC Section 289^{24} (1) envisages that a person who has been made administratively liable may submit an application requesting to initiate a case due to newly discovered facts. LAVC does not *expressis verbis* envisage such procedural status of the owner of the instrument for committing the administrative violation that would allow him to submit an application of this kind.

Pursuant to findings expressed in Ruling in Case No. SKA-794/2008, a vehicle owner would have the right to turn to the court, which reviewed the case, by referring to LAVC Section 297, which regulates deciding on issues related o implementation of decisions.

However, such procedure for implementing the judgement by the Constitutional Court with regard to the Applicant and persons referred to in Para 20.3 of this

Judgement would not be effective and not only would create additional workload to courts of general jurisdiction, but would also delay the vehicle owners' possibility to regain their vehicles.

To establish, whether the contested norm has or has not become invalid with regard to a concrete vehicle owner, there is no need to conduct a review typical of legal proceedings, it is enough to verify, whether the person, who at the moment when the violation was committed was indicated as its owner (holder), is or is not the same person to who an administrative fine has been imposed. The Agency, on the basis of the judgement by the Constitutional Court, has the right to conduct such a review, if an application has been received regarding returning a vehicle to its owner. Whereas a decisions by the Agency that is unfavourable for a person is to be appealed against in the procedure established by the Administrative Procedure Law.

The Substantive Part

Pursuant to Section 30 – 32 of the Constitutional Court Law the Constitutional Court

held:

1. To recognise the words in the second sentence of Section 257 of the Latvian Administrative Violations Code "[if such administrative violation has been committed, which is provided for in Section 149^{4}, Paragraph seven; Section 149^{5}, Paragraph four or Section 149^{15} of this Code (except for the violation provided for in Paragraph six) up to the implementation of the fine applied]:

1) with regard to Liene Vegnere, as being incompatible with Article 105 of the Satversme of the Republic of Latvia and invalid as of 14 June 2012;

2) with regard to other vehicle owners (holders indicated in the vehicle registration certificate), who have not committed the administrative violation for which a fine has been imposed and whose vehicles on the day when this Judgement is published are stored by the Provision State Agency, as being incompatible with

Article 105 of the Satversme and invalid as of the date when the decision was adopted in the respective administrative case;

3) with regard to other vehicle owners (holders indicated in the vehicle registration certificate), who have not committed the administrative violation for which a fine has been imposed, as being incompatible with Article 105 of the Satversme of the Republic of Latvia and invalid as of the date when the Judgement by the Constitutional Court is published.

2. To establish the following procedure for implementing the Judgement by the Constitutional Court: the Provision State Agency, on the basis of this Judgement, shall return vehicles in its storage to the owners and holders of vehicles indicated in the registration certificate of a vehicle referred to in subparagraph 1 and 2 of Para 1 in the Substantive Part of this Judgement upon their request, irrespectively of the enforcement of the fine.

The Judgement is final and not subject to appeal.

The Judgement enters into force on the day of its publication.

Chairperson of the Court sitting G. Kūtris