REPORT ON THE WORK OF THE **CONSTITUTIONAL COURT** OF THE REPUBLIC OF **LATVIA**

2020

Report on the work of the Constitutional Court of the Republic of Latvia in 2020.
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INTRODUCTION

This report provides insight into the work of the Constitutional Court from 9 December 2019 to 8 December 2020. The cut-off line for the report is 9 December – the foundation date of the Constitutional Court.

The foreword by the President of the Constitutional Court Sanita Osipova introduces the report. It is followed by recent news relating to the Constitutional Court. Afterwards, the statistics on the number of received applications, as well as the number of initiated and examined cases are provided.

The third section of the report comprises information about the case-law of the Constitutional Court. First of all, this is information about the trends of the development of the case-law as disclosed by the cases heard within the reporting period, as well as short descriptions of these cases. The examined cases are divided in accordance with the following branches of law – fundamental rights, public law, tax and budget law, international and European Union law, civil law and civil procedure, as well as criminal law and criminal procedure. This division, however, is rather approximate, since some aspects of fundamental rights are examined in almost each of the cases heard by the Constitutional Court; moreover, cases may pertain to various branches of law. Besides the trends in the development of the case-law and short descriptions of cases, the report also provides and overview of the Constitutional Court's decisions on terminating legal proceedings, as well as decisions of the Constitutional Court's panels to initiate or refuse initiation of cases.

The fourth section of the report characterises the Constitutional Court's dialogue with the society and public institutions, as well as the judicial dialogue within the European legal space and international cooperation. Speeches by Ineta Ziemele, the President of the Constitutional Court, and the President of Latvia Egils Levits pronounced at the solemn hearing dedicated to the opening of the Constitutional Court's judicial year on 10 January 2020 are also published. Finally, the report comprises a list of publications by judges and staff members of the Constitutional Court, as well as key excerpts from these publications.

CONTENT

FOREWORD

Each year has unique features of its own. Each year the time flows in its own unique rhythm. What were the characteristics of 2020? At the Constitutional Court, it, definitely, was a year of intense work, fast adjustment, self-improvement and a year for searching and finding new paths.

Judging by the reports of mass media, it might seem that last year the Constitutional Court has heard only four or five cases, depending on the interest of the particular mass media outlet: on the language use in private higher education institutions, financing of higher education institutions, families of same-sex couples, and benefits for the indigents. In fact, the Constitutional Court has worked as productively as never before, without interrupting, not for a moment, legal proceedings even during the state of emergency, and, by the end of the year, examining 30 cases. Although this range of cases included also cases pertaining to public administration and separation of powers, majority of them involved issues of fundamental rights.

Out of the totality of this diversity, abundance and richness of content, I shall highlight only some trends that the rulings of the previous year clearly outlined.

First of all, it should be noted that problems that had not been dealt with for years and even decades reached the Constitutional Court last year. For years, both the persons whose rights had been infringed upon, the Ombudsman and other state officials had been pointing in various ways to the issuer of the norm – the *Saeima* or the Cabinet – to the existence of a particular legal problem, and the resolution of this problem had been delayed and postponed for a long time. This applies both to the Ombudsman's applications regarding issues of social security, which had not been re-examined since the previous crisis, the possibility for homosexual persons to register their partnerships legally, as well as an increase in the financing for higher educational institutions to be included in the state budget, which had not been allocated even once since 2014.

At the same time, the Constitutional Court also examined legal provisions which had been unexpectedly included as a priority in the second or third reading of a draft law and adopted as law, without particular debates and a more extensive assessment of their alignment with the rest of the legal system or the compliance with Latvia's international obligations. In this regard, a striking example is the provisions that established restrictions for private higher education institutions to teach in foreign languages, simultaneously imposing on them the duty to cultivate the Latvian language.

The outlined trends are opposite – on the one hand, delaying the solution, which leads to resolving the problem in constitutional legal proceedings, and, on the other hand, establishing new, unconsidered restrictions on a person's fundamental right in haste, which also leads to constitutional legal proceedings.

If I had to choose one quote from the judgements delivered by the Constitutional Court in 2020, it would be the following: "The opinion that the dignity of one person could be less valuable than the dignity of another person is incompatible with the principle of human dignity. The principle of human dignity does not permit the state to refrain from guaranteeing fundamental rights to a particular person or a group of persons. The stereotypes existing in the society may not serve

President of the Constitutional Court Sanita Osipova. Photo: Karīna Miezāja.

as constitutionally justifiable grounds for denying fundamental right to a certain person or a group of persons or restricting these rights in a democratic state governed by the rule of law."[1] This is the essence of the case-law of the whole year: a person's right to self-determination, based on human dignity, or the principle of private autonomy, which not only the state but society in general must comply with.

The assessment of the range of cases examined reveals another common feature: to a large extent, the Court has reviewed provisions that affect groups of persons who might experience any infringement on their rights particularly acutely. These are children, the elderly and persons with special needs, indigent persons, prisoners, etc. Likewise, the rights of both national and sexual minorities have been reviewed. It can be concluded that the Constitutional Court by its judgements, dealt with legal issues that are of a particular importance in a state governed by the rule of law, where the fundamental rights of each person are respected.

Fundamental rights can be exercised only in a state governed by the rule of law. Although immense work has been done since the restoration of independence, there are some traits of the legacy left by the Soviet Union that still hinder further consolidation of the rule of law. Three, to my mind, most important ones could be highlighted:

1) The state continues restricting a person's fundamental rights with the aim of changing, improving the society. Prof. Edgars Meļķisis

1 On 12 November 2020, the Constitutional Court delivered the judgement in Case No. 2019-33-01 "On the Compliance of Article 155(1) of the Labour Law with the First Sentence of Article 110 of the Constitution of the Republic of Latvia".

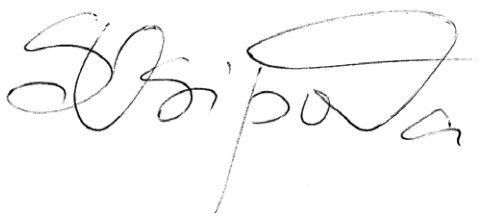
mentioned this problem as one of the threats to the rule of law at the 1st Congress of the Popular Front in 1988: "Thus, the law must rule in a state governed by the rule of law. However, there is a hidden threat in this requirement… An illusion could arise or, to be more exact, could remain that society can be transformed by laws and decrees. This trend, which appeared already at the very origins of Stalinism, has brought innumerable losses and sufferings to nations."[2]

2) The legislator's attitude towards the laws it has adopted. All laws are of equal legal force and must be abided by everyone, including the legislator. The Constitutional Court reviewed this threat to a state governed by the rule of law in the case relating to the financing of higher education institutions. Although it might seem surprising now, the origins of this problem are also rooted in the Soviet legal order. To quote Prof. E. Meļķisis again: "Regretfully, with us, the law has become devalued, to a large extent. We all know that economic and social development plans are adopted by law; however, does anyone know of a case when these two laws had been implemented in full? Hardly so. But there's no one to blame."[3]

3) However, the most painful Soviet legacy is found in the attitude of the public opinion and also the state towards the dignity of each person and the understanding that all persons are equally valuable. The Soviet power held otherwise: "Those who are not with us are against us". The Soviet power taught us intolerance towards class and ideological opponents, enemies of the people, all those who were different, who did not fit into the ideal Soviet society: dissident intellectuals, homosexual persons, religious groups, simply people longing for freedom. We drove away the Soviet power but the intolerance towards the different lingered. "There is no nation in the world that is free from the original evil. Therefore it is senseless to hate any nation. The evil, cruel man is despicable, and a system which turns a man into a non-human and devil must be especially combatted,"[4] Zenta Mauriņa writes. We conquered the Soviet system, now it remains to weed out the last flowers of evil planted by it...

What the Latvian cultural space needs most of all to implement fundamental rights in accordance with their genuine meaning is a culture of tolerance and acceptance, where all persons are equal in human dignity and equivalent in the civil society.

Prof. Dr. iur. Sanita Osipova
President of the Constitutional Court



2 Meļķisis E. Runa LTF 1. kongresā 1988. gada 8. oktobrī. Available: https://www.barikadopedija.lv/raksti/837036

3 Ibid.

4 Mauriņa Z. Dzintargraudi. Rīga: Zvaigzne, 2018, 88. lpp.

1 NEWS

The Constitutional Court's composition changed during the reporting period. Ineta Ziemele, who on 6 May 2020 was re-elected President of the Constitutional Court, left the office of the Constitutional Court's Justice on 2 October to take up the official duties of a Judge of the Court of Justice of the European Union. On 14 October 2020, Sanita Osipova was elected President of the Constitutional Court, whereas, on 28 October 2020, Aldis Laviņš was elected Vice-president of the Constitutional Court. Until the end of the reporting period, the Constitutional Court consisted of six Justices.

Changes have taken place also in the structure of the Constitutional Court and its staff. To modernise the management of the Constitutional Court, the position of the Head of the Constitutional Court's Administration was created. Marika Laizāne-Jurkāne entered this office on 31 August 2020. Two new structural units were established – the Administrative Department and the Department of Public Relations and Protocol. The number of Justice's assistants also has increased – now each Justice has two assistants.

To consolidate the Constitutional Court's independence, the *Saeima* introduced amendments to the Constitutional Court Law, which entered into force on 29 September 2020. The amendments envisage, *inter alia*, guarantees to the Constitutional Court's Justices after their mandate expires and autonomy of the Constitutional Court's budget.

With the onset of pandemic caused by Covid-19 infection, various restrictions were introduced and even emergency situation was declared in the state. Adjusting to these conditions, the Court's work was, mostly, organised remotely. Court hearings with the participants in the case present, as well as the election of the Court's President and Vice-president were held as video conferences, streamed in the Court's *YouTube* channel. Case participants were ensured the possibility to study the materials in the case digitally.

During the reporting period, the research centre SKDS for the first time studied the attitude of Latvia's inhabitants towards the Constitutional Court. It was found in the study that the Constitutional Court was the constitutional body of the judicial power that enjoyed the greatest trust among the population. I.e., 51 % of the respondents have answered that they "fully trust" or "rather trust" the Constitutional Court.

Finally, it needs to be mentioned that the Constitutional Court's premises have expanded. The Constitutional Court is located in Riga, in the building at 1 Jura Alunāna Street, which the Court previously shared with another institution. By taking over the entire building, the Constitutional Court has equipped a contemporary conference hall, as well as additional premises for Justices and the Court's employees.

2 STATISTICS

From left: Justice of the Constitutional Court Jānis Neimanis, Justice of the Constitutional Court Daiga Rezevska, President of the Constitutional Court Sanita Osipova, former President of the Constitutional Court Ineta Ziemele, Vice-president of the Constitutional Court Aldis Laviņš, Justice of the Constitutional Court Gunārs Kusiņš, Justice of the Constitutional Court Artūrs Kučs. Photo: Toms Norde.

From 9 December 2019 until 8 December 2020, the Constitutional Court has received 728 applications. Of these, 470 have been recognised as obviously falling outside the Court's jurisdiction or an answer has been provided to them in the procedure set out in the Freedom of Information Law; whereas 258 were registered as applications requesting initiation of a case and were transferred for examination by the Constitutional Court's Panels.

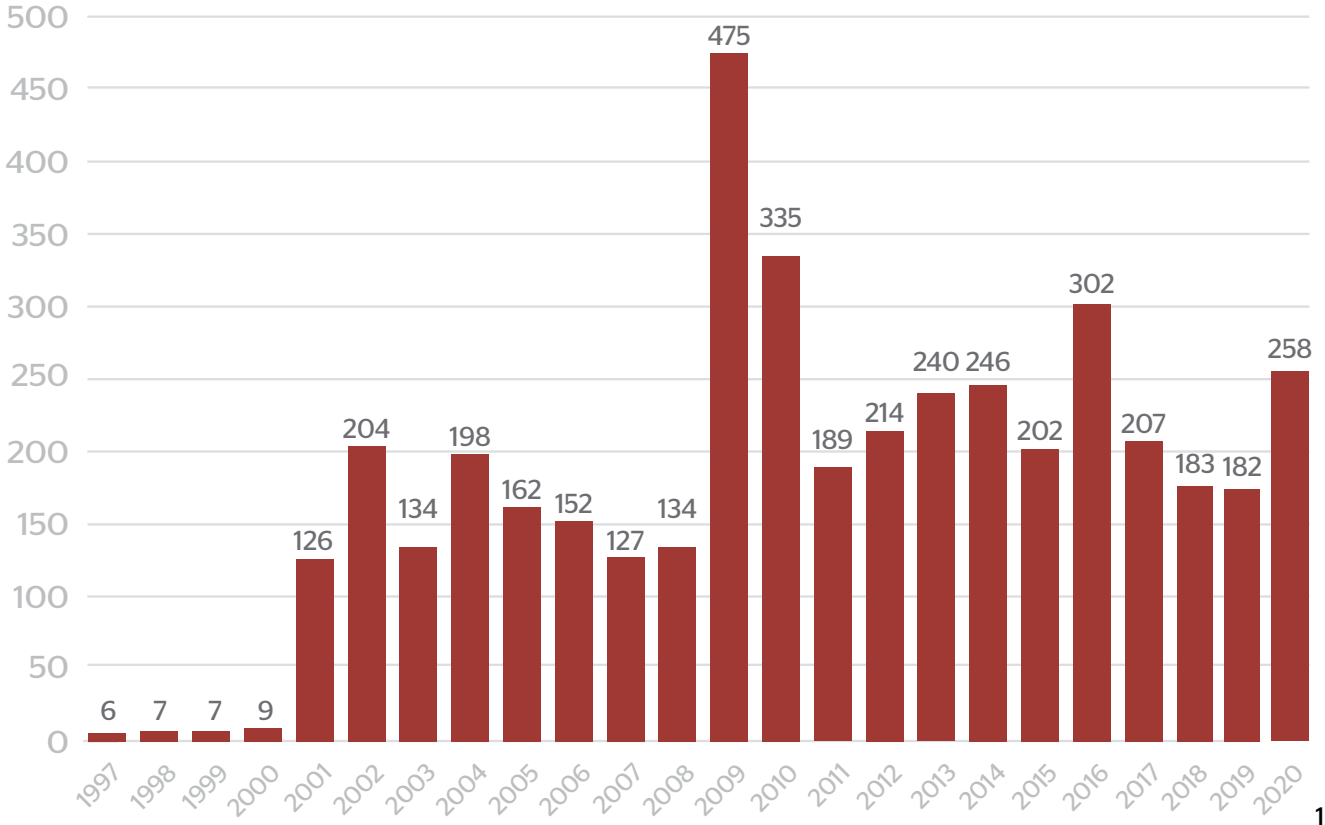
Last year, the Constitutional Court initiated 70 cases. Of these, 25 were initiated on the basis of a constitutional complaint, 22 cases – on the basis of a court's application, 17 cases – on the basis of an application by a local government council, 4 cases – on the basis of the Ombudsman's application, and 2 cases – on the basis of an application by no less than 20 Members of the *Saeima*.

During the reporting period, the Constitutional Court has reviewed 30 cases. Judgements were delivered in 26 cases, but in 4 cases legal proceedings were terminated. Due to referring a question for a preliminary ruling to the Court of Justice of the European Union, legal proceedings have been suspended in 4 cases. The constitutionality of 39 legal norms (acts) has been examined in the judgements.[5] 19 legal norms (acts) have been recognised as being compatible with the *Satversme* [Constitution] of the Republic of Latvia (hereafter – the *Satversme*), 20 legal norms (acts), in turn, have been recognised as being incompatible with the *Satversme*. The Constitutional Court's Justices have annexed 15 separate opinions to the judgements.[6]

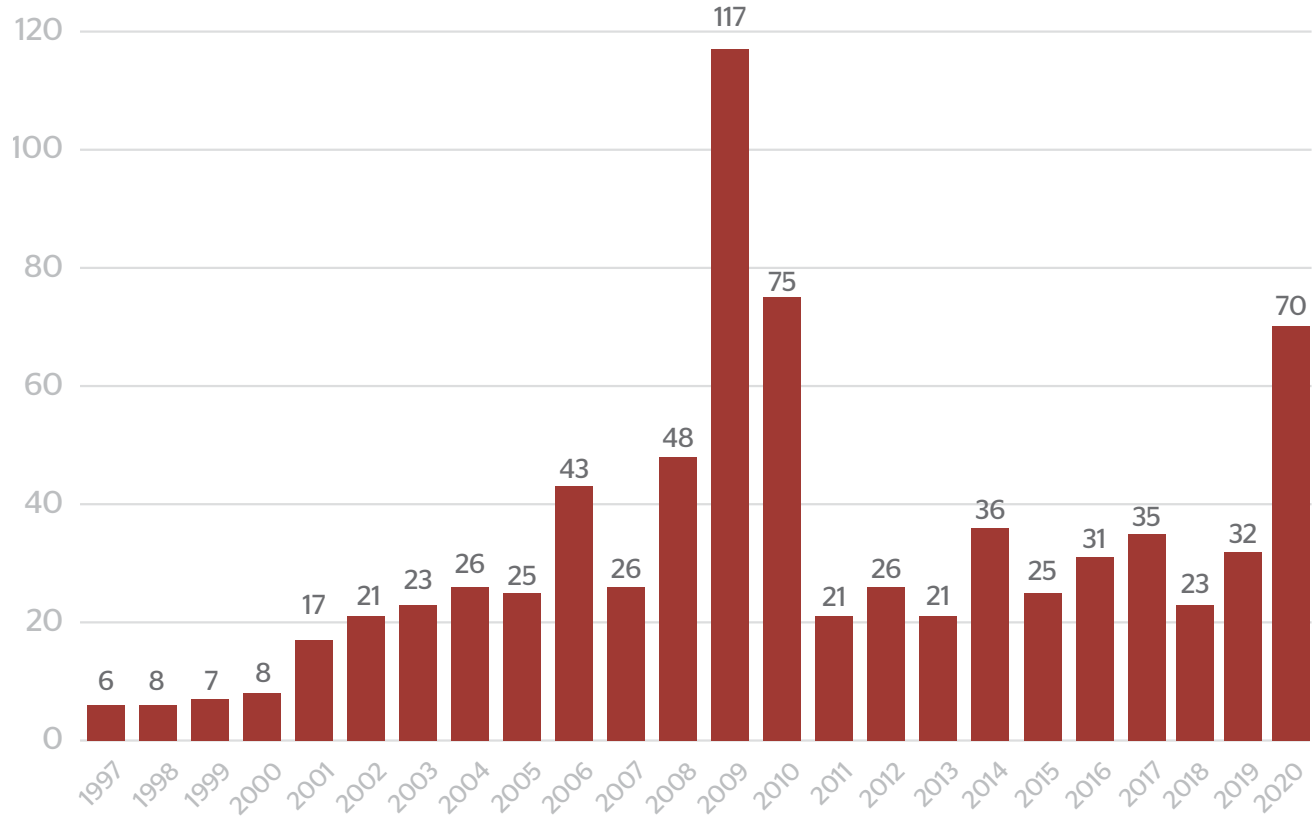
5 For statistical purposes, the programmes and sub-programmes of the law "On State Budget for 2019", reviewed in Case No. 2019-29-01, are counted as one legal norm (act).

6 Including the separate opinions that had been signed during the previous reporting period but not yet published, in accordance with Section 33 (1) of the Constitutional Court Law, the separate opinion by the Constitutional Court's Justice J. Neimanis in Case No. 2018-22-01, the separate opinion by the Constitutional Court' s Justice A. Kučs of 27 November 2019 in Case No. 2018-22-01, the separate opinion by the Constitutional Court's Justice I. Ziemele of 21 November 2019 in Case No. 2018-25-01.

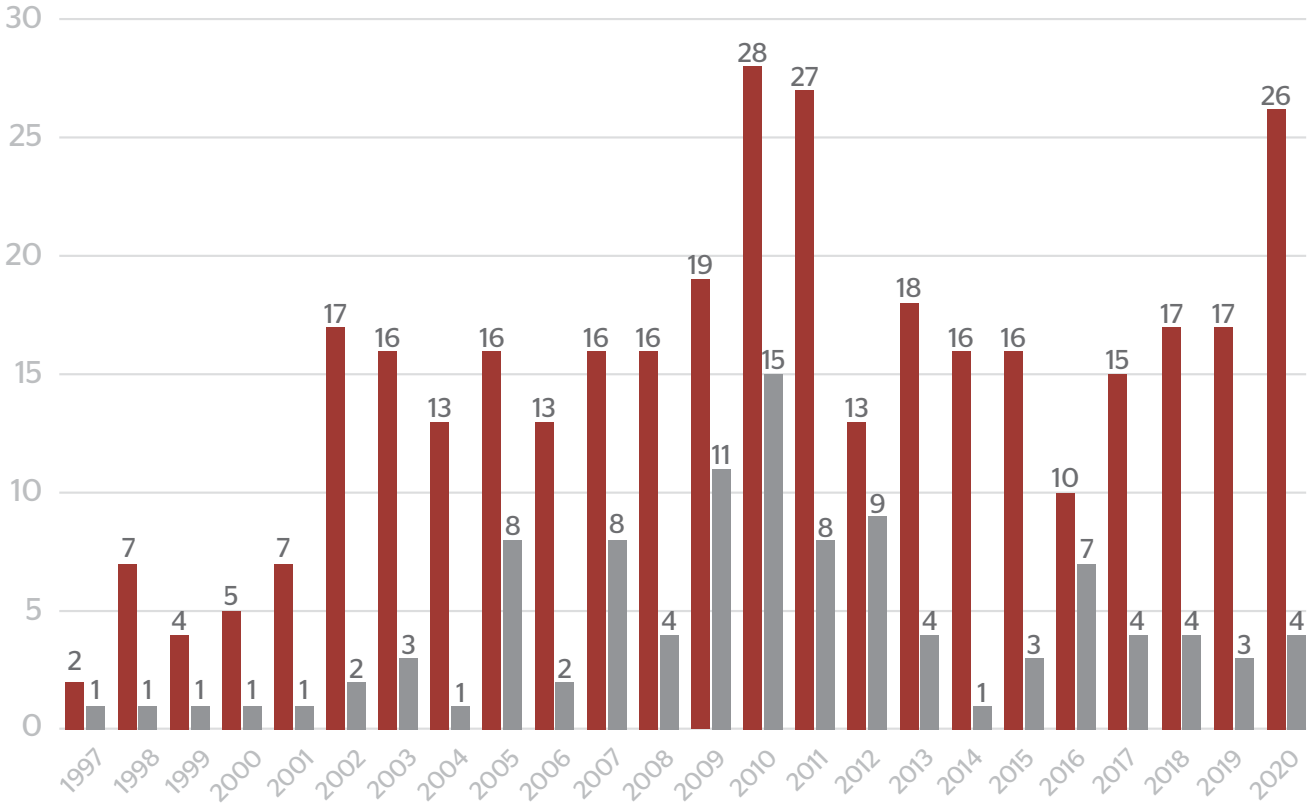
Number of applications received



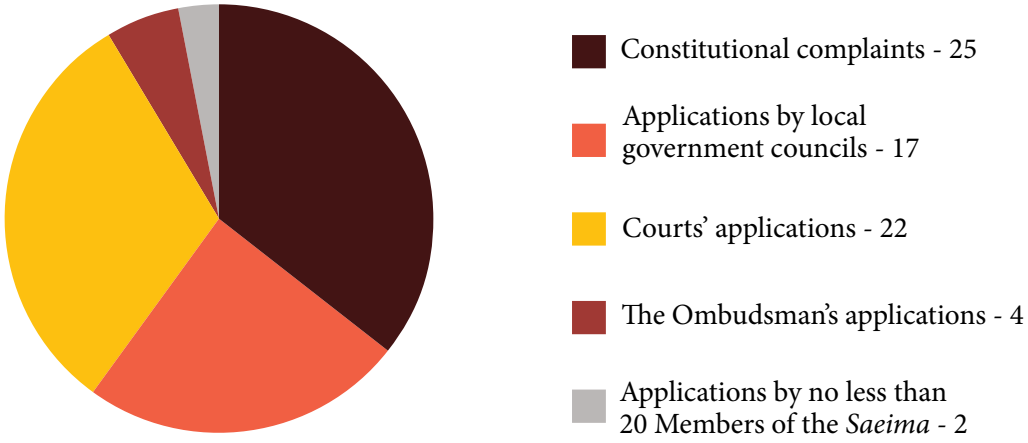
Number of initiated cases



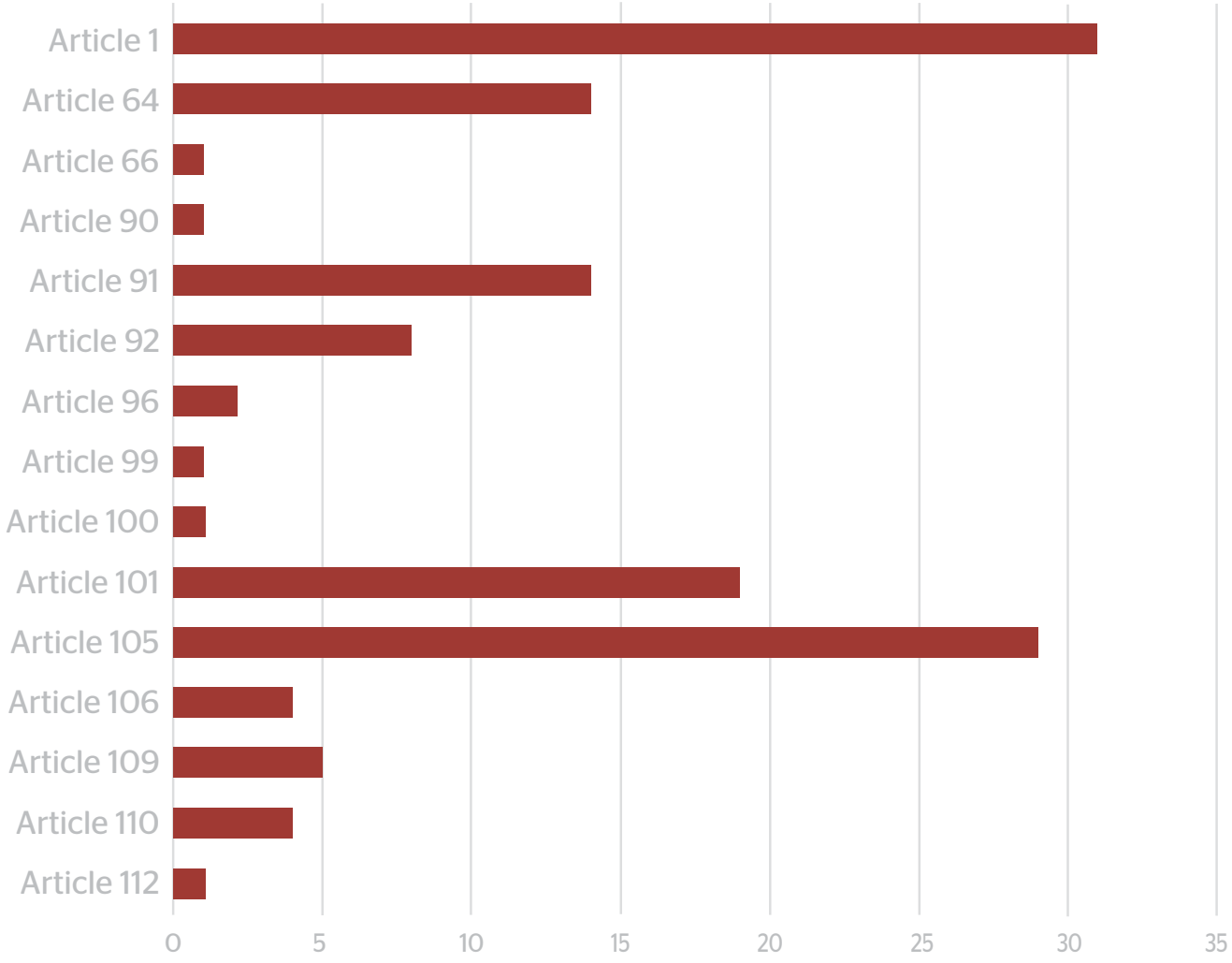
Number of cases heard
(judgments and decisions on terminating legal proceedings)



The division of initiated cases according to the applicant



Cases initiated according to Articles of the *Satversme*



3 JUDICATURE

3.1. FUNDAMENTAL RIGHTS

This section comprises information on cases, in which the compliance of legal norms with the fundamental rights established in the *Satversme* was examined and the legal issues, reviewed therein, were not closely linked to another branch of law. First, the trends of development in the Constitutional Court's judicature in the particular area of fundamental rights are analysed, followed by insight in the disposed cases.

Human dignity

In the Constitutional Court's judicature thus far, the principle of human dignity was examined in connection with procedural justice – the right to a fair trial,[7] the right to health protection and the right to live in a benevolent environment,[8] the State's obligation to regulate issues relating to the burial of a deceased person,[9] as well as a person's right to the inviolability of private life.[10]

During the reporting period, the issues related to the protection of human dignity gained unprecedented relevance, mostly in connection with the principle of a socially responsible state – in case No. 2019-24-03, No. 2019-25-03 and No. 2019-27-03. For example, in case No. 2019-24-03 regarding the guaranteed minimum income, the Court recognised: human dignity as a fundamental right is unconditionally vested in each person. The State's obligation to take care of a just social order, levelling out the most essential social differences in society, fostering social inclusion and ensuring to each group of inhabitants the possibility to lead a life worthy of human dignity follows from the principle of a socially responsible state, based on human dignity.

Whereas in case No. 2019-32-01 on leaving a prison to attend the funeral of a close relative, the Court elaborated the finding regarding the human dignity after death,[11] noting that, after a person's death, his or her body should be treated with dignity, *inter alia*, abiding by, to the extent possible, the last will of the deceased. In case No. 2019-33-01, in turn, relating to the leave for the female partner of a child's mother, the Constitutional Court underscored: the opinion that the dignity of one person could be less valuable than the dignity of another person was incompatible with the principle of human dignity. The principle of human dignity does not permit the State to derogate from ensuring fundamental rights to a particular person or a group of person. The stereotypes, existing in the society, may not serve as constitutionally justifiable grounds for denying fundamental right to a certain person or a group of persons or restricting these rights in a democratic state governed by the rule of law.

The principle of legal equality and prohibition of discrimination

As in the previous years, also last year, the principles enshrined in Article 91 of the *Satversme* have been applied repeatedly, in different aspects.

In case No. 2019-03-01 regarding restrictions on combining the offices of a member of a local government council, the Court elaborated its judicature on the limits of the legislator's discretion in organising public administration in the context of the equality principle and recognised that, in cases like these, it had to be assessed, whether the legislator had not acted arbitrarily. I.e., it should be examined, whether the contested norm has a legitimate aim, whether it had been adopted in compliance with the principle of good legislation and had been selected on the basis of objective criteria, whether it reaches the legitimate aim and is not obviously disproportional.[12] In case No. 2019-09-03 regarding financing of the operation of the Financial and Capital Market Commission, the

7 See the Constitutional Court's Judgement of 17 January 2005 in Case No. 2004-10-01, Para 9.1., and the Judgement of 5 November 2008 in Case No. 2008-04-01, Para 11.

8 See the Constitutional Court's Judgement of 19 December 2017 in Case No. 2017-02-03, Para 19.1.

9 See the Constitutional Court's Judgement of 5 March 2019 in Case No. 2018-08-03, Para 14.2.

10 See the Constitutional Court's Judgement of 5 December 2019 in case No 2019-01-01, Para 16.1.

11 See the Constitutional Court's Judgement of 5 March 2019 in Case No. 2018-08-03, Para 11.

12 Information about case No. 2019-03-01 is included in the section "State Law (Institutional Part of the *Satversme*)"of this Report.

Court recognised that the differential treatment of members of the financial and capital market, who were in similar and according to definite criteria comparable circumstances, had not been established by a legal norm adopted in the procedure set out in regulatory enactments.[13] In case No. 2019-11-01 regarding the refusal to initiate cassation legal proceedings in civil procedure in certain financial disputes, the Court found that, as the result of applying the contested norm, groups of persons, on the basis of a personal characteristic, did not form, therefore the groups of persons, identified by the applicant were not comparable from the perspective of equality principle.[14]

In case No. 2019-20-03, the Constitutional Court applied Article 91 of the *Satversme* in two aspects, examining, whether: 1) the contested norms caused unfounded differential treatment of persons belonging to ethnic minorities and those belonging to the title nation; 2) whether the contested norms caused unfounded equal treatment of children with special needs and children who did not have such needs. As regards the first aspect, the Court, complying with the previous judicature,[15] found that the learners belonging to the title nation and the learners belonging to an ethnic minority did not constitute comparable groups. Whereas with respect to the second aspect, the Court noted that Article 91 of the *Satversme* comprised not only the prohibition of unequal treatment on the basis of a prohibited criterion, i.e., a child' s special needs, but also the State's obligation to implement additional measures to ensure that the prohibited criterion is not an obstacle for the child in exercising the rights included in the *Satversme*, *inter alia*, the right to education. The Court recognised that the contested norms envisaged equal treatment of children who were in different circumstances. At the same time, the Court found: although, considering the aim to be reached, the legislator had established equal treatment of a child with special needs and a child without such needs, to reach this aim, positive measures were taken to ascertain that a child with special needs would become integrated into Latvia's system of education in the best possible way and, hence, in society, learning the Latvian language within the limits of their abilities. Hence, the contested norms were recognised as being compatible with Article 91 of the *Satversme*.

In case No. 2019-27-03 regarding the amount of social security benefit, the Constitutional Court, for the first time, examined disability as one of the criteria included in the content of Article 91 of the *Satversme*, which are the prohibited grounds of discrimination. The Court also underscored that disabled persons were a group of persons in need of special protection and the State, *inter alia*, had to implement special measures to ensure to these persons equal opportunities and lawful freedoms. Whereas with respect to the criterion of age, included in the content of this article[16], the Court noted additionally that the State should take appropriate care of seniors, *inter alia*, by fostering their social inclusion and decreasing their social isolation. The Court found that equal treatment of groups of persons in different circumstances had been allowed by the contested norm and that this treatment had not been established by a legal norm adopted in a procedure set out in regulatory enactments. Whereas in case N. 2019-36-01 regarding the social insurance of a disabled person, the Court elaborated the finding linked to the principle of legal equality and the special measures implemented by the State, pointing out that special measures had to meet certain criteria. The Court noted: to recognise that differential treatment was part of the special measure, it had to be examined whether this differential treatment was in the interests of the particular group of persons and whether this group of persons gained such benefit from it that would comply with the aim of the special measure.

In case No. 2020-05-01 regarding the repayment of the state fee in the case of a dismissed appellate complaint, the Court found that the groups of persons, identified by the applicant, were not in comparable circumstances and, hence, recognised the contested norm as being compatible with the principle of legal equality.[17] Whereas in case No. 2020-14-01 regarding the term for exercising the right to receive repayment of the state fee in civil procedure, the Court specified the methodology for reviewing the compliance of a legal norm with the first sentence of Article 91 of the *Satversme*, noting that, first and foremost, the Court had to establish, whether and which persons (groups of persons) were comparable and whether they were in similar or different circumstances. Following that, it had to be assessed, whether the contested norm envisaged equal treatment of persons who were in different circumstances or differential treatment of persons in similar circumstances.[18]

In case No. 2020-13-01 regarding benefits to parents of prematurely born children, in turn, the Court found that the child's moment of birth and health condition could not be recognised as being such characteristics that would differentiate between comparable groups and due to which the term for disbursing the childcare benefit and the parental benefit should be adjusted. Envisaging a differential term for the disbursement of parental benefit and childcare benefit only for those

13 Information about case No. 2019-09-01 is included in the section "State Law (Institutional Part of the *Satversme*)"of this Report.
14 Information about case No. 2019-11-01 is included in the section "Civil Law and Civil Procedure" of this Report.
15 See the Constitutional Court's Judgement of 13 May 2005 in Case No. 2004-18-0106, Para 13 of the Findings, and the Judgement of 23 April 2019 in Case No. 2018-12-01, Para 21.1.
16 See the Constitutional Court's Judgement of 20 May 2003 in Case No. 2002-21-01, Para 1 of the Findings.
17 Information about case No. 2020-05-01 is included in the section "Civil Law and Civil Procedure" of this Report.
18 Information about case No. 2020-14-01 is included in the section "Civil Law and Civil Procedure" of this Report.

parents, whose child is born prematurely, the rights of those parents, whose child has health or development disorders, although he has been born within the due-date set by the physician or later, would be levelled out Therefore, the Court recognised that socially insured parents, whose child had been born within the due-date set by the physician, and socially insured parents, whose child had been born prematurely, were in similar and according to definite criteria comparable circumstances. The contested norms envisage equal treatment of these groups and, thus, do not violate the principle of legal equality.

The right to a fair trial

During the reporting period, the procedural guarantees established in Article 92 of the *Satversme*, the principles and fundamental rights related to these guarantees, were examined in eight rulings. In case No. 2019-08-01, the Court examined the compliance of the contested norm with the presumption of innocence,[19] in case No. 2019-11-01, the right to appeal in the cassation instance in financial disputes was examined,[20] in case No. 2019-13-01, the Court reviewed compliance of the regulation of the Civil Procedure Law, pursuant to which the decision on refusal to initiate cassation legal proceedings in a civil case could be drawn up in the form of a resolution, with the principle of stating reasons,[21] in case No. 2019-15-01 – the compliance of the term for submitting a cassation complaint in criminal proceedings with the right to have sufficient time for preparing the defence,[22] in case No. 2019-21-01, the Court elaborated its previous judicature regarding the right to commensurate remuneration,[23] in case No. 2019-22-01, it examined the compliance of the concept of a public official, defined in the Criminal Law, with the principle nullum crimen, nulla poena sine lege,[24] but in case No. 2019-23-01 – the compliance of the regulation of the Civil Procedure Law, which did not envisage the right to request recusal of judges, who decided on the initiation of cassation legal proceedings, with the guarantee of a court's objectivity.[25]

In case No. 2019-35-01, the Court examined whether the procedure for appealing against a decision on inclusion a foreigner, who prior to expulsion had resided in Latvia legally, on the list of those foreigners to whom entry into Latvia was prohibited (hereafter – the List), ensured to a person access to an independent and objective institution, as well as whether, in this procedure, the procedural rights complying with the right to a fair trial had been envisaged.

The Constitutional Court already has examined the compliance of the legal norms, which regulate the inclusion of foreigners on the List, with the right to a fair trial. In case No. 2004-14-01, the Court, specifying the first sentence of Article 92 of the *Satversme*, in conjunction with Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter also – the Convention),

19 Information about case No. 2019-08-01 is included in the section "State Law (Institutional Part of the *Satversme*)" of this Report.
20 Information about case No. 2019-11-01 is included in the section "Civil Law and Civil Procedure" of this Report.
21 Information about case No. 2019-13-01 is included in the section "Civil Law and Civil Procedure" of this Report.
22 Information about case No. 2019-15-01 is included in the section "Criminal Law and Criminal Procedure" of this Report.
23 Information about case No. 2019-21-01 is included in the section "Decisions on Terminating Legal Proceedings" of this Report.
24 Information about case No. 2019-22-01 is included in the section "Criminal Law and Criminal Procedure" of this Report.
25 Information about case No. 2019-23-01 is included in the section "Civil Law and Civil Procedure" of this Report.

recognised the norm, which did not envisage at all the right to foreigners to appeal against the decision by the Minister for the Interior on their inclusion on the List, as being incompatible with the *Satversme*.[26] Whereas in case No. 2019-35-01, the Court noted, first and foremost, that a foreigner's right to appeal against the decision linked to the expulsion to an independent and unbiased institution followed from the first sentence of Article 92 of the *Satversme*, specifying it in conjunction with Article 1 of Protocol 7 to the Convention. The Court found: although the Prosecutor General is an official belonging to the judicial system, in the particular case, however, doubts regarding his objectivity had not ben precluded. Notwithstanding this conclusion, the Court also examined, whether in the process of appealing against the decision on including a foreigner in the List procedural rights, compatible with the first sentence of Article 92 of the *Satversme* were ensured. The Court recognised that also in the case, where a foreigner was expelled from the state due to considerations of national security, he should not be denied the right to be heard substantially and he should be provided at least such summary of the information that did not jeopardise the national security. However, if due to important considerations related to the national security, such summary of the causes of expulsion cannot be provided, it is important that the restriction on the foreigner's right to be heard would be balanced by other procedural safeguards. I.e., an independent and objective institution should examine the conditions that are the grounds for the decision to expel the foreigner, *inter alia*, also, in a certain procedure, information containing official secrets. Finally, the Court found that, in the particular case, such balance was not ensured and that even the minimum amount of procedural rights, established in the first sentence of Article 92 of the *Satversme*, was not guaranteed.

The right to inviolability of private life

During the reporting period, the content of the right to inviolability of private life was revealed in two judgements: in case No. 2019-32-01 regarding leaving the prison to attend the funeral of a close relative and in case No. 2019-33-01 regarding a leave for the female partner of the child's mother.

In case No. 2019-32-01, the Constitutional Court developed the finding, expressed before, that Article 96 of the *Satversme* included, *inter alia*, the right to form and develop relationships with other persons,[27] and for the first time enshrined in its judicature that the scope of this right included also attendance of a close relative's funeral, which was applicable also to a person who had been sentenced to deprivation of liberty. The substantiation for this conclusion was that attending the funeral of a close relative was an important manifestation of a person's autonomy and self-determination. The funeral, *inter alia*, is collective leave-taking by the family members from the deceased and allows not only to show the last respect to him but also to strengthen the relationships between the family members. The Court found that this prohibition for a convicted person, who served the sentence at a closed or semi-closed prison on the lowest level of the sentence serving regime, was aimed at protecting the public security. However, this legitimate aim could be reached by a less restrictive measure – examining the individual request by the particular individual regarding leaving the prison for a short period. At the same time, the Court underscored that the type and severity of the criminal offence committed by the person could not be the only criterion to be taken into account in deciding on this request. Whereas taking the leave from the deceased relative in the prison territory cannot replace participation in the ritual of burial and, thus, cannot be considered as being an alternative measure.

In case No. 2019-33-01, in turn, the Constitutional Court, on the basis of the principle of the unity of the *Satversme*,[28] found that the right to protection of the family, established in the first sentence of Article 110 of the *Satversme*, was closely interconnected with the right to inviolability of private life, defined in Article 96 of the *Satversme*. Sexual behaviour of a person, in turn, is one of the elements of private life. Within the framework of private life, a person is ensured the possibility to establish relationships of different nature, including sexual relations. A person's freedom of sexual behaviour needs to be protected, irrespectively of the person's sexual orientation.

The right to participate in the work of the state and local government

Article 101 of the *Satversme* defines the right that serves as the safeguard for the existence of a democratic order and is aimed at ensuring the legitimacy of the state order. However, this right is not absolute because the *Satversme* provides that the way, in which this right is exercised, must be set out in law.[29] Until now, the fundamental right included in this article has been examined in the Constitutional Court's judicature in connection with various restrictions on the voting right,[30] requirements set for civil servants and other

26 See the Constitutional Court's Judgement of 6 December 2004 in Case No. 2004-14-01.

27 See, for example, the Constitutional Court's Judgement of 23 April 2009 in Case No. 2008-42-01, Para 8 and Para 10.

28 See, for example, the Constitutional Court's Judgement of 8 March 2017 in Case No. 2016-07-01, Para 16.3.

29 See, for example, the Constitutional Court's Judgement of 30 August 2000 in Case No. 2000-30-01, Para 1 of the Findings, and the Judgement of 7 April 2009 in Case No. 2008-35-01, Para 12.

30 See the Constitutional Court's Judgement of 30 August 2000 in Case No. 2000-03-01, Judgement of 15 June 2006 in Case No. 2005-13-0106, Judgement of 5 February 2015 in Case No. 2014-03-01.

officials of state and local government institutions[31], as well as the right to participate in a referendum.[32] Whereas in case No. 2019-08-01 regarding the right to take the office of a Member of the *Saeima*, reviewed during the reporting period, the Court recognised that Article 110 of the *Satversme* envisaged to a person, if he had been elected to the *Saeima*, the right to take the office of the deputy without such interference in the performance of the functions of this office that would be contrary to the general principles of law and the rights established in the *Satversme*.[33]

The right to property

During the reporting period, issues of the right to property were examined in case No. 2019-05-01 regarding the total costs of consumer credit, case No. 2019-12-01 on the language of instruction in higher education institutions,[34] as well as in cases No. 2019-10-0103 and No. 2019-37-0103 on compensation in the case of violating the rules on the use of natural gas.[35]

In case No. 2019-05-01, the Constitutional Court took into account the finding included in its judicature that the right to engage in business activities, obtained on the basis of a licence, fell into the scope of the right to property.[36] At the same time, the Court, referring to the judicature of the European Court of Human Rights,[37] also pointed to a new criterion in examining a restriction on this fundamental right. I.e., it recognised that, in the particular case, it had to be verified, not only whether the contested norm hindered the applicant from engaging in commercial activities on the basis of a licence, but also, in assessing the proportionality of the restriction, it should be ascertained, whether the commercial activities of creditors were hindered to the extent that the licences issued to it became meaningless. Moreover, the compliance of the contested norm with the right to property should be reviewed in conjunction with the principle of legal expectations. The Court found that the contested norm restricted the applicants' right to engage in business activities on the basis of a licence since it envisaged more adverse terms for the creditors than before, which had to be taken into account in planning their business activities in the area of consumer credit. In assessing the constitutionality of the said restriction, the Court upheld the finding made in other cases, i.e., that Article 105 of the *Satversme* did not envisage legal protection for a person' s opportunities to make profit.[38] Hence, the creditor cannot develop legal expectations requiring protection that the legal regulation in the respective area will not be amended in a way that might have a negative impact on its economic activities, decreasing the possibilities of gaining the intended amount of profit.

In case No. 2019-10-0103 regarding the obligation for a household user to pay compensation if the regulations on the use of natural gas had been violated, the Constitutional Court elaborated the finding made in other cases that the all rights of financial nature should be understood as the right to property,[39] noting that a person's monetary resources were the object of the right to property. The Court recognised that a person's monetary resources, which the household user, in case he had violated the regulations on the use of natural gas, had to invest to pay the compensation to the energy supply merchant, fell within the scope of Article 105 of the *Satversme*. The obligation defined in the contested norm of the law to make these payments decreases the amount of a person's monetary resources, hence, this norm includes a restriction on the right to property, in the meaning of Article 105 of the *Satversme*. In case No. 2019-37-0103, the Constitutional Court relied on the interpretation of Article 105 of the *Satversme* provided in case No. 2019-10-0103. I.e., it recognised that the contested norm, which envisaged a mandatory obligation to make a payment and, thus, restricted the right to property of the user of energy who was not a household user.

In case No. 2019-12-01, the Constitutional Court developed the finding, consolidated in its case law, that also the European Union law and the practice of its application influenced the interpretation of Article 105 of the *Satversme*.[40] The right to property, included in Article 105 of the *Satversme*, comprises everybody's right to use their property, *inter alia*, by continuing to engage in the launched business activities. It follows from the commitments that Latvia has assumed by joining the European Union that Article 105 of the *Satversme* must be specified in conjunction with the

31 See the Constitutional Court's Judgement of 18 December 2003 in Case No. 2003-12-01, Judgement of 11 April 2006 in Case No. 2005-24-01, Judgement of 10 May 2007 in Case No. 2006-29-0103, Judgement of 7 November 2013 in Case No. 2012-24-03.

32 See the Constitutional Court's Judgement of 7 April 2009 in Case No. 2008-35-01.

33 Information about case No. 2019-08-01 is included in section "State Law (Institutional Part of the *Satversme*)" of this Report.

34 See also information about case No. 2020-33-01 included in section "International and European Union Law" of this Report.

35 Information about case No. 2019-10-0103 and case No. 2019-37-0103 is included in section "State Law (Institutional Part of the *Satversme*)" of this Report.

36 See, for example, the Constitutional Court's Decision of 20 April 2010 on Terminating Legal proceedings in Case No. 2009-100-03, Para 8.2., and Judgement of 12 December 2014 in Case No. 2013-21-03, Para 10.1.

37 See Judgement by the Grand Chamber of the European Court of Human Rights of 7 June 2012 in Case "*Centro Europa 7 S.R.L. and di Stefano v. Italy*", Application No. 38433/09, Paras 177–178, and Judgement of 8 November 2018 in Case "*O'Sullivan McCarthy Mussel Development Ltd v. Ireland*", Application No. 44460/16, Para 88.

38 See the Constitutional Court's Judgement of 3 November 2011 in Case No. 2011-05-01, Para 15.2.

39 See, for example, the Constitutional Court's Decision of 20 April 2010 on Terminating Legal Proceedings in Case No. 2009-100-03, Para 8.2., and Judgement of 16 May 2019 in Case No. 2018-17-03, Para 14.

40 See, for example, the Constitutional Court's Judgement of 18 December 2018 in Case No. 2016-04-03, Para 18.4. and Para 19.

freedom of establishment, included in Article 49 of the Treaty on the Functioning of the European Union. Since at the time when the judgement was prepared in case No. 2019-12-01, the Court of Justice of the European Union was reviewing a case, which might be of essential importance in specifying the content of Article 105 of the *Satversme*, the Constitutional Court saw it necessary to divide case No. 2019-12-01 and, in the newly established case, request the Court of Justice of the European Union to provide a preliminary ruling.[41]

The right to social security

During the reporting period, the Constitutional Court has reviewed four cases pertaining to the right to social security, included in Article 109 of the *Satversme*: cases No. 2019-24-03, No. 2019-25-03, No. 2019-27-03 and No. 2019-36-01. In these judgements, the Court examined issues relating to: the level of guaranteed minimum income; the level of income, at which a person or a family had to be recognised as being needy; the amount of social security allowance; a disabled person's right to social insurance. The contested norms were recognised as being incompatible with the *Satversme* in all the aforementioned cases.

A similar legal issue was examined in cases No. 2019-24-03 and No. 2019-25-03 – the constitutionality of the minimum amount of various social support measures. They reveal and elaborate the content of the principle of a socially responsible state, as well as expand the Constitutional Court's judicature with respect to human dignity as a fundamental right that characterises a human being as the supreme value of a democratic state governed by the rule of law. These judgements focus, in particular, on the fact that the State, in adopting the concrete regal regulation, has not used as the basis a substantiated and reasoned method for establishing and granting measures of social support that would give the opportunity to all persons to lead a life that complies with human dignity. Likewise, the Court underscored that the social support measures, established by the State, for ensuring this minimum affected essential fundamental rights of the most vulnerable members of society, Hence, the conceptual decisions on the legal issues linked to this area should be made by the legislator.

The compliance of the amount of the state social security allowance with the *Satversme* was reviewed in case No. 2019-27-03. The Court recognised that this allowance was a measure of the social security system, introduced by the legislator. Hence, the State's actions relating to this allowance should comply with the general legal principles, *inter alia*, the principles of equality and prohibition of discrimination, included in Article 91 of the *Satversme*. The Court noted that both disability and age were to be considered as being one of the criteria, falling within the content of Article 91 of the *Satversme*, and that the State had to provide adequate care both to disabled persons and to seniors, *inter alia*, facilitating the social inclusion of these persons and decreasing their social exclusion.

In case No. 2019-36-01, in turn, the issue of whether the regulation, pursuant to which persons with group I or group II disability were not subject to disability insurance, complied with the *Satversme* was examined. The Court noted that the State could and, in certain cases, even had the obligation to make reasonable adjustments or to provide that other persons had to make reasonable adjustments to allow disabled persons to exercise rights equally with the other societal groups. Special measures to be implemented to decrease conditions that facilitate discrimination were also analysed more extensively in the context of the principle of prohibition of discrimination. The Court emphasised that these special measures had to be effective and aimed at attaining inclusive equality, e.g., with respect to fair reallocation of resources and participation of disabled persons in social processes to ensure full inclusion of these persons in society. The Court also underscored that the State could treat differentially comparable groups of persons to rectify the actual inequality of a societal group.

Right to the protection of marriage, family and the rights of parents and the child

During the reporting period, the Constitutional Court revealed the content of the rights established in the first sentence of Article 110 of the *Satversme* in case No. 2019-33-01 regarding a leave for the female partner of the child's mother and in case No. 2020-13-01 regarding benefits for parents of a prematurely born child.

The judgement in case No. 2019-33-01 contributed significantly to clarifying the concept of marriage and family as well as the content of the State's respective positive obligations. The Constitutional Court recognised that the first sentence of Article 110 of the *Satversme*, first and foremost, established the State's obligation to protect marriage as union between a man and a woman. Marriage is a form of family relationships that has developed historically, the protection of which is envisaged in the awareness of, *inter alia*, the natural potential of a family that has formed through marriage to create a new life and, thus, facilitate society's sustainability. The concept of family, however, does not set the gender criterion for determining the persons who should be recognised as being a family. The State's positive obligation to protect and support family applies not only to a family that has formed through marriage. Hence, in this regard, the Court followed the finding included in its judicature that the first sentence of Article 110 of the *Satversme* established the State's

41 See the Constitutional Court's Decision of 14 July 2020 on Referring a Question for Preliminary Ruling to the Court of Justice of the European Union in Case No. 2020-33-01.

positive obligation to protect and support all families, *inter alia*, a *de facto* family.[42] In specifying the content of the particular obligation of the State, the Court interpreted the first sentence of Article 110 of the *Satversme* in conjunction with the principle of human dignity, the right to inviolability of family life, the principle of prohibition of discrimination, the principle that the best interests of a child take the priority, as well as Latvia's commitments in the area of human rights. The Court noted that the State had to respect equally also those members of society who, as to their nature, formed personal relationships with representatives of their own gender, as well as to respect the fact that a family could form on the basis of such relationship. The Court recognised that the legislator had the obligation to ensure, *inter alia*, legal protection also for the family of same-sex partners and envisage appropriate measures of social and economic protection and support, abiding by the general principles of law and other norms of the *Satversme*. The Court also concluded that, in the particular case, the legislator had not fulfilled this obligation.

In case No. 2020-13-01, in turn, the Constitutional Court used the findings, repeatedly enshrined in its judicature, regarding the State's obligation to ensure social protection to a family with children.[43] The Court noted that the State had the obligation to provide reasonable and targeted social support to a family during the first years of the child's life. A family needs support the most immediately after the birth of a child because the child fully depends on parental care and the parents, due to taking care of the child, might not gain sufficient income to provide for the family's needs. Hence, the State's obligation to create and to maintain such system of social security that supports the family during the first years in a child's life follows from Article 110 of the *Satversme*.

Right to education

As previously, the issues relating to the language of instruction in education were relevant for the Constitutional Court during the reporting period.[44] They were examined in case No. 2019-12-01 regarding the language in which study programmes were delivered in private higher education institutions and in case No. 2019-20-03 on the language of education in institutions of pre-school education.

In case No. 2019-12-01, the Constitutional Court noted that higher education united harmoniously both the process of education and scientific activity and research. Therefore, the Court decided to review the compatibility of the contested norm with Article 112 of the *Satversme* in conjunction with Article 113 of the *Satversme*. Taking into account the reasoning provided by the applicant, the Court reviewed separately the alleged restrictions on the norms established in the aforementioned norms of the *Satversme* with respect to three subjects: faculty members of private higher education institutions, the students of these institutions of education and the private higher education institutions themselves. The Court recognised, *inter alia*, that the right to demand accreditation of study programmes delivered in a foreign language of one's choice and to obtain a state-recognised diploma of higher education attesting to the acquisition of such study programme did not follow from Article 112 and Article 113 of the *Satversme*.[45] At the same time, the Court concluded that two of the norms contested in the

42 See the Constitutional Court's Judgement of 5 December 2019 in Case No. 2019-01-01, Para 16.2.2.

43 See, for example, the Constitutional Court's Judgement of 4 November 2005 in Case No. 2005-09-01, Para 8.2., Judgement of 15 March 2010 in Case No. 2009-44-01, Para 11, Judgement of 23 November 2015 in Case No. 2015-10-01, Para 13, and Judgement of 15 February 2018 in Case No. 2017-09-01, Para 14.2.

44 During the previous reporting period, the Constitutional Court reviewed cases No. 2018-12-01 and No. 2018-22-01 on the language of instruction.

45 See also the Constitutional Court's Judgement of 23 April 2019 in Case No. 2018-12-01, Para 20.5.

case [46] restricted the academic freedom of the faculty members and students of private higher education institutions and the autonomy of private institutions of higher education related to it, which were included in Article 112 in conjunction with 113 of the *Satversme*. Whereas, in examining the proportionality of such a restriction, the Court noted that if, in these exceptional cases, institutions of higher education were allowed to deliver study programmes in foreign languages required for raising their qualification, the autonomy of higher education institutions, as well as the academic freedom of faculty members and students in some branches of science or in studies of certain level would be restricted to a lesser extent.

In case No. 2019-20-03, the Constitutional Court recognised for the first time that the right to education, included in the first sentence of Article 112 of the *Satversme*, comprised the level of pre-school education in both stages thereof. The Court, referring to Latvia's international commitments in the area of human rights,[47] noted that the right to education permitted a certain discretion of the State with respect to system of education that the State established. Likewise, the Court recognised that the first sentence of Article 112 of the *Satversme* comprised the right to make full use of all the opportunities provided by the system of education. The State's actions, in creating a system of education accessible to all learners, must comply with such basic requirements as availability, accessibility, acceptability and adaptability of education. The judgement provided, *inter alia*, an in-depth analysis of pre-school education system in Latvia. The Court examined the arguments regarding the language of instruction in pre-school education, included in the application, in compliance with its previous judicature,[48] from the perspective of the right to obtain qualitative education. The Court noted that pre-school education should ensure that the learner, upon graduating from the institution of pre-school education and continuing studies on the level of basic education, would be able to master the curriculum of education in the official language in the scope that had been defined for the acquisition of basic education. The Court concluded: the competency-based education approach introduced by the contested norms and the use of bilingual method ensured also to the learners belonging to ethnic minorities accessible and acceptable education; i.e., in both stages of pre-school education, the possibility to use two or more languages has been retained; a supervisory and control mechanism regarding the quality of education has been established in the state and it cannot be concluded that the contested norms, insofar adaptation to the learner's needs is envisaged, would cause decrease in the quality of education; neither do the contested norms violate parents' right to participate in the process of pre-school education. Hence, the contested norms were recognised as being compatible with the first sentence of Article 112 of the *Satversme*.

Freedom of scientific research, artistic and other creative activity

The judgement in case No. 2019-12-01 regarding the language of instruction in private higher education institutions contributes significantly to revealing the content of the concept of academic freedom. Until now, it had been rarely examined in the Constitutional

46 Section 56 (3) and Para 49 of the Transitional Provisions of the Law on Higher Education Institutions.

47 See Article 13 of International Covenant on Economic, Social and Cultural Rights and the respective explanations regarding this Article, provided by the UN Committee on Economic, Social and Cultural Rights, as well as Article 2 of the First Protocol to the Convention and the respective judicature of the European Court of Human Rights.

48 See the Constitutional Court's Judgement of 23 April 2019 in Case No. 2018-12-01, Para 20.1.

Court's judicature – in case No. 2000-01-04 on the Cabinet's right to decide on the reorganisation and liquidation of several institutions of higher education,[49] as well as in case No. 2018-15-01 regarding the fixed-term employment contracts of associate professors and professors.[50]

In case No. 2019-12-01, the Court recognised that academic freedom was included in both Article 112 and Article 113 of the *Satversme*.[51] The Constitutional Court, referring, *inter alia*, to authoritative international documents in this area,[52] noted that academic freedom had to be linked to the right of the faculty members of higher education institutions to conduct research, both individually and collectively, in the areas of their interest, disseminate the results of this research and other knowledge, share ideas and express their opinions. Likewise, academic freedom comprises the students' right to engage in scientific creativity and choose a study direction and programme within the framework of the education system established by the State. One of the values included in the *Satversme* – liberty – is the basis for academic freedom and the autonomy of higher education institutions required to exercise it. However, the autonomy of higher education institutions, needed to ensure academic freedom, similarly to other rights included in Article 112 and Article 113 of the *Satversme*, is not absolute. It might be necessary to restrict this right to protect other fundamental rights, included in the *Satversme*, and documents of international law binding upon Latvia.

Minority rights

In case No. 2019-20-03, referred to above, the Court examined also the compliance of the competency-based model of education with Article 114 of the *Satversme*. First and foremost, the Court ascertained, in accordance with the criteria consolidated in its judicature[53], whether the applicants belonged to any of the ethnic minorities that had historically resided in Latvia. Upon concluding that the applicants belonged to Latvia's historical minority – Russians, the Court verified, whether the contested norms ensured to a child the possibility to be aware of and to strengthen one's identity – as an individual belonging to the Russian ethnic minority. The Court recognised that the State should ensure the rights of a child belonging to an ethnic minority to master their native language in the initial stages of education. Whereas, in responding to the objection expressed in the application against Latvian as the main means of communication in play-activities during the second stage of pre-school education, except for targeted activities for the acquisition of the minority language and ethnic culture, the Court concluded that, during this stage of education, there already was in several areas of learning, the possibility to introduce and to master the minority culture and language. Hence, the possibility to use their native language and keep their identity is ensured to learners.

Case No. 2019-05-01
On the case [in English]
Judgement [in Latvian]
Press release [in English]

On 12 February 2020, the Constitutional Court delivered the judgement in case No. 2019-05-01 "On Compliance of Section 1 (1) of the Law of 4 October 2018 "Amendments to the Consumer Rights Protection Law" with Article 1 and Article 105 of the *Satversme* of the Republic of Latvia".

A legal norm that limited the total costs of the credit to a consumer was examined in the case.

The case was initiated on the basis of two constitutional complaints. It was indicated therein that the applicants were capital companies who provided consumer credit services. It was maintained that the contested norm, in which the limits for the total cost of credit for the consumer were set, thus prohibited the applicants from receiving due payment for the use of capital for the issued loans. Hence, the applicants would no longer be able to engage in commercial activities in the chosen area, i.e., to issue short-term consumer credits. Allegedly, the restriction included in the contested norm had not been duly considered, moreover, it was said to be disproportional. Hence, it was maintained that the contested norm was incompatible with the right to property and, also, violated the principle of legal expectations.

Firstly, the Constitutional Court found that the legislator, in the process of drafting the contested norm, had ensured the participation of stakeholders and their opinions had been heard. The legislator had also identified the particular situation in the area of consumer credit, established the practice of other countries, as well as examined various possibilities for setting a limit on the total costs of a credit for a consumer. Moreover, the contested norm had been worded with sufficient clarity, allowing a person to understand the content of the rights and obligations that followed from it and foresee the consequences of its application. Hence, the legislator has abided by the principle of good legislation.

Secondly, the Constitutional Court noted that, in financial terms, the creditor was incomparably more

49 See the Constitutional Court's Judgement of 10 May 2000 in Case No. 2000-01-04.
50 See the Constitutional Court's Judgement of 7 June 2019. In Case No. 2018-15-01.
51 Compare, see the Constitutional Court's Judgement of 7 June 2019 in Case No. 2018-15-01, Para 11.3.
52 See: The Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education, adopted in 1988, and UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel, as well as commentary by the UN Committee on Economic, Social and Cultural Rights on Article 13 of the International Covenant on Economic, Social and Cultural Rights.
53 Se the Constitutional Court's Judgement of 23 April 2019 in Case No. 2018-12-01, Para 22.

powerful than the consumer. Hence, the restriction on a creditor's financial interests with the aim of protecting the rights and interests of a consumer as a weaker market player complied with the substance and aim of the consumer protection law. Moreover, in the circumstances of abundance of various goods and services, the need to ensure the protection of consumer rights had increased.

Thirdly, the Constitutional Court recognised that short-term credits, if they were appropriately regulated and they were used by knowledgeable and informed consumers could satisfy certain consumption needs effectively. However, short-term loans, loans with particularly high credit costs, due to their specificity, can cause additional risks for the consumer, *inter alia*, drive them into the cycle of repeated loans and higher costs compared to choosing another financial product. These risks pertain, in particular, to consumers with low or irregular income and who have poor financial literacy, to young or – quite to the contrary – older persons. The legal regulation, which was in force before the contested norm entered into effect, allowed a situation, where many consumers experienced difficulties in repaying the loan within the set term. Therefore, the legislator had the obligation to take measures to ensure a fair treatment of a consumer and prevent situations, in which the creditor, by using its economic advantages, could gain disproportional financial benefits at the consumer's expense. The State must ensure effective protection of consumer rights.

Fourthly, the Constitutional Court found that a licence, issued to a creditor for an indefinite term, could create legal expectations, requiring protection, regarding the possibilities to continue commercial activities in the area of consumer credit. However, the merchant cannot develop legal expectations requiring protection that the legal regulation of the respective sector would not be amended in a way that could have a negative impact on its business activities, decreasing the possibilities of gaining the intended amount of profit. The Court also emphasised that the creditors had approximately nine months for adjusting the practice of their commercial activities to the new regulation and ensuring that the total costs of a credit for a consumer would fall within the limits defined in the contested norm. Moreover, the licence issued to the applicants grants them the right to provide to a consumer all kinds of credit services. Hence, there are no grounds to conclude that the respective restriction would have hindered the creditor's business activities to the extent that had made the licences, issued to them, meaningless.

In view of the above, the Constitutional Court recognised that the contested norm was compatible with Article 1 and Article 105 of the *Satversme*.

Consumer rights protection is a value of a democratic state governed by the rule of law, and it is important also with respect to sustainable social development.

Case No. 2019-12-01
On the case [in English]
Judgement [in Latvian]
Press release [in English]
Press conference [in Latvian]
Separate opinion [in Latvian]

On 11 June 2020, the Constitutional Court delivered the judgement in Case No. 2019-12-01 "On Compliance of the Third Sentence of Section 5 (1), Section 56 (3) and Para 49 of the Transitional Provisions of the La on Higher Education Institutions with Article 1, Article 105 and Article 112 of the *Satversme* of the Republic of Latvia".

Legal norms that envisaged that higher education institutions, in their activities, had to cultivate and develop the official language and that provided that study programmes in higher educational institutions and colleges had to be delivered in the official language were reviewed in the case.

The case was initiated on the basis of an application submitted by 20 Members of the 13th convocation of the *Saeima*. It was noted therein that the contested norms placed disproportional restrictions on the autonomy of private higher education institutions, as well as the academic freedom of the faculty members and students. Private higher education institutions and their faculty members had limited possibilities to deliver study programmes in foreign languages, whereas students could not choose to obtain higher education in study programmes delivered in foreign languages. Hence, it was alleged that the right to education had been violated. Moreover, the contested norms were said to be incompatible with the right to property and the principle of legal expectations by placing disproportional restrictions on the rights of private higher education institutions to engage in commercial activities.

Firstly, the Constitutional Court recognised that the right to engage in commercial activities, included in Article 105 of the *Satversme*, had to be specified in conjunction with the freedom of establishment, included in Article 49 of the Treaty on the Functioning of the European Union. Thus, the content of the freedom of establishment had to be clarified, at the same time considering the possibility of submitting a request of preliminary ruling to the Court of Justice of the European Union. However, a situation, where, in connection with possible turning to the Court of Justice of the European Union, the issue of the contested norms' compliance with the *Satversme* would not be resolved, at least partially, for a long period of time, would be undesirable. Therefore the Constitutional Court decided to divide the present case into two – in a case regarding the compliance of the contested norms with Article 112 of the *Satversme* and in the case regarding the compliance of the contested norms with Article 1 and Article 105 of the *Satversme*. Judgement is to be delivered in the first case, whereas the examination of the case on its merits had to be resumed in the second case.

Secondly, the Constitutional Court noted that the right to higher education was one aspect in the right to education. Higher education unites two inseparable aspects – education process and scientific activities and research. These aspects of higher education are inseparable. Therefore, in view of the close connection between higher education and the freedom of scientific research, artistic and other creative activity, in the present case, in addition to the compliance of the contested norms with Article 112 of the *Satversme*, their compliance with Article 113 of the *Satversme* also should be examined.

Thirdly, the Constitutional Court concluded that academic freedom was one of the aspect of the right to education and freedom of scientific creativity. It is a person's freedom, individually or together with others, to obtain, perfect and transfer knowledge, by conducting research, studying, participating in discussions, documenting, developing, engaging in creativity, teaching, delivering lectures and writing. This right is vested in all persons who teach, study, conduct research and work at an institution of higher education. Institutions of higher education, in turn, need autonomy to protect the academic freedom of students and academic staff. Within the framework of their autonomy, institutions of higher education may adopt decisions free of external pressure to ensure academic freedom, insofar it complies with the principles of a democratic state governed by the rule of law and the *Satversme*. The autonomy of higher education institutions comprises also the right to adopt decisions on their academic activities and strategy. However, the autonomy of higher education institutions is not absolute. The State has the obligation to establish such a system of higher education that ensures the operation of these education institutions in the interests of society in general.

Fourthly, the Constitutional Court underscored that the State had a positive obligation to facilitate the use of the official language on all levels of education. Cultivating and developing the official language is one of the tasks that follows from the general obligation of higher education institutions to act in society's interests. Hence, both the autonomy of higher education institutions and academic freedom, as well as the obligation, defined in the third sentence of Section 5 (1) of Law on Higher Education Institutions, to cultivate and develop the official language are aimed at the protection of society's interests. Hence, the aforementioned norm complies with Article 112 of the *Satversme* in conjunction with Article 113 of the *Satversme*.

Fifthly, the Constitutional Court recognised that the obligation to deliver study programmes in the official language, envisaged in Section 56 (3) of the Law on Higher Education Institutions and Para 49 of the Transitional Provisions, restricted the autonomy of higher education institutions and academic freedom of their faculty members and students. This restriction on fundamental rights has a legitimate aim – to strengthen the role of the official language in higher education and, thus, protect the democratic order and other persons' rights. However, this restriction is not proportional since there are more legitimate means for reaching the legitimate aim. Comprehensive quality assessment of all private institutions of higher education, on the basis of which permission to implement study programmes in foreign languages would be granted, should be recognised as one of such measures. Likewise, regulation that would provide exemptions to some branches of science or studies on a certain level from Section 56 (3) of the Law on Higher Education Institutions would be less restrictive on the autonomy

and academic freedom of institutions of higher education. Hence, Section 56 (3) of the Law on Higher Education Institutions and Para 49 of the Transitional Provisions are incompatible with Article 112 of the *Satversme* in conjunction with Article 113 of the *Satversme*, insofar these contested norms apply to private higher education institutions.

Justice of the Constitutional Court Artūrs Kučs added his separate opinion to the judgement. The Justice noted that the restriction on rights, included in Section 56 (3) of the Law on Higher Education Institutions and Para 49 of the Transitional Provisions, had not been established by law since substantive violations of the principle of good legislation had been made. In drafting these contested norms, their impact on fundamental rights had not been examined, their alignment with the legal system had not been analysed likewise, their compatibility with policy planning documents had not been examined.

Liberty – one of the values included in the *Satversme* – is the basis for academic freedom and the autonomy of higher education institutions required to exercise it.

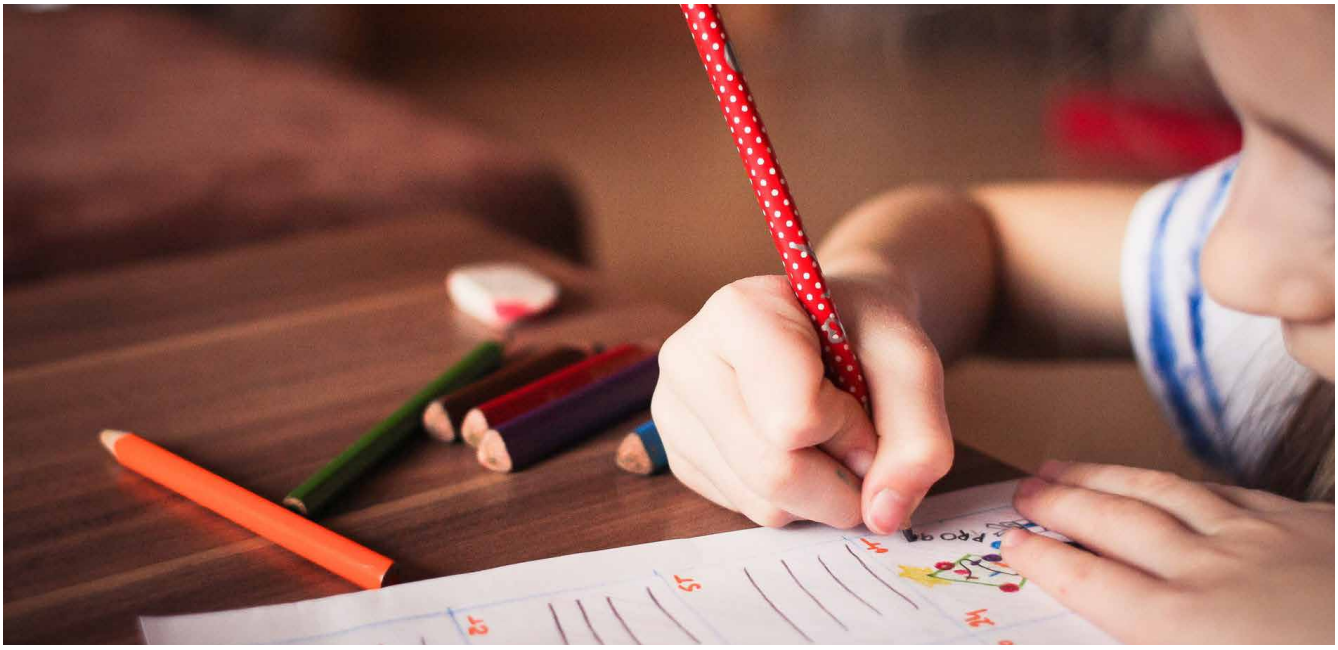
Case No. 2019-20-03
On the case [in English]
Judgement [in Latvian]
Press release [in English]
Press conference [in Latvian]

On 19 June 2020, the Constitutional Court passed the judgement in case No. 2019-20-03 "On Compliance of Para 9 of Annex 2 and Para 9 of Annex 4 of the Cabinet Regulation of 21 November 2018 No. 716 "Regulation on the National Guidelines on Pre-school Education and Model Programmes of Pre-school education" with Article 64, Article 91, the First Sentence of Article 112 and Article 114 of the *Satversme* of the Republic of Latvia".

The legal norms that provided that, throughout the stage of pre-school education, acquisition of the Latvian language should be facilitated and that Latvian had to be used in daily communication, whereas for a child from the age of five in game-activities the main means of communication was Latvian were examined in the case.

The case was initiated on the basis of constitutional complaints submitted by children belonging to the Russian ethnic minority and their parents. It is noted therein that the contested norms ensure neither a child's right to qualitative education in their native language nor the rights of the child and parents to preservation of the ethnic, cultural and linguistic identity of ethnic minorities. Thus, ungrounded differential treatment of learners is created. At the same time, the contested norms, allegedly, cause ungrounded equal treatment of two groups of learners belonging to ethnic minorities. I.e., children with special needs are said to need differential treatment with respect to language use. Finally, the contested norms had not been adopted in due procedure, moreover, they are said to be incompatible with the authorisation granted by the legislator.

Firstly, the Constitutional Court recognised that, in Latvia, teaching activities in pre-school education were divided into two stages. The first stage is pre-school education for a child from the age of eighteen months to five years. The second stage is the mandatory pre-school education for a child from the age of five to seven. The right to education, included in the first sentence of Article 112 of the *Satversme*, includes both stages in pre-school education level. The possibility to use two or more languages has been retained in



both stages. Thus, the use of bilingual method ensures accessible and acceptable education also to a learner who belongs to an ethnic minority.

Secondly, the Constitutional Court noted that, pursuant to Article 114 of the *Satversme*, the State had the obligation to respect and guarantee the right of persons belonging to ethnic minorities to safeguard and develop their identity. An integral part of this fundamental right is the right to master the language of the particular ethnic minority and use it as the language of instruction in education process. Pursuant to the contested norms, in the state of pre-school education from the age of eighteen months to five years, both Russian and Latvian are to be used in the acquisition of the study curriculum. The possibility to use the Russian language is ensured also in the stage of pre-school education from five to seven years. Thus, the legislator, in regulating the use of languages in institutions of pre-school education, had ensured to the learners, who belong to the Russian ethnic minority, the right to safeguard and develop their identity and culture in a way, which takes into account the circumstances that characterised the Russian ethnic minority in Latvia's historical context.

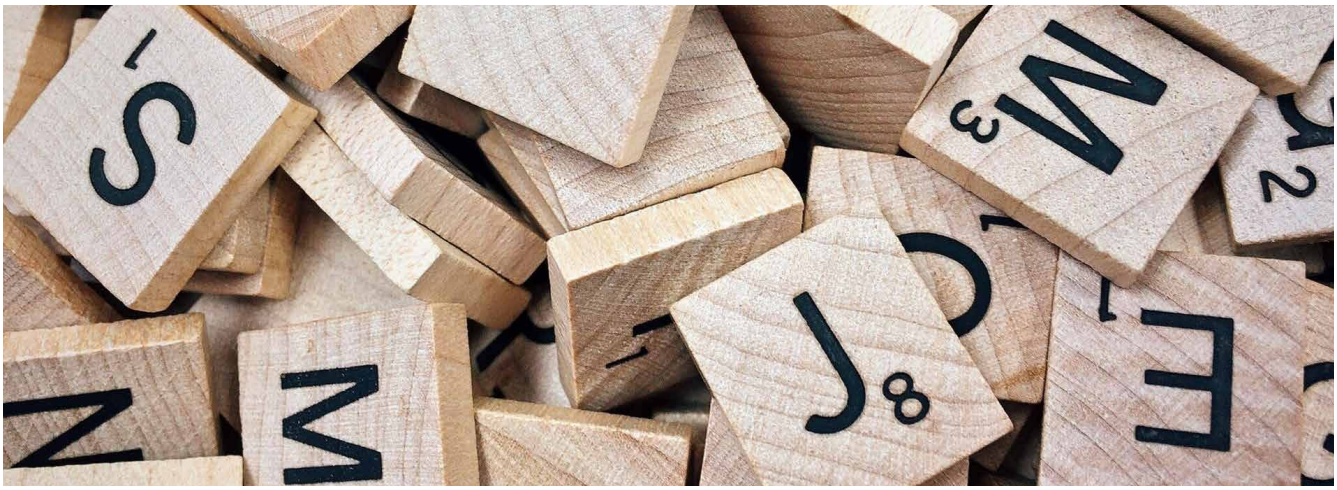
Thirdly, the Constitutional Court found that, in Latvia, a pre-school learner, whose native language was another language rather than the official language, was not in comparable circumstances with a learner whose native language was the official language. This conclusion was substantiated by the constitutional status of the official language and its importance in the functioning of a democratic state, as well as by the fact that neither the *Satversme* nor provisions of international law, binding upon Latvia, imposed an obligation upon the State to ensure that, in the process of obtaining education, learners could use the language of their preference or use another language, which is not the official language, in the desired proportion.

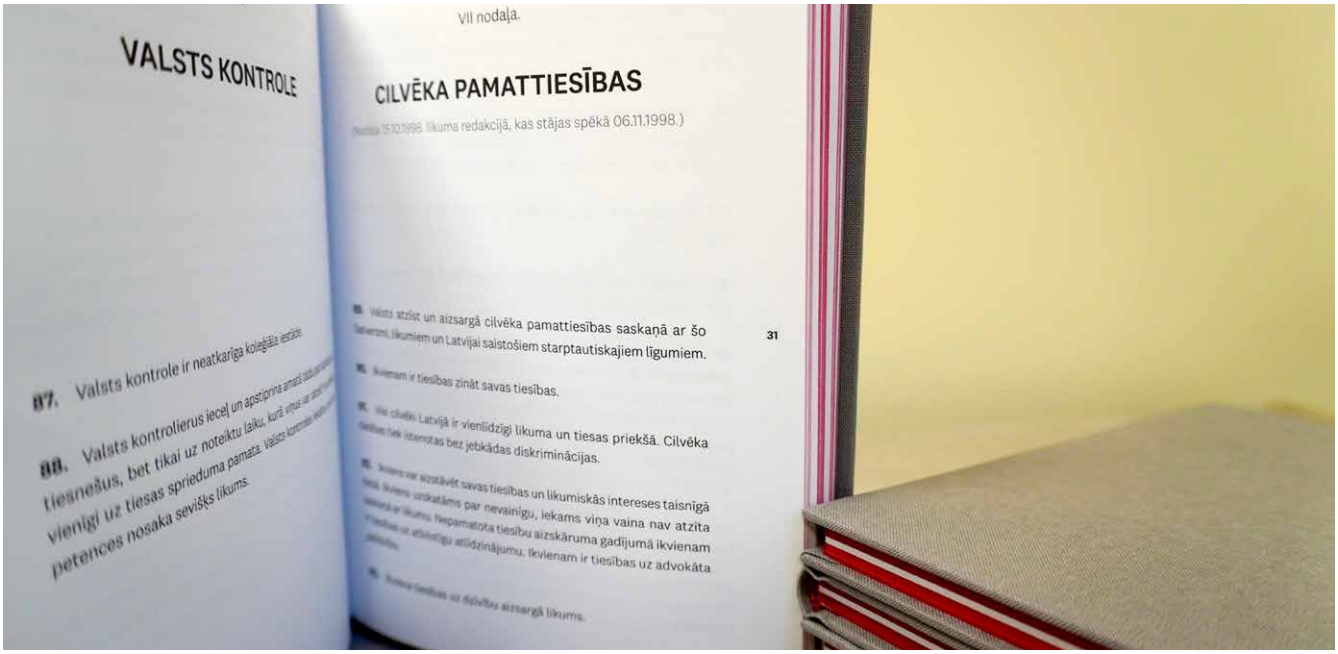
Fourthly, the Constitutional Court underscored that a child with special needs, belonging to an ethnic minority, was under particular risk to become ostracized, therefore acquisition of the official language was even more important in such a situation. Special measures are introduced in Latvia to integrate children with special needs in the system of education. To this end, *inter alia*, a special education programme has been created, the aim and basic requirements of which, including acquisition of the Latvian language, to the extent possible, corresponds to the regulations on minority education programme. In delivering this programme, children with special needs are ensured support, as well as special and individual approach and attitude, required to ensure to them equal possibility to others to acquire education. I.e., positive measures are taken to ascertain that a child with special needs would integrate in the best possible way into the Latvian system of education and, hence, also in society, by mastering the Latvian language within the limits of his or her abilities.

Fifthly, the Constitutional Court dismissed the applicants' opinion that, in the adoption of the contested norms, the authorisation granted by the *Saeima* and the procedure set out in regulatory enactments had been violated, or that the representatives of ethnic minorities had not been heard.

In view of the above, the Constitutional Court recognised the contested norms as being compatible with the first sentence of Article 112, Article 114, Article 91 and Article 64 of the *Satversme*.

Acquisition and use of the official language are one of the central principles in Latvia's system of education. The requirement to be proficient in the official language permeates the entire system of education, on a certain level and in a certain proportion it must be used in all stages of education.





Case No. 2019-24-03
On the case [in English]
Judgement [in English]
Press release [in English]
Press conference [in Latvian]

On 25 June 2020, the Constitutional Court delivered the judgement in case No. 2019-24-03 "On Compliance of Para 2 of the Cabinet Regulation of 18 December 2012 No. 913 "Regulation on the Guaranteed Minimum Income Level" with Article 1 and Article 109 of the *Satversme* of the Republic of Latvia".

A legal norm, which set the level of the guaranteed minimum income level in the amount of 64 euro per month, was reviewed in the case.

The case was initiated on the basis of the Ombudsman's application. It was noted therein that the level of the guaranteed minimum income was too low to ensure pre-conditions for life worthy of human dignity. Allegedly, this level was set by political agreement, without concrete methodology, based on economic considerations. Although the contested norm and the benefit for ensuring the guaranteed level of minimum income, closely linked to it, is not the only support measure accessible to a needy person, nevertheless, the support provided by the State and local governments was said to be insufficient to provide for a person's basic needs at least in minimum amount. Hence, the contested norm was said to be incompatible with the principles of a socially responsible state and a state governed by the rule of law, likewise, it did not ensure to a person the possibility to exercise their right to social security, at least in minimum scope.

Firstly, the Constitutional Court recognised the legislator's obligation to create such social security that was aimed at the protection of human dignity as the supreme value of a democratic state governed by the rule of law, levelling out social inequality and sustainable national development followed from the principle of a socially responsible state, based on human dignity. To let everyone lead a life that is worthy of human dignity, the minimum of social assistance should be such that would allow everyone to ensure for oneself food, clothes, housing and medical assistance, as well as to exerciser their right to basic education. Moreover, social assistance should guarantee the possibility to participate in social, political and cultural life, thus, ensuring to all persons the status of a full-fledged member of society.

Secondly, the Constitutional Court pointed out that the benefit for ensuring the guaranteed minimum income level was one the types of social assistance allowances. The said benefit is disbursed to persons who have no income at all or whose income is very low. However, the legislator has not defined concrete basic needs, for the satisfaction of which this benefit is envisaged, or the basic principles of a method that the Cabinet should follow in defining the guaranteed minimum income level. Hence, the legislator has not decided on the most substantive matters related to setting of this level.

Thirdly, the Constitutional Court underscored that the Cabinet should set the guaranteed minimum income level in accordance with a valid and substantiated method. Only this would allow ascertaining that the set level served for the protection of human dignity, levelling out of social inequality, and for sustainable national development. The Court did not gain substantiation from preparatory materials of the contested norm as to why the guaranteed minimum level had been set in the amount of 64 euro. I.e., before the adoption of the contested norm, the Cabinet did not have at its disposal a valid and substantiated method for setting the guaranteed minimum income level.

Fourthly, the Constitutional Court found that, within the framework of the social security system, a needy

person had access to various social support measures. However, the state social allowances cannot be assessed as intended for satisfying a person's basic needs, since they have different aims. Moreover, these are granted to persons belonging to particular groups of inhabitants in certain situations. Whereas in the framework of social assistance, the possibilities of needy persons to receive social support differ. Hence, the guaranteed minimum income level, defined in the contested norm, in conjunction with other measures of the social security system does not ensure that all needy persons lead a life that is worthy human dignity.

In view of the above, the Constitutional Court recognised that the contested norm was incompatible with Article 1 and Article 109 of the *Satversme*.

Human dignity as a fundamental right is unconditionally vested in each person.

Case No. 2019-25-03
On the case [in English]
Judgement [in Latvian]
Press release [in English]
A Justice's video commentary [in Latvian]

On 16 July 2020, the Constitutional Court delivered the judgement in case No. 2019-25-03 "On Compliance of the Words "if its average monthly income during the last three months per each member of the family does not exceed EUR 128.06" of Para 2 of the Cabinet Regulation of 30 March 2010 No. 229 "Regulations Regarding Recognising of a Family or Person Living Separately as Needy" with Article 1 and Article 109 of the *Satversme* of the Republic of Latvia".

A legal norm, which determines the average income level, at not exceeding which a person or a family is to be recognised as being needy, was reviewed in the case.

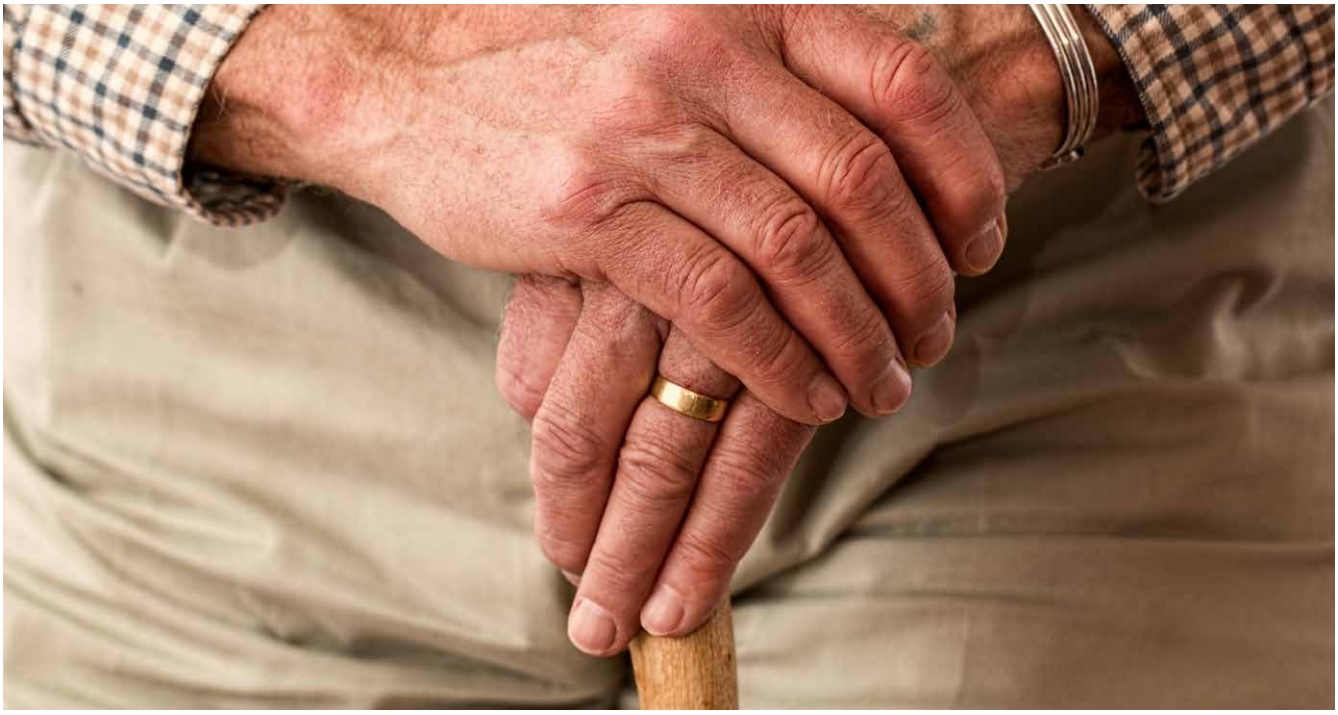
The case has been initiated on the basis of the Ombudsman's application. It is noted therein that the average income level in the amount of EUR 128.06 that complies with the status of a needy person, established by the contested norm, is excessively low for recognising a person as being needy and, accordingly, would grant to them the right to the social support measures that are available to needy persons. A much larger number of Latvia's inhabitants needs this social assistance than allowed by the contested norm. Thus, the principles of human dignity, of a state governed by the rule of law and a socially responsible state have been violated, likewise, the State has failed to fulfil its obligation to provide social support to all persons in need of it.

First of all, the Constitutional Court recognised that the objective of social assistance was assuming care of families and persons experiencing hardship, assisting them in providing for their basic needs and facilitating their inclusion in society until they were able to provide for themselves. The social assistance at least on the minimum level should be such that would create to all persons, who were unable to provide sufficient means themselves, the possibility to create such a life that complies with human dignity, and this means also the possibility to integrate into the society of a contemporary democratic state governed by the rule of law. I.e., everyone has the right to the minimum social assistance, and this minimum, in turn, should ensure to the person the possibility to retain the status of a full-fledged member of society.

Secondly, the Constitutional Court noted that it was the legislator who had to define not only the aim for establishing the minimum social assistance but also the main criteria for defining it. The legislator must take into account the social reality, in step with the particular time and the actual circumstances in the state and must envisage appropriate social assistance minimum. The legislator's duty is to determine, in which cases and to which persons minimum social assistance should be ensured, as well as to determine the way, in which such appropriate minimum social assistance should be ensured. Establishing the basic principles of the method for ensuring the minimum social assistance cannot be delegated to the Cabinet, likewise, it is inadmissible that various local governments ensure different minimum social assistance to inhabitants, according to their financial possibilities.

Thirdly, the Constitutional Court underscored that the Cabinet, in specifying the minimum social assistance established by the legislator, was obliged to use a valid and reasoned method to this end. Only this allows ascertaining that the established support measures serve for the protection of human dignity, decreasing of social inequality and sustainable national development. The income level set for recognising a person or a family as needy should be updated, scientifically and statistically substantiated.

Having examined the facts of the case, the Constitutional Court found that the average level of a person's income, included in the contested norm, which determined the circle of persons entitled to the social assistance for needy families and persons, had been defined without a valid and substantiated method. The legislator has not regulated the most essential issues relating to granting of social assistance, and the State has not developed legal regulation aimed at decreasing social inequality that would create the possibility to every person to create a life worthy of human dignity. The contested norm, in conjunction with other support measures of social assistance, does not ensure to each person the possibility to create a life worthy of human dignity. Hence, the measures that the State has taken to ensure to persons the possibility to exercise their social rights, have not been duly implemented. These measures do not ensure to all persons the possibility to exercise their social rights at least in minimum scope. This means that the State has not fulfilled its positive obligations that follow from a



person's fundamental social rights in interconnection with the fundamental rights to the protection of human dignity, the principle of socially responsible state and the principle of sustainable national development. Hence, the contested norm is incompatible with Article 1 and Article 109 of the *Satversme*.

When persons unable to provide for themselves the means for leading a life worthy of human dignity, it is the State's obligation to ensure to this person social assistance and provide it in a way that would give to the person the possibility to create a life worthy of human dignity.

Case No. 2019-27-03
On the case [in English]
Judgement [in Latvian]
Press release [in English]
Press conference [in Latvian]
Separate opinion [in Latvian]

On 9 July 2020, the Constitutional Court delivered the judgement in case No. 2019-27-03 "On Compliance of Para 2 of the Cabinet Regulation of 22 December No. 1605 "Regulations Regarding the Amount of the State Social Security Benefit and Funeral Benefit, Procedures for the Review thereof and Procedures for the Granting and Disbursement of the Benefits" with Article 1, the Second Sentence of Article 91 and Article 109 of the *Satversme* of the Republic of Latvia".

A legal norm that set the amount of the State social security benefit for disabled persons and persons who had reached retirement age or seniors not entitled to an old-age pension was examined in the case.

The case was initiated on the basis of the Ombudsman's application. It was noted therein that, pursuant to the contested norm, the state social assistance benefit to persons disabled since childhood was EUR 122.69 per month, to other disables persons – EUR 80 per month, but to seniors not entitled to the old-age pension – EUR 64.03 per month. Allegedly, the amount of the state social security benefit is insufficient since it forbids the recipients of the benefit from satisfying their basic needs. Hence, the contested norm is said to be incompatible with the principles of human dignity and a socially responsible state. Moreover, the contested norm allows discrimination of the recipients of the benefit on the grounds of disability, age and social status.

Firstly, the Constitutional Court recognised that disabled persons were a group of persons needing special protection and the State had to introduce special measures to ensure to these persons equal opportunities and legal freedoms. Likewise, the State had to take special care of seniors, *inter alia*, by promoting their social inclusion and decreasing their social exclusion.

Secondly, the Constitutional Court noted that the legislator had attributed the right to receive the state social security benefit to different groups of persons – to both employed and unemployed persons. For an employed person, the benefit is additional support, which the person may use as he or she deems necessary. Whereas for unemployed recipients of the benefit, it, primarily, serves to satisfy basic needs. Neither the contested norm nor any other legal norm provides for a different amount of the benefit depending on whether the benefit for its recipient is the basic or additional

source of means of subsistence. Thus, the Cabinet, in setting the amount of the benefit, has not taken into account whether the recipient of this benefit is employed and gains other income. Hence, the contested norm allows equal treatment of groups of persons who are in different circumstances.

Thirdly, the Constitutional Court found that a series of measures of social security system, provided by the State and local government, had been envisaged for unemployed disabled persons, and each of them was important. However, each of these measures has its own aim. Moreover, a comprehensive assessment of the appropriateness of the State and local government support services to unemployed disabled persons for their needs and of the extent to which these persons can satisfy their needs has not been conducted in Latvia. Neither has the Cabinet envisaged criteria that would allow assessing objectively the amount of state social security benefit, which, in interconnection with other measures of social security system would ensure that the recipient's basic needs are met and would allow leading a life worthy of human dignity. The amount of the benefit has been defined depending only on the possibilities of the state budget, without examining the economic situation in the state and without taking into account the average index of actual consumer prices. The Court underscored that the State had the obligation to set a comprehensive standard of social security intended for disabled persons. This standard should facilitate social inclusion of all disabled persons, as well as decrease the poverty and social isolation of these persons and members of their families, irrespectively of the local government they reside in. The Court did not gain confirmation that the state social security benefit, in interconnection with other support measures for unemployed disabled persons, would meet, at least, their basic needs and would give to these persons the possibility to lead a life worthy of human dignity. Hence, the treatment of unemployed disabled persons, permitted by the contested norm, is unjustifiable. The Court also noted that the *Saeima*, by authorising the Cabinet to set the amount of the state social security benefit, pursuant to the principle of the rational legislator, could not have wanted the Cabinet to permit equal treatment of persons who were in different circumstances, i.e., employed and unemployed recipients of the benefit. Thus, in issuing the contested norm, the Cabinet has not complied with the legislator's authorisation.

Fourthly, the Constitutional Court found that the amount of the state social security benefit for seniors had not been increased for almost 15 years, irrespectively of the national economic growth and the increase of the actual consumer prices during this period. In those cases, where a person had been unable to accrue the statutory period of work needed for receiving the old-age pension, the State has the obligation to ensure that the person, through the measures of social security system available to them, could provide for, at least, their basic needs, thus decreasing social inequality and fostering social inclusion of these persons. The Court could not ascertain that the state social security benefit, in interconnection with other social support measures, would ensure that seniors' needs were met and would provide the possibility to lead a life worthy of human dignity. Such approach by the State does not facilitate social inclusion of seniors and does not decrease their social isolation, therefore cannot be deemed to be appropriate care of the seniors and, thus, cannot be justified. Moreover, as concluded above, in issuing the contested norm, the Cabinet has not complied with the legislator's authorisation.

In view of the above, the Constitutional Court recognised the contested norm, insofar it defined the amount of the state social security benefit for unemployed disabled persons and seniors, as being incompatible with Article 91 of the *Satversme* in conjunction with Article 1 and Article 109 of the *Satversme*.

The Constitutional Court's Justice Jānis Neimanis added his separate opinion to the judgement. It is noted therein that the state social security benefit is the so-called "universal" benefit, which is disbursed, irrespectively of the person's financial situation, if only the person has applied for this benefit. Whereas the Court has granted to the state social security benefit the meaning of the so-called "means-tested" benefit, being of the opinion that a person's possibilities to gain income should be taken into account in setting this benefit. The Justice also underscored that the aim of the state social benefits, *inter alia*, the state social security benefit, was not providing for a person's basic needs. Such social support that would create for a person the possibility to lead a life worthy of human dignity should be ensured by support measures of social assistance.

The right to social security is of particular importance in the case, where a person is unable to ensure for himself or herself an adequate living standard because, due to unemployment, age or disability, does not work and does not earn one's livelihood.

Case No. 2019-32-01
On the case [in English]
Judgement [in Latvian]
Press release [in English]
A Justice's video commentary [in Latvian]

On 18 September 2020, the Constitutional Court delivered the judgement in case No. 2019-32-01 "On Compliance of Section 49^2 (1) of the Sentence Execution Code of Latvia with the Second Sentence of Article 91 and Article 96 of the *Satversme* of the Republic of Latvia".

A legal norm, which regulates the right of convicted persons to leave the territory of an institution for deprivation of liberty due to the death of a close relative, was reviewed in the case.

The case was initiated on the basis of a constitutional complaint. It is indicated therein that the applicant is serving his prison sentence in a closed prison. While the applicant was serving the sentence, his mother died, and he had requested the head of institution for deprivation of liberty permission to attend his mother's funeral. However, permission was not granted because the contested norm does not envisage this right to convicted persons, who are serving their sentence in a closed prison or a semi-closed prison on the lower regime for serving the sentence. Thus, the applicant holds that the contested norm infringes upon his right to private life. Moreover, it is maintained that the contested norm also violates the prohibition of discrimination on the grounds of gender because women, who are sentenced for committing a criminal offence of similar severity, serve their sentence in a more lenient regime and, therefore, would be able to attend the funeral of a close relative.

Firstly, the Constitutional Court recognised that attending the funeral of a close relative was an important manifestation of a person's autonomy and self-determination. A funeral, *inter alia*, is collective leave-taking from the deceased and allows not only to pay the last respects to the deceased but also to strengthen the relationships between the family members. Therefore, attending the funeral of a deceased relative falls within the scope of the right to inviolability of private life. At the same time, the Court underscored that attending the funeral of a close relative, included in Article 96 of the *Satversme*, is applicable also to convicted persons, who are serving a prison sentence.

Secondly, the Constitutional Court noted that the prohibition to leave temporarily the territory of a prison had been established with the aim to protect public security. However, the legislator has not assessed, whether each convicted person, who serves their sentence in a closed prison or a semi closed prison on the lowest regime for serving the sentence, should be considered as being so dangerous to public security that a prohibition to attend the funeral of a close relative should be applied to them. The Court concluded that there was a more lenient measure that would allow reaching the legitimate aim of the restriction on fundamental rights in the same quality – by individual assessment of each request to leave temporarily the prison territory. This assessment should include such aspects as the severity and type of the criminal offence, committed by the person, the convicted person's conduct, potential threat to public security, etc.

Thirdly, the Constitutional Court dismissed the argument made by the *Saeima* that the regulation, currently in force, which allowed sentenced persons to pay their lasts respects to the deceased relative in the territory of the institution for deprivation of liberty, could be regarded as a more lenient measure. Funerals and burial rites have a special meaning in the life of an individual and society – paying the last respect to the deceased person in the territory of a prison cannot replace it.

In view of the above, the Constitutional Court found that the contested norm was incompatible with Article 6 of the *Satversme* and that reviewing the compliance of the contested norm with Article 91 of the *Satversme* was not necessary.

To make resocialisation possible, the convicted persons' relationships with their families should be improved, facilitating return to them. Permission to leave temporarily the territory of the prison is one of the ways to support the development of such relationships.

Case No. 2019-33-01
On the case [in English]
Judgement [in Latvian]
Press release [in English]
Press conference [in Latvian]

On 12 November 2020, the Constitutional Court delivered the judgement in case No. 2019-33-01 "On the Compliance of Article 155(1) of the Labour Law with the First Sentence of Article 110 of the Constitution of the Republic of Latvia".

A legal norm that did not envisage the right to a leave in connection with the birth of a child to the female partner of the child's mother was reviewed in the case.

The case was initiated on the basis of a constitutional complaint. It was noted therein that the applicant was in a stable same-sex relationship with her partner. After they began cohabiting, two children have been born to the applicant's partner, and the applicant and her partner had jointly planned their birth. Both children live in a common household with the applicant and her partner. Immediately after the birth of the youngest child, the applicant had wanted to take the leave of 10 calendar days to be together with the new-born child in the first moments of his life and to provide support to her partner. However, the contested legal provision envisages the right to this leave only to the father of the child but does not envisage this right to the female partner of the child's mother, who in fact should be considered as being one of the new-born child's parents. Thus, the legislator has not fulfilled its duty to ensure protection and support to a family of same-sex partners.

Firstly, the Constitutional Court noted that, first and foremost, the state's obligation to protect marriage as a union between a man and woman was defined in the first sentence of Article 110 of the *Satversme*. Marriage is a form of family relationships that has developed historically, the protection of which is envisaged in the awareness of, *inter alia*, the natural potential of a family established through marriage to create a new life and, thus, foster the sustainability of the society. At the same time, the first sentence of Article 110 of the *Satversme* establishes an obligation of the State to protect and support also family, parents, and children. The Court underscored that this obligation did not apply only and solely to a family established through marriage. I.e., a family is a social institution founded on close personal ties that could be identified in the social reality, based on understanding and respect. The existence of close personal ties follows from a concluded marriage or the fact of kinship; however, in the social reality ,close personal ties develop also in other ways, for instance, as the result of *de facto* cohabitation. Thus, the first sentence of Article 110 of the *Satversme* defines a positive obligation of the State to protect and support all families, also, *inter alia*, *de facto* families. The Court also noted that Article 110 of the *Satversme* did not specify the concept of family and did not advance gender as a criterion for determining the persons who should be recognised as being a family.

Secondly, the Constitutional Court recalled that human dignity was the constitutional value of the State of Latvia. The view that the dignity of one human being could be of a lesser value than the dignity of another human being is incompatible with the principle of human dignity. The principle of human dignity does not allow the State to derogate from ensuring fundamental rights to a certain person or a group of persons. The stereotypes prevailing in the society may not serve as constitutionally justifiable grounds for denying or restricting the fundamental rights of a certain person or groups of persons in a democratic state governed by the rule of law. Likewise, the Court also pointed out that the first sentence of Article 110 of the *Satversme* was closely linked to a person's right to the inviolability of private life, established in Article 96 of the *Satversme*. Sexual behaviour is one of the elements in a person's private

life. A person's right to freedom of sexual behaviour requires protection, irrespectively of the way it is manifested and of a person's sexual orientation.

Thirdly, the Constitutional Court recognised that society consisted not only of such persons who, as to their nature, formed close personal and family ties with the representatives of the opposite sex, but also of persons who, as to their nature, formed such relationships with the representatives of their own sex. In accordance with the principle of human dignity, the State must equally respect also those members of society, who, as to their nature, establish personal relationships with representatives of their own sex, and also should respect the fact that a family may evolve on the basis of such relationships. Accordingly, the first sentence of Article 110 of the *Satversme*, in conjunction with the principle of human dignity and the right to inviolability of private life, determines the State's obligation to protect and support also families of same-sex partners.

Fourthly, the Constitutional Court concluded that, in a family of same-sex partners, legal protection and the measures of social and economic protection were accessible only to the mother and her child. Thus, substantially, the protection and support accessible to the family of same-sex partners does not differ from the protection and support that is accessible to the family consisting only of a mother and her child. Thus, the existing legal regulation of family relationships does not ensure protection and support to same-sex partners and the children born in their families as a united family. The legislator had not established legal regulation of family relationships of same-sex partners and had not envisaged for families of same-sex partners measures of social and economic protection and support in relation to the birth of a child. Thus, the legislator has not fulfilled its positive obligation deriving from the first sentence of Article 110 of the *Satversme* to ensure legal, social and economic protection also to families of same-sex partners. Consequently, the Court recognised the contested norm as being incompatible with the first sentence of Article 110 of the *Satversme*.

The principle of human dignity does not allow the State to derogate from ensuring fundamental rights to a certain person or a group of persons. The stereotypes prevailing in the society may not serve as constitutionally justifiable grounds for denying or restricting the fundamental rights of a certain person or groups of persons in a democratic state governed by the rule of law.

Case No. 2019-35-01
On the case [in English]
Judgement [in Latvian]
Press release [in English]
A Justice's video commentary [in Latvian]

On 25 September 2020, the Constitutional Court delivered the judgement in case No. 2019-35-01 "On Compliance of Section 61 (8) and Section 63 (7) of Immigration Law with the First Sentence of Article 92 of the *Satversme* of the Republic of Latvia".

A legal norm, which establishes the procedure for appealing against a decision on prohibiting a person from entering Latvia, was reviewed in the case.

The case was initiated on the basis of a constitutional complaint. It is noted therein that the Minister for the Interior, on the basis of an opinion provided by the State Security Service, had taken the decision to include the applicant in the list of those foreigners for whom entry into Latvia was prohibited (hereafter – the List). The Applicant had requested the Minister for the Interior to review this decision; however, the Minister for the Interior had decided to leave the decision in force. The Applicant had appealed against the Minister's decision to the Prosecutor General, who had decided to dismiss the complaint. The Applicant is of the opinion that the procedure, established in the contested norm, for appealing against the decision on including a foreigner in the List, does not ensure examination of the complaint in a way that would be compatible with the first sentence of Article 92 of the *Satversme*. The person has no access to the court, in the institutional meaning of this word, because the final decision is made by the Prosecutor General. However, the Prosecutor General, in examining a person's complaint about a decision made by the Minister for the Interior, cannot be independent and objective. Moreover, in the process of appeal, appropriate procedural safeguards for the right to a fair trial, allegedly, are not ensured to a person.

Firstly, the Constitutional Court terminated legal proceedings in the part of the case relating to Section 63 (7) of the Immigration Law. Although the said legal provision had been applied to the Applicant it did not cause adverse legal consequences to him by prohibiting him for appealing against the Minister's for the Interior decision in a way compatible with the first sentence of Article 92 of the *Satversme*.

Secondly, the Constitutional Court recognised that a foreigner's right to appeal a decision linked to expulsion in an independent and objective institution followed from the first sentence of Article 92 of the *Satversme*. The Prosecutor General is the one who has the jurisdiction for reviewing a complaint against the decision by the Minister for the Interior by a foreigner, who is included in the List on the basis of information, obtained as the results of intelligence and counter-intelligence operations conducted by a national security institution. However, the Prosecutor General,

in the process of appealing against the decision by the Minister for the Interior, verifies also such information that might have been accessible to him in supervising operational activities of the national security institutions, intelligence and counter-intelligence gathering process and the system for the protection of official secrets. In such a case, when the Prosecutor General, in ensuring supervision, has recognised that the activities of state security institutions complied with laws, he, substantially, had deemed as being legal also the information, on the basis of which the foreigner has been included in the List. Moreover, it is only indicated in the decision by the Prosecutor General that, taking into account information provided by the national security institutions, it is necessary to include the foreigner in the List and, therefore, the Minister's for the Interior decision is lawful. These circumstances may cause valid doubts as to whether the Prosecutor General, as the party who adopts the final decision on including the foreigner in the List, is objective. Hence, in the procedure, established in the contested norm, for appealing against a decision on including a foreigner in the List, access to institution that would be objective had not been ensured.

Thirdly, the Constitutional Court pointed out that the State had to ensure such procedure for appealing against a decision on including a foreigner in the List that would ensure his right to submit, at least in writing, his considerations regarding the grounds for expulsion. To allow the foreigner to exercise his right to speak, he should be informed about the circumstances on which the decision is based, except for circumstances, the disclosure of which might jeopardise the national security. Even if a foreigner is expelled from the State due to considerations of its security, he cannot be substantially deprived of the right to be heard and he should be provided, at least, a summary of information, which does not pose threats to the national security. The Court found that in the procedure, in which a decision on including a foreigner in the List was appealed against, procedural rights in compliance with the first sentence of Article 92 of the *Satversme* were not ensured.

In view of the above, the Constitutional Court recognised Section 61 (8) of the Immigration Law as being incompatible with the first sentence of Article 92 of the *Satversme*.

It is important to envisage sufficient procedural measures that would ensure a fair balance between the restriction of a person's procedural rights and the need to protect official secrets.

Case No. 2019-36-01
On the case [in English]
Judgement [in Latvian]
Press release [in English]

On 10 July 2020, the Constitutional Court delivered the judgement in case No. 2019-36-01 "On Compliance of Section 6 (2) of the Law "On State Social Insurance" (in the Wording that was in Force from 1 January 1998 until 31 December 2002) with Articl 91 and Article 109 of the *Satversme* of the Republic of Latvia".

A legal norm, which did not envisage subjecting employees with group I or II disabilities to disability insurance, was reviewed in the case.

The case was initiated on the basis of an application submitted by the Supreme Court. It was indicated therein that, in general all employees were socially insured for all types of social insurance. However, the legislator has provided in the contested norm that persons with group I or II disabilities are not subject to disability insurance. Allegedly, this exception is incompatible with the right to social security and the principle of legal equality.

Firstly, the Constitutional Court compared the following groups of persons: employees, whose group I or II disability had been determined *after* they had worked for at least three years (these persons were eligible to disability pension), and employees, whose group I or II disability had been determined *before* they had worked for at least three years, *inter alia*, also those employees, whose group I or II disability had been determined before they started working (these persons were not eligible for disability pension). The contested norm envisages differential treatment of these groups of persons on the grounds of disability.

Secondly, the Constitutional Court recognised that, with the contested norm, the legislator had wished to decrease the tax burden for persons with disabilities and facilitate involvement of these persons in the labour market. The legislator holds that, for these persons the insured event has set in prior to commencing work, therefore, exclusion from the disability insurance was intended to release from inexpedient payments. At the same time, the rate of social insurance contributions made by employees had been decreased, thus, fostering the inclusion of disabled persons in working and professional life.

Thirdly, the Constitutional Court noted that, in accordance with the State's obligation to improve the situation of vulnerable social groups, measures that improved the situation of disabled persons and facilitated their integration into society were admissible. The State may treat comparable groups differently to rectify their actual inequality. However, the goal and the outcome of the special measures should be aimed at achieving, substantially, effective and inclusive equality. In the particular case, the differential treatment, envisaged by

the contested norm, not only failed to reach the aim of the special measure and did not ensure to disabled persons, substantially, equality but even worsened their legal status. Also persons, who already have group I or II disability, may develop new functional limitations or they health status may deteriorate in another way, leading to, accordingly, termination of employment relations and loss of income from work. Thus, persons, whose group I or II disabilities already have been determined, may both continue to work and also end up in a situation, where because of their health conditions they no longer can participate in the labour market. Thus, the risk of disability may set in also for persons with group I or II disabilities. The disability insurance is not linked to the onset of disability but to the loss of income from work. Persons with pre-existing disability are, in particular, subject to the threat of deteriorating health, and, therefore, substitution of the amount of previous income in the case where the disability risk sets is even more important. Hence, the aim of the specific measure – facilitating the inclusion of persons with group I or II disabilities into the labour market – could not have been linked to the prohibition for making such social insurance contributions that could ensure to persons social insurance service, applicable to them in the future.

In view of the above, the Constitutional Court found that the contested norm caused disability-related adverse consequences, not allowing disabled persons to exercise the rights they were entitled to and not facilitating inclusive equality. Such differential treatment cannot be justified. Hence, the differential treatment is discriminatory and the contested regulation is incompatible with Article 91 of the *Satversme* in conjunction with Article 109 of the *Satversme*.

Persons with disabilities have the right to be employed as any other person, and the State has the obligation to foster such employment.

Case No. 2020-13-01
On the case [in English]
Judgement [in Latvian]
Press release [in English]

On 19 November 19, the Constitutional Court delivered the judgement in case "On Compliance of Para 2 of Section 10^4 (4) of the law "On Maternity and Sickness Insurance" and Section 7 (1^1) of "Law on State Social Allowances" with the first sentence of Article 91 and Article 110 of the *Satversme* of the Republic of Latvia".

Legal norms that envisage the term for disbursing the parental and childcare benefits to parents of a prematurely born child were reviewed in the case.

The case was initiated on the basis of a constitutional complaint. It was noted therein that women were granted a maternity benefit for the days of pregnancy and childbirth leave. Usually, 56-70 calendar days of the pregnancy leave are granted before the due date of the child, forecast by the physician, whereas 56–70 calendar days of childbirth leave are granted after the pregnancy leave ends. However, to women, who give birth before the term for the pregnancy leave has been set, the pregnancy and childbirth leave as well as the maternity benefit is granted for 140 calendar days after the child has been born. Whereas the parental and childcare benefit are granted when the disbursement of the maternity benefit ends. It is possible to receive at the same time both the parental benefit and the childcare benefit until the date when the child reaches the age of eighteen months, but in the period when the child is from eighteen months to two years old, the parent may continue receiving the childcare benefit. The applicant notes that her child was born prematurely and the maternity benefit was granted only following the birth of her child. Consequently, pursuant to the contested norms, the parental benefit and the childcare benefit had been disbursed to her for a shorter period of time compared to those parents, whose child had been born on the due-date. Hence, the State, allegedly, has violated the principle of legal equality and the principle that the best interests of a child take the priority.

Firstly, the Constitutional Court recognised that the State had the obligation to provide reasonable and targeted social support to a family during the first years of a child's life. It is immediately after the birth of a child that the family needs the support most of all because the child is totally dependent on parental care and the parents, due to taking care of the child, may be unable to gain sufficient income to provide for the family's needs. Substantially, both the parental benefit and the childcare benefit are aimed to ensure the best possible care and parents' presence to a child below the age of two, thus, respecting the best interests of a child. By adopting the contested norms, the legislator has abided by the desirable term for disbursing the childcare benefit and has set a relatively long period for disbursing the parental benefit and the childcare benefit. At the same time, it is underscored that the parental and the childcare benefits are not intended for resolving situations that are related to the child's health condition. For those cases, where the family needs additional state social support due to the child's health condition, the State has established the parents' right to the sickness benefit for caring for a sick child.

Secondly, the Constitutional Court noted that the legislator, by envisaging differential regulations, which allowed a woman, whose child had been born before the moment when the pregnancy leave and the maternity benefit calculated for it had been granted, to receive the maternity benefit in full amount after the birth of the child, had ensured to this woman social support that was equal to the social support received by a woman whose child had been born after the pregnancy leave and the maternity benefit calculated for it had been granted. Usually, the maternity benefit is larger than the parental benefit and childcare benefit taken together; moreover, a woman has the right to use the type of social support that is more advantageous for her and her family.

Thirdly, the Constitutional Court concluded: although the parental benefit and the childcare benefit were disbursed to the applicant for a period that was shorter compared to the parents, whose child was born on the predicted due date, nevertheless, also she, for the whole period when she was not receiving a salary, received concrete social insurance service and the state social benefit. After the Applicant's child reached the age of eighteen months, in turn, the State continued providing support to her until the child reached the age of two years, as to other parents with children below the age of two. The Court also added that, upon reaching the age of two years, the majority of prematurely born children catch up with their peers in terms of their development.

In view of the above, the State, by the contested norms, has fulfilled its positive obligation to ensure a system of social security for a family, as well as has complied with the principle that the best interests of a child take the priority and the principle of legal equality. Therefore, the Constitutional Court recognised the contested norms as being compatible with the first sentence of Article 91 and Article 110 of the *Satversme*.

The State has the obligation to provide reasonable and targeted social support to a family during the first years of a child's life. It is immediately after the birth of a child that the family needs the support most of all because the child is totally dependent on parental care and the parents, due to taking care of the child, may be unable to gain sufficient income to provide for the family's needs.

3.2. STATE LAW (INSTITUTIONAL PART OF THE *SATVERSME*)

During the reporting period, the Constitutional Court reviewed seven cases linked to the area of state law. They pertain to three different sub-categories of state law: local government rights (cases No. 2019-03-01, No. 2019-17-05 and No. 2020-16-01), legitimisation of bodies granting authorisation and issuing regulatory enactments (cases No. 2019-10-0103, No. 2019-37-0103 and No. 2019-09-03), as well as the rights of a Member of the *Saeima* (case No. 2019-08-01).

Local government rights

Case No. 2019-03-01

Some findings already had developed in the Constitutional Court's judicature thus far relating both to the members of local government councils and the right of public officials to combine various occupations. With respect to a member of the local government council, the Court had recognised that it was public law office and the performance of the council member's duties of office and exercise of rights was using the public power for the benefit of society.[54] With respect to the status of a public official, in turn, it was recognised that it was characterised by special relationship of trustworthiness and loyalty with the state. The condition regarding the special trustworthiness and loyalty towards the state were the basis for the restrictions linked to the status of a public official, which, *per se*, should not be held as being disproportional from the perspective of the equality principle.[55] Moreover, in assessing, whether equalling insolvency administrators to public officials complied with the right to freely choose one's employment, the Court had noted that the right to choose several employments and simultaneous exercising of these rights also fell within the scope of this right. If this right is restricted with the aim of not allowing combining of certain offices, it is admissible only the basis of law to protect public interests of particular importance, abiding by proportionality. The Court recognised that the legislator had equalled insolvency administrators in their official activities to public officials, *inter alia*, to ensure transparency of their actions and to reduce the risk of conflict of interest and corruption.[56]

Whereas in case No. 2019-03-01, the Constitutional Court linked the prevention of conflict of interest in the activities of public officials with the principle of good governance, concluding that, pursuant to the aforementioned principle, a situation, in which a person takes simultaneously two offices, which are in relation of subordination, was inadmissible. At the same time, the Court recognised that the principle of incompatibility of public offices allowed setting of certain exemptions, in the defining of which the legislator enjoyed certain discretion.

Case No. 2019-17-05

In the Constitutional Court's judicature thus far regarding the clarification of the opinion of local governments and their inhabitants in connection with the implementation of the administrative territorial reform, it has been recognised that the principle of local government requires that, in the case their boundaries change, each local government should have the possibility to familiarise itself with a sufficiently specific and elaborated draft of the changes, to discuss it within reasonable time, involving, to the extent possible, in the discussion also the inhabitants of the respective territory; on the basis of these consultations, to adopt at the local government's council a respective decision and expect that the public institution, which issues the respective act related to the territorial changes, will take into account the opinion expressed in the local government's decision, i.e., that the arguments included by the local government in the decision will be examined even if the final decision adopted by public institutions will be different.[57]

54 The Constitutional Court's Judgement of 29 June 2018 in Case No. 2017-32-05, Para 19.
55 The Constitutional Court's Judgement of 23 November 2015 in Case No. 2015-10-01, Para 17.2.
56 The Constitutional Court's Judgement of 21 December 2015 in Case No. 2015-03-01, Para 14.2. and Para 24.3.
57 The Constitutional Court's Judgement of 30 October 2009 in Case No. 2009-04-06, Para 13.4.

These findings were elaborated in case No. 2019-17-05. The Constitutional Court underscored that the local government's right to hear the opinion of the inhabitants residing in the respective administrative territory on the changes to the boundaries of the local government's administrative territory followed from Article 1 and Article 101 of the *Satversme* and Article 5 of the European Charter of Local Self Government.

Moreover, such an extraordinary solution as joining a local government with another local government is of essential importance for the local government and its inhabitants and if regulatory enactments do not envisage convening of a mandatory referendum, in such a case, other, direct or indirect, preliminary consultations with the inhabitants of the respective local government should be used.

Case No. 2020-16-01

As noted in the judgement delivered in case No. 2020-16-01, this was the first case, in the framework of which the Constitutional Court had to review a legal norm, by which the *Saeima* dismissed a local government council. However, the Constitutional Court has expressed findings on the relations between the State and local government already in its previous rulings. The Court had noted that the local government's obligation to abide, in its functioning, by subordination to legal acts and law followed from the principle of state governed by the rule of law, whereas the State had the obligation to supervise the local government abided by this subordination and, if necessary, achieve that it was complied with. Moreover, with respect to supervision of local governments, the Constitutional Court had recognised that the law "On Local Governments" granted to the Minister for Environmental Protection and Regional Development a series of rights. Firstly, the Minister has the right to request and to receive from the local government information on all aspects of its work. Secondly, the law provides for a number of *ex-post* types of control over the local government's work. I.e., the Minister has the right to demand the local government to revoke unlawful regulatory enactments and suspend such acts; to demand convening of an extraordinary sitting of the local government council, set the agenda for such a meeting and propose a draft decision; request dismissal of the council's chairperson and to suspend him or her from performing the official duties. The Ministry has the right to conduct extraordinary audit of the local government's finances, bring a claim to court regarding compensation for the damages inflicted upon the local government if the local government does not do it itself. Finally, the ultimate measure is the *Saeima's* right to dismiss a local government council and appoint provisional administration. The supervisory institution may choose the most appropriate measure of *ex-post* control.[58]

In view of the fact that the *Saeima*, before dismissing the Riga City Council, had dismissed a local government council only on three occasions, and in none of these occasions the law had been contested in the Constitutional Court, in this case, the Court had to decide on the most appropriate methodology for reviewing the constitutionality of such laws. In this context, the Court, firstly, recognised: although, in order to dismiss a local government council, the *Saeima* has to adopt a law and, therefore, to a certain extent such a decision was political, a law like this should be based on legal arguments; moreover, the Constitutional Court, in examining issues related to the functioning of local governments, examined legal arguments (arguments of law). Therefore, the Court noted that it was going to examine, whether the law on dismissing a local government council was adopted in one of the instances defined in the law "On Local Governments", in legal procedural order, on the basis of concrete facts and legal arguments.

Moreover, with respect to laws on dismissing local government councils, the Constitutional Court also concluded that, in examining, whether the contested norm had been defined by a law adopted in due procedure, it should be taken into account that the legislator, in adopting such a norm, actually acts as a party applying the law, therefore it examined the compliance of the legislative process with the principle of good legislation in a limited scope – with respect to those elements in specifying the principle of good legislation that applied to the involvement of society and stakeholders in the legislative process and the need for sufficient grounds for the adoption of the contested norm. The Court also recognised that a local government council could be dismissed if it since its election (commencement of work) had repeatedly committed substantial violations of legal norms, which had to be duly examined in the process of drafting and adopting the respective law on dismissing the local government council. Finally, the Court noted that that it had to be examined, whether, in the particular circumstances, the dismissal of the local government council as a measure of *ex-post* review of the legality of actions taken by the local government was necessary in a democratic state governed by the rule of law.

The Constitutional Court provided separate consideration, unconnected to the particular case, that eliminating unlawful actions by a local government, in particular, if these actions were repeated, was not only the right but also the obligation of public administration. If it is impossible to achieve the elimination of violations by other *ex-post* measures of legal oversight then the Cabinet, without unfoundedly long delay, should consider the possibility of submitting to the *Saeima* a draft law on dismissing the local government council.

58 The Constitutional Court's Judgement of 29 June 2018 in Case No. 2017-32-05, Para 14.

Authorisation and legitimisation of the issuers of regulatory enactments

Case No. 2019-10-0103

The Constitutional Court has reviewed the authorisation to issue regulatory enactments in many rulings. It has noted that, even if the legislator has granted broad discretion to the Cabinet, the Cabinet must ensure that the limits of the authorisation granted by the legislator are complied with and that the adopted procedure would lead to a fair outcome.[59] Moreover, previously, the Court had reviewed also the transferring of authorisation, concluding that, in the particular case, the Cabinet had the right and obligation to set the procedure for supplementing the Financial Equalisation Fund but it did not have the right to authorise another institution to determine this procedure because the law did not envisage this right for the Cabinet. The Court also referred to a finding from the Latvian legal science that only an institution that was authorised by law to do so could pass regulations, but it could not transfer the right to any other institution.[60]

In case No. 2019-10-0103, the Constitutional Court elaborated the findings referred to above, *inter alia*, for the first time mentioned in the context of authorisation the principle of a rational legislator, which the authorised institution had to comply with, in assessing the scope and the content of the authorisation granted by the *Saeima*. I.e., the Court underscored: the Cabinet should take into account that, in granting the authorisation, the *Saeima* could not have wished the Cabinet to issue a regulatory enactment that violated the requirements of other legal acts. Moreover, as the Court noted with respect to transferring the authorisation granted by the legislator to the Cabinet, it was inadmissible that the Cabinet included in the legal composition of the contested norms provisions, defined by a private person without democratic legitimisation, in the particular case, an energy supply merchant or a system operator.

Case No. 2019-37-0103

This case was closely linked to the case described above, case No. 2019-10-0103; however, the Constitutional Court expressed several new findings also in it. For example, the finding referred to above regarding the principle of a rational legislator is better understandable in the context of the finding regarding the completeness of the legal system: in a democratic state governed by the rule of law, the procedure of law application

59 The Constitutional Court's Judgement of 6 May 2011 in Case No. 2010-57-03, Para 13.1.

60 The Constitutional Court's Judgement of 23 February 1998 in Case No. 04-04(97), Para 2 of the Findings.

is characterised by the axiom that the legal system is objectively complete. Solely the fact that the particular issue is not regulated by provisions of written law does not mean that it is not regulated at all.

The Cabinet's obligations in exercising authorisation granted by the legislator were specified in conjunction with this finding. I.e., the Constitutional Court noted that the Cabinet, in exercising the authorisation granted by the legislator, had the obligation to use such legal methods that respected the relationship of checks-and-balances that existed in the separation of state powers. I.e., the Cabinet, being aware of and using the diversity of sources of law, should perform not only grammatical but also systemic, historical and teleological interpretation of the authorising norm. This follows not only from the principles of the rule of law and separation of powers as the basis for the existence of a democratic state governed by the rule of law but also from the principle of a rational legislator. The Cabinet should also perform assessment of the constitutionality and validity and applicability of the authorising norm, verifying its compliance with a legal norm of higher legal force and its validity, by exercising the Cabinet's right to submit an application to the Constitutional Court.

Case No. 2019-09-03

It was recognised in the Constitutional Court's jurisdiction thus far that, although Article 57 of the *Satversme* permitted the establishment of such independent state institutions, which conducted some activities of the executive power, without being subordinated to the Cabinet, democratic legitimisation of such institutions and their accountability for their actions had to be ensured.[61] Moreover, if autonomous institutions of public administration issue external regulatory enactments, appropriate democratic legitimisation is required, and the *Saeima* has the right to authorise autonomous institutions of public administration to set binding requirements only for a certain circle of subjects, in accordance with the particularities of their operations.[62]

The finding on the democratic legitimisation of autonomous institutions of public administration was elaborated in case No. 2019-09-03. The Constitutional Court noted that, in some cases, in the framework of delegated legislation, external regulatory enactments were issued also by institution, which were not directly democratically legitimised. However, in such a case, an element of the people's will should be identified to establish that the sovereign has, at least, indirect possibility to influence decisions by such an institution. A situation, where external regulatory enactments are issued by an autonomous public institution, where the right to adopt decisions on issuing such regulatory enactments is granted also to such officials, about whom the *Saeima* had not decided on, would not meet the requirements of a democratic state governed by the rule of law.

Upon concluding that the Financial and Capital Market Commission lacked appropriate democratic legitimisation, the Constitutional Court decided on the date as of which the contested norm had to be recognised as being void. In the existing judicature, upon establishing that a legal norm had been issued *ultra vires*, it almost always[63] was recognised as being void as of the moment when it was issued.[64] However, in case No. 2019-09-03, the Court noted that derogation from this general principle was admissible if recognising the norm as being void as of a certain past date would be incompatible with the need to ensure sustainable national development and to protect public welfare.

Rights of the Members of the *Saeima*

Case No. 2019-08-01

Various aspects relating to work of the State and the status of a Member of the *Saeima* have been examined in the Constitutional Court's judicature. For example, the Court has recognised that persons in civil service are in special relationship with the State – the rights of these persons are restricted and special obligations have been imposed upon them[65] – and that civil service comprises all public offices established in the institutions of legislative, executive and judicial power.[66] However, at the same time, the Court has noted that, in regulating legal relations in civil service, the legislator has the right to establish only such restrictions on fundamental rights that are necessary in the relations of civil service.[67] With respect stop Members of the *Saeima*, it has been recognised in the Constitutional Court's existing judicature that they have been recognised as the people's representatives and are legitimate promulgators of the people's will in the constitutional institution of the state – the *Saeima*.[68] The deputy's status require the State to set for these persons special requirements, the aim of which is to protect the independence of the State of Latvia and the principles of a democratic state governed by the rule of law.[69]

61 The Constitutional Court's Judgement of 16 October 2006 in Case No. 2006-05-01, Para 16.1.

62 The Constitutional Court's Judgement of 2 March 2016 in Case No. 2015-11-03, Para 21.1. and Para 21.2.

63 With very rare exceptions – see, for example, the Constitutional Court's Judgement of 20 October 2002 in Case No. 2002-04-03, Para 3 of the Findings.

64 See, for example, the Constitutional Court's Judgement of 12 December 2014 in Case No. 2013-21-03, Para 13.

65 The Constitutional Court's Judgement of 11 April 2006 in Case No. 2005-24-01 , Para7.

66 The Constitutional Court's Judgement of 10 May 2013 in Case No. 2012-16-01, Para 31.1.

67 The Constitutional Court's Judgement of 23 April 2014 in Case No. 2013-15-01, Para 10.

68 The Constitutional Court's Judgement of 22 February 2002 in Case No. 2001-06-03, Para 1.2.

69 The Constitutional Court's Judgement of 29 June 2018 in Case No. 2017-25-01, Para 20.2.

Whereas in case No. 2019-08-01, the principle of parliamentary autonomy, which is included in Article 21 of the *Satversme* and pursuant to which the *Saeima* itself and not anyone else defines its procedure of work, was for the first time underscored. The authorisation to establish the procedure for exercising the deputy's rights and the necessary restrictions also follows from the *Saeima*' right to define its own organisation and procedure of work. Pursuant to the principle of parliamentary autonomy, the *Saeima* is free in establishing this procedure; it has the right to define its own internal procedure of work, *inter alia*, restrictions on Members of the *Saeima*, that would the best for ensuring effective functioning of the *Saeima*, however, restrictions on a deputy's rights should comply with the general legal principles, in particular, the proportionality principle, and other provisions of the *Satversme*.

Likewise, the concept of the rights of a Member of the *Saeima*, which follows from the *Saeima's* mandate of free representation, is revealed in case No. 2019-08-01. The rights of a Member of the *Saeima* to participate in the *Saeima's* work – sittings of the *Saeima* and its committees, speaking and voting in them, as well as to act on behalf of the *Saeima* in those institutions, to which the *Saeima* has elected or appointed the deputy, and to receive remuneration for the performance of one's duties are to be mentioned among the deputy's rights. The following broader description of the deputy's rights is provided: Article 101 of the *Satversme* provides not only for a person's right to participate in the *Saeima* election but also the right, if elected, to perform the deputy's office without interference into the fulfilment of the functions of this office that would be contrary to the general principles of law and rights defined in the *Satversme*.

Finally, the judgement delivered in case No. 2019-08-01 comprises significant findings regarding resolution of disputes between constitutional bodies or parts thereof. The Constitutional Court recognised that in a situation, where the legislator had not envisaged a legal remedy, which an individual deputy of the *Saeima* – a part of a constitutional body of the state power – could use to defend his official authorisation in case of an infringement, it was admissible to eliminate deficiencies in the mechanism for protecting the rights of a separate constitutional body of the state power or a part thereof by a constitutional complaint, which, as to its substance and procedural pre-requisites, is the closest legal remedy.

Case No. 2019-03-01
On the case [in English]
Judgement [in Latvian]
Press release [in English]

On 17 December 2019, the Constitutional Court passed the judgement in case No. 2019-03-01 "On Compliance of Para 4 of Section 38 (2) of the law "On Local Governments" with the First Sentence of Article 91 of the *Satversme* of the Republic of Latvia".

The prohibition for a deputy of a local government council to hold the office of the head or the deputy head of a local government institution, which performed a social function, was examined in the case.

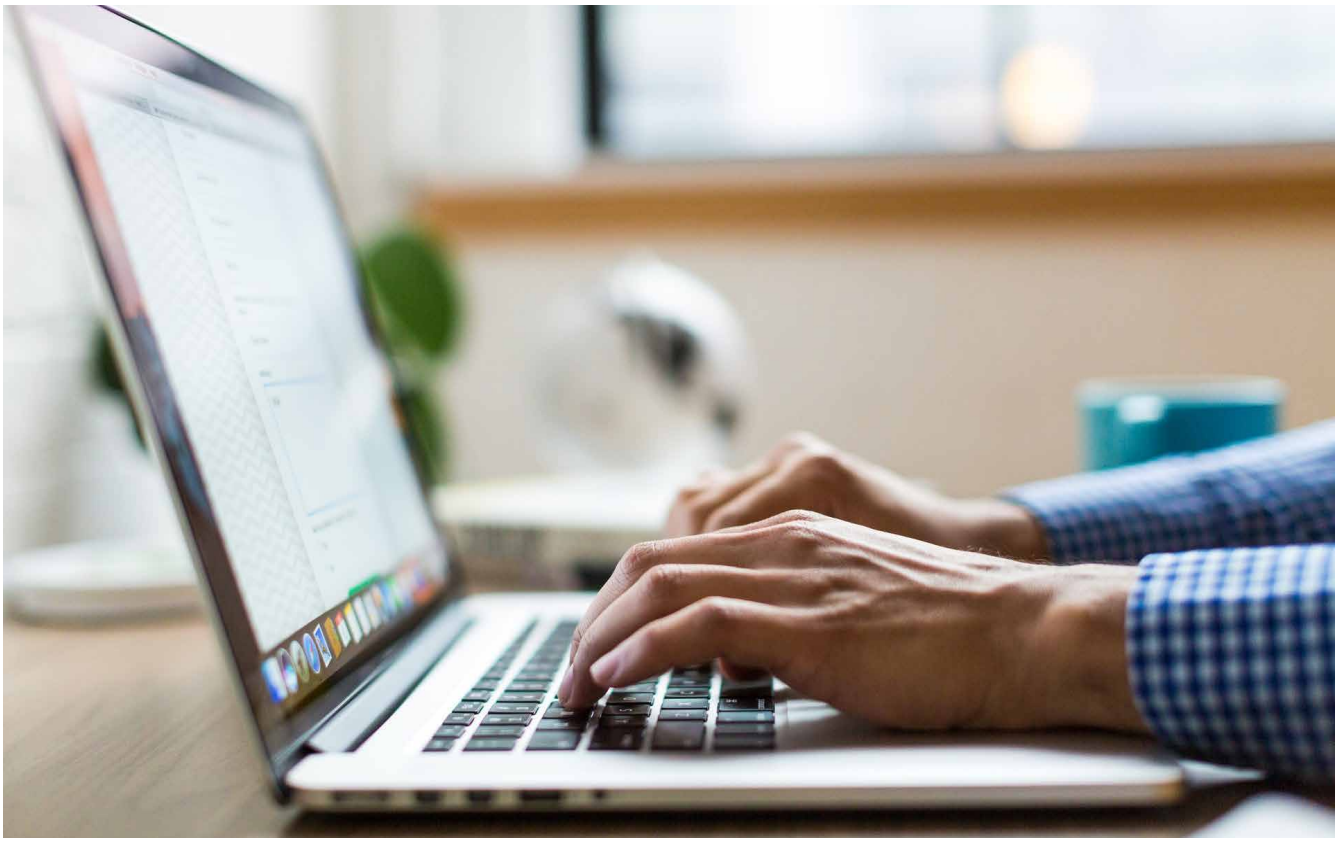
The case was initiated on the basis of a constitutional complaint. It was noted therein that the contested norms prohibited a deputy of a local government council from taking the position of the head of a local government's institution, except an institution, which fulfilled functions of education, sports, health care of culture. The applicant had been made administratively liable for violating the prohibition established by the contested norm because, while being a deputy of the local government, he was also in the position of the head of an institution of social care. The applicant holds that the contested norm envisages unsubstantiated differential treatment of heads of institutions of social care, prohibiting them from combining the respective office with performing the duties of a local government's deputy. Hence, allegedly, the contested norm is incompatible with the principle of legal equality.

Firstly, the Constitutional Court recognised that the need to ensure effective control over offices that fulfil the functions of legislative and executive power followed from the principle of separation of powers. Whereas, pursuant to the principle of good governance, the State has the obligation to improve the procedure of governance and to organise it as effectively as possible. This includes preventing the conflict of interest in the activities of public officials. For example, to manage effectively possible conflicts of interest, restrictions on combining offices have been introduced. The aim of restrictions on combining offices, included in the contested norm, is to ensure that the person does not hold simultaneously within the local government several offices, which are in subordination relationship.

Secondly, the Constitutional Court noted that the principle that public offices cannot be combined allowed setting some exemptions, in determining of which the legislator enjoyed certain discretion. However, it should be exercised within the framework of general legal principles.

In the context of the equality principle, in defining the limits of the legislator's discretion in organising the public administration, it must be assessed, whether the legislator has not acted arbitrarily. To verify this, it must be examined, whether the contested norm has objective grounds; i.e., whether the contested norm has a legitimate aim, whether the contested norm has been adopted in compliance with the principle of good legislation and has been chosen on the basis of objective criteria, as well as whether the contested norm reaches the legitimate aim and is not obviously disproportional.

Thirdly, the Constitutional Court found that the contested norm prevented conflicts of interest in the work of local government officials and, at the same time, facilitated more effective work of a local-



government and more extensive and inclusive democratic representation in the local government. From the perspective of effective functioning of local governments and the quality of adopted decisions, it is important that the range of persons standing for local government elections is sufficiently broad. The contested norm expands the range of persons who would be interested in standing for the office of a local government's deputy, without being afraid to lose the office they are holding. Hence, the contested norm has not been adopted arbitrarily and the solution chosen by the legislator is not obviously contrary to the general principles of law and other provisions of the *Satversme*.

In view of the above, the Constitutional Court recognised the contested norm as being compatible with the first sentence of Article 91 of the *Satversme*.

Too extensive restrictions on combining offices for local governments, which are small in terms of population, could deny the possibility to involve in the council's work persons with appropriate qualification. Therefore, it may be necessary to envisage exceptions that would allow combining the office of a local government's deputy with other offices in local government institutions.

Case No. 2019-08-01
On the case [in English]
Judgement [in Latvian]
Press release [in English]
A Justice's video commentary [in Latvian]
Separate opinion [in Latvian]

On 23 December 2019, the Constitutional Court passed the judgement in case No. 2019-08-01 "On Compliance of the Second Part of Article 17 and Article 19 of the Rules of Procedure of the *Saeima* with the Second Sentence of Article 92 and the First Sentence of Article 101 of the *Satversme* of the Republic of Latvia".

Legal norms, which prohibited a Member of the *Saeima*, against whom criminal prosecution had been initiated, to participate in the *Saeima's* work and receive remuneration in full, were reviewed in the case.

The case was initiated on the basis of a constitutional complaint. It was noted therein that the applicant was a Member of the *Saeima* and that the *Saeima* had agreed that criminal prosecution was commenced against him. As of that moment, the contested norms denied him the right to participate in the work of the *Saeima* and the right to receive remuneration for working in the *Saeima* in full. Thus, allegedly, the presumption of innocence had been violated and the applicant's right to participate in the work of the State had been disproportionally restricted.

Firstly, the Constitutional Court terminated legal proceedings in the part regarding the compliance of the second sentence of the second part of Article 17 and

the second and third sentence of Article 19 of the Rules of Procedure of the *Saeima* with the second sentence of Article 92 and the first sentence of Article 101 of the *Satversme*. In his application, the applicant had not stated separate arguments regarding the compliance of these norms of the Rule of Procedure of the *Saeima* with the *Satversme*. Moreover, the second sentence of the second part of Article 17 and the second sentence of Article 19 of the Rules of Procedure of the *Saeima* pertain to the application of coercive measures; however, such measures had not been applied to the applicant. Thus, the aforementioned norms do not cause an infringement on the applicant's rights.

Secondly, the Constitutional Court also recognised that the presumption of innocence, included in the second sentence of Article 92 of the *Satversme*, *per se* did not prohibit from suspending a person from office in connection with criminal proceedings initiated against this person if such suspension was in public interests and it was not punitive in nature. However, in the case of lengthy suspension, the effect of such rights restriction on the presumption of innocence of the said person should be examined. The right to participate in the work of the State, envisaged in Article 101 of the *Satversme*, comprises the right to participate in the *Saeima* election and also the right, if elected, to perform the deputy's office without interference into the fulfilment of the functions of this office that would be contrary to the general principles of law and rights defined in the *Satversme*.

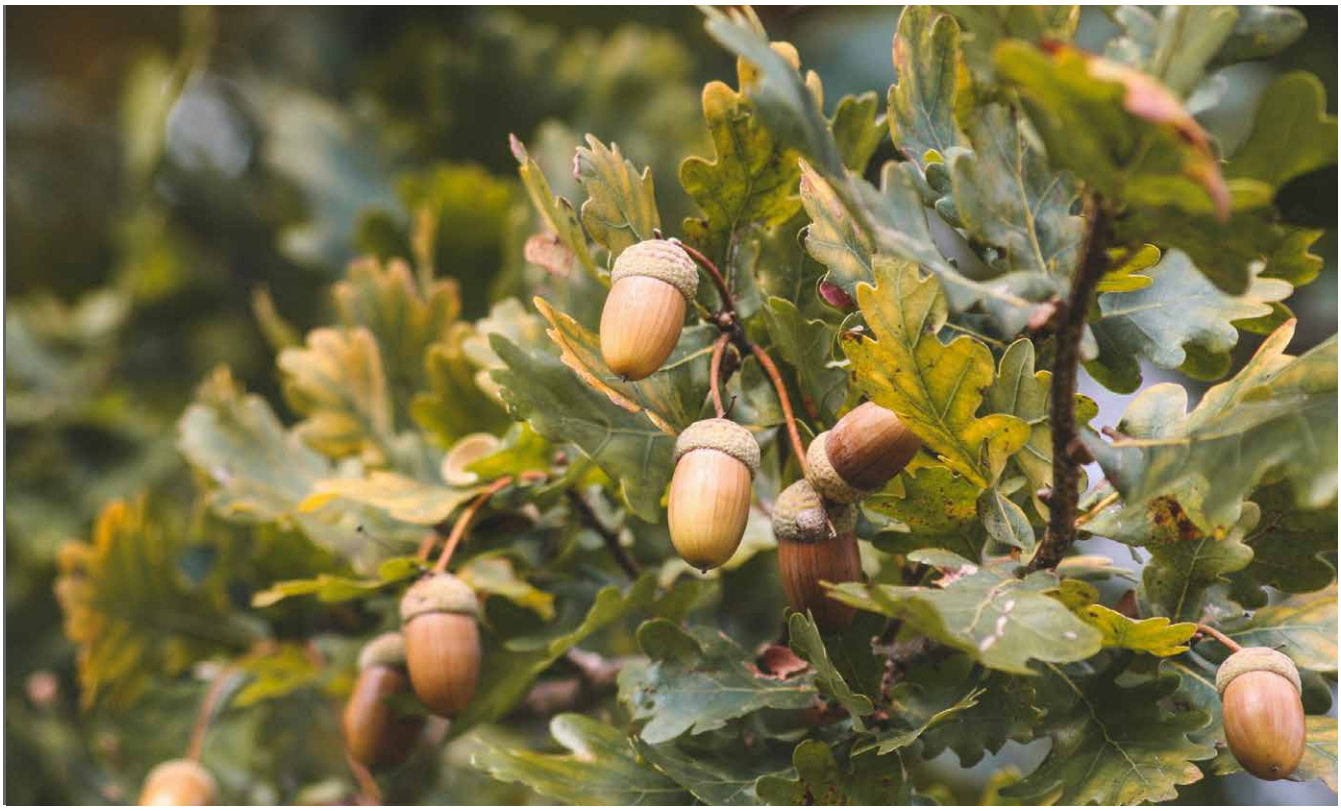
Thirdly, the Constitutional Court noted that the legal status of a Member of the *Saeima* was defined by Article 5 of the *Satversme*, envisaging that the *Saeima* was constituted by hundred representatives of the people. Hence, a Member of the *Saeima* has the duty to be the people's representative. It follows from the duty of representing the people that a deputy has the mandate of representation. Moreover, pursuant to Article 5 of the *Satversme*, the mandate of free representation is immanent for the deputy's status. The main purpose of the mandate of free representation is to protect the deputy against external influence and allow the State's decisions in the *Saeima* to develop autonomously. Several rights of a Member of the *Saeima* follow from the principle of the mandate of free representation. The right to participate in the work of the *Saeima* – in the sittings of the *Saeima* and its committees, speaking and voting there, as well as to act on behalf of the *Saeima* in those institutions, to which the *Saeima* has elected or appointed the deputy, and, finally, to receive remuneration for the performance of his duties, are part of the rights vested in the deputy's office.

The Court also recognised that, in exercising the rights granted to the position of the Member of the *Saeima* and exercising his official authorisation, the deputy of the *Saeima* performs functions of public law and does not act in the status of a private person. However, Members of the *Saeima* enjoy also the fundamental rights, which, in some cases, may overlap with the official authorisation. The legislator has not envisaged a legal remedy, which an individual deputy of the *Saeima* – a part of a constitutional body of the state power – could use to defend his official authorisation in case of an infringement. Therefore it is admissible to eliminate deficiencies in the mechanism for protecting the rights of a separate constitutional body of the state power or a part thereof by a constitutional complaint, which as to its substance and procedural pre-requisites is the closest legal remedy.

Fourthly, the Constitutional Court found that the contested norms prohibited a Member of the *Saeima*, against whom criminal prosecution had been initiated, from being a member of the *Saeima* committees and by his speeches and voting influence directly the committee's decisions. Hence, although the contested norms do not provide that the Member of the *Saeima*, after the *Saeima* has consented to commencement of criminal prosecution against him, loses his office, the member of the *Saeima*, nevertheless, is denied the most significant rights that are linked to his participation in the work of the *Saeima* (i.e., the right to participate in the sittings of the *Saeima* and its committees, exercising his right to vote). Moreover, pursuant to the contested norms, a Member of the *Saeima* is suspended from exercising the essential right to the mandate of free representation and authorisation for undetermined period of time; i.e., until criminal prosecution is terminated or until a convicting court's judgement enters into force. Criminal proceedings could last for the whole period of the deputy's term in office or a significant part of it. Thus, the contested norms create such a limitation on the rights of a Member of the *Saeima*, which not only temporarily restricts his rights and authorisation that follow from his free mandate of representation but, essentially, already punish the deputy of the *Saeima* for the criminal offence, in connection with which an approval to initiate criminal prosecution against him had been given. The Court also pointed out that the right, guaranteed to a Member of the *Saeima*, to receive monthly salary not disbursed during the period of suspension as well as compensation, was not sufficient to outweigh the fact that important rights and authorisation of the mandate of free representation of the *Saeima's* Member, protected by the presumption of innocence, were disproportionally restricted or, substantially, denied.

In view of the above, the Constitutional Court recognised the aforementioned norms as being incompatible with Article 5, the second sentence of Article 92 and the first sentence of Article 101 of the *Satversme*.

The Constitutional Court's Justices Gunārs Kusiņš and Jānis Neimanis added their separate opinion to the judgement. It is noted therein that the contested norms are incompatible with the presumption of innocence for the very same reason that they are incompatible with Article 5 and Article 101 of the *Satversme*. I.e., the contested norms are incompatible with the presumption



of innocence because they interfere excessively into the deputy's right to the free mandate of representation.

The parliament has an essential role in the political debates of democracy. Members of the parliament, in performing their duties of office, represent electors, draw attention to issues relevant for them and protect their interests. Thus, exercising the deputy's rights facilitates effective functioning of democracy – legitimisation of the legislator and plurality of views in the composition of the parliament in accordance with the will expressed by the sovereign.

Case No. 2019-09-03
On the case [in English]
Judgement [in Latvian]
Press release [in English]
A Justice's video commentary [in Latvian]

On 20 February 2020, the Constitutional Court passed the judgement in case No. 2019-09-03 "On Compliance of Para 2.11. of the Regulation of 2 December 2018 of the Financial and Capital Market Commission No. 198 "Regulation on Determining the Amount of Payments by the Financial and Capital Market Participants for Financing the Financial and Capital Market Commission in 2019 and for Submitting Reports" with the First Sentence of Article 91 of the *Satversme* of the Republic of Latvia".

A legal norm, which determined the amount of payment made by credit institutions for financing the operations of the Financial and Capital Market Commission (hereafter – the Commission), was reviewed in the case.

The case was initiated on the basis of a constitutional complaint submitted by a credit institution. It was noted therein that, pursuant to the contested norm, the amount in percentage to be paid for financing the Commission had been increased only for credit institutions, whereas with respect to other operators in the financial and capital market (hereafter – market operators) it remained in the previous amount or even had been reduced. Hence, it was alleged that the contested norm was incompatible with the principle of equality.

Firstly, the Constitutional Court recognised that the supervision of finance and capital market in Latvia was financed by the market operators – credit institutions, insurers, private pension funds, etc. The amount of payments made by market operators is determined by the Commission's Council, without exceeding the amount defined in law. In accordance with the contested norm, in 2019, the amount of payment for credit institutions increased by almost 30 per cent. The amount of payment was not increased for any other group of market operators, whereas for the area life insurance with savings component it even

was deceased. Thus, the contested norm envisages differential treatment of groups of persons who are in similar and according to certain criteria comparable circumstances.

Secondly, the Constitutional Court found that the Commission was an autonomous public institution, which performed its functions independently and was not subject to the Cabinet or any other institution. Autonomous public institutions are established in important areas, essential for public interests. These institutions supervise their areas autonomously, on the basis of professional knowledge and long-term vision of the development in the particular area. Supervision of the finance and capital market is one such areas, implemented by the Commission.

Thirdly, the Constitutional Court noted that the legislator had granted the right to the Commission's Council to issue external regulatory enactments, which were binding upon the operators of finance and capital market. Democratic legitimisation is a mandatory pre-requisite that allows a public body in a democratic state to acquire the right to issue external regulatory enactments. I.e., this public body should be included in the chain of democratic legitimisation, which links it to the will of the people – the bearer of the state's sovereign power. The people can exercise their influence upon indirectly legitimised institutions via the political responsibility of these institutions before the *Saeima*. I.e., the *Saeima* should have the possibility to decide on the composition of such institutions, on the basis of consideration on political expediency.

At the time when the contested norm was issued, the Commission's Council had five members. The *Saeima* appointed the chairperson and the deputy-chairperson of the Commission, whereas the three remaining members of the Council were appointed by the Council's chairperson. Thus, the *Saeima* did not have the right to decide on appointing or releasing from the office of these three members of the Council.

Fourthly, the Constitutional Court found: in view of the Commission's essential significance in the national financial sector and the possibility to decide on the market operators' rights and restrictions on these as well as the need to ensure independence of the Commission's operations and the restricted possibilities of parliamentary supervision that followed from it, the democratic legitimisation of the Commission's Council, as an institution that issued external regulatory enactments, was of particular importance. A situation, where external regulatory enactments are issued by an autonomous public institution, where the right to adopt decisions on issuing such regulatory enactments is granted also to such officials, about whom the *Saeima* had not decided, did not meet the requirements of a democratic state governed by the rule of law. Thus, the Commission's Council had not been properly democratically legitimised to issue the contested norm.

In view of the above, the contested norm had been issued *ultra vires* since the differential treatment envisaged by this norm had not been established in accordance with a legal norm adopted in the procedure set out in regulatory enactments. Hence, the contested norm is incompatible with the first sentence of Article 91 of the *Satversme*.

In cases, where the contested norm has been recognised as having been issued *ultra vires*, the Constitutional Court usually rules that is void as of the moment of being issued. However, in view of the great importance of the supervision of the financial and capital market in the economy and the area of public welfare, the proportion of payments made by credit institutions in the Commission's budget revenue as well as the legislator's actions aimed at proper democratic legitimisation of the Council, the Constitutional Court found that it was impossible, in the present case, to recognise the contested norm as being void retroactively. A solution like this would be incompatible with the need to ensure sustainable national development and to protect public welfare. Hence, the contested norm is to be deemed as being void as of the date when the Constitutional Court's judgement is published.

Democratic legitimisation is a mandatory pre-requisite that allows a public body in a democratic state to acquire the right to issue external regulatory enactments. The public body should be included in the chain of democratic legitimisation, which links it to the will of the people – the bearer of the state's sovereign power.

Case No. 2019-10-0103
On the case [in English]
Judgement [in Latvian]
Press release [in English]
Separate opinion [in Latvian]

On 20 March 2020, the Constitutional Court passed the judgement in case No. 2019-10-0103 "On Compliance of Section 42^3 (1) of Energy Law (in the wording that was in force until 7 March 2016) with Article 64 and Article 105 of the *Satversme* of the Republic of Latvia and of Para 56, Para 58 and Para 87 of the Cabinet Regulation of 16 December 2008 No. 1048 "Regulation on the Supply and Use of Natural Gas" with Article 64 and Article 105 of the *Satversme* of the Republic of Latvia and Section 42^3 (1) of Energy Law (in the wording that was in force until 7 March 2016)".

The procedure for calculating the amount of natural gas used and compensation that the energy user paid in the

case of violating the regulation on the use of natural gas was examined in the case.

The case was initiated on the basis of a constitutional complaint and applications by courts. It was indicated therein that the norms, which regulated payment for natural gas in cases where the energy user had violated regulations on the supply and use of natural gas or an agreement on the supply of natural gas (hereinafter – regulations on the use of natural gas), as well as the norms on compensation that the user of energy paid to the system operator in such cases were incompatible with the *Satversme*. The applicants hold that the Cabinet's authorisation, included in the contested norm of the law, is not sufficiently clear, therefore this norm is incompatible with Article 64 and Article 105 of the *Satversme*. Moreover, Para 87 of the Cabinet Regulation of 16 December 2008 No. 1048 "Regulation on the Supply and Use of Natural Gas" (hereafter – the Cabinet Regulation) is said to be incompatible with the aforementioned articles of the *Satversme*. I.e., the contested norm of the law authorises the Cabinet to establish the procedure, in which the operator supplying energy, determines the amount of consumed natural gas. However, substantially, the Cabinet had re-delegated this task to the system operator, thus exceeding the limits of its authorisation. The applicants also note that the compensation, envisaged in the contested norm of the law and in Para 56 and Para 58 of the Cabinet Regulation, is punishment for an infringement committed by an energy user. By establishing this punishment, the Cabinet had exceeded the authorisation granted by the legislator. Moreover, the restriction on fundamental rights included in the contested norm is said to be disproportional.

Firstly, the Constitutional Court recognised that the legislator, in exercising its discretion to establish special regulation on the legal relationship between an energy supply merchant and the household user, had decided that, in case of violating the regulations on the use of natural gas, the household user had to pay for the consumed natural gas and to pay compensation to the energy supply operator. This obligation was disciplinary by nature and was aimed at preventing violations of the regulations on the use of natural gas. Such violations could cause not only consumption of natural gas, i.e., limited resource, without remunerating for it and, consequently, increase in the tariffs, but also functional disruptions in the natural gas supply system. Hence, the restriction on the household user's fundamental rights was proportional. Hence, the contested norm of the law complied with Article 64 and Article 105 of the *Satversme*.

Secondly, the Constitutional Court noted that, as to its legal consequences, compensation performed the functions of contractual penalty. However, by defining a fixed amount of compensation, the Cabinet had not ensured compliance with the principle of the individualisation of punishment, i.e., that the scope of punishment in each particular case should be commensurate to the offence committed by the person. Moreover, if the payment for the natural gas and establishing and limiting the compensation had been aimed at protecting consumers against an energy supply merchant in the conditions of a monopoly, then the *Saeima*, by granting the authorisation to the Cabinet in the contested norm of the law, could not have wished, in accordance with the principle of a rational legislator, the Cabinet to define such method for setting the amount of compensation, the impact of which on the consumer could lead to violations of the requirements set in the normative legal acts regulating the protection of consumer rights. In the particular case, the Cabinet had not defined itself how, in the case where the regulations on the use of natural gas had been violated, the amount of consumed natural gas should be determined, but had authorised the system operator to do it, by imposing the obligation on the system operator to determine differentiated norms of consumption. Thus, the Cabinet not only had not respected the limits of authorisation set in the contested norm of the law but also, by the contested norm of the Regulation, had included in it as an element of the united legal regulation a provision that was defined by a private person without democratic legitimisation. Since the contested norms of the Regulation had been issued by exceeding the legislator's authorisation, the Court recognised them as being incompatible with Article 105 of the *Satversme*.

The Constitutional Court's Justice Jānis Neimanis added his separate opinion to the judgement. It is noted therein that Para 56 and Para 58 of the Cabinet Regulation complied with the legislator's authorisation. In arriving at the conclusion to the contrary, the Constitutional Court had not examined in detail the compliance of these legal norms with the principle of proportionality.

A contractual penalty or other compensation for failure to meet contractual obligations or poor performance of the contract should be commensurate to the damages caused by the failure to meet contractual obligations or poor performance of the contract.

Case No. 2019-17-05
On the case [in English]
Judgement [in Latvian]
Press release [in English]
A Justice's video commentary [in Latvian]
Separate opinion: 1; 2 [in Latvian]

On 15 May 2020 , the Constitutional Court delivered the judgement in case No. 2019-17-05 "On Compliance of the Order by the Minister for Environment Protection and Regional Development of 25 April 2019 No. 12/59 "On Suspending the Regulation on the Opinion Poll of the Inhabitants of Ikšķile Region "Vote of Ikšķile Region"" with Article 1 and Article 101 of

the *Satversme* of the Republic of Latvia and Article 5 of the European Charter of Local Self Government".

An order by the Minister for Environment Protection and Regional Development, by which the regulation on the opinion poll of the inhabitants of Ikšķile Region "Vote of Ikšķile Region" was suspended, was reviewed in the case. The Minister held that neither the law "On Local Governments" nor other regulatory enactments envisaged the right of a local government council to organise an opinion poll of inhabitants, which resembled an election or a local referendum.

The case was initiated with respect to an application by the Ikšķile Regional Council. It was noted therein that, in the framework of the initiated administrative territorial reform, it had been planned to merge the administrative territory of Ikšķile Region with other regions. The applicant had issued Regulation on the Opinion Poll to organise an opinion poll of inhabitants of Ikšķile Region regarding this region as an independent administrative territory. Allegedly, the applicant's right to organise inhabitants' opinion poll follows from the *Satversme* and the European Charter of Local Self-Government. Hence, the Minister, in suspending the Regulation, had acted unlawfully.

Firstly, the Constitutional Court recognised that since a local government had been established to provide for the interests of inhabitants, hearing the opinion of inhabitants was an element in the local government's daily work, which could be used with respect to various issues falling within its competence. The local government's right to hear the opinion of the inhabitants of the respective administrative territory on the changes to the boundaries of an administrative territory is included in Article 1 and Article 101 of the *Satversme* and Article 5 of the European Charter of Local Self-Government.

Secondly, the Constitutional Court pointed out that clarification of the opinion held by the inhabitants of the local-government was an auxiliary activity, the form of which was not defined in law. The local government has the right to conduct it, also by not regulating the organisation of the opinion poll in a separate legal act. The applicant chose to issue the regulation on opinion poll as an internal legal act. Although the terminology used in Regulation was rather characteristic of an election or a referendum, it was nowhere indicated that the outcomes of the poll could be binding upon the local government or other state institutions. Hence, the applicant had acted within the framework of its competence in establishing the procedure for organising the opinion poll, regulated in Regulation on the Opinion Poll.

Thirdly, the Constitutional Court recognised; if the Minister saw the need to improve Regulation on the Opinion Poll, he had the possibility to use other control measures, less restrictive on the local government, *inter alia*, requesting the convening of an extraordinary sitting of the local government council. At the sitting, the Minister could have explained his opinion and urged the local government to use a more appropriate model for clarifying the public opinion. The Court underscored that the relations between the state and local governments should be developed in the form of

a dialogue, abiding by the principle of good faith and mutual respect, to ensure effective public governance and use of resources.

In view of the above, the Constitutional Court found that the Minister did not have the right to suspend Regulation on the Opinion Poll. Hence, the contested order is incompatible with the principle of the rule of law, included in Article 1 of the *Satversme*. The Court also noted that, thus, there was need to review the compliance of the contested order with Article 101 of the *Satversme* and Article 5 of the European Charter of Local Self-Government.

At the same time, the Court drew attention, *inter alia*, to the fact that applicant organised the opinion poll after the Minister had suspended the Regulation and, likewise, without waiting for the Constitutional Court's judgement to enter into effect. Thus, the applicant had acted contrary to the order established in a democratic state governed by the law and had not abided by Section 49 (3) of the law "On Local Governments".

The Constitutional Court's Justice Gunārs Kusiņš added his separate opinion to the judgement. He maintains that the local government' s right to hear the opinion of the inhabitants of the respective administrative territory regarding changes to the boundaries of the local government's administrative territory does not follow from Article 101 of the *Satversme* since a local government cannot be the subject of fundamental rights. The legal nature of the Regulation on the Opinion Poll, issued by the Ikšķile Regional Council, had not been duly examined.

The Constitutional Court's Justice Jānis Neimanis also added his separate opinion to the judgement. When a state decides to adopt a law to merge several local governments, public consultations are said to be the appropriate form for hearing the inhabitants' opinion. The Justice also noted that the Regulation on the Opinion Poll, issued by the Ikšķile Regional Council, had been directed at regulating external legal relations. The Justice also did not uphold the finding that the Minister could have chosen less restrictive measures for controlling the local government – the Minister's right to request information and propose convening of the council's sitting is said to be an ineffective solution where the local government's council already has adopted a final decision.

The relations between the state and local governments should be developed in the form of a dialogue, abiding by the principle of good faith and mutual respect, to ensure effective public governance and use of resources.

Case No. 2019-37-0103
On the case [in English]
Judgement [in Latvian]
Press release [in English]
A Justice's video commentary [in Latvian]

On 28 September, the Constitutional Court delivered the judgement in case No. 2019-37-0103 "On Compliance of Section 42^3 (1) of Energy Law (in the wording that was in force until 7 March 2016) with Article 64 and Article 105 of the *Satversme* of the Republic of Latvia and compliance of Para 98, Sub-para 99.2. and Para 100 of the Cabinet Regulation of 9 February 2016 "Regulation on the Supply and Use of Natural Gas" with Article 64 and Article 105 of the *Satversme* of the Republic of Latvia and Section 42^3 (1) of the Energy Law (in the wording that was in force until 7 March 2016)".

The procedure for calculating the amount of the natural gas used and compensation that the user of energy pays if the regulations on the use of natural gas have been violated was examined in the case.

The case was initiated on the basis of applications by courts. It was indicated therein that the norms that regulated payment for natural gas if the energy user had violated the rules on the use of natural gas, as well as norms regarding the compensation that the energy users paid to the system operators in such cases were incompatible with the *Satversme*. Allegedly, the authorisation to the Cabinet, included in Section 42^3 (1) of the Energy Law is not sufficiently clear, therefore this norm is incompatible with Article 64 and Article 105 of the *Satversme*. Moreover, also Sub-para 99.2. of the Cabinet Regulation of 9 February 2016 "Regulation on the Supply and Use of Natural Gas" (hereafter – the Cabinet Regulation) is said to be incompatible with Article 64 and Article 105 of the *Satversme* since the contested legal norm had authorised the Cabinet directly to establish the procedure, in which, in the case of a violation, the energy supply merchant determines the amount of the used natural gas. Substantially, the Cabinet, by the aforementioned norm of the Regulation, had re-delegated this task to a system operator, thus exceeding the limits of its authorisation set in the law. The applicants also note that the compensation envisaged in the contested legal norm and Para 98 and Para 100 of the Cabinet Regulation is a punishment for the violation committed by the energy user. By establishing this punishment, the Cabinet has breached the authorisation granted by the legislator. Moreover, the restriction established by the contested norms is said to be disproportional.

Firstly, the Constitutional Court terminated legal proceedings in the part of the case regarding the compliance of the contested norms with Article 64 and Article 105 of the *Satversme*, insofar the contested legal norms applied to a household user. This claim already had been adjudicated in case No. 2019-10-0103. Whereas insofar the contested legal norm applied to such energy user who was not a household user, it was recognised

by the Constitutional Court as being compatible with the *Satversme*. The Court used reasoning that was similar to the one in case No. 2019-10-0103.

Secondly, the Constitutional Court decided to broaden the limits of the claim and to examine not only Para 98, Sub-para 99.2 and Para 100 but also Sub-para 99.1. of the Cabinet Regulation as united legal regulation.

The Court noted that the Cabinet had established several ways for determining, if the regulations on the use of natural gas had been violated, the amount of the used natural gas, i.e. – depending on the actual amount of the used natural gas in similar conditions in a similar period, the maximum hourly consumption of natural gas permitted to the energy user, the maximum possible hourly consumption of natural gas by the natural gas equipment of the energy user or the differentiated consumption norms set in the procedure of settling payments, approved by the energy supply merchant. The Court found that the method, which used the differentiated consumption norms set in the procedure of settling payments, approved by the energy supply merchant, was unconstitutional. The Cabinet had authorised an energy supply merchant, who had not been democratically legitimised, to specify part of those legal relations, regulated by the legislator, which included a restriction on the fundamental rights of a household user. Hence, the Cabinet had exceeded the limits of the authorisation defined by the legislator.
Thirdly, the Constitutional Court underscored that the methods for determining the amount of the used natural gas were constitutional only if they, in accordance with the principle of justice, ensured economic equivalence of the parties to the legal relations of energy supply and that the amount of the used natural gas was determined as close as possible to the actual amount consumed. Economic equivalence is ensured only by a method that envisages using the amount of actually consumed amount of natural gas in a similar period in similar conditions. Whereas the amount of natural gas determined by other methods exceeds the actual amount of natural gas used. Thus, these methods are obviously disproportional.

Fourthly, the Constitutional Court recognised that the compensation that the energy user paid in the case, where the rules on the use of natural gas had been violated, should be set in the amount that would facilitate prevention of violations. This means that the amount of compensation, which can be equalled to the amount of contractual penalty, should be adjustable to the circumstances of violation. However, the method for calculating the amount of compensation is not linked to such circumstances. Moreover, there are no grounds to link the amount of compensation with such possible losses of the energy supply merchant, the determination of the amount of which, in the case where the rules on the use of natural gas have been violated, is not objectively hindered. In a situation like this, the method for calculating the amount of compensation that sets it in the double amount of the trade tariff of natural gas in accordance with amount of natural gas, determined in the procedure set out in the contested norms of the Cabinet Regulation, is obviously disproportional and unfair.

In the case where the regulations on the use of natural gas have been violated, the methods for determining the amount of the used natural gas should be such that, in accordance with the principle of justice, ensure economic equivalence of the parties to the legal relations of energy supply and that the amount of the used natural gas is determined as close as possible to the actual amount consumed.

Case No. 2020-16-01
On the case [in English]
Judgement [in Latvian]
Press release [in Latvian]
Justices' video commentary [in Latvian]

On 3 December 2020, the Constitutional Court delivered the judgement in case No. 2020-16-01 "On Compliance of Para 2 of Section 1 of the law "On Dismissal of the Riga City Council" with Article 1 and Article 101 of the *Satversme* of the Republic of Latvia".

The legal norm regarding the dismissal of the Riga City Council because the Riga City Council had allowed unlawful actions and did not fulfil the autonomous function of a local government to organise household waste management was reviewed in the case.

The case was initiated on the basis of an application by twenty Members of the 13th convocation of the *Saeima*. It was noted therein that the Riga City Council had fulfilled its autonomous function to organise household waste management properly and that the dismissal of the Riga City Council had been politically motivated. Moreover, in adopting the law "On Dismissal of the Riga City Council", substantial violations of the principle of good legislation had been made. Thus, the legislator had breached the principle of democracy and the principle of local government.

Firstly, the Constitutional Court recognised that the dismissal of a local government council was the ultimate *ex-post* control measure over the legality of a local government's actions, which entailed the most severe legal consequences, since, as the result of its application, a democratically elected institution was dismissed. In a democratic state governed by the rule of law, a law on dismissing a local government council

may not be adopted arbitrarily, on the basis of solely political considerations. The adoption of a law like this should be based on concrete facts and legal assessment thereof.

Secondly, the Constitutional Court found that, in the process of preparing the draft law "On Dismissal of the Riga City Council", the opinion of the Riga City Council and the Latvian Association of Local and Regional Governments had been duly heard. Likewise, in the process of adopting the contested norm by the *Saeima*, the violations of legal norms, committed by the Riga City Council, were examined and the stakeholders' opinion was heard. Hence, in adopting the contested norm, the procedure for dismissing a local government council had been complied with.

Thirdly, the Constitutional Court noted that a local government council could be dismissed if it since its election (commencement of work) had repeatedly committed substantial violations of legal norms. The substantivity of the violations of legal norms, committed by a local government council, is proven, *inter alia*, by the consequences that are caused or could be caused by such violations for the lawful interests of the inhabitants of the particular administrative territory or the general society, as well as the systemic character of such violations. Also, failure to enforce a valid court's judgement, in which the unlawfulness of a particular local government council's actions had been clearly established, is a substantial violation of legal norms. The Court concluded that in the Riga City Council's actions in organising household waste management repeated substantial violations of legal norms could be identified. For years, also during the period when the dismissed Riga City Council worked, household waste management in Riga was organised by violating the requirements defined in legal norms and disregarding the Constitutional Court's judgement in case No. 2012-01-01. Thus, it arbitrarily infringed upon the lawful interests of inhabitants and society in general and the rule of law was jeopardised.

Fourthly, the Constitutional Court underscored that the aim of the law "On Dismissing the Riga City Council", first and foremost, was to prevent a situation, in which a council not only repeatedly committed substantial violations of legal norms but also ignored the warnings repeatedly expressed by the authorities. The Riga City Council's attitude and unlawful actions, in fulfilling its autonomous function, proved that the elimination of violations would not have been reached by other measures for legal oversight at the disposal of the Ministry of Environmental Protection and Regional Development. In the adoption of the contested norm, the significance of household waste management as an autonomous function of a local government and the need to fulfil it properly and effectively, which follows from the significant impact of this area on a person's right to live a benevolent environment, on public health and welfare, as well as sustainable national development, was taken into account. This impact on society's lawful interests and environmental protection as the aims of sustainable development is even greater in a city as large as Riga. Thus, in the particular circumstances, the dismissal of the Riga City Council as an *ex-post* measure for reviewing the legality of the local government's actions was necessary in a democratic state governed by the rule of law. Thus, the contested norm complies with Article 1 and Article 101 of the *Satversme*.

In a democratic state governed by the rule of law, a situation, in which a local government does not enforce a court's judgement for a long time and repeatedly commits substantive violations of legal norms, thus jeopardising society's lawful interests and the rule of law, as well as diminishing society's trust in the state and law, is inadmissible.

3.3. TAX AND BUDGET LAW

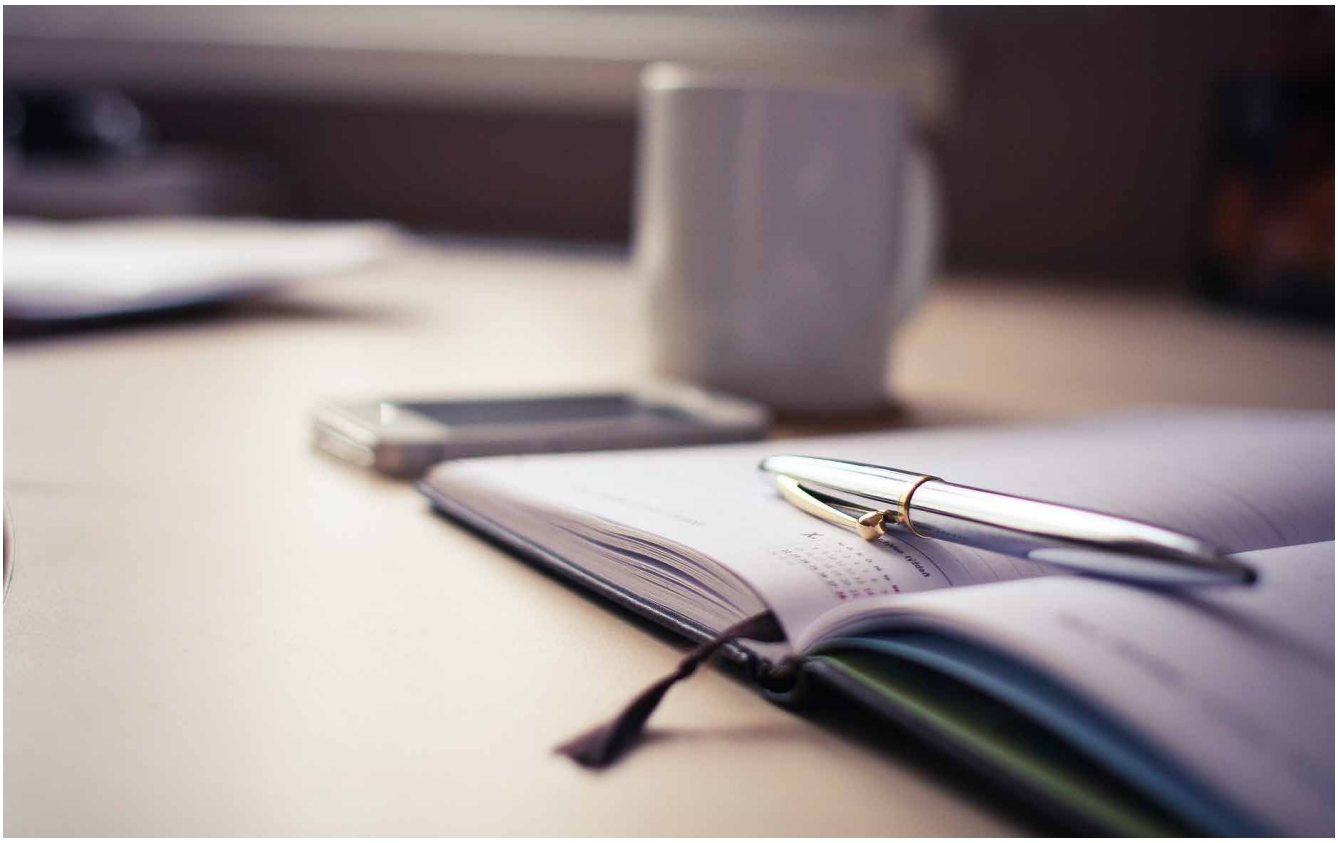
In the reporting period, the Constitutional Court has delivered one judgement in the area of tax and budget law; however, it comprises several new findings regarding the process of creating the budget and the manifestations of the principle of separation of powers in this area.

Several basic principles related to the creation of the state budget have been already consolidated in the Constitutional Court's judicature. The Court recognised already in 1998 that, upon approving a law or another decision relating to disbursements from the State Treasury, the *Saeima* had to reckon with the existing budget. If the *Saeima* adopts a decision that is related to spending resources that are not envisaged in the annual state budget, it must envisage resources for covering this expenditure.[70] In 2010, in turn, the Court provided detailed characterisation of the procedure of adopting the state budget and highlighted the Cabinet's special role within it, noting that the preparation of the draft state budget was solely in the Cabinet's competence, whereas the *Saeima* assessed and adopted the budget.[71] Finally, in 2012, the Court recognised that the limited revenue determined the discretion of both the Government and the *Saeima*, in deciding on the use of the state financial resources. The obligation of constitutional bodies to prepare and adopt a sustainable state budget follows from Article 66 of the *Satversme*, therefore, in deciding on the state budget, balance between the State's economic possibilities and the welfare of society in general must be ensured in the long-term. Moreover, the Court characterised the limits of its competence, related to the state budged, noting that, insofar decisions on issues that pertained to the state budget did not violate the principle of the separation of state powers, e.g., by depriving a constitutional body of the possibility to perform its tasks and functions, defined in the *Satversme*, the Cabinet and the *Saeima* enjoyed discretion in making forecasts and deciding in this area.[72]

In case No. 2019-29-01, compliance of some programmes of the state budget law for 2019 with Article 1 and Article 66 of the *Satversme* was examined. The Applicant alleged that the respective programmes were incompatible with the said provisions of the *Satversme* because they did not envisage the annual increase in the financing for state established institutions of higher education in the amount of no less than 0.25 per cent of the gross national product, as envisaged in Section 78 (7) of the Law on Higher Education Institutions. The Constitutional Court, however, decided to broaden the limits of the claim and review also the compatibility of the respective norm of the Law on Higher Education Institutions with Article 66 of the *Satversme*.

With respect to the latter issue, the Constitutional Court, first and foremost, noted that the requirement that all public institutions had to act fairly followed from the principle of a state governed by the rule of law. Therefore, it followed that the adoption of such legal norms, which from the very onset had been empty promises to voters and would not be covered by the resources, entrusted by the people, was incompatible with the principle of a state governed by the rule of law. The Court continued in elaborating on the division of competences between the *Saeima* and the Cabinet in the area of preparing and reviewing the state budget. The Court noted that the principle of the separation of powers was revealed in Article 66 of the *Satversme*, pursuant to which the special competences of the executive and the legislative power in the area of preparing and reviewing the state budget were separated. Whereas by constantly "earmarking" in the long-term substantive part of expenditure in various laws that exceed the boundaries of one fiscal year, the *Saeima* takes over the competence of drafting the budget, significantly restricting the respective competence of the Cabinet. Thus, actually, the competence of drafting the budget is transferred from

70 The Constitutional Court's Judgement of 27 November 1998 in Case No. 01-05 (98), Para 1.
71 The Constitutional Court's Judgement of 25 November 2010 in Case No. 2010-06-01, Para 12.
72 The Constitutional Court's Judgement of 3 February 2012 in Case No. 2011-11-01, Para 10, Para 11.2. and Para 17.5.



the executive power to the legislative power, which is contrary to the principle of separation of powers and the first sentence of Article 66 of the *Satversme*.

Case No. 2019-29-01
On the case [in English]
Judgement [in Latvian]
Press release [in English]
Press conference [in Latvian]

On 29 October 2020, the Constitutional Court delivered the judgement in case No. 2019-29-01 "On compliance of the programmes 03.00.00 "Higher Education", 02.03.00 "Higher Medical Education", 20.00.00 "Cultural Education" and sub-programme 22.02.00 "Higher Education" of the Law "On the State Budget for 2019", insofar these do not envisage annual increase of the State-allocated financing for studies in State-founded institutions of higher education in the amount no less than 0.25 per cent of the gross domestic product, as provided for in Section 78 (7) of the Law on Higher Education Institutions, with Article 1 and Article 66 of the *Satversme* of the Republic of Latvia".

The law "On the State Budget for 2019", insofar it did not envisage the annual increase in the state financing for state-established institutions of higher education, defined in Section 78 (7) of the Law on Higher Education Institutions, was examined in the case.

The case was initiated on the basis of an application submitted by thirty-one Members of the 13th Convocation of the *Saeima*. It was noted therein that, pursuant to Article 78 (7) of the Law on Higher Education Institutions, increase in the financing for studies in state-established institutions of higher education had to be envisaged annually, until it reached at least two per cent of the gross national product. However, the legislator had not complied with this legal provision already since 2014, thus violating the principles of rule of law, legal certainty and the principle of good legislation as well as the sustainability principle.

Firstly, the Constitutional Court recognised: although the law on the State budget was a pronouncedly "political decision", in a democratic state governed by the rule of law, in preparing and adoption, execution and supervision of the execution of the state budget law, law had to be complied with.

Since the *Saeima* exercises the budgeting right, set out in Article 66 of the *Satversme*, in the form of a law, the Constitutional Court has full competence to verify, whether, in drafting and adopting the law "On the State Budget for 2019", the *Satversme* has been complied with. At the same time, the Court decided to expand the limits of the claim and examine also the constitutionality of Section 78 (7) of the Law on Higher Education Institutions.

Secondly, the Constitutional Court noted that Article 66 of the *Satversme* revealed the principle of separation of powers, pursuant to which the special competencies of the executive and the legislative power in the area of drafting and examining the State budget were separated. The executive power, acting through the Cabinet, has to prepare the draft budget of the

financial year for the State' s revenues and expenditure, and the legislator, acting through the *Saeima*, has to approve of it. Moreover, the text of Article 66 of the *Satversme* reveals several constitutional principles of the state budget law. Pursuant to the principle of completeness, all expected revenue of the state and the planned expenditure must be reflected in the budget. The principle of truthfulness requires the Cabinet and the *Saeima* to have a true and clear understanding of the expected state revenue and the planned expenditure. In follows from the principle of economy that the draft state budget law must comply, to the extent possible, with the actual economic situation of the State. These principles prohibit the *Saeima* from imposing upon the Cabinet the obligation to allocate financing in concrete amount in a way that it prohibits the Cabinet from taking into account the social economic forecasts regarding economic growth as well as to balance the planned expenditure between all sectors.

Thirdly, the Constitutional Court found that Section 78 (7) of the Law on Higher Education Institutions required the Cabinet to determine each year the financing in a certain amount and its increase to cover the expenditure of state-financed institutions of higher education in connection with the gross domestic product of the state. This requirement significantly limits the Cabinet's competence and the possibility to draft an economically balanced state budget. By constantly "earmarking" in the long-term substantive part of expenditure in various laws that exceed the boundaries of one fiscal year, the *Saeima* takes over the competence of drafting the budget, significantly restricting the respective competence of the Cabinet. Actually, the competence of drafting the budget is transferred from the executive power to the legislative power, Hence, Section 78 (7) of the Law on Higher Education Institutions is incompatible with the principle of separation of powers and the first sentence of Article 66 of the *Satversme*. It follows from this, in turn, that the contested regulation complies with Article 1 and Article 66 of the *Satversme*.

At the same time, the Constitutional Court underscored that the *Saeima* held special responsibility towards the people in relation with the state budget. Adoption of such legal norms, which from the very onset have been empty promises to voters and would not be covered by the resources, entrusted by the people, is incompatible with the principle of a state governed by the rule of law. Such actions jeopardise the foundations of the democratic order of the State, protected by the *Satversme*.

The Cabinet must abide by and ensure the financing for fulfilling obligations set out in laws but in a way that would not undermine the economic balance of the State.

3.4. INTERNATIONAL AND EUROPEAN UNION LAW

During the reporting period, the Constitutional Court has reviewed several cases relating to application of the international and the European Union law.

International law

During the reporting period, international law was applied in case No. 2019-12-01 in connection with the concept of the autonomy of universities, as well as case No. 2019-20-03 in connection with the right to use the language of ethnic minorities in institutions of pre-school education and the concept of inclusive education.[73]

In case No. 2019-12-01, the Constitutional Court made a reference to international law to define the freedom of scientific, artistic and other creativity, protected by the *Satversme*. I.e., the Court referred to Article 13 of the International Covenant of Economic, Social and Cultural Rights, from the interpretation of which it follows that the right to education, in particular, to higher education, cannot be exercised in the absence of academic freedom of the faculty members and students and autonomy of educational institutions. In defining the autonomy of educational institutions, the Court referred to authoritative instruments of soft law – the Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education as well as to the United Nations Educational, Scientific and Cultural Organization's (UNESCO) Recommendation Concerning the Status of Higher Education Reaching Personnel.

In case No. 2019-20-03, the Constitutional Court applied international law to define the scope of the right to education in connection with the use of minority languages in institutions of pre-school education and to define the concept of inclusive education.

Firstly, with respect to the right to use a minority language in connection with the right to education, envisaged in Article 13 of the International Covenant of Economic, Social and Cultural Rights, the Court noted that the right to education was exercised in compliance with the prevailing circumstances in the particular Member States. Referring to the UN Convention on the Rights of the Child, the Court recognised that a Member State had to ensure a system of education that supplemented the parents' role to ensure that a child acquired education, in the broadest understanding of it. However, the Convention on the Rights of the Child does not directly envisage the obligation for the Member States to ensure to a child educational possibilities before starting school. The Court also found that the aforementioned international human rights provisions with respect to pre-school education did not set a particular age, from which a child was entitled to the exercise the right to education. Although the child has this right from a young age, the ways of exercising it depend on the possibilities of the State and the traditions and values of the respective society.

Secondly, the Constitutional Court noted that Article 24 of the UN Convention on the Rights of Persons with Disabilities comprised the principle of reasonable accommodation. The possible measures that should be taken to help a learner with special needs to acquire education equally to others must be derived from it. This means that the legislator has a positive obligation to ensure that a child with special needs, on the basis of, *inter alia*, language, would not be excluded from the general system of education. The legislator must envisage a way and form of inclusion that would, to the extent possible, meet a child's individual educational needs and would foster effective education of the child.

The European Union Law

The trend of the applicants referring more frequently to the provisions of the primary and secondary law of the European Union to prove an infringement on fundamental rights, guaranteed in the *Satversme*, as well as of an increasing diversity of issues involved was observed during the reporting period.

73 Additional information about case No. 2019-12-01 and case No. 2019-20-03 is included in section "Fundamental Rights" of this Report.

During the reporting period, the Constitutional Court has referred four questions to the Court of Justice of the European Union for a preliminary ruling, i.e., in case No. 2019-28-0103, case No. 2020-02-0306, case No. 2020-24-01 and case No. 2020-33-01.

In Case No. 2019-28-0103, in connection with the possibility, envisaged in Latvia's legal regulation, for each user of natural gas, to connect to the transmission system, the Court had to decide on how to interpret Directive 2009/73/EC[74]. The Court noted that, apparently, Para 1 of Article 32 of Directive 2009/73 defined obligations of the Member States with respect to the access of third persons but not connection to the natural gas supply system, and that the Member States retained the possibility to choose to direct the users of the system to the use of one or another kind of system, whereas, in Article 23 of the respective Directive, concrete requirements were set for the Member States with respect to connecting industrial customers to the transmission system of natural gas. At the same time, Article 23 and Para 1 of Article 32 of Directive 2009/73/EC define obligations of the Member States with respect to third party's access, as well as regarding connecting to the supply system of natural gas, *inter alia*, envisaging connection of industrial customers to both the system of transmission and system of distribution of natural gas. Hence, in Court's opinion, legal proceedings had to be suspended in order to clarify, whether, substantially, Directive 2009/73/EC envisaged such legal regulation, pursuant to which, any direct user of natural gas could connect to the transmission system of natural gas, and the system operator had the obligation to permit it to connect to the respective system. Or, whether, in accordance with the directive, Member States had been imposed the obligation to adopt such legal regulation, pursuant to which, only the direct customer, who is not a household customer, could connect to the transmission system of natural gas.

In case No. 2020-02-0306, the Constitutional Court had to decide, whether the procedure for advertising medicinal products, set out in the Latvian legal provisions, was compatible with the rules envisaged in Directive 2001/83[75]. The Court had doubts regarding three aspects of the said directive. Firstly, whether the norms contested by the applicant are to be considered as being regulation on advertising of medicinal products in the directive's meaning? Secondly, whether, in view of the nature of this directive (i.e., it is an act of secondary EU law, which introduces full harmonisation), a Member State has any possibilities to expand the enumeration of prohibited methods of advertising, included in this directive? Thirdly, how should the concept of rational use of medicinal products, included in this directive, be interpreted to prevent excessive and ill-considered advertising of medicinal products?

In Case No. 2020-24-01, the Constitutional Court had doubts, whether, pursuant to Directive 2006/112[76], the legislator had the right to adopt such legal regulation, pursuant to which land lease in the case of compulsory lease was VAT taxable. I.e., the Court has questions regarding the scope of the legislator's discretion, in determining, to which transactions of leasing or renting the value added tax is applied. The Court concluded that, pursuant Directive 2006/112, Member States release from the payment of value added tax for renting or letting immovable property. At the same time, Directive 2006/112 grants to Member States the right to adopt such regulation, pursuant to which the value added tax is applied to certain transactions of renting or letting immovable property. The Court emphasized that, in cases of compulsory land lease, land lease was a different type of lease relations, occurring on the basis of law and existing independently from the landowner's and the building owner's will. In cases of compulsory lease, the leasing of land is a pronouncedly passive activity because the landowner allows the owner of the building to use the land he owns and on which the building is located only on the basis of the law. The Court held that these circumstances impacted the conclusion on whether, indeed, the valued added tax should be applied in the case of compulsory land lease, in the meaning of Directive 2006/112. Finally, the Court noted that, in this case, it was important to clarify the content of the neutrality principle of the value added tax, i.e., whether the legislator would have the right to release from value added tax in cases of compulsory land lease if the value added tax still would be applied in all other instances of land lease.

In case No. 2020-33-01, the Constitutional Court had to decide, whether the regulation on language use in private institutions of higher education complied with the right to property, included in Article 105 of the *Satversme*. The Court noted that, possibly, this restriction on rights should be examined in conjunction with the freedom of establishment, envisaged in Article 49 of the Treaty on the Functioning of the European Union, or, alternatively, with the freedom to provide services, envisaged in Article 56 of the Treaty, as well as the freedom to conduct business, enshrined in the Charter of Fundamental Rights of the European Union. In the Court's opinion, pursuant to the judicature of the Court of Justice of the European

74 Eiropas Parlamenta un Padomes Direktīvu 2009/73/EK (2009. gada 13. jūlijs) par kopīgiem noteikumiem attiecībā uz dabasgāzes iekšējo tirgu un par Direktīvas 2003/55/EK atcelšanu [DIRECTIVE 2009/73/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC], OV, L 211, 94. lpp.

75 Eiropas Parlamenta un Padomes Direktīva 2001/83/EK (2001. gada 6. novembris) par Kopienas kodeksu, kas attiecas uz cilvēkiem paredzētām zālēm [Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use], OV, L 311, 67. lpp.

76 Padomes Direktīva 2006/112/EK (2006. gada 28. novembris) par kopējo pievienotās vērtības nodokļa sistēmu [COUNCIL DIRECTIVE 2006/112/EC of 28 November 2006 on the common system of value added tax], OV, L 347, 1. lpp.

Union, the obligation to use the official language of a Member State or to foster its development in an aspect of business activities could be regarded as a restriction on the right to establishment. However, the Court had doubts, whether such a restriction was justifiable in a situation like this, when it was applied in the area that fell with the competence of the Member States of the European Union and was linked to the protection of the official language as a value in need of constitutional protection.

Alongside the cases examined above, in which the Constitutional Court referred a question for preliminary ruling to the Court of Justice of the European Union, the European Union law was applied also in other cases, *inter alia*, in case No. 2019-05-01 and case No. 2019-12-01.[77]

The norm, by which the legislator had imposed a restriction on the total costs of credit that the creditor could demand from a consumer, was contested in case No. 2019-05-01. In verifying, whether the restriction on fundamental rights had been established by a law, adopted in due procedure, the Constitutional Court had to decide, whether the legislator, in compliance with the principle of good legislation, had examined the compliance of the norm, included in a draft law, with legal norms of higher legal force, *inter alia*, with provisions of international and the European Union law. The Court verified, *inter alia*, whether the contested norm was not a technical rule, about which the Member State should notify the European Commission in accordance with Directive 2015/1535[78]. The Court noted that Directive 2015/1535 imposed an obligation upon Member States to notify the European Commission on the adoption of any draft technical rules on products and services of information society before these rules were included in the national legal acts. The aim of this directive is to ensure that Member States are informed about the planned technical rules of any other Member State. However, since the contested legal norms pertained to lending, which is financial service in the meaning of Directive 2006/123[79], the Court concluded that the contested norm did not fall within the scope of application of Directive 2015/1535 because, pursuant to Para 4 of Article 1 of this Directive, it was not applicable to rules that pertained to matters that were included in the legal acts of the European Union in the area of financial services. At the same time, in assessing the proportionality of the restriction on fundamental rights, included in the contested norm, the Court recalled that the significance of the protection of consumer rights had been recognised also in the European Union law. I.e., Article 38 of the Charter of Fundamental Rights of the European Union provides that Union policies ensure a high level of consumer protection. In particular, Article 8 of Directive 2008/48[80] defines the obligation of Member States to ensure that before the conclusion of the credit agreement the creditor assesses the consumer's creditworthiness. Latvia has transposed the requirements of this Directive into the Consumer Rights Protection Law, envisaging in several provisions of this law the creditor's obligation to assess, prior to concluding the consumer credit agreement, the consumer's ability to repay this loan.

In case No. 2019-12-01, the Constitutional Court noted that Member States retained the competence to determine the language use in institutions of higher education. Pursuant to Article 165 of the Treaty on the Functioning of the European Union, the European Union respects the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity. Moreover, the Court also made a reference to the Charter of Fundamental Rights of the European Union. The Court noted that, pursuant to Article 13 of the Charter of Fundamental Rights, the arts and scientific research was free of constraint, i.e., academic freedom must be respected. This means that the State, in drafting regulation that pertains to the aspects in the professional activities of faculty members of higher education institution, must ensure the rights of respective persons to the freedom of scientific, artistic and other creativity.

77 Additional information about case No. 2019-05-01 and case No. 2019-12-01 is included in section "Fundamental Rights" of this Report.

78 Eiropas Parlamenta un Padomes Direktīva 2015/1535 (2015. gada 9. septembris), ar ko nosaka informācijas sniegšanas kārtību tehnisko noteikumu un informācijas sabiedrības pakalpojumu noteikumu jomā, paredzētajai kārtībai [DIRECTIVE (EU) 2015/1535 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services], OV, L 241, 1. lpp.

79 Eiropas Parlamenta un Padomes Direktīva 2006/123/EK (2006. gada 12. decembris) par pakalpojumiem iekšējā tirgū [DIRECTIVE 2006/123/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 December 2006 on services in the internal market], OV, L 376, 36. lpp.

80 Eiropas Parlamenta un Padomes Direktīva 2008/48/EK (2008. gada 23. aprīlis) par patēriņa kredītlīgumiem un ar ko atceļ direktīvu 87/102/EEK [DIRECTIVE 2008/48/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC], OV, L 133, 66. lpp.

3.5. CIVIL LAW AND CIVIL PROCEDURE

During the reporting period, the Constitutional Court has reviewed five cases, in which such issues related to the civil procedure as the reimbursement of the state fee, refusal to initiate cassation proceedings and requesting recusal of a judge who decided on the initiation of cassation proceedings were dealt with.

The Constitutional Court previously has examined several cases relating to the state fee to be paid on civil procedure or similar payments.[81] In the cases reviewed during the reporting period, i.e., in case No. 2020-05-01 and case No. 2020-14-01, the reimbursement of the state fee was examined for the first time.

The norm of the Civil Procedure Law, which did not envisage repayment of the state fee if the notice of appeal had been dismissed, was reviewed in case No. 2020-05-01. The Court recognised that, in accordance with the general principle, the state fee should not be repaid. However, the legislator has the right to define exceptions to this principle. The Court also emphasised that the exceptions, established by the legislator in choosing repayment of the state fee were not comparable, in particular, those belonging to different stages of civil proceedings.

Whereas in case No. 2020-14-01, a norm of the Civil Procedure Law, which limited the right to reimbursement of the state fee to the term of three years, was reviewed. The Court recognised that in case if the legal proceedings in a civil case lasted for more than three years, a person did not have the possibility to exercise this right. I.e., due to the length of legal proceedings, the person has lost the right to reimbursement of the state fee, although he or she had never the opportunity to exercise this right. This regulation is incompatible with the principle of justice.

Until now, the refusal to initiate cassation proceedings in civil procedure has been examined in two cases.[82] During the reporting period, two more cases joined them, i.e., case No. 2019-11-01 regarding the refusal to initiate cassation proceedings in disputes of financial nature and case No. 2019-13-01 regarding the refusal to initiate cassation proceedings by a decision drawn up in a form of resolution.

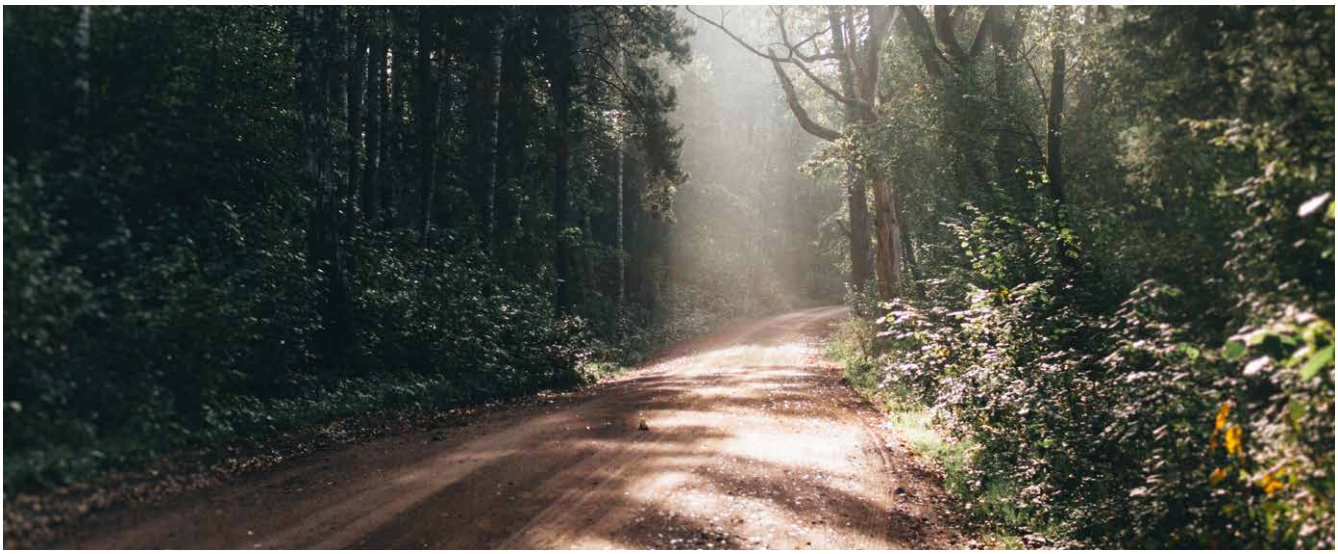
Significance of case No. 2019-11-01 lies in the fact that it describes a court's discretion. The legislator must ensure a court's discretion, allowing the court to perform creatively the function of administering justice. Casuistic approach, making the legislator to list all those legal issues that in each particular case should be recognised as being the grounds for initiating cassation proceedings, would be contrary to the principle of the court's discretion.

Case No. 2019-13-01, alongside two cases adjudicated previously, constitutes the Constitutional Court's judicature on a court's decisions, drawn up in the form of a resolution.[83] In case No. 2017-23-01, such decisions were examined in connection with the refusal to initiate cassation proceedings in criminal procedure, in case No. 2017-16-01 – in connection with the refusal to initiate cassation proceedings in the procedure of administrative violations, but in the case reviewed last year, i.e., case No. 2019-13-01, in connection with the refusal to initiate cassation proceedings in civil procedure. It is essential that in case No. 2017-23-01 and in case No. 2017-16-01 the drawing up of decisions in the form of a resolution was recognised as being incompatible with the *Satversme*, whereas in case No. 2019-13-01 – as being compatible. This is explained both by the different types of legal proceedings and different stages of the legal proceedings .

81 See the Constitutional Court's Judgement of 14 March 2006 in Case No. 2005-18-01, the Judgement of 20 November 2008. gada 20 in Case No. 2008-07-01, and the Judgement of 20 April 2012 in Case No. 2011-16-01.

82 See the Constitutional Court's Judgement of 2 June 2008 in Case No. 2007-22-01, and the Judgement of 21 October 2013 in Case No. 2013-02-01.

83 See the Constitutional Court's Judgement of 15 March 2018 in Case No. 2017-16-01, and the Judgement of 14 June 2018 in Case No. 2017-23-01.



These differences were important also in case No. 2019-23-01. It was examined in the case, whether the legislator had validly denied the right to request recusal of judges, who decide on initiating cassation proceedings in civil procedure. The Court assessed a similar issue regarding requesting recusal of judges, who decide on initiating appellate proceedings in the procedure of administrative violations in case No. 2017-16-01. In these cases, the Court reached different conclusions. As the Court noted in case No. 2019-23-01, in legal proceedings of different nature and in different stages of proceedings, the court's objectivity may be ensured by different measures. The first sentence of Article 92 of the *Satversme* does not require that the court's objectivity in the stage of initiating cassation proceedings in civil procedure would be ensured by the same measures as in the stage of initiating appellate legal proceedings in cases of administrative violations.

It should be noted that, alongside the cases examined above, which dealt with issues pertaining to civil procedure, such institution of civil law as contractual penalty was characterised in case No. 2019-10-0103 and case No. 2019-37-0103. Information about these cases is included in section "State Law (Institutional Part of the *Satversme*)" of this Report.

Case No. 2019-11-01
On the case [in English]
Judgement [in Latvian]
Press release [in English]
A Justice's video commentary [in Latvian]
Separate opinion: 1; 2 [in Latvian]

On 12 March 2020, the Constitutional Court passed the judgement in case No. 2019-11-01 "On Compliance of Section 464[1] (3) of the Civil Procedure Law with the First Sentence of Article 91 and the First Sentence of Article 92 of the *Satversme* of the Republic of Latvia".

A legal norm, which allowed refusing to initiate cassation proceedings in civil procedure in disputes of financial nature, if its parts, in which the judgement had been appealed against, was less than EUR 2000, was reviewed in the case.

The case was initiated on the basis of a constitutional complaint. It was indicated therein that the contested norm placed disproportional restriction on access to the cassation instance court and that the restriction, included in the said norm, envisaged differential treatment on the basis of a characteristic of a financial nature. Hence, it was alleged that the contested norm was incompatible with the right to a fair trial and the principle of legal equality.

Firstly, the Constitutional Court recognised that the legislator could establish procedural order and conditions for access to the cassation instance court. However, this procedure and conditions must comply with the principle of the rule of law, aimed at ensuring justice. At the same time, the Court underscored that, in a democratic state governed by the rule of law, the judicial power was characterised by independence and discretion. Hence, regulation adopted by the legislator must ensure the court's independence and the discretion necessary for the court to fulfil creatively the function of administering justice, within the framework of the basic norm.

Secondly, the Constitutional Court recognised that, as to its nature, the contested norm was not imperative. The panel of judges, in deciding on the matter of initiating cassation proceedings, in all cases first of all examines the criteria, included in the first part of Section 464[1] of the Civil Procedure Law, and may apply the second and third part of this Section afterwards. Hence, the legislator has envisaged certain discretion for the judges' panel also with respect to applying the criterion of financial nature, included in the contested norm. I.e., if, the part of the judgement that is appealed at a cassation instance court is less than EUR 2000 but the panel of judges find substantial interests of society or interests in protecting the rights of persons, a decision to initiate cassation proceedings may be made.

Thirdly, the Constitutional Court found that the discretion granted to the cassation instance court to decide, abiding by the conditions set in the restricted norm, on the issue of compliance of a cassation complaint with the principle of cassation, was necessary and reasonable in a democratic state governed by the rule of law. An approach contrary to the principle of the court's discretion , making the legislator list all those legal issues that in each particular case should be recognised as being the grounds for initiating cassation proceedings, would be casuistic. In deciding on the issue of initiating cassation proceedings, the benefit to society is assessed *vis-à-vis* the individual's legal interest in the particular case, if this case were initiated in cassation instance and a full judgement were delivered. The contested norm allows conducting this assessment, in each particular case balancing the public law interests with an individual's legal interests.

Fourthly, the Constitutional Court noted that the criterion of financial nature, included in the contested norm, *per se* could not be regarded as a feature by which groups of persons, in the meaning of Article 91 of the *Satversme*, should be identified. Hence, the groups of persons identified by the applicant are not comparable in the aspect of legal equality.

In view of the above, the contested norm was recognised as being compatible with the first sentence of Article 91 and the first sentence of Article 92 of the *Satversme*.

The Constitutional Court's Justice Artūrs Kučs added his separate opinion to the judgement. The Justice did not uphold the conclusion made in the judgement that, in the aspect of legal equality, comparable groups of persons form only on the basis of a personal feature. Differential treatment can be prohibited also if it was based on features that were not strictly personal. At the same time, the Justice agreed that the contested norm complied with the first sentence of Article 91 of the *Satversme*. i.e., the respective norm was not imperative and allowed initiating of cassation proceedings even if the outcome of the case, included in the appealed judgement was wrong, hence, the norm did not envisage differential treatment.

The Constitutional Court's Justices Aldis Laviņš and Jānis Neimanis also added their separate opinion to the judgement. The contested norm is said to allow the panel of judges to refuse initiation of the cassation proceedings even if the outcome of the case, included in the appealed judgement, is wrong. Thus, it is not ensured that legal proceedings conclude with a fair judgement, compatible with human rights, in a civil case, therefore the contested norm is incompatible with the first sentence of Article 92 of the *Satversme*. Moreover, the contested norm is said to be incompatible also with the first sentence of Article 91 of the *Satversme* since it envisages ungrounded differential treatment of persons, who are in similar and according to certain criteria comparable circumstances.

The regulation adopted by the legislator must ensure a court's independence and discretion, allowing the court to perform creatively the function of administering justice within the framework of the basic norm.

Case No. 2019-13-01
On the case [in English]
Judgement [in Latvian]
Press release [in English]
A Justice's video commentary [in Latvian]

On 12 March 2020, the Constitutional Court delivered the judgement in case No. 2019-13-01 On Compliance of Section 464 (4^1) of the Civil Procedure Law with the First Sentence of Article 92 of the *Satversme* of the Republic of Latvia".

A legal norm, which allowed drawing up the decision on refusal to initiate cassation proceedings in civil procedure in the form of a resolution, was examined in the case.

The case was initiated on the basis of constitutional complaints. It was noted therein that the contested norm allowed to draw up the decision on refusal to initiate cassation proceedings in a form of a resolution, without providing substantiation. Thus, neither the submitters of a cassation complaint nor the society in general could find out the reasons of the Judges' Panels that had been the basis for adopting these decisions. The applicants held that the contested norm denied to them the right to a substantiated court's ruling and, thus, was incompatible with the right to a fair trial.

Firstly, the Constitutional Court recognised that one of the elements of procedural justice was the principle of stating reasons, from the mandatory requirement to provide in all rulings adopted with respect to a person the legal grounds or the respective legal norm, on the basis of which the respective legal relationship has been resolved, followed. Whether, in accordance with the principle of stating reasons, the substantiation should be mandatorily indicated in a decision of a certain type as well as the scope and level of details of the substantiation depend on a number of systemically interlinked factors, which characterise this ruling. These factors are, *inter alia*, the legal relationship, which is resolved by the respective ruling, as well as the legal procedure and grounds for adoption thereof.

Secondly, the Constitutional Court noted: in view of the importance and functions of the cassation instance court in a democratic state governed by the rule of law, as well as the significance of the decision to refuse initiation of cassation proceedings in civil procedure, the legislator had to ensure that this court was fulfilling its functions effectively. This means that, *inter alia*, the

legislator should relieve the cassation instance court from reviewing unsubstantiated complaints and performing inessential tasks. Even if formulating the substantiation of one decision in writing, possibly, would not require excessive investment of resources, in the long-term, the right to not provide substantiation for a decision on the refusal to initiate cassation legal proceedings allowed saving substantial amount of the court's time and labour resources and ensured efficient use of these resources in fulfilling the functions of a cassation instance court.

Thirdly, the Constitutional Court underscored that the decision on the refusal to initiate cassation proceedings a civil case was adopted in a collegial way and unanimously. The collegiality in adopting this decision ensures comprehensive assessment of whether there are grounds for initiating cassation proceedings on the basis of the particular cassation complaint. Moreover, the reference to the legal grounds for the refusal to initiate cassation proceedings, included in the decision, provided to the person sufficient information regarding the reasons for refusal. Hence, in view of the impact of civil law relationships on a person's rights, the functions and peculiarities of the cassation instance court as well as the procedure and grounds for adopting this decision, the principle of stating reasons did not require indicating in the decision on the refusal to initiate cassation legal proceedings in a civil case its substantiation. Therefore, the contested norm complies with the first sentence of Article 92 of the *Satversme*.

Whether, in accordance with the principle of stating reasons, included in the first sentence of Article 92 of the Satversme, the substantiation should be mandatorily indicated in a decision depends on the nature of the particular ruling.

Case No. 2019-23-01
On the case [in English]
Judgement [in Latvian]
Press release [in English]
Press conference [in Latvian]

On 16 July 2020, the Constitutional Court delivered the judgement in case No. 2019-23-01 "On Compliance of the First Part of Section 464 of the Civil Procedure Law with the First Sentence of Article 92 of the *Satversme* of the Republic of Latvia".

A legal norm, which did not envisage the right of the participants in the case to request recusal of judges in the stage of initiating cassation proceedings in civil procedure, was examined in the case.

The case was initiated on the basis of a constitutional complaint. It was initiated therein that the applicant had appealed in cassation procedure against the judgement by a first instance court in a civil case. A collegium of the Judges of the Department of Civil Cases of the Supreme Court, in compliance with the contested norms, refused to initiate cassation proceedings on the basis of its cassation complaint. The applicant had not been provided information on judges, who were to decide on the matter of initiating cassation proceedings, likewise, he had not been ensured the right to demand recusal of judges. If the applicant had been ensured this right, he would have demanded recusal of one the judges belonging to the composition of the Collegium of Judges. The applicant holds that, thus, the contested norm places disproportional restriction on the right to a fair trial.

Firstly, the Constitutional Court provided the reasons for the decision adopted at the court hearing to dismiss the request made by the applicant's representative regarding recusal of the Constitutional Court's Justice Gunārs Kusiņš. The grounds for the recusal were the fact that Gunārs Kusiņš formerly served as the Head of the *Saeima* Legal Bureau before becoming the Constitutional Court's Justice. The Court established that, while being the Head of the *Saeima* Legal Bureau, Gunārs Kusiņš did not decide on the adoption of the contested norm. At the same time, the Court noted that the opinion held by the Constitutional Court's Justice on the legal regulation *per se* could not be the reason for his self-recusal from hearing the case or the only grounds for his recusal. Such circumstances that are indicative of the Justice's possible interest in achieving a particular outcome in the case could be the grounds for the obligation of the Constitutional Court's Justice to recuse himself from hearing the case or for the recusal of the Justice.

Secondly, the Constitutional Court recognised that the first sentence of Article 92 of the *Satversme* required to ensure a person's right to a fair trial not only when the case was heard on its merits but also during other stages of legal proceedings, in a way appropriate for them. The court's objectivity is one of the aspects of the right to a fair trial. The first sentence of Article 92 of the *Satversme* requires envisaging sufficient measures for ensuring the court's objectivity, to exclude valid doubts regarding the court's objectivity; however, it does not demand that one particular measure should be used for it or that several measures should be introduced to reach this aim. The legislator is obliged to ensure the court's objectivity in each stage of legal proceedings but does not have the obligation to envisage mandatorily the institution of recusal in all stages of the legal proceedings. The legislator has the right, taking into account the nature of the particular stage in the legal proceedings, to envisage one or several measures for ensuring the court's objectivity, insofar these measures are sufficient to ensure the court's objectivity in this stage of legal proceedings.

Thirdly, the Constitutional Court concluded: the fact that the issue of initiating the cassation proceedings is decided on in a collegial manner and the decision to

refuse initiating the cassation legal proceedings may be adopted only unanimously, in interconnection with the high qualification and ethical requirements set for judges, averts the possibility that a judge, whose objectivity could cause reasonable doubts, could achieve adoption of a decision to refuse initiation of cassation legal proceedings, unfavourable for the participants in the case.

Fourthly, the Constitutional Court dismissed the argument that, in the stage of initiating cassation proceedings in civil procedure, the same possibility to demand recusal of a judge should be ensured as in the stage of initiating appellate proceedings in the procedure of administrative violations. In types and stages of legal proceedings of different nature, the court's objectivity may be ensured by different means. The Court also underscored that envisaging the institution of recusal in the stage of initiating the cassation proceedings in civil procedure, *inter alia*, would make the work of the judges' collegium difficult because then the participants of the case should be informed in advance about the court's composition, the opinions of other participants in the case regarding the recusal would have to be heard, and the decision on recusal should be taken in a certain procedure, which would require inadequate investment of labour and time resources. Although the legislator has the right to introduce the institution of recusal also in this stage of legal proceedings, the legislator's right to do it does not follow from the first sentence of Article 92 of the *Satversme*.

Having established that the measures for ensuring the court's objectivity in the stage of initiating the cassation proceedings in civil procedure were sufficient and effective, the Constitutional Court recognised the contested norm as being compatible with the first sentence of Article 92 of the *Satversme*.

The Constitutional Court's Justice Aldis Laviņš added his separate opinion to the judgement. It is indicated therein that the institution of recusal should be envisaged in such stage of legal proceedings , in which the arguments provided by the participants in the case are examined on their merits, *inter alia*, in the stage when the decision on initiation of cassation proceedings is made. Hence, the legislator has the obligation to envisage the right for the participants in the case to demand recusal of Judges of the Supreme Court who decide on initiating cassation proceedings.

The Constitutional Court's Justice Gunārs Kusiņš also added his separate opinion to the judgement. He noted that the first sentence of Article 92 of the *Satversme* required ensuring to the participants in the case the right to demand recusal of judges included in the court's composition in such stage of legal proceedings, in which the materials in the case and the arguments provided by the participants in the case on resolving the dispute, on which the case is founded, are examined and the court delivers the final ruling, which is not subject to appeal. Hence, in the stage of initiating cassation proceedings in civil procedure, the right to a fair trial would be ensured to the participants in the case only if they had the right to be informed about the judges who would decide on the matter of initiating cassation legal proceedings, as well as the right to demand their recusal.

The legislator is obliged to ensure the court's objectivity in each stage of legal proceedings but does not have the obligation to envisage mandatorily the institution of recusal in all stages of the legal proceedings to reach this aim.

Case No. 2020-05-01
On the case [in English]
Judgement [in Latvian]
Press release [in English]

On 16 July 2020, the Constitutional Court delivered the judgement in case No 2020-05-01 "On Compliance of Section 37 (1) of the Civil Procedure Law, insofar it does not Envisage Repayment of the State Fee Paid of a Notice of Appeal if the Notice of Appeal is Dismissed, with the First Sentence of Article 91 of the *Satversme* of the Republic of Latvia".

A legal norm, which did not envisage repayment of the state fee if the notice of appeal had been dismissed in civil procedure, was examined.

The case was initiated on the basis of an application submitted by the Riga Regional Court. It was noted therein that in the case, where the court dismissed a statement of claim, the legislator had envisaged the reimbursement of the state fee. However, when the notice of appeal is dismissed, the reimbursement of the state fee is not envisaged. Allegedly, such differential treatment lacks reasonable grounds and, therefore, is incompatible with the principle of legal equality.

Firstly, the Constitutional Court recognised that, pursuant to the general principle, a state fee is not reimbursable, the reimbursement of it is envisaged only in exceptional cases.

In the contested norm, the legislator has listed exhaustively the exceptional cases, in which it has decided on the repayment of the State fee. The Court underscored that, to ensure effective right to a fair trial, each stage of legal proceedings, envisaged in the civil procedure, had to be protected against ungrounded overburdening, which occurs, when persons turn to court hastily. Hence, the legislator has the right, abiding by the general legal principles and other norms of the *Satversme*, to define exceptions to the general principle that the state fee is not reimbursable.

Secondly, the Constitutional Court pointed out that the exceptional cases, with respect to which the legislator had chosen to reimburse the state fee, were not comparable, in particular, in different stages of civil procedure. Hence, persons who submit a statement of claim and persons who submit a notice of appeal are not comparable from the perspective of legal equality. I.e., the groups, identified by the applicant, are not in comparable circumstances. Hence, the contested norm complies with the first sentence of Article 91 of the *Satversme*.

The State has the obligation to ensure in each judicial instance such a procedure that would ensure that, with the development of legal relationships and understanding thereof, the effectiveness of the right to a fair trial and trust in the court system would not diminish.

Case No. 2020-14-01
On the case [in English]
Judgement [in Latvian]
Press release [in English]

On 2 November 2020, the Constitutional Court delivered the judgement in case No. 2020-14-01 "On Compliance of Section 37 (2) of the Civil Procedure Law with the First Sentence of Article 91 and Article 105 of the *Satversme* of the Republic of Latvia".

The legal norm, which restricted the right to the reimbursement of state fee in civil procedure to the term of three years, was examined in the case.

The case was initiated on the basis of a constitutional complaint. It was indicated therein that the applicants had paid the state fee in 2011 for bringing a claim to court and the fee for submitting a notice of appeal in 2013. In 2017, however, the Supreme Court terminated legal proceedings because the case had not been subject to review by a court. The applicants had requested the court to reimburse the state fee that had been paid, but their request had been dismissed because they had missed the term defined in the contested norm. I.e., the request regarding the reimbursement of the state fee had to be submitted within three years after the amount had been paid into the state budget. The applicants hold that the contested norm is incompatible with the principle of legal equality because it places them in a more disadvantageous situation compared to persons, with respect to whom a court had terminated legal proceedings before the term of three years had expired. Moreover, it is alleged that the contested norm also infringes on the applicants' right to property.

The Constitutional Court found that the plaintiffs, in whose cases the length of legal proceedings had not exceeded three years, had the possibility to apply for the reimbursement of the state fee. Whereas those plaintiffs, in whose cases the length of legal proceedings, due to reasons beyond their control, had exceeded three years, the term set in the contested norm had expired before they even could have the possibility to exercise the right to apply for reimbursement of the state fee. A situation like this is contrary to the meaning of the expiry of a term, as well as the principles of justice and legal certainty. A norm that makes the exercise of a right for a certain group of persons dependent on circumstances, which, actually, are beyond the control of these persons, should be considered as being arbitrary since it is not linked to circumstances that would make these persons significantly different compared to the other subjects of this norm. Thus, objective and reasonable grounds for the equal treatment, established by the contested norm, of persons in different circumstances, could not be identified. Hence, the contested norm is incompatible with the first sentence of Article 91 of the *Satversme*

The Court also underscored that the legislator enjoyed discretion in choosing the most appropriate solution for calculating the term for reimbursement of the state duty and the expiry of this term, insofar this solution complied with the principle of proportionality and legal equality, and the point of reference for calculating the term should be the date as of which persons may exercise their rights.

The legislator should envisage for all persons, taking into account their different circumstances, substantially, not formally, equal rights to reimbursement of the state fee.

3.6. CRIMINAL LAW AND CRIMINAL PROCEDURE

During the reporting period, the Constitutional Court has reviewed two cases related to criminal law and criminal procedure law. Matters relating to the term for submitting cassation complaint in criminal proceedings and the clarity of the concept of public official in the Criminal Law were examined therein.

In case No. 2019-15-01, the Constitutional Court examined for the first time the compliance of the term for submitting cassation complaint in a criminal case with the right to a fair trial, set out in the first sentence of Article 92 of the *Satversme*. The Court recognised that drafting and submitting of the cassation complaint was part of the defendant's defence. To find an answer to the question, whether the term for submitting the cassation complaint, included in the contested norms, in particular, in especially complicated and large criminal proceedings, was sufficient for exercising the right to defence, the Court took into account and underscored the findings, repeated in its judicature, regarding the special role of the cassation instance court, as well as the additional safeguards defined in the framework of criminal procedure, for example, the possibility of the defendant and his legal counsel to participate in the adjudication of the criminal case, the possibility to submit amendments and additions to the cassation complaint, as well as the possibility to renew the term for submitting the cassation complaint.

The court, examining, for the first time, the institution of an abridged judgement, recognised that it was possible to prepare for exercising the right to defence in the period from receiving the abridged judgement until the day when the full judgement of the court becomes available, as of which the term for submitting the cassation complaint was counted.

Finally, in defining the term for submitting the cassation complaint, not only the rights of a person who has the right to defence should be respected but also the fundamental rights of other participants in the criminal proceedings and society's interest in reaching legal certainty and fair regulation of criminal law relationships within reasonable time.

In case No. 2019-22-01, the Constitutional Court, in examining the clarity of the concept of a public official, characterised the clarity of norms as one of the aspect of the principle *nullum crimen, nulla poena sine lege*. The Constitutional Court has reviewed the clarity and comprehensibility of the Criminal Law provision already previously, to establish, whether a person could be made criminally liable on the basis of it.[84] Likewise, it had been examined, whether a norm of the Criminal Law defined the limits of additional punishment with sufficient clarity.[85] Moreover, the Constitutional Court has already analysed which persons are regarded as being public officials in the meaning of the Criminal Law.[86] However, this was the first time when the Constitutional Court had to examine the clarity of the legal definition of a special subject, included in the Criminal Law.

In clarifying the concept of the special subject – a public official, the Constitutional Court recognised that Section 316 (1) of the Criminal Law included an independent legal definition and that the interpretation of terms used in the law "On Preventing Conflict of Interest in Activities of Public Officials" could not be identical. However, to establish the content of the features of public officials, included in the contested norm, which are to be interpreted autonomously, other regulatory enactments also should be taken into account. However, this *per se* is not contrary to the requirement regarding the clarity and predictability of criminal law provisions. Moreover, in establishing the scope of the criminal law provisions, as to their content, through interpretation, all methods of interpretation should be used, and the fact that the legislator had later amended the norm with the aim of making it clearer *per*

84 See the Constitutional Court's Judgement of 21 February 2019 in Case No. 2018-10-0103, and the Constitutional Court's Judgement of 16 December 2008 in Case No. 2008-09-0106.

85 See the Constitutional Court's Judgement of 8 April 2015 in Case No. 2014-34-01.

86 See the Constitutional Court's Judgement of 29 October 2003 in Case No. 2003-05-01.

se are not the grounds for recognising that, previously, the norm had been unclear or unpredictable.

Case No. 2019-15-01
On the case [in English]
Judgement [in Latvian]
Press release [in English]

On 26 March 2020, the Constitutional Court passed the judgement in case No. 2019-15-01 "On Compliance of the Third Sentence of Section 564 (7) and Section 570 (1) of the Criminal Procedure Law with the First Sentence of Article 92 of the *Satversme* of the Republic of Latvia".

Legal norms, which regulate the term for submitting a cassation complaint in criminal proceedings in particularly complex and large cases, were examined in the case.

The case was initiated on the basis of a constitutional complaint. It is noted therein that the applicant has the status of the accused in a criminal case. In the said case, the appellate instance court, in compliance with the contested norms, set the term of 20 days for submitting the cassation complaint regarding its judgement. Since the particular criminal case is complex and the appellate court's judgement had been drawn up on 345 pages, such term is said to be insufficient for drawing up a cassation complaint. Hence, the contested norms are said to restrict disproportionally the right to a fair trial.

Firstly, the Constitutional Court noted that the drawing up and submitting of the cassation complaint was a part of the accused person's defence. Whereas the right to have sufficient time for preparing one's defence is one the elements of the right to a fair trial. In assessing, whether the time allocated for preparing defence had been sufficient, the following circumstances should be taken into account: the complexity of the case, the procedural stage of the case, whether the persons had had time to familiarise themselves with the materials in the case previously, whether the accused person provided the defence himself or had a counsel, whether the term and the date set for the legal proceedings had been foreseeable.

Secondly, the Constitutional Court recognised that the contested norms envisaged sufficient time for drawing up and submitting the cassation complaint and, thus, complied with the right to defence. To draw up a cassation complaint, the person submitting the cassation complaint has no need to analyse repeatedly all materials in the case. Whereas participation in the legal proceedings ensured to the accused person the possibility to note timely the arguments that could be included in the cassation complaint.

Moreover, it was possible to understand from the abridged judgement whether the court had taken into account the arguments expressed by the accused person. The Court also noted that the legal counsel's participation in the legal proceedings facilitated exercise of the right to defence and that the party submitting the cassation complaint could, within 10 days after expiry of the term for appealing against the ruling, submit supplements and modifications to the cassation complaint could be submitted. Moreover, in exceptional cases, a person, who due to valid reasons had missed the term set for submitting a cassation complaint, had the right to request the renewal of this term.

Thirdly, the Constitutional Court dismissed the applicant's argument that he had been denied the right to choose freely the defence lawyer because due to the term for submitting the cassation complaint, defined in the contested norms, been unable to involve an additional lawyer. The Court underscored that the fourth sentence of Article 92 of the *Satversme* did not envisage a person's right to several defence counsels (lawyers). Moreover, the defence counsel, involved in the proceedings, should be able, by using his professional knowledge and experience, assess the situation reasonably and urge the person, who has the right to defence, to involve several defence counsels timely, if that is necessary. The Court also dismissed the applicant's argument that the contested norms placed him in a more unfavourable situation compared to the court, which had been granted unlimited time for preparing the judgement. The time that the appellate instance court uses for drawing up the judgement cannot be compared to the term for preparing the defence, set in the contested norms.

In view of the above, the Constitutional Court recognised the contested norms as being compatible with the first sentence of Article 92.

The State should allocate to the accused person sufficient time and possibilities for preparing defence in criminal proceedings that would allow him to submit to the court important defence arguments and, thus, influence the outcome of legal proceedings.

Case No. 2019-22-01
On the case [in English]
Judgement [in Latvian]
Press release [in English]
A Justice's video commentary [in Latvian]

On 24 September 2020, the Constitutional Court delivered the judgement in case No. 2019-22-01 "On Compliance of Section 316 (1) of the Criminal Law, in the Wording that was in Force from 2 January 2004 to 31 March 2013, with the Second Sentence of Article 92 of the *Satversme* of the Republic of Latvia".

The clarity of the norm of the Criminal Law, which legally defined a public official, was examined in the case. The case was initiated on the basis of constitutional complaints. It is noted therein that the applicants had been recognised as being guilty of committing a criminal offence envisaged in Section 320 (3) of the Criminal Law and that a public official had to be made liable for committing a criminal offence. At the time when criminal offences were committed, the contested norm, which provided the legal definition of a public official, had not been sufficiently clear. It had been impossible to predict that such positions as the board member of a state stock company and the technical director of production at the state stock company fell within the scope of the contested norm. Hence, the applicants could not have predicted that they would be recognised as being public officials in the meaning of the contested norm.

Firstly, the Constitutional Court recognised that, pursuant to the second sentence of Article 92 of the *Satversme*, person could be recognised as being guilty and be punished only for actions that had been recognised as being criminal in accordance with the law. Hence, at the moment when the offence is committed, for which later criminal liability sets in, a clear and foreseeable legal norm must be in force, determining that the particular actions by a person are to be recognised as criminal. The legislator should word the provisions of criminal law in a way to ensure to a person safeguards against arbitrary charges, sentencing and punishment.

Secondly, the Constitutional Court underscored: in determining, what actions were to be recognised as being a criminal offence, the legislator had the right to draft laws with different levels of certainty as to their content and to use concepts that required explanation, provided by a court; however, such legal norms should be clear and predictable. At the same time, the clarity and predictability of this legal norm should not be exaggerated because law should be able to follow the changing circumstances.

Thirdly, the Constitutional Court noted that the contested norm did not enumerate the positions of public officials. However, it includes a set of the features of public officials – categories of persons (representative of the state authority or persons who permanently or temporarily perform their duties in the state or local government service) and their rights (making decisions that are binding upon other persons, performing functions of supervision, control, investigation and punishment; dealing with the property or financial resources of the state or local government). The need to establish the content of the features of public officials, established in the contested norm, was not *per se* the grounds for recognising a legal norm unclear or unpredictable.

Fourthly, the Constitutional Court recognised that the legislator had chosen to include in the contested norm an independent legal definition and that the interpretation of the terms used in the law "On Prevention of Conflict of Interest in the Activities of Public Officials" and in Section 316 of the Criminal Law, was not identical. The contested norm is applicable on the basis of the features of a public official, which should be interpreted autonomously. To establish the content of these features, other regulatory enactments should be taken into account. Moreover, as the Court emphasized, judicature had been available for clarifying the features of public officials defined in the contested norms. At the same time, the Court dismissed the *Saeima's* argument that the section of the Criminal Law, according to which a person could be recognised as being guilty of committing a criminal offence, should not be as clearly predictable as the fact that the particular action entailed criminal liability at all. The requirement, included in the second sentence of Article 92 of the *Satversme*, regarding the clarity and predictability of a norm of the Criminal Law pertains not only to the matter of whether the action entails criminal liability but also to the punishment (type of punishment) and its scope.

The Constitutional Court found that the contested norm determined with sufficient clarity, which persons should be recognised as being the special subjects of criminal law – public officials, and everyone, receiving appropriate legal assistance, could have clarified, whether they could me made criminally liable as the special subject. Hence, the contested norm was recognised as being compatible with the second sentence of Article 92 of the *Satversme*.

In formulating sections of the Criminal Law, the *Saeima* has the right to use various legal techniques, if only the use thereof ensures the safeguard, included in the second sentence of Article 92 of the *Satversme*, against arbitrary charges, sentencing and punishment.

3.7. DECISIONS ON TERMINATING LEGAL PROCEEDINGS

In 2020, the Constitutional Court has adopted four[87] decisions on terminating legal proceedings – in cases No. 2019-02-03, No. 2019-14-03, No. 2019-21-01 and No. 2020-22-01. Decisions on terminating legal proceedings in cases No. 2019-02-03, No. 2019-14-03 and No. 2019-21-01 were adopted at a court hearing. The decision on terminating legal proceedings in case No. 2020-22-01, in turn, at an assignments sitting.

In case No. 2019-02-03 and case No. 2019-14-03, the decisions on terminating legal proceedings were adopted on the basis of Para 2 of Section 29 (1) of the Constitutional Court Law since the contested norms had become void.

It has been recognised repeatedly in the Constitutional Court's judicature that, in deciding on terminating legal proceedings on the basis of Para 2 of Section 29 (1) of the Constitutional Court Law, it should be examined, whether: 1) the contested norm (legal act) has become void and 2) whether circumstances requiring continuation of legal proceedings do not exist.

In case No. 2019-02-03 and in case No. 2019-14-03, the institutions, which had issued the contested acts, had amended them and recognised them as being void. Hence, during examining the case, the validity of the contested act did not require in-depth assessment. However, the issues related to the existence of such circumstances that required continuation of legal proceedings, were examined more extensively – they develop the Court's judicature and add new findings to it.

In examining this issue, in case No. 2019-02-03, the Court emphasised, in particular, that the administrative court had to apply those legal norms that were in force at the moment when it decided on issuing a favourable administrative act. Hence, the Court recognised that the legal proceedings in the case could be terminated since it was not needed to recognise the contested norms as being void as of a past date.

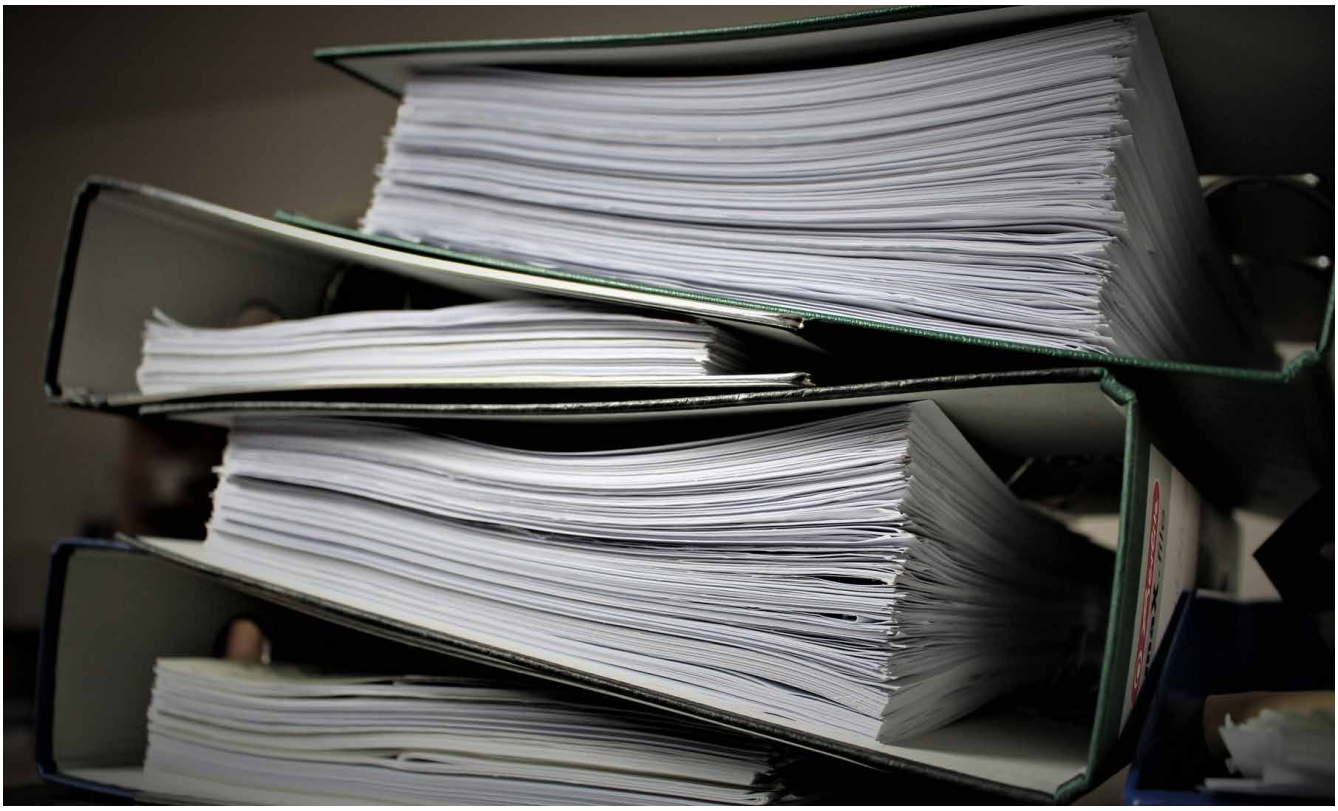
In case No. 2019-14-03, the Court, in particular, focused on the fact that the local government territorial planning had been contested by a private person, who had submitted a constitutional complaint. The local government, in turn, had recognised the contested act as being void as of the moment it was issued and, thus, had eliminated entirely an infringement on a person's fundamental rights.

In case No. 2019-21-01, the decision on terminating legal proceedings was adopted on the basis of Para 6 of Section 29 (1) of the Constitutional Court Law, since an infringement on the applicant's right to commensurate remuneration was not established. The finding relating to the infringement on the fundamental rights, included in the third sentence of Article 92 of the *Satversme*, can be highlighted as one that develops the Court's judicature. I.e., if, in the particular civil or administrative case, the court, in granting compensation, does not need to set the amount of compensation higher than the one defined in the contested norm[88] then it should be deemed that the norm does not infringe upon a person's fundamental rights, included in the third sentence of Article 92 of the *Satversme*.

Whereas in case No. 2020-22-01, the decision on terminating legal proceedings was adopted on the basis of Para 5 of Section 29 (1) of the Constitutional Court Law because the applicant's claim already had been adjudicated by the judgement in case No. 2019-23-01.

87 For example, three decisions on terminating legal proceedings were adopted in 2019, in 2017 and 2018 – four decisions but in 2016 and 2015 – five such decisions.

88 The norm that was contested in case No. 2019-21-01 provided: "The compensation for non-pecuniary damages shall be set in the amount of 7000 euro. If severe non-pecuniary damages have been caused, the compensation may be set in the amount of 10 000 euro, but if damage to life has been caused or particularly severe damage to health, the maximum amount of compensation may be up to 30 000 euro. The amount of compensation for non-pecuniary damages caused by ungrounded or unlawful restriction of liberty shall be determined in accordance with Article 15 of this Law."



Case No. 2019-02-03
On the case [in English]
Decision on terminating legal proceedings [in Latvian]
Press release [in English]

On 12 December 2019, the Constitutional Court adopted a decision in case No. 2019-02-03 "On Compliance of Para 3 of the Cabinet Regulation of 12 December 2017 No. 724 "Regulation on the Qualification Criteria of the Experts of the Latvian Council of Science, Establishing of Experts' Committees and Organising of the Work thereof" and the decision of 15 January 2018 by the Latvian Council of Science No. 19-1-1 "The Procedure for Granting the Rights of an Expert of the Latvian Council of Science" with Article 1 and Article 64 of the *Satversme* of the Republic of Latvia".

The case was initiated on the basis of an application by the Administrative District Court. It was requested therein to recognise that Para 3 of the Cabinet Regulation of 12 December 2017 No. 724 "Regulation on the Qualification Criteria of the Experts of the Latvian Council of Science, Establishing of Experts' Committees and Organising of the Work thereof" and the decision of 15 January 2018 by the Latvian Council of Science No. 19-1-1 "The Procedure for Granting the Rights of an Expert of the Latvian Council of Science" (hereafter – Regulation No. 724) were incompatible with Article 1 and Article 64 of the *Satversme* of the Republic of Latvia.

The norms contested in the case regulated issues relating to the qualification of the Latvian Council's of Science experts. In its written reply, the Cabinet recognised that Para 3 of Regulation No. 724 had been issued *ultra vires* and, while the case was being prepared, deleted this paragraph from it. Consequently, also the decision adopted by the Latvian Council of Science became void.

In deciding to terminate legal proceedings in the case, the Constitutional Court took into account the fact that special amendments had been introduced to the Law on Scientific Activity to resolve the issue relating to the authorisation for issuing the contested norms. After these amendments entered into force, Regulation No. 724 became void. The Cabinet, in turn, issued a new regulation, in which, in accordance with the authorisation included in the Law on Scientific Activity, defined the qualification criteria for an expert of the Latvian Council of Science, indicating also the expected results of scientific activity.

The Constitutional Court, referring to its judicature, stated that that the Latvian administrative judicial proceedings were characterised by such principle of applying provisions of substantive law that, in deciding on issuing a favourable administrative act, the administrative court had to apply those legal norms that were in force at the time when the hearing of the case on its merits was completed, unless other legal norms provided otherwise. In the present case and in other administrative cases, in which the contested norms have to be applied, the Administrative Court must apply those legal norms that are in force at the moment when it decides on issuing a favourable administrative act. Hence, it was not necessary to recognise the contested norms as being void as of a certain past date.

The Constitutional Court also underscored, in particular, the great role that science played in sustainable national development. I.e., the Court pointed out that the principle of good legislation was enshrined in its judicature, which, *inter alia*, comprised the legislator's obligation to ensure, with the mediation of parliamentary control, that the authorisation granted by the legislator was exercised in accordance with the *Satversme*. This control is necessary to avoid contradictions in the legal system. This is particularly important in the area, which is so important for sustainable development of the state as the legal regulation on science.

Case No. 2019-14-03
On the case [in English]
Decision on terminating legal proceedings [in Latvian]
Press release [in English]

On 17 March 2020, the Constitutional Court adopted the decision in case No. 2019-14-03 "On Compliance of the Binding Regulation by the Amata Regional Council of 19 December 2018 No. 12 "The Rules on the Use and Construction in the Territory and the Graphic Part of the Spatial Plan of the Amata Region for 2014–2024 (with Amendments of 2018)" in the Part Regarding the Borders of Anna Village of Zaube Rural Municipality and the Type of Territory Use of the Immovable Property with Cadastre No. 4296 009 0047 with Article 115 of the *Satversme* of the Republic of Latvia".

The case was initiated on the basis of constitutional complaint submitted by a private person. It was requested therein to recognise the contested legal act, in the part thereof that related to changing the type of using the territory of the particular immovable property, as being incompatible with Article 115 of the *Satversme*.

The applicant noted the contested legal act violated several norms of regulatory enactments that regulated the planning of spatial development and principles of planning spatial development. Moreover, the contested legal act was said to broaden unlawfully the boundaries of a village, allowing division of one immovable property and allowing construction that was not typical of the particular territory.

While the case was being prepared, the institution, which had issued the contested act, the Amata Regional Council, issued new binding regulation, by which it recognised the contested legal act ad being void.

In deciding on terminating legal proceedings, the Court highlighted two aspects: 1) the local government had recognised the contested legal act as being void as of the date it was issued. I.e., the local government's new binding regulation had reinstated the previous regulation, pursuant to which the particular immovable property was no longer within the boundaries of the village and the type of its use was "agricultural territory"; 2) the local government had not started enforcement of the contested legal act and, thus, it had not created for the applicant negative legal consequences. Possibly, the local government's actions were influenced by the fact that the Ministry of Environmental Protection and Regional Development had already indicated to the Amata Regional Council that the contested legal act in its part relating to changing the boundaries of the village and changing the type of use for the particular immovable property was not enforceable.

Case No. 2019-21-01
On the case [in English]
Decision on terminating legal proceedings [in Latvian]
Press release [in English]
A Justice's video commentary [in Latvian]

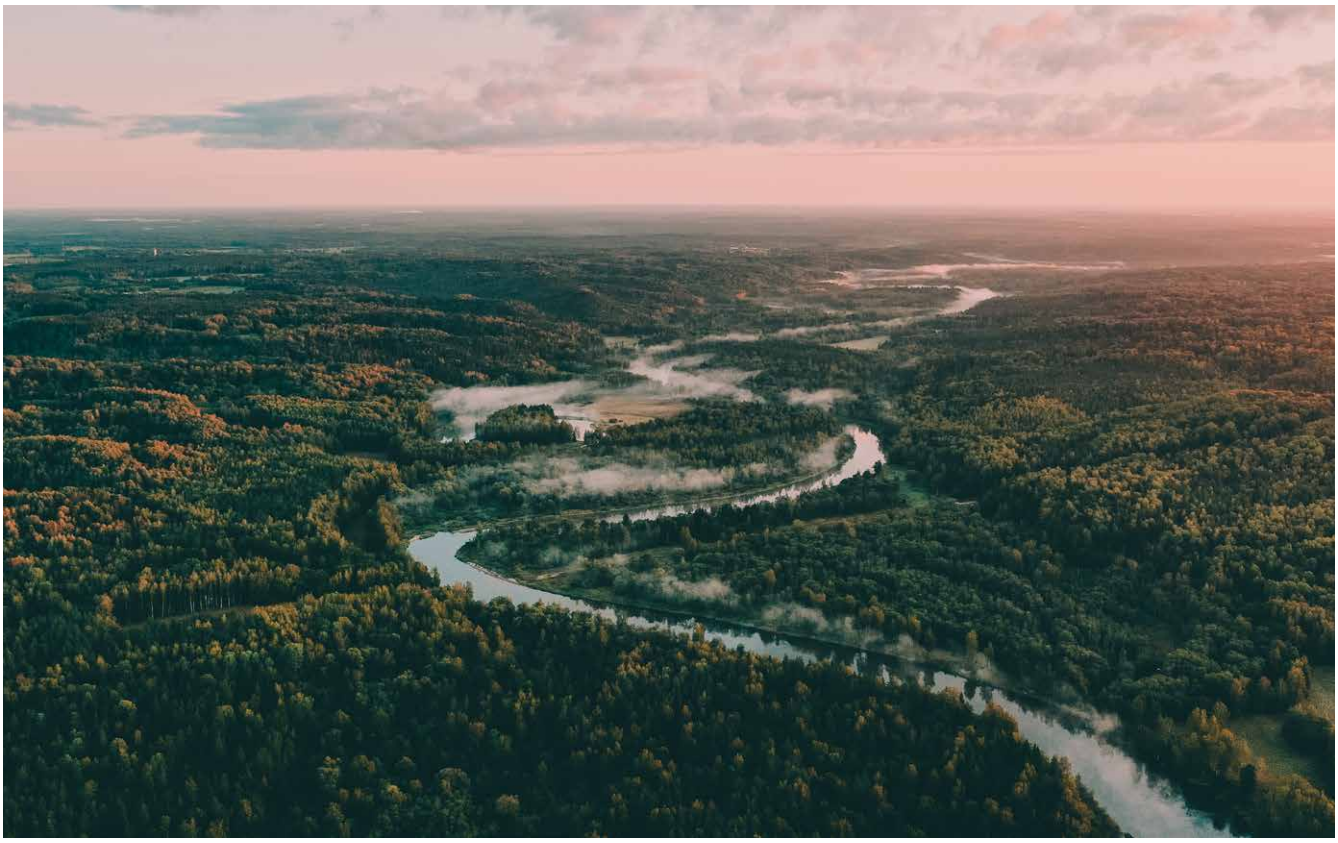
On 7 May 2020, the Constitutional Court adopted a decision to terminate legal proceedings in case No. 2019-21-01 "On Compliance of Section 14 (4) and Para 4 of the Transitional Provisions of the Law "On Compensation for Damages Caused in Criminal Proceedings and Record-Keeping of Administrative Violations" with Article 1 and the Third Sentence of Article 92 of the *Satversme* of the Republic of Latvia".

The case was initiated on the basis of a constitutional complaint submitted by a private person. It was requested therein to recognise Section 14 (4) and Para 4 of the Transitional Provisions of the Law "On Compensation for Damages Caused in Criminal Proceedings and Record-Keeping of Administrative Violations" (hereafter – Compensation Law) as being incompatible with Article 1 and the third sentence of Article 92 of the *Satversme* of the Republic of Latvia".

The applicant noted that Section 14 (4) of the Compensation Law was incompatible with the third sentence of Article 92 of the *Satversme* since it envisaged the maximum amount of compensation and did not give the possibility to a court to determine fair and appropriate compensation. Para 4 of the Transitional Provisions of the Compensation Law, in turn, is said to be incompatible with Article 1 of the *Satversme* since the applicant's legitimate expectations had been infringed upon. I.e., the legislator had established restrictions on the amount of compensation for non-pecuniary damages retroactively.

In deciding to terminate legal proceedings in the case, the Constitutional Court, first and foremost, revealed the content of the third sentence of Article 92 of the *Satversme*. Referring to its judicature, the Court noted that this provision comprised general guarantee of the right to a fair trial – if a person's rights or interests, protected by law, have been violated the person has the right to receive commensurate compensation. Commensurate compensation comprises fair satisfaction, which in the particular legal situation is commensurate with the infringement on the person's rights. Such compensation has several functions – firstly, the function of compensation, settlement, as well as the functions of general and special prevention. The aim of these functions is to achieve effective restoration of justice and protection of fundamental rights. Whereas, in analysing the judicature of the European Court of Human Rights in conjunction with Article 13 of the Convention, the Constitutional Court found that in the case, where the rights and freedoms included in the Convention had been infringed upon, the State had to ensure an effective legal remedy that allows the competent institution to reveal the substance of the particular rights infringement and to grant appropriate compensation.

Non-pecuniary damages are constituted by such elements as suffering, inconvenience, infringement on reputation and honour. However, this does not mean that the judicial review would be subjective. It does not follow from the right to commensurate compensation that the person should be granted compensation, which he subjectively perceives as sufficient and necessary. Commensurate compensation should be proportional and fair, and, in determining it, all circumstances of the case must be taken into account, *inter alia*, the nature of rights and lawful interests that had been infringed upon, the severity and manifestations of the particular infringement, as well as the victim's actions. Since the non-pecuniary damages cannot be expressed directly in material values, the party, which is applying the legal norm, plays a particularly significant role in assessing the commensurate compensation for non-pecuniary damages.



The party applying the legal norms, i.e., the court, must indicate the substantiation for the compensation set, to allow ascertaining the considerations, on which the assessment is based, and the significance thereof. Moreover, the principle of equality demands granting similar compensation in similar cases, hence, the court must take into account comparable cases. Moreover, commensurate compensation cannot be obviously disproportionate or significantly lower than the compensation granted by the European Court of Human Rights in similar cases.

The Constitutional Court also underscored that, in a democratic state governed by the rule of law, a court is one among legal remedies.

It ensures to a person the right to commensurate compensation and provision of individualised justice in the particular situation. By fulfilling the positive obligation that follows from the third sentence of Article 92 of the *Satversme*, the legislator must establish regulation that does not prohibit the court from performing its role – ensuring fair administration of justice. Otherwise, the protection provided by the court would become illusory and ineffective. The legal regulation, in which the legislator has defined the limits of a public person's liability and compensation for non-pecuniary damages, *per se* does not restrict the court in determining commensurate compensation and does not infringe upon a person's right to commensurate compensation, included in Article 92 of the *Satversme*.

By applying the regulation, established by the legislator, specifying a person's right to commensurate compensation, included in the third sentence of Article 92 of the *Satversme*, the court takes into account also the general principles of law to reach the aim of this regulation – ensuring commensurate and fair compensation to a person. The limits to the state's liability, defined by the legislator, could infringe upon a person's right to commensurate compensation if they would restrict the court in determining commensurate compensation to a person, by examining all circumstances of the respective case.

By applying the findings referred to above to the applicant's situation, the Constitutional Court recognised that the court of general jurisdiction, having examined all actual circumstances of the case, determined, in its opinion, commensurate compensation and the limits to compensation, indicated in Article 14 (4) of the Compensation Law, did not restrict it in determining the commensurate compensation. Thus, the Constitutional Court found that an infringement on the applicant's right to commensurate compensation, caused by Section 14 (4) of the Compensation Law, could not be established, and there were grounds for terminating legal proceedings regarding the compliance of this norm with the third sentence of Article 92 of the *Satversme*.

At the same time, the Constitutional Court recognised that there were no grounds for examining the compliance of Para 4 of the Transitional Provisions of the Compensation Law with the principle of legal expectations, included in Article 1 of the *Satversme*. I.e., since the applicant's fundamental right to commensurate compensation, included in the third sentence of Article 92 of the *Satversme*, had not been affected by Section 14 (4) of the Compensation Law, it was impossible to continue legal proceedings regarding the compliance of Para 4 of the Transitional Provisions of the Compensation Law with the principle of legitimate expectations, included in Article 1 of the *Satversme*. Thus, on the basis of Para 6 of Section 29 (1) of the Constitutional Court Law, legal proceedings in the case had to be terminated.

Case No. 2020-22-01
On the case [in English]
Decision on terminating legal proceedings [in Latvian]
Press release [in English]

On 15 September 2020, the Constitutional Court decided to terminate legal proceedings in case No. 2020-22-01 "On Compliance of Section 464 (1) of the Civil Procedure Law with the First Sentence of Article 92 of the *Satversme* of the Republic of Latvia".

The case was initiated on the basis of a constitutional complaint. The constitutionality of Section 464 (1) of the Civil Procedure Law was contested in the case. The subject of claim in this case was identical to the subject of claim in case No. 2019-23-01. In view of the fact that, on 16 July 2019, judgement was delivered in case No. 2019-23-01, by which the said provision of the Civil Procedure Law was recognised as being compatible with the first sentence of Article 92 of the *Satversme*, the Constitutional Court, on the basis of Para 5 of Section 29 (1) of the Constitutional Court Law, terminated legal proceedings in case No. 2020-22-01.

3.8. DECISIONS BY THE PANELS

From 9 December 2019 to 8 December 2020, 258 applications regarding initiation of a case were transferred to the Constitutional Court's Panels for examination, and 70 cases were initiated. The number of cases initiated during the reporting period of 2020 has more than doubled compared to the reporting period of 2019.[89] The number of applications submitted to the Court, i.e., 258, is also higher than in in the reporting period of 2019.[90]

The largest number of cases, i.e., 25, has been initiated on the basis of constitutional complaints, submitted by natural persons, the other half – on the basis of complaints by legal persons. 22 cases were initiated on the basis of applications submitted by courts, of which 17 – applications by courts of general jurisdiction, which had adjudicated civil cases, but five – on the basis of applications by an administrative court. Four cases were initiated on the basis of the Ombudsman's application, two cases – on the basis of an application by no less than twenty Members of the *Saeima*, and 17 cases – on the basis of an application by a local government council. In 2020, several similar cases were initiated,[91] which pertained to an identical or similar legal issue, with respect to which a case already had been initiated. It needs to be noted that, during this reporting period, for the first time in the Constitutional Court's history, a decision on dividing a case was adopted while preparing the case.[92]

As customary in the legal proceedings before the Constitutional Court, the largest share of applications is made up by constitutional complaints. In 2020, 200 constitutional complaints were submitted to the Constitutional Court, which constituted approximately 75 per cent of all the received applications. Approximately 85 per cent of the constitutional complaints had been submitted by natural persons, and approximately 15 per cent – by legal persons (limited liability companies, share companies and associations). It needs to be noted that the proportion of constitutional complaints in the total number of applications has slightly decreased in 2020, i.e., in 2018 and 2019, the share of constitutional complaints in the total number of applications exceeded 90 per cent.

Similarly to the previous years, the second largest part of applications, on the basis of which cases are initiated, is constituted by applications from courts of general jurisdiction and administrative courts. In 2020, they submitted, in total, 37 applications.[93] This is the largest number of applications submitted within one year by courts of general jurisdiction and administrative courts in the Constitutional Court's history. The majority of these applications comprised legal issues that were decided on in judgements in cases No. 2019-10-0103 and No. 2019-37-0103.

The trend, observed before, continued in 2020, i.e., that several constitutional bodies – applicants, who are referred to in Para 1-12 of Section 17 (1) of the Constitutional Court Law, i.e., the President, the *Saeima* and the Cabinet, did not submit applications to the Constitutional Court. Likewise, in 2020, no application was received from the Council of the State Audit, the Judicial Council, the Prosecutor General, a court that was adjudicating a criminal case, a judge of the Land Registry, who entered immovable property or corroborated a title related to it in the Land Register, as well as a local government council, when the minister, authorised by the Cabinet, had suspended an external or internal regulatory enactment adopted by the council.

89 32 cases where initiated in the reporting period of 2019.

90 During the reporting period of 2019, 183 applications requesting initiation of a case were transferred to the Panels.

91 Cases No. 2019-34-0103, No. 2019-37-0103, No. 2020-03-0103, No. 2020-04-0103, No. 2020-06-0103, No. 2020-09-0103, No. 2020-10-0103, No. 2020-11-0103, No. 2020-12-0103, No. 2020-15-0103, No. 2020-17-0103, No. 2020-20-03, No. 2020-25-0103, No. 2020-27-01, No. 2020-28-01, 2020-44-03, 2020-56-01 and 2020-62-01.

92 The Justices Decision of 9 December 2019 on Dividing Case No. 2019-23-01.

93 For example, during the reporting period of 2019, the courts of general jurisdiction and administrative courts submitted nine applications.

Similarly to previous years, to substantiate the incompatibility of the contested norm with a legal norm of higher legal force, applicants have referred most frequently to the general legal principles, derived from the basic norm of a democratic state governed by the rule of law, falling within the scope of Article 1 of the *Satversme*, the principle of equality and the principle of prohibition of discrimination, included in Article 91, the right to a fair trial, enshrined in Article 92, the right, included in Article 101, as provided by law, to participate in the work of the State and of local government, and to hold a position in the civil service, the right to property, enshrined in Article 105, as well as the right, included in Article 109, to social security in old age, for work disability, for unemployment and in other cases as provided by law.

The applicants, however, had made no reference to several rights included in Chapter VIII of the *Satversme*. For example, in 2020, no application comprised the request to review the compliance of a legal norm or act with Article 108 of the *Satversme* – the right to a collective labour agreement, the right to strike and the right to the freedom of trade unions, Article 113 – the State's obligation to protect the freedom of scientific research, artistic and other creative activity, and Article 114 – the right of persons belonging to ethnic minorities to preserve and develop their language and their ethnic and cultural identity.

The most often contested norms in these applications have been those of the Civil Procedure Law – in 35 applications, the Energy Law and the Criminal Procedure Law – in 22 applications, the Law on Administrative Territories and Populated Areas– in 19 applications, and of the Administrative Procedure Law – in 11 applications.

Section 20 (7) of the Constitutional Court Law provides that the decision to initiate a case or on the refusal to initiate a case must be adopted within a month from the date of the receipt of the application. In complicated cases, the Court may prolong this term up to two months. In 2020, the Panels have adopted nine decisions[94] on prolonging the term for reviewing an application. Seven of the aforementioned applications had been submitted by private persons, one – by a court of general jurisdiction, which was examining a civil case, and one – by 21 Members of the *Saeima*.

In seven cases[95] , the Panel concluded that the submitted application pertained to a complex legal issue and, thus, in-depth analysis of its legal reasoning was required. Following an in-depth assessment and receipt of additional information, in three cases the decision on refusal to initiate a case,[96] but in three cases – a decision on initiating a case[97] was adopted.

Significant development of the legal regulation on the legal proceedings before the Constitutional Court is

94 For example, in 2019, the Constitutional Court's Panels adopted three decisions on extending the term for reviewing the application, in 2018 – nine decisions, in 2017 – two decisions, but in 2016 – ten decisions.

95 The Panel's decision regarding application No. 218/2020 was made after this reporting period had ended.

96 Decision by the 1st Panel of the Constitutional Court of 9 March 2020 on Refusal to Initiate a Case on the Basis of Application No. 7/2020, Decision by the 3rd Panel of 16 June 2020 on Refusal to Initiate a Case on the Basis of Application No. 82/2020, and Decision by the 4th Panel of 15 July 2020 on Refusal to Initiate a Case on the Basis of Application No. 101/2020.

97 Decision by the Constitutional Court's Assignments Sitting of 30 April 2020 to Initiate a Case on the Basis of Application No. 51/2020, Decision by the 3rd Panel of 28 May 2020 to Initiate a Case on the Basis of Application No. 64/2020, and Decision by the Assignments Sitting of 3 August 2020 to Initiate a Case on the Basis of Application No. 117/2020.

included in the Panel's decisions on prolonging the term for examining applications No. 21/2020 and No. 26/2020. The Panel noted in these decisions that such instances were possible when an application was submitted to the Constitutional Court with respect to a claim, which was already being reviewed by the Constitutional Court but with respect to which a judgement had not been delivered yet. Whereas, in accordance with the first sentence of Section 30 (4) of the Constitutional Court Law, the Court must deliver the judgement no later than within 30 days following the court hearing in the respective case.

Pursuant to Para 4 of Section 20 (5) of the Constitutional Court Law, the Panel of Justices has the right to refuse initiation of a case if the application has been submitted with respect to an already adjudicated claim. Pursuant to Para 5 of Section 29 (1) of this Law, the Court may terminate legal proceedings in a case before the judgement is delivered if a judgement already has been delivered in another case with respect to the same subject of claim.

Hence, if an application, submitted to the Constitutional Court, comprises a claim, which, *prima facie*, coincides with the claim, which is already being examined in Court but with respect to which a judgement has not been delivered yet, an effective use of the Court's resources would be ensured if the term for examining the application were prolonged and the matter of initiating a case or refusal to initiate a case would be decided on after the respective judgement is delivered.

In its decision on prolonging the term for examining application No. 21/2020, the Panel concluded that the application comprised a claim, which *prima facie* coincided with the claim to be examined in case No. 2019-13-01. Similarly also in the decision on prolonging the term for examining application No. 26/2020, the Panel concluded that the application comprised a claim, which *prima facie* coincided with the claim to be reviewed in case No. 2019-10-0103. Thus, in these cases, the Panel, on the basis of the principle of effectiveness, decided to prolong the term for examining the application. After judgements were delivered in cases No. 2019-10-0103 and No. 2019-13-01, the Panel recognised that the claim included in applications No. 21/2020 and No. 26/2020 had already been adjudicated.[98]

Section 20 (7^1) of the Constitutional Court Law provides: if the Panel decides on refusal to initiate a case and a Justice, a member of the Panel, votes against such ruling by the Panel and, moreover, has reasoned objections to it, the examination of the application and adoption of the decision is transferred to an assignments sitting of Justices in full composition of the Court. In 2002, three applications were examined at an assignments sitting.[99] A decision to refuse initiation of a case was adopted with respect to application No. 158/2019.[100] Whereas, with respect to application No. 51/2020, the decision to initiate case No. 2020-24-01 was made[101], and with respect to application No. 117/2020 – the decision to initiate case No. 2020-39-02[102] were adopted.

The decision to refuse initiation of a case on the basis of application No. 158/2019 includes several significant findings regarding contesting the norms of the Law on Vehicle Operation Tax and Company Car Tax at the Constitutional Court. Firstly, if a person contests the procedure or the criteria for calculating the vehicle operation tax, established in this law, then the term for submitting an application must be counted from the date when the person has paid this tax. Secondly, legal substantiation must be provided in the application that the legislator had exceeded its broad discretion, in determining and implementing the policy on vehicle operation tax.

The Constitutional Court Law does not deny the applicant the right to submit an application repeatedly if the Constitutional Court's Panel had decided to refuse initiation of a case. In such instances, the applicant may eliminate the deficiencies in the application, identified by the Panel.

In 2020, the Panels examined approximately 40 re-submitted applications. With respect to seven such re-submitted applications[103], the Panels have adopted decisions to initiate a case.[104] Thus, if an application has been submitted timely then, also in the case where a decision has been adopted on refusal to initiate a case, the person has the possibility to eliminate the deficiencies, identified by the Panel, and to re-submit an application, in compliance with the statutory requirements.

98 Decision by the 1st Panel of the Constitutional Court of 26 March 2020 on Refusal to Initiate a Case on the Basis of Application No. 21/2020, and Decision by the 2nd Panel of 2 April 2020 on Refusal to Initiate a Case on the Basis of Application No. 26/2020, No. 43/2020 un No. 55/2020.

99 Application regarding initiation of a case No. 158/2019, No. 51/2020 and No. 117/2020.

100 Decision by the Constitutional Court's Assignments Sitting of 17 December 2019 on Refusal to Initiate a Case on the Basis of Application No. 158/2019.

101 Decision by the Constitutional Court's Assignments Sitting of 30 April 2020 on Initiating a Case on the Basis of Application No. 51/2020.

102 Decision by the Constitutional Court's Assignments Sitting of 3 August 2020 on Initiating a Case on the Basis of Application No. 117/2020.

103 Applications regarding initiation of a case No. 162/2019, No. 31/2020, No. 36/2020, No. 51/2020, No. 65/2020, No. 156/2020 and No. 157/2020.

104 Cases No. 2019-32-01, No. 2020-14-01, No. 2020-15-0103, No. 2020-22-01, No. 2020-24-01 and No. 2020-49-01.

A selection of those decisions by the Panels on refusal to initiate a case, which point to significant aspect in applying the Constitutional Court Law, is published on the Constitutional Court's homepage, section "Panel's decisions on refusal to initiate a case".[105] These decisions allow the parties, who are drafting the applications, to understand the Constitutional Court Law better and makes it easier to draft an application that meets the legal requirements. During the reporting period, 94 redacted[106] decisions by the Panels have been published.

Decisions on initiating a case

Most diverse legal issues have been dealt with in the initiated cases. As customary in the Constitutional Court's judicature, most of the cases pertain to **fundamental rights**. These cases are linked, for instance, to leaving a prison temporarily to attend the funeral of a close relative; prohibition to a sentenced person to meet another sentenced person; leave for the female partner of a child's mother; appealing against the prohibition, established by the Minister for the Interior, to enter the country; procedure for advertising medicinal products; prohibition to a person with a criminal record to be a board member at a state capital company; prohibition to organise gambling in the conditions of Covid-19 pandemic; prohibition to a person with alcohol dependency from becoming a guard; the term for receiving compensation for damages; the amount of fine in tax law; the amount of state duty for corroborating the title to property in the Land Register for the partner of the estate leaver; prohibition to persons, who have been punished for criminal offences, to work in an institution of education for children; control over support to commercial activities; the right of persons, who have been punished for intentional criminal offence, to serve in an institution belonging to the system of the Ministry of the Interior; preventing overcompensation to electricity producers; the obligation of real estate owner to cover the costs of moving engineering structures of roads; the public law status of a surface water basin – a lake.

Among cases pertaining to fundamental rights, the cases relating to **the right to social security** can be highlighted in particular; *inter alia*, regarding the social insurance of a disabled person, the amount of minimum old-age pension, benefit to the parents of a prematurely born baby, the amount of social security allowance and the right to state social insurance during the childcare leave.

Issues of **civil procedure** were examined in cases related to access to the cassation instance court, repayment of the state fee, and a claim regarding negative declaration.

State law and administrative law include cases regarding the amount of compensation in cases where the rules on the use of natural gas have been violated, dismissal of the Riga City Council, administrative territorial reform and the remuneration to health care workers, envisaged in the state budget.

The cases regarding the payment of value added tax in instances of compulsory land lease and the constitutionality of several norms of the Convention on Preventing and Combating Violence Against Women and Domestic Violence are attributable to the area of **international and the European Union law**.

Finally, the case regarding the clarity and term of validity of the norm of the Criminal Law regarding negligent storage of a firearm falls within the area of **criminal law**.

In 2020, the Constitutional Court initiated a relatively large number of cases[107] with a claim, presentation of the facts of the case and legal reasoning similar to those of cases already initiated or reviewed by the Court. Therefore, in 16 decisions by the Panels on initiating a case it was noted that due to considerations of procedural economy it was not necessary to request the institution, which had issued the contested act, to re-submit a written reply with the presentation of the facts of the case and legal reasoning.

In 2020, most often cases have been initiated with regard to Article 1 of the *Satversme* – 31 cases, the right to property, established in Article 105 of the *Satversme*, – 29 cases, the right, included in Article 101 of the *Satversme*, to participate in the work of the State and local governments – 19 cases, the principle of equality and the principle of prohibition of discrimination, included in Article 91 of the *Satversme*, – 14 cases, and the right to a fair trial, established in Article 92 of the *Satversme*, – 8 cases. Also, the Court initiated cases regarding the compliance of a legal norm (act) with Article 64, 66, 90, 96, 99, 100, 106, 109, 110 and 112, as well as the European Charter of Local Self-Government and the Energy Law.

The year of 2020 was important also because the first case in the Constitutional Court's history regarding the

105 All decisions by the Panels on initiation of cases are published on the Constitutional Court's homepage, section "Initiated and Disposed Case".

106 The Panels' decisions on applications, which have been submitted by courts and the subjects of abstract constitutional review, are not redacted. Decisions on applications submitted by private persons are redacted.

107 Cases No. 2019-34-0103, No. 2019-37-0103, No. 2019-38-01, No. 2020-01-01, No. 2020-03-0103, No. 2020-04-0103, No. 2020-06-0103, No. 2020-09-0103, No. 2020-10-0103, No. 2020-11-0103, No. 2020-12-0103, No. 2020-15-0103, No. 2020-17-0103, No. 2020-19-0103, No. 2020-20-03, No. 2020-22-03, No. 2020-25-0103, No. 2020-27-01, No. 2020-28-03, No. 2020-32-01, No. 2020-38-0106, No. 2020-41-0106, No. 2020-42-0106, No. 2020-43-0106, No. 2020-44-03, No. 2020-45-0106, No. 2020-46-0106, No. 2020-47-0106, No. 2020-48-0106, No. 2020-51-0106, No. 2020-53-01, No. 2020-54-0106, No. 2020-55-0106, No. 2020-57-0106, No. 2020-58-0106, No. 2020-56-01, No. 2020-60-0106, No. 2020-61-0106, 2020-62-01 and No. 2020-64-0106.

compliance of the contested norm with the Preamble to the *Satversme* was initiated.[108] A second case, in turn, was initiated with respect to the compliance of the contested norm with a provision of the Treaty on the Functioning of the European Union.[109] To a certain extent, this fact is an evidence of the recent trend that the proportion of cases, in the adjudication of which the European Union law is essential, is increasing.

In fourteen[110] cases initiated last year it was requested to review the compliance of a legal norm (act) with Article 64 of the *Satversme*. I. e., similarly to 2019, the number of applications, in which the applicants argue that the issuer of the legal norm, most often – the Cabinet, has acted *ultra vires* and has exceeded the legislator's authorisation, increases.

If the application submitted to the Constitutional Court is recognised as being compatible with the Constitutional Court Law, then the Constitutional Court's Panel initiates a case on the basis of it. Therefore, the decisions on initiating a case usually does not comprise extensive review of the applications' content or form. However, in some cases the Panel has to decide on matters that are important both for the initiation of the case and for preparing it for adjudication.

During the reporting period, these issues most often related to redacting of the Panel's decision, the application or a part thereof, as well as documents annexed to the application. The Panels decided on this issue either on the basis of the applicant's request or on its own initiative.

For example, in the application, on the basis of which case No. 2019-33-01[111] was initiated, the applicant requested the Panel to not disclose in the Panel's decision on initiating the case, in press releases about the case, on the Constitutional Court's homepage or elsewhere publicly during the whole duration of legal proceedings the names, surnames, personal identity numbers of the applicant and her family members and information about their place of residence. The request was substantiated by the fact that the particular case was linked to the interests of children and disclosed information about the applicant's and her family members' private life.

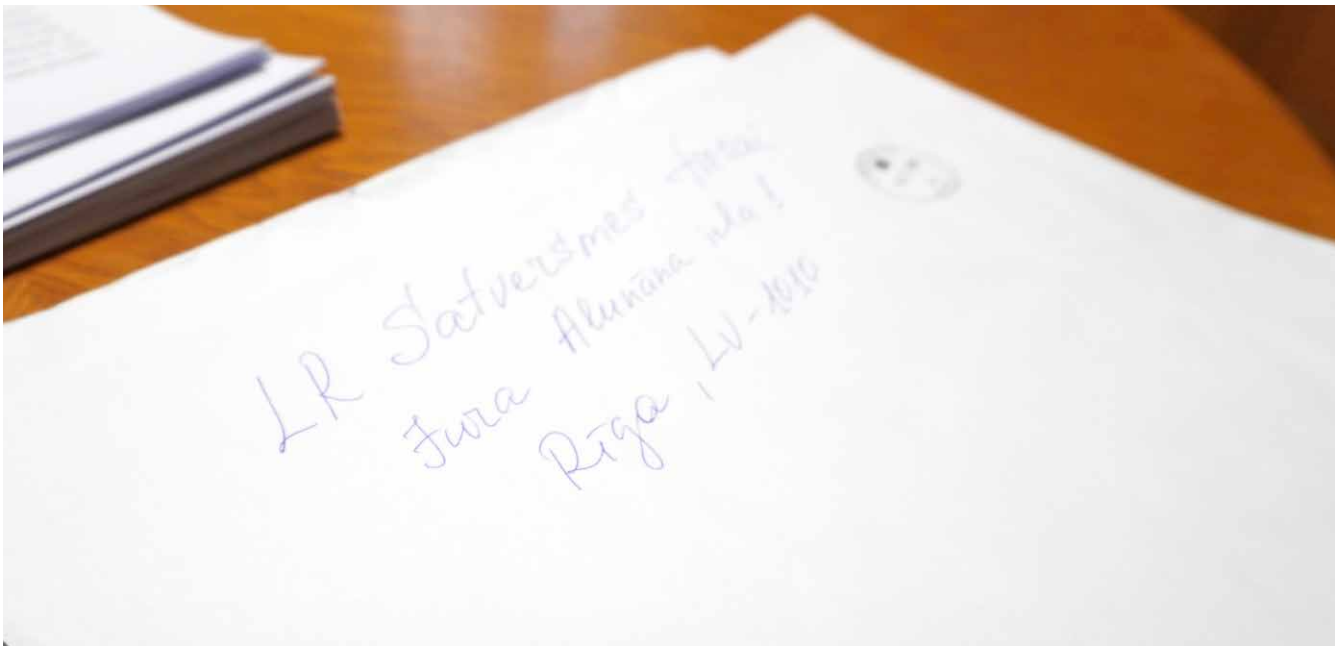
The Constitutional Court's Panel, in deciding on the applicant's request to restrict the accessibility of information included in the application, noted that it would examine, first and foremost, whether satisfaction of this request would protect a person's right to inviolability of private life, *inter alia*, protection of personal data, would not infringe on a person's right to a fair trial and would not hinder objective course of the legal proceedings, as well as would not violate the society's right to obtain information

108 Case No. 2020-39-02.

109 Cases No. 2017-28-0306, No. 2020-02-0306 and No. 2020-26-0106.

110 The majority of these cases pertained to the amount of compensation if the regulation on the use of natural gas had been violated.

111 Application regarding initiation of a case No. 157/2019.



about constitutional legal proceedings. The right to inviolability of private life means that the individual has the right to his or private space and the right to lead his or her life as he or she wishes to, suffering, to the extent possible, minimum interference by the State or other persons. The right to a fair trial, in turn, comprises the right to equality of parties, the possibility to be heard, as well as the independence and objectivity of the court also in the legal proceedings before the Constitutional Court. Whereas society's right to information about constitutional legal proceedings follows from the right to information included in Article 100 of the *Satversme* and, *inter alia*, allows a person to obtain information about cases reviewed by the Constitutional Court.

Hence, the Panel concluded that information mentioned in the application and in the annexed documents about the private life of natural persons, *inter alia*, about sexual orientation and sexual life, fell within the scope of these persons' rights to inviolability of private life. Moreover, this information, in conjunction with the name, surname, personal identification code and place of residence, is to be considered personal data in the meaning of Para 1 of Article 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council L of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (hereafter – the General Data Protection Regulation). Inclusion of these personal data in the Panel's decision on initiating the case and publishing in the official publication "Latvijas Vēstnesis", in turn, is to be considered as being data processing in the meaning of Para 2 of Article 4 of the regulation.

Pursuant to the first part of Article 9 of the General Data Protection Regulation, processing of personal data concerning a person's sexual orientation is prohibited, but, pursuant to sub-para "f" of the second part of Article 9 of this regulation, this prohibition is not applied if processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity. However, all instances of persona data procession must comply with, firstly, the principles of data quality, included in Article 5, and, secondly, one of the criteria defined in Article 6 of Regulation 2016/679 for recognising processing as being lawful. Moreover, recital 38 of the Regulation provides that children merit special protection of their personal data.

Pursuant to sub-para "c" of Article 6 of the General Data Protection Regulation, the legal grounds for processing the applicant's personal data are the legal obligation attributable to the Constitutional Court. I.e., Para 4 of Section 20 (9) of the Constitutional Court Law provides: if a decision has been taken to initiate a case, within three days after taking thereof, information regarding initiation of the case must be sent to the journal "Latvijas Vēstnesis", indicating the Panel that has initiated the case, the applicant and the name of the case. However, pursuant to sub-para "c" of the first part of Article 5 of the regulation, personal data must be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed.

Having examined the applicant's request and the facts of the case indicated, the Panel concluded that inclusion of information allowing to identify the applicant in the Panel's decision on initiating the case and publishing in the official journal "Latvijas Vēstnesis" would create such restriction on the fundamental rights of the applicant, her partner and children that would outweigh the public benefit from publishing of this information.

At the same time, the Panel also drew attention to the fact that establishing the status of restricted access to the materials in the case had to be differentiated from making information about the Court's work restricted access information. Section 28^3 (2) of the law "On Judicial Power" provides that, until the final ruling by a

court has entered into effect in the case, the materials in the case are accessible only to those persons who have been granted this right by procedural laws. Pursuant to Section 24 of the Constitutional Court Law, only the participants of the particular case have the right to familiarise themselves with the materials of an unadjudicated case – the applicant and the institution or the official who issued the contested act. To respect a person's right to inviolability of private life, the participants in the case, in familiarising themselves with restricted access information, have the obligation to use it only for the purpose of effective participation in the legal proceedings before the Constitutional Court.[112]

Also in the application, on the basis of which case No. 2020-18-01[113] was initiated, the applicant requested to not reveal his name, surname and personal identity number in the Panel's decision on initiating the case, press releases relating to the case, the Constitutional Court's homepage and elsewhere publicly for the whole duration of legal proceedings. The substantiation of the request was that the applicant's name, surname and personal identity number, examined in the context of the content of the contested norm, would make information about the applicant's criminal record accessible to any person.

Examining the application and documents annexed to it, the Panel concluded that information about the applicant's criminal record, following from them, fell within the scope of his right to inviolability of private life, established in Article 96 of the *Satversme*. Moreover, this information, in conjunction with the applicant's name, surname and personal identity number, is to be deemed personal data in the meaning of Para 1 of Article 4 of the General Data Protection Regulation. Whereas inclusion of these personal data in the Panel's decision on initiating the case and publishing in the official journal "Latvijas Vēstnesis" is to be recognised as data processing in the meaning of Para 2 of Article 4 of the General Data Protection Regulation.

Pursuant to Article 10 of the General Data Protection Regulation, personal data on a person's criminal record, abiding by Para 1 of Article 6 of the regulation, are processed only under the control of official authority or when processing is authorised by Union or Member State law, providing for appropriate safeguards for the rights and freedoms of data subjects. Moreover, any instance of data processing must comply, firstly, with the principles regarding data quality, included in Article 5 of the regulation, and, secondly, one of the criteria, defined in Article 6 of the regulation, for recognising lawfulness of data processing.
Thus, the Panel concluded that including information that would allow identifying the applicant in the Panel's decision on initiating the case and publishing in the official journal "Latvijas Vēstnesis" would cause such restriction on his fundamental rights that would outweigh the public benefit gained form publishing this information. In the particular case, the Constitutional Court, for exercising its competence and performing its obligations defined in law, does not need to process the data on the applicant's criminal record in the way referred to above. Therefore, the Panel decided that information that allowed identifying the applicant had to be redacted in the decision and it had to be granted the status of restricted access, which would be in effect until the Constitutional Court adopts the final ruling.[114]

Very similar assessment was included also in the decision to initiate case No. 2020-30-01.[115] I.e., the applicant requested the Constitutional Court to ensure his anonymity in the legal proceedings before the Constitutional Court *vis-à-vi*s third persons. The request was substantiated by the fact that the case materials comprised information about criminal proceedings, in which the applicant was involved.

The Panel concluded that, in the particular case, the Constitutional Court, for exercising its competence and performing its obligations defined in law, did not need to process applicant's personal data, including these in the Panel's decision on initiating a case and publishing in the official journal "Latvijas Vēstnesis". Therefore, the Panel's decision does not comprise information about the criminal proceedings, in which the applicant had been involved, but information (name and surname) that would allow identifying the applicant was redacted. To protect the applicant's right to inviolability of private life, information that would allow identifying the applicant, i.e., his name, surname and personal identity number, included in the application and documents annexed to it, has been granted the status of restricted access, which is in force until the Constitutional Court delivers the final ruling.[116]

In 2020, on several occasions, the Panels redacted *ex officio* the information on person's identity. For example, in adopting the decision on initiating case No. 2020-13-01,[117] the Panel recognised that indicating the applicant's identity in the Constitutional Court's rulings and publishing of it would cause such restrictions on the fundamental rights on the applicant and her child that would outweigh the public benefit from the publishing of this information. Hence, on the basis of Article 96 of the *Satversme* and with the purpose of protecting the rights of these persons to inviolability of private life, information about the applicant's identity should be redacted in the Court's rulings in this case.[118]

112 Decision by the Constitutional Court's 3rd Panel of 16 December 2019 on Initiating a Case on the Basis of Application No. 157/2019.
113 Application regarding initiation of a case No. 38/2020.
114 Decision by the Constitutional Courts 1st Panel of 19 March 2020 on Initiating a Case on the Basis of Application No. 38/2020.
115 Application regarding initiation of a case No. 64/2020.
116 Decision by the Constitutional Courts 3rd Panel of 28 May 2020 on Initiating a Case on the Basis of Application No. 64/2020.
117 Application regarding initiation of a case No. 19/2020.
118 Decision by the Constitutional Courts 4th Panel of 27 February 2020 on Initiating a Case on the Basis of Application No. 19/2020.

Whereas, in deciding to initiate case No. 2020-34-03,[119] the Panel concluded that the Ombudsman's application and the documents annexed to it included information about the personal life of the person who had turned to the Ombudsman, including information about sexual orientation and sexual life. Such information falls within the scope of the right to inviolability of private life. Moreover, such information in conjunction with the respective person's name and surname is to be considered as being personal data in the meaning of Para 1 Article 4 of the General Data Protection Regulation. Whereas disclosure of such data should be deemed to be data processing in the meaning of Para 2 of Article 4 of the regulation.

Pursuant to the first part of Article 9 of the General Data Protection Regulation, processing of personal data concerning a person's sexual orientation is prohibited, but, pursuant to sub-para "f" of the second part of Article 9 of this regulation, this prohibition is not applied if processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity.

The Panel recognised that the it was not necessary for the Constitutional Court to process information that would allow identifying the person who had submitted an application to the Ombudsman, in order to exercise its competence and perform the obligations defined in law. Hence, to protect the right of these persons to inviolability of private life, information allowing identification of the person, indicated in the application and Annex 4 to it, who had submitted an application to the Ombudsman, i.e., the person's name and surname, was granted the status of restricted access, which is in force until the Constitutional Court delivers the final ruling.[120]

Also in deciding on the initiation of case No. 2020-50-01,[121] the Panel concluded that information that followed from the application and documents annexed to it regarding the applicant's criminal record fell within the scope of the right to inviolability of private life. Hence, the Panel decided that the information allowing to identify the applicant had to be redacted and the status of restricted access should be granted to it until the Constitutional Court delivers its final ruling. The reasoning, included in the Panel's decision, was very similar to the one included in the decision on initiating case No. 2020-18-01.[122]

In 2020, the Panels decided also on matters relating to application of temporary remedies. For example, in the application that was the basis for initiating case No. 2020-26-0106[123] and the application that was the basis for initiating case No. 2020-27-01,[124] the applicants requested decision on the application of a temporary remedy, i.e., suspending the contested norm. The applicants held that the issue of suspending the contested norm was a procedural matter unregulated in the Constitutional Court Law and the Rules of Procedure of the Constitutional Court, which should be decided on at the Court's assignments sitting.

The Constitutional Court's Panel, referring to the Court's judicature, noted that, in the case of a constitutional complaint, the Constitutional Court Law provided for only one temporary legal remedy – suspending the enforcement of a court's ruling, envisaged in Section 19² (5). Since the legislator has set out in this norm the regulation regarding the application of a temporary legal remedy if a constitutional complaint has been submitted, the request to suspend the contested norm could not be regarded as being an unregulated procedural issue. Thus, the Constitutional Court concluded that the request to suspend the contested norm was submitted with respect to a regulated procedural issue and should be left unexamined.[125]

Whereas, in deciding on initiating cases with respect to the constitutionality of the norms of the Annex to the Law on Administrative Territories and Populated Areas "Administrative Territories, Administrative Centres thereof and the Units of Territorial Division", the Panel focused, in particular, on the infringement of the local government's rights. Namely. Section 19 (1) of the Constitutional Court Law, in conjunction with Para 4 of Section 18 (1) of this law, defines the local governments obligation to substantiate that the contested act infringes on its rights. The Constitutional Court has recognised, in deciding on whether the local government has the right to submit an application to the Court, that it should be assessed, whether the applicant has substantiated the opinion that the contested act infringes on its rights. I.e., whether the rights of the particular local government follow from the norms, the compatibility with which is contested and whether the contested act infringes on these rights; i.e., causes adverse consequences for it.[126] Thus, in deciding on initiation of the case or refusal to initiate a case, the Panel verifies, *inter alia*, whether the applicant has substantiated its opinion regarding the infringement on its rights.

119 Application regarding initiation of a case No. 120/2020. The application to the Constitutional Court was submitted by the Ombudsman.

120 Decision by the Constitutional Courts 3rd Panel of 7 July 2020 . on Initiating a Case on the Basis of Application No. 120/2020.

121 Application regarding initiation of a case No. 160/2020.

122 Decision by the Constitutional Courts 4th Panel of 11 September 2020 on Initiating a Case on the Basis of Application No. 160/2020.

123 Application regarding initiation of a case No. 73/2020.

124 Application regarding initiation of a case No. 81/2020.

125 Decision by the Constitutional Courts 1st Panel of 8 May 2020 on Initiating a Case on the Basis of Application No. 73/2020 and Decision of 12 May 2020 on Initiating a Case on the Basis of Application No. 81/2020.

126 The Constitutional Court's Decision of 16 April 2008 on Terminating Legal Proceedings in Case No. 2007-21-01, Para 5, and Judgement of 24 October 2017 in Case No. 2016-23-03, Para 14.

The Panels recognised in their decisions on initiation of cases that the applicants – local government councils – had substantiated the infringement on their rights, caused, for example, by changing the boundaries of the local governments' administrative territories. At the same time, the Panels have underscored that the applicants' opinion related to the infringement on the local government rights, caused by the norms of the Law on Administrative Territories and Populated Areas, should be examined on its merits in the course of preparing and reviewing these cases.[127]

In conclusion, some trends relating to the constitutional complaints, on the basis of which cases were initiated in 2020, need to be highlighted.

Firstly, in 2020, in none of the applications, on the basis of which a case was initiated, the submitters of the constitutional complaint had requested suspending the enforcement of a court's ruling.

Secondly, the number of initiated cases, where a person, prior to turning to the Constitutional Court, had exhausted all accessible general legal remedies, increased significantly. In 2018, only two cases like that were initiated, in 2019 – five, but in 2020 already 10 persons had exhausted all available legal remedies before turning to the Court. This fact, most probably, proves that the significance of the subsidiarity principle has increased in legal proceedings before the Constitutional Court.

Decisions on refusal to initiate a case

In 2020, the Constitutional Court's panels have adopted 172 decisions on refusal to initiate a case. Thus number is higher than in the previous years.[128] The legal grounds for the Panel to refuse initiation of a case is the fifth and the sixth part of Section 20 of the Constitutional Court Law. These norms regulate several instances when a Panel may adopt such a decision.

The Constitutional Court's jurisdiction over the case

Para 1 of Section 20 (5) of the Constitutional Court Law provides that the Court refuses initiation of a case if it is not under the Constitutional Court's jurisdiction. In 2020, this provision was applied in 14 decisions on refusal to initiate a case.

The Court's competence is defined by the *Satversme* and the Constitutional Court's Law. This competence is exhaustively set out in Section 16 of the aforementioned law. This means that a claim, which is not referred to in Section 16 of the Constitutional Court Law, may not be included in the application to the Court. The following may be mentioned as claims, which, in accordance with the decisions made by the Panels of 2020, are not under the Court's jurisdiction:

1) the request to recognise Sub-para 9.1.1.1. of the annex to Order No. 1803 of 30 December 2016 by the Head of the State Border Guard "Methodological Guidance on Inspecting Vehicles upon Crossing the Border" (hereafter – Methodological Guidance) as being incompatible with Section 21 of the Latvian Administrative Violations Code. The Constitutional Court's Panel noted, in particular, that after coming into effect of the Administrative Procedure Law, reviewing the legality of internal regulatory enactments could be under the Constitutional Court's jurisdiction only in exceptional case, if it were substantiated in the application that the internal regulatory enactment infringed on a person's fundamental rights and it was impossible to eliminate this infringement in administrative procedure. Pursuant to Section 104 (3) of the Administrative Procedure Law, the administrative court is the one that reviews the compatibility of internal regulatory enactments with external regulatory enactments and, in case of contradictions, does not apply the internal regulatory enactment. It followed from the rulings by administrative courts that in this case, *inter alia*, the legal nature and compliance with external regulatory enactments had been examined. In view of the above, in this particular situation, the Panel did not establish such circumstances, due to which the claim, included in the application, regarding incompatibility of the internal regulatory enactment with a legal norm of higher legal force, would be under the Constitutional Court's jurisdiction;[129]

2) a request to amend the contested norm and to compensate for the non-pecuniary damages incurred;[130]

3) a request to examine the legality of the Prosecutor's General actions and request the Prosecutor's General Office, in the procedure set out in law, to submit an application to a court requesting decreasing the sentence entailing deprivation of the applicant's liberty;[131]

4) a request to apply a legal remedy to the applicant and the mother of his child;[132]

5) a request to impose an obligation on the Office of Citizenship and Migration Affairs to stop discrimination in issuing personal identification documents;[133]

127 See, for example, Decision by the Constitutional Court's 2md Panel of 16 July 2020 on Initiating a Case on the Basis of Application No. 127/2020 and Decision of 4 September 2020 on Initiating a Case on the Basis of Application No. 165/2020.

128 In 2018, the Constitutional Court's Panels adopted 147 decisions on refusal to initiate a case, but in – 151 decisions.

129 Decision by the Constitutional Court's 3rd Panel of 19 December 2019 on Refusal to Initiate a Case on the Basis of Application No. 166/2019.

130 Decision by the Constitutional Court's 4th Panel of 5 March 2020 on Refusal to Initiate a Case on the Basis of Application No. 27/2020.

131 Decision by the Constitutional Court's 1st Panel of 16 March on Refusal to Initiate a Case on the Basis of Application No. 32/2020.

132 Decision by the Constitutional Court's 3rd Panel of 11 May 2020 on Refusal to Initiate a Case on the Basis of Application No. 90/2020.

133 Decision by the Constitutional Court's 4th Panel of 28 May 2020 on Refusal to Initiate a Case on the Basis of Application No. 95/2020.

6) a request to recognise actions by a court of general jurisdiction or its ruling as incompatible with the *Satversme*;[134]

7) a request to examine the contradiction between two legal norms of equal legal force;[135]

8) a request to recognise an order by the Minister for Transportation – a general administrative act – as being incompatible with the *Satversme*;[136]

9) a request to the Constitutional Court to draft or to initiate drafting by the legislator legal regulation favourable for the applicant.[137]

The applicant is not entitled to submit an application

Para 2 of Section 20 (5) of the Constitutional Court law provides that the Constitutional Court may refuse initiation of a case if the applicant is not entitled to submit an application. In 2020, this norm has not been in applied in a Panel's decision. Also previously, the Panels have applied para 2 of Section 20 (5) of the Constitutional Court Law in rare exceptional cases.

Incompatibility of the application with the requirements set in the Constitutional Court Law

Par 3 of Section 20 (5) of the Constitutional Court Law provides that the Constitutional Court may refuse initiation of a case if the application does not meet the requirements set in Section 18 or Section 19-19^3 of this law. This provision of the law has been applied most frequently in the Panel's decisions to refuse initiation of a case.

The infringement on a person's fundamental rights has not been substantiated in the application

The obligation of the person submitting a constitutional complaint to substantiate that the contested norm infringes upon his fundamental rights, established in the *Satversme*, follows from Section 19^2 (1), Para 1 of the sixth part and Para 4 of Section 18 of the of the Constitutional Court Law. It has been repeatedly noted in the Panels' decisions that an infringement upon a person's fundamental rights can be established if: firstly, the particular fundamental rights have been defined in the *Satversme*, i.e., the contested norm falls within the scope of the particular fundamental right; secondly, it is exactly the contested norm that infringes upon a person's fundamental rights, defined in the *Satversme*.[138] In 2020, the Constitutional Court's Panels adopted slightly more than 60 decisions on refusal to initiate a case with respect to the entire application or a part thereof, on the basis of the aforementioned norms of the Constitutional Court Law. Similarly to the previous years, also in 2020, a large share of such decisions by the Panels pertain to cases, where the person, instead of contesting the constitutionality of a legal norm, objects, substantially, to the way the legal norm has been interpreted and applied.

The first part and Para 6 of the sixth part of Section 19^2 of the Constitutional Court Law have been applied as the grounds for refusal to initiate a case also in such instances, where the contested norm does not infringe upon the applicant's fundamental rights. For example, in examining application No. 16/2020, it was found that the security measure, envisaged in Section 272 (1) of the Criminal Procedure Law, i.e., arrest, had been applied to the applicant. The applicant had turned to the court several times, requesting revoking of the security measure that had been applied; however, the court had dismissed this request, being of the opinion that the grounds, defined in the contested norm, were present to continue application of the measure. The applicant noted that arrest had been applied to him without grounds since he had not committed the criminal offence he had been charged with and also was not planning to commit a new criminal offence. Whereas Section 272 (1) of the Criminal Procedure Law allows treating the applicant as if it had been proven that he had committed a criminal offence. Hence, his right to the presumption of innocence, established in Article 92 of the *Satversme*, had been infringed upon.

The Constitutional Court's Panel noted, referring to the Court's judicature, that, in criminal proceedings, the principle of presumption of innocence, defined in the second sentence of Article 92 of the *Satversme*, required ensuring to a person the right to be regarded as innocent of charges brought until the person's guilt has been recognised by a court's ruling that had entered into force. However, the principle of presumption of innocence does not prohibit the institutions that bring and maintain charges to take criminal procedural measures and apply to the suspect or the accused person criminal procedural measures, *inter alia*, arrest. Likewise, the principle of presumption of innocence

134 Decision by the Constitutional Courts 4th Panel of 2 June 2020 on Refusal to Initiate a Case on the Basis of Application No. 104/2020, Decision by the 2nd Panel of 17 June 2020 on Refusal to Initiate a Case on the Basis of Application No. 111/2020 un No. 112/2020, Decision by the 1st Panel of 4 September 2020 on Refusal to Initiate a Case on the Basis of Application No. 153/2020, Decision by the 3rd Panel of 6 November 2020 on Refusal to Initiate a Case on the Basis of Application No. 210/2020, Decision by the 4th Panel of 10 November 2020 on Refusal to Initiate a Case on the Basis of Application No. 211/2020, and Decision by the 1st Panel of 30 November 2020 on Refusal to Initiate a Case on the Basis of Application No. 220/2020.

135 Decision by the Constitutional Court's 1st Panel of 27 August 2020 on Refusal to Initiate a Case on the Basis of Application No. 162/2020.

136 Decision by the Constitutional Court's 1st Panel of 25 June 2020 on Refusal to Initiate a Case on the Basis of Application No. 110/2020.

137 Decision by the Constitutional Court's 4th Panel of 1 July 2020 on Refusal to Initiate a Case on the Basis of Application No. 114/2020.

138 Decision by the Constitutional Court's 1st Panel of 8 April 2020 on Refusal to Initiate a Case on the Basis of Application No. 48/2020.

does not prohibit the competent institutions from bringing charges and maintaining that the person is guilty of committing a particular criminal offence.

In view of this findings by the Constitutional Court, the Panel concluded that sufficient substantiation had not been provided in the application as to why the principle of presumption of innocence, established in Article 92 of the *Satversme*, prohibited from applying to a person arrest as a criminal procedural security measure if the grounds, indicated in the contested norm, for the application thereof existed. Hence, it was not substantiated in the application that Section 272 (1) of the Criminal Procedure Law infringed on the applicant's fundamental right to the presumption of innocence, established in Article 92 of the *Satversme*.[139]

The applicant has not exhausted all available general legal remedies

Section 19^2 (2) of the Constitutional Court Law provides that a complaint may be submitted only all other possibilities to defend the rights that had been infringed upon by general legal remedies had been exhausted – a complaint to a higher standing institution or an official, as well as a complaint or a statement of claim to a court of general jurisdiction, or if such possibilities are not available to the person. This norm defines the obligation for the submitter of the constitutional complaint to exhaust all available general legal remedies prior to turning to the Constitutional Court. On the basis of Section 19^2 (2) of the Constitutional Court Law, in 2020, the Panels made 12 decisions on refusal to initiate a case.

During the reporting period, the Panels have pointed repeatedly to a person's obligation to turn to an administrative court for the protection of their infringed rights before turning to the Constitutional Court. For example, in the application regarding initiation of a case No. 146/2020, the applicants noted that the possibility to contest and appeal against amending administrative acts that had been issued before would not eliminate the infringement on their fundamental rights. It was alleged that, in view of the imperative nature of the norms in local government binding regulations[140] and unambiguous wording, the general legal remedies, available to the applicants, were not effective.

The Constitutional Court's Panel noted, firstly, that in the case, where fundamental rights had been infringed upon by an act of applying law, the person had to use all general legal remedies, which provided

139 Decision by the Constitutional Court's 3rd Panel of 6 February 2020 on Refusal to Initiate a Case on the Basis of Application a No. 16/2020.

140 The constitutionality of tax exemption, included in Para 11 of the Binding Regulation of the Riga City Council of 18 December 2019 No. 111 "The Procedure for Granting Immovable Property Tax Exemptions in Riga", was contested in the application.

for the possibility to contest or appeal against the act of applying law, through which the legal norm had infringed on the person's fundamental rights. The constitutional complaint mainly is a subsidiary (additional) mechanism for protecting a person's fundamental rights when it is impossible to eliminate the infringement of a person's fundamental rights by general legal remedies. The subsidiarity principle, included in the Constitutional Court Law, aims to ensure that the protection of fundamental rights, ensured by the Constitutional Court, is not used prematurely and the mechanism for rights protection, established by the State, is used in full.

Pursuant to the principle of subsidiarity, when a private person objects against the infringement of subjective rights, established in an administrative act, first of all the statutory legal remedies should be used within the framework of administrative procedure – the issued administrative act should be contested before a higher institution and, finally, should transfer, by an application, the administrative act for review by an administrative court. In the process of contesting and appealing, the actual elements of the case are determined and the correctness of application of legal norms is reviewed, *inter alia*, compliance of legal norms with legal norms of higher legal force. By using the principle of objective investigation, the administrative court itself determines the actual elements of the particular case, but the review of the hierarchy of legal force of legal norms at the administrative court[141] allows preventing the application of legal norms of lower legal norm that are incompatible with legal norms of higher legal force.

The Panel underscored – although the contested norm set rather clearly the summary restriction on tax rebates, the Panel, however, had no grounds to consider that the contestation or application to the administrative court regarding the established obligation to pay the tax (restriction on rebates) would not be an effective possibility for the applicant to verify the existence of an infringement on its fundamental rights and, in case of an unfounded infringement, to protect its infringed taxpayer's rights.

Firstly, both the higher standing institution and the administrative court have the right to revoke or amend the issued administrative act if it is incompatible with legal provisions. Secondly, both the higher standing institution and the administrative court have the obligation, in case of reviewing the legality of an administrative act, to comply with the principle of legal expectations, the infringement of which, in the actual circumstances, is substantiated by the applicant. Thirdly, the higher standing institution may inform the issuer of the legal norm about its conclusion regarding the compliance of the contested norm with the legal norms of higher legal force and achieve amendments to the legal regulation prior to the court's involvement. Fourthly, and administrative court has been granted

141 See Section 104 of the Administrative Procedure Law.

the right to not apply the contested norm if it finds that the contested norm is incompatible with laws or to submit an application to the Constitutional Court if it holds that the contested norm is incompatible with the *Satversme*. Finally, also reviewing of the case by a higher standing institution and the administrative court, specifying the facts of the case, providing legal arguments and counter-arguments regarding the legitimacy of the norms to be applied, may convince the applicant of the compliance of the contested norm with norms of higher legal force in the particular case.

Thus, the Panel found that the applicant had access to general legal remedies to protect his rights that had been infringed upon because, pursuant to Article 77 and Article 79 of the Administrative Procedure Law, decisions by the Municipal Revenue Office of the Riga City Council could be contested in the Riga City Council within one month as of the date when the decisions entered into force. Whereas pursuant to Section 103 (1) and Para 1 of Section 184 (1) of the Administrative Procedure Law, the decision by the Riga City Council could have been appealed against in the administrative court. The applicants had not exercised the rights granted to them. Hence, the application is incompatible with the requirements of Section 19^2 of the Constitutional Court Law.[142]

Likewise, with respect to applications, in which the constitutionality of provisions of the Cabinet Regulation of 31 March 2020 No. 179 "Regulations Regarding the Allowance for Idle Time for the Self-employed Persons Affected by the Spread of COVID-19" was contested, the Panels pointed to the need to use all available legal remedies for the protection of the infringed rights. For example, in application No. 76/2020, a person contested a norm of this regulation that provided that the State Revenue Service did not grant an allowance for idle time to self-employed persons who receive an old-age or service pension. The Panel noted, in turn, that, although the applicant was in a situation, typical of the scope of the contested norm, it did not ascertain that, in the particular case, there were no doubts regarding the application of the contested norm.

The Panel underscored, in particular, that the administrative court, in exercising its competence, clarified and assessed all issues of law and facts that were significant in the case. Thus, in the administrative procedure, comprehensive legal review is implemented. Likewise, the administrative court, in the framework of hearing the case and in compliance with its competence, must verify, whether the applicable norm of the Cabinet's Regulation, complies with the authorisation granted by the legislator and other legal norms. If this norm would be recognised as being incompatible with a legal norm of higher legal force, which is not a norm of the *Satversme* or an international treaty, it would not be applied to the applicant.

Since the contested norm is a norm of the Cabinet's Regulation, the administrative court, upon establishing its incompatibility with law, is allowed to not apply it, in accordance with Section 104 (3) of the Administrative Procedure Law. Thus, in the particular case, the applicant has access to general legal remedies for the protections of his rights that had been infringed upon, which he has not used yet. Hence, the Panel recognised that the application was incompatible with the requirements set in Section 19^2 (2) of the Constitutional Court Law.[143]

The submitter of application No. 99/2020, in turn, already had contested the decision by the State Revenue Service to refuse granting the allowance for idle time. However, the applicant had not appealed against the decision by the Service's Director General in court, in the procedure established by the Administrative Procedure Law. Thus, the Panel concluded that the applicant had not used all general legal remedies available to him to protect the infringed rights and that also this application was incompatible with the requirements set in Section 19^2 (2) of the Constitutional Court Law.[144]

The applicant has missed the term of six months for submitting the application

Section 19^2 (4) of the Constitutional Court Law provides that a constitutional complaint may be submitted within six months after the ruling by the final institution has entered into effect. If there is no possibility to defend the fundamental rights, defined in the *Satversme*, by general legal remedies the constitutional complaint may be submitted to the Constitutional Court within six months as of the moment when the infringement on fundamental rights occurred. In 2020, the Panels adopted six decisions on refusal to initiate a case on the basis of Section 19^2 (4) of the Constitutional Court Law.

In examining application No. 25/2020, the Panel recognised that one of the applicant's claims was to recognise Section 50^4 of the Sentence Execution Code of Latvia as being incompatible with Article 96 of the *Satversme*. However, Section 50^4 of the Sentence Execution Code of Latvia already had been recognised as being incompatible with Article 91 of the *Satversme* by the judgement in case No. 2018-25-01[145]. Case No. 2018-25-01 had been initiated on the basis of an application by the same applicant, who had submitted also application No. 25/2020.

142 Decision by the Constitutional Court's 1st Panel of 28 August 2020 on Refusal to Initiate a Case on the Basis of Application No. 146/2020.

143 Decision by the Constitutional Court's 1st Panel of 11 May 2020 on Refusal to Initiate a Case on the Basis of Application No. 76/2020.

144 Decision by the Constitutional Court's 2nd Panel of 11 June 2020 on Refusal to Initiate a Case on the Basis of Application No. 99/2020.

145 The Constitutional Court's Judgement of 7 November 2019 in Case No. 20182501.

The Panel, referring to the materials in case No. 2018-25-01, concluded that the applicant did not have the possibility to defend his rights by general legal remedies since, pursuant to Section 13^1 of the Sentence Execution Code of Latvia, the decision of placing the sentenced person in an institution for deprivation of liberty, cannot be contested and is not subject to appeal. Hence, the application regarding the possible incompatibility of Section 50^4 of the Sentence Execution Code of Latvia with Article 96 of the *Satversme* complies with the requirements set in Section 19^2 (2) of the Constitutional Court Law.

However, at the same time, the term for submitting the constitutional complaint must be counted from the date, as of which it was counted in the decision on initiating case No. 2018-25-01, i.e., as of the moment when the Head of the Prison Administration adopted the decision on placing the applicant in an institution for deprivation of liberty. Since application No. 25/2020 had been submitted to the Constitutional Court more than six months after the said decision had been adopted, the applicant had missed the term for submitting the application and, thus, the application did not comply with the requirements set in the second sentence of Section 19^2 (4) of the Constitutional Court Law .[146]

The application does not contain legal grounds

Para 4 of Section 18 (1) of the Constitutional Court Law provides that the application to the Constitutional Court must contain the legal grounds for it. In 2020, upon establishing that they were not included in the application, the Panels adopted more than 50 decisions on refusal to initiate a case. Several of these applications had been submitted to the Court by both courts of general jurisdiction and administrative courts, as well as a local government council and 20 Members of the *Saeima*.

In examining the application submitted by the Ikšķile Regional Council No. 159/2020, the Panel established that the applicant requested examining the compliance of Sub-para 3.2.3. of the Cabinet Regulation of 12 May 2020. No. 278 "Regulation on the Conditions and Procedure for Issuing State Loan to Local Governments for Decreasing and Eliminating the Impact of the Emergency Situation in Relation with the Spread of Covid-19" with the Preamble to the *Satversme*, its Article 1 and Article 101, as well as Article 4 of the European Charter of Local Self-Government.

In examining the legal grounds provided by the local government council, the Panel noted that several principles and constitutional values, included in the Preamble to the *Satversme*, had been quoted in the application. However, it follows from the application that the applicant considers that the contested norm is incompatible with exactly the equality principle. The Panel underscored that the contested norm regulated the legal relationship between two subjects of public law – the local government and the State.

Local governments are derived public law persons, which, pursuant to Para 2 and Para 6 of Section 1 of the State Administration Structure Law, exercise indirect administration. In accordance with Section 10 (4) of the State Administration Structure Law, the public administration, in implementing the functions of state administration, does not have its own interests. Whereas the application did not provide legal ground as to why, in view of the legal relations regulated by the contested norm, the equality principle should be applied also to a local government as a legal person of public law.

In assessing the legal grounds regarding the alleged incompatibility of the contested norm with Article 1 of the *Satversme*, the Panel, referring to the Constitutional Court's judicature, noted that the basic function of the principles of a state governed by the rule of law, falling within the scope of Article 1 of the *Satversme*, was to protect a private person against unfounded use of public power against him, and that in the legal relations between public law subjects, these were applicable only insofar the specific nature of these relations allowed it. However, the application comprised only general statements that the contested norm violated the principle of legal expectations, and it did not provide the grounds as to whether and how, in view of the specific nature of the legal relations between the Cabinet and the local government, in the situation regulated by the contested norm, the principle of legal expectations, falling within the scope of Article 1 of the *Satversme*, should be applicable to the applicant – a local government council.

Finally, examining the applicant's request to recognise the contested norm as being incompatible with the principle of local government, which fell within the scope of Article 1 of the *Satversme*, Article 101 of the *Satversme* and Article 4 of the European Charter or Local Self-Government, the Panel recognised that the application provided a description of the actual circumstances of the particular situation, likewise, various legal norms, as well as the Constitutional Court's judicature on the scope of the principle of local government were quoted. However, the application did not provide the legal grounds as to why the contested norm was incompatible with the respective legal norms of higher legal force. A summary of the facts of the case, legal norms or court rulings, without the required legal reasoning, cannot be considered as being legal grounds for the application in the meaning of the Constitutional Court Law. Hence, the application is incompatible with the requirements set in Para 4 of Section 18 (1) of the Constitutional Court Law.[147]

146 Decision by the Constitutional Court's 3rd Panel of 9 March 2020 on Refusal to Initiate a Case on the Basis of Application No. 25/2020.

147 Decision by the Constitutional Court's 3rd Panel of 2 September 2020 on Refusal to Initiate a Case on the Basis of Application

The application is incompatible with other requirements set in the Constitutional Court Law

Section 18 of the Constitutional Court Law sets the general requirements that all applicants, referred to in Section 17 (1) of this Law, must comply with. The applicant's duty, *inter alia*, to append to the application documents that are needed for establishing the facts of the case are to be considered as such a requirement.

In examining application No. 12/2020, the Panel found that the applicant had not appended to the application documents needed for establishing the facts of the case, *inter alia*, the decision by the administrative committee of the regional local government council by which, as indicated by the applicant, she had been made administratively liable. The Panel *ex officio* obtained information from the Court Information System and noted that, pursuant to the information available in the system, it was impossible to establish the exact legal norm, in accordance with which the applicant had been made administratively liable. Hence, it was recognised that the application was incompatible with the requirements set out in Para 2 of Section 18 (4) and Para 1 of Section 19.[2] (7) of the Constitutional Court Law.[148]

As regards an application by a local government council, Section 19 (1) of the Constitutional Court Law provides that, pursuant to Para 7 of Section 17 (1) of this law, a local government council may submit such an application if the contested act infringes on the rights of the respective local government. The Constitutional Court has recognised that a local government council was entitled to submit an application to the Constitutional Court only and solely if the contested norm infringed on its rights, i.e., rights of the particular local government followed from the norms, the compliance with which was contested, and that the contested norm infringed upon these rights, directly causing to the local government some adverse consequences.[149] Hence, a local government council must substantiate in its application that the contested norm causes an infringement on the local government's rights.

In examining application No. 152/2020, submitted by the Alsunga Regional Council, the Panel established that the applicant requested reviewing the compliance of Sub-para 21.1. of the Annex to the Law on Administrative Territories and Populated Areas "Administrative Territories, Administrative

No. 159/2020.

148 Decision by the Constitutional Court's 3rd Panel of 24 February 2020 on Refusal to Initiate a Case on the Basis of Application No. 12/2020.

149 The Constitutional Court's Decision of 16 April 2008 on Terminating Legal Proceedings in Case No. 2007-21-01, Para 5.

Centres thereof and the Units of Territorial Division" with Article 1 of the *Satversme* and the sixth part of Article 4 and Article 5 of the European Charter of Local Self-Government.

With respect to the claim to review the compliance of the contested norm with Article 1 of the *Satversme*, the Panel, referring to the Constitutional Court's judicature, noted that the basic function of the principles of a state governed by the rule of law, included in Article 1 of the *Satversme*, was to protect a private person against unfounded use of public power against them, and that they were applicable to the legal relations of subjects of public law insofar the specific features of these relations allowed it. The application, however, did not include substantiation regarding the rights of a local government as a legal person of public law that were derived from the principle of good governance, included in Article 1 of the *Satversme*, and the way, in which the contested norm infringed upon these rights. Neither did the application substantiate whether and how, in view of the specific nature of the relations between the *Saeima* and the local government, in the situation regulated by the contested norm, the principle of good governance, included in Article 1 of the *Satversme* would be applicable to the applicant.

Whereas in examining the claim requesting to recognise the contested norm as being incompatible with the sixth part of Article 4 and Article 5 of the European Charter of Local Self-Government, the Panel, referring to the Constitutional Court's judicature, noted that the strengthening of local governments as one of the basic instruments for implementing the democratic order could be manifested in various ways. I.e., the Charter does not define what the administrative division of local governments should be like. The strengthening of democracy, referred to above, is equally possible also by uniting local governments in larger local governments, if the requirements of laws and the Charter are met and the principle of local government *per se* is not jeopardised. The said principle does not require a concrete form and content of the procedure for hearing, insofar it is not specified in laws. Moreover, the requirement of concrete consultation procedure does not follow from Article 5 of the Charter.

The Panel concluded that legal norms and findings included in the Constitutional Court's rulings had been quoted in the application. A presentation of the facts of the case had been provided, likewise, general statements regarding the content of rights established in the sixth part of Article 4 and Article 5 of the Chapter had been included. However, the application did not provide legal grounds as to how, in the particular situation, the infringement on the principle of local government had manifested itself. Thus, the Panel recognised that the application was incompatible with Para 4 of Section 18 (1) and Section 19 (1) of the Constitutional Court Law.[150]

Res judicata

Para 4 of Section 20 (5) of the Constitutional Court Law provides that the Constitutional Court may refuse to initiate a case if the application has been submitted with respect to an adjudicated claim. In 2020, the Panels have adopted 14 decisions on the basis of this norm. To compare, it can be mentioned that, for example, in 2019, this norm was not applied in any decision by the Panels. The majority of these decisions were adopted with respect to the applications submitted by courts of general jurisdiction after the Constitutional Court had delivered the judgement in case No. 2019-10-0103.

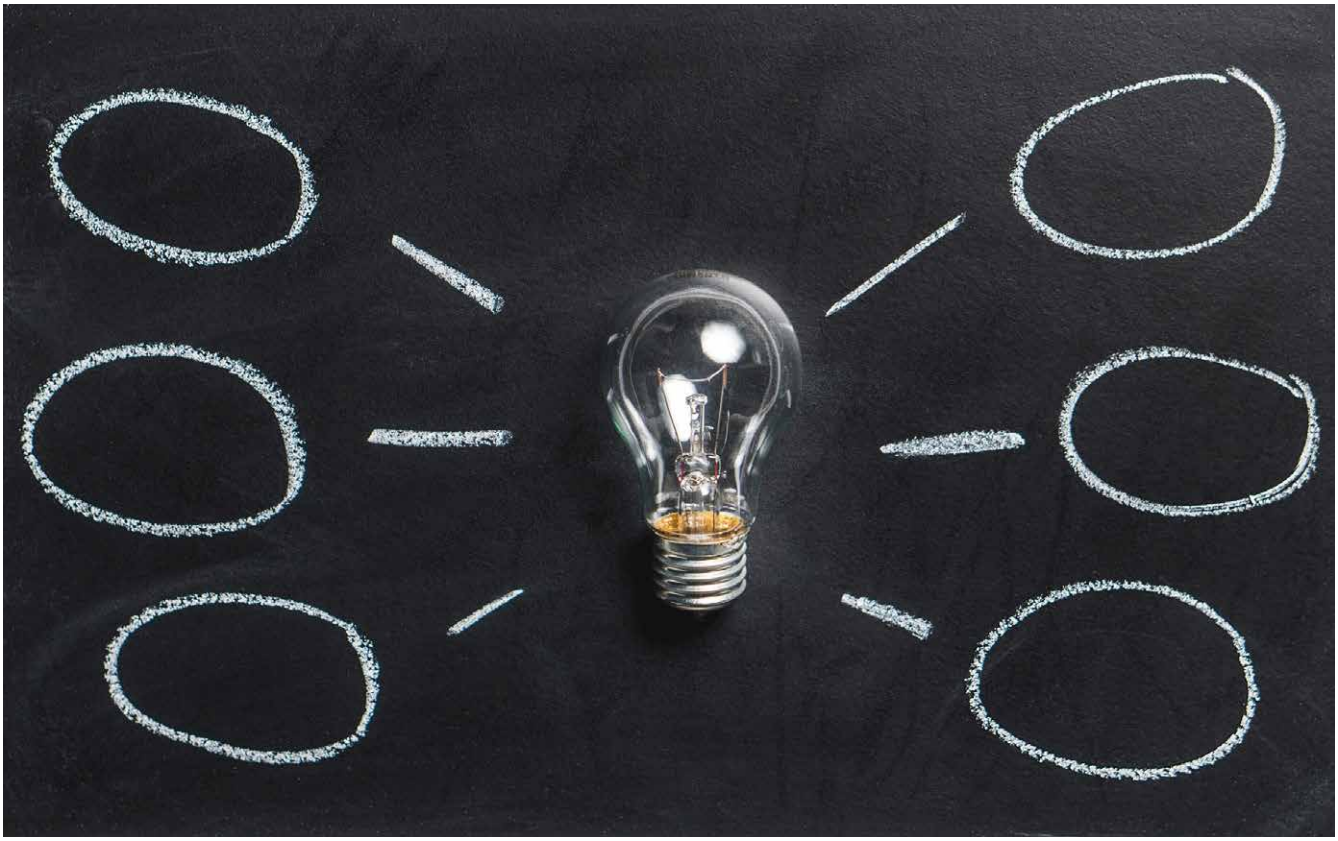
In 2020, Para 4 of Section 20 (5) had been applied to constitutional complaints and applications submitted by Members of the *Saeima*. For example, examining application submitted by Members of the *Saeima* No. 58/2020, the Panel assessed, whether the application had been submitted with respect to an already adjudicated claim. I.e., it was requested in the application to recognise the first sentence of Section 41 of the Transitional Provisions of the Law "On State Pensions",[151] insofar it envisaged that supplement for the insurance period accrued until 31 December 1995 was granted only to those persons who had retired until 31 December 2011, as being incompatible with Article 1, the first sentence of Article 91 and Article 109 of the *Satversme*. The Constitutional Court, however, already had recognised this norm as being compatible with Article 91 and Article 109 of the *Satversme* in case No. 2012-12-01.

To assess, whether the application was submitted with respect to an adjudicated claim, the Panel clarified, successively, whether: 1) the claim had been formally adjudicated; 2) whether the claim had changed on its merits; 3) whether significant new circumstances existed due to which the claim could not be deemed to be adjudicated. It recognised that the claim regarding the compliance of the contested norm with the first sentence of Article 91 and Article 109 of the *Satversme* had been formally adjudicated. Whereas Para 41 of the Transitional Provisions of the law "On State Pensions" had not changed on its merits compared to the regulation contested in case No. 2012-12-01.

Regarding the existence of significant new circumstances, due to which the claim could not

150 Decision by the Constitutional Court's 2nd Panel of 4 September 2020 on Refusal to Initiate a Case on the Basis of Application No. 152/2020.

151 The first sentence of Para 41 of the Transitional Provisions of the Law "On State Pensions" provides that recipients of the old age and invalidity pension residing in Latvia and the European Economic Area, for the length of period of insurance that is accrued up to 31 December 1995 and has been taken into account when granting (recalculating) the pension, are granted, up to 31 December 2011, a supplementary payment for each year of the insurance period.



be deemed to be adjudicated, it was noted in the application that the Constitutional Court's judgement in case No. 2012-12-01 had been delivered at the time of fast economic recession; however, currently Latvia's economy had exceeded the highest point of the pre-crisis period, and the state budget of 2020 was the largest in the state's history. Moreover, at the time when the judgement in case No. 2012-12-01 had been adopted, supplements to the pension had been disbursed from the special budget. Since 2014, supplements to the pension are no longer disbursed from the state's special budget but from the state's basic budget. Finally, since 2019, indexation of pensions is taking place.

Having examined these considerations, the Panel recognised: although the Findings in the judgement in case No. 2012-12-01 included references to the special budget, there were no grounds to consider that the Court's conclusions were not equally applicable to the state's basic budget. The applicant had not indicated, how the changes in the state budget since 2013 would now prohibit the contested norm from reaching its legitimate aim – protection of other persons' rights. Likewise, the applicant had not indicated how these arguments influenced the legislator's discretion in deciding on political issues. Hence, the applicant's arguments regarding the current amount of the state's basic budget and the division of basic budget's functions could not be recognised as being new circumstances, due to which the claim could not be deemed as being adjudicated. Whereas with respect to resuming indexation of pensions, the applicant had not indicated how these considerations should be considered as being significant new circumstances, due to which the claim could not be deemed as being adjudicated. Thus, the Panel recognised that the claim requesting examination of the compliance of Para 41 of the Transitional Provisions of the law "On State Pensions" with the first sentence of Article 91 and Article 109 of the *Satversme* had been submitted with respect to an adjudicated claim.[152]

Changes in the legal grounds or in the presentation of the facts of the case

Para 5 of Section 20 (5) of the Constitutional Court Law grants to the Constitutional Court's Panel the right to refuse initiation of the case if the legal grounds and presentation of the facts of the case, included in the application, have not changed substantially, compared to a previously submitted application, on which the Panel has ruled. In 2020, 19 decisions on refusal to initiate a case were adopted on the basis of this norm.

Para 5 of Section 20 (5) of the Constitutional Court Law is based on the principle of procedural economy and relieves the Panel's work when the Court receives re-submitted applications with legal grounds and presentation of the facts of the case that are similar to the presentation of the facts of the case and legal grounds included in the application submitted previously.

152 Decision by the Constitutional Court's 4th Panel of 14 April 2020 on Refusal to Initiate a Case on the Basis of Application No. 58/2020.

One circumstance can be highlighted with respect to applications, received in 2020, with respect to which a decision to refuse initiation of the case was made in accordance with Para 5 of Section 20 (5) of the Constitutional Court Law. I.e., there have been cases when a person re-submits several times, substantially, identical constitutional complaints, and the Panel pointed out in several decisions that the presentation of the facts of the case and the legal grounds, included in the application, had not substantially changed in comparison with the application submitted previously, on which the Constitutional Court's Panel had already ruled.[153] On the one hand, the Constitutional Court Law does not prohibit from eliminating the deficiencies, identified by the Panel, and submitting an application that complies with statutory requirements. However, on the other hand, a person should exercise this right in good faith, and repeated re-submission of such, substantially, identical applications is to be seen as a negative trend as it creates additional burden for the Panels.

The legal grounds are obviously insufficient for satisfying the claim

Pursuant to Section 20 (6) of the Constitutional Court Law, the Panel has the right to refuse initiation of a case if the legal grounds, provided in the constitutional complaint, are obviously insufficient for satisfying the claim. In 2020, the Panels have made 23 decisions on refusal to initiate a case on the basis of the said provision.

Section 20 (6) of the Constitutional Court Law applies only to those instances where a constitutional complaint has been submitted to the Constitutional Court. These decisions by the Panels, basically, have pertained to issues that the Constitutional Court already had examined in its judicature. For example, in application No. 103/2020, the applicant had contested the compliance of the first and the third part with Section 169 of the Commercial Law[154] with the *Satversme*. It was noted in the application that the restriction, included in the contested norms, on the fundamental rights of Article 105 of the *Satversme*, had not been established by a law adopted in due procedure because the contested norms had not been worded sufficiently clearly and comprehensibly and were incompatible with Article 90 of the *Satversme*. It was alleged that the scope of the concept of "an honest and careful manager" could not be clearly derived from the contested norms and that the genuine meaning of these legal norms could not be established also by using methods of interpretation.

The Panel, referring to the Constitutional Court's judicature, noted: irrespectively of how precisely and clearly legal norms were formulated, the content thereof would always have to be clarified through interpretation. Since laws, as to their legal nature, are abstract precepts on behaviour, they can never be formulated with absolute precision. One of the techniques for drafting legal regulation is using general designations instead of exhaustive enumeration. Likewise, the use of general clauses or inclusion in a law open legal concepts are admissible if, in general, their aim, scope and link to the envisaged effects are clear. If a general clause is applied, legal guidelines, derived from the totality of all sources of law, can be used to specify it.

Whereas the concept of "an honest and careful manager", used in Section 169 (1) of the Commercial Law, is a general clause, from which the concrete official duties of a board member are to be derived in accordance with, for example, the size of the commercial company, type of commercial activities or the market situation. The features of "an honest and careful manager" are constituted by a series of objective obligations, *inter alia*, an obligation to abide by law, by-laws and decisions made by the shareholders' meeting, the obligation to be loyal and avoid taking decisions in a situation of conflict of interest, as well as the obligation to make informed, economically sound decisions. An important criterion for assessing the legality of actions by a board member is the compliance of his actions with the operational aims of the particular commercial company. A board member has the obligation to control constantly and be aware of the commercial company's financial situation. Hence, a board member's liability remains also in such cases when he had been unable to assess the financial situation of the commercial company adequately.

Taking into account these findings by the Constitutional Court, the Panel concluded that it had not been substantiated in the application that the meaning of the content of the concept of "an honest and careful manager", used in the contested norms, was not clear. Likewise, it had not been substantiated in the application why the legislator's obligation to specify the content of the concept of "an honest and careful manager" followed from the *Satversme*. Hence, the Panel recognised that the legal grounds, provided in the application for the alleged incompatibility of the contested norms with the *Satversme* had to be recognised as being obviously insufficient for satisfying the claim.[155]

153 Application No. 91/2019, No. 113/2019, No. 30/2020 and No.145/2020.

154 Section 169 (1) of the Commercial Law provides: "Members of the board of directors and of the council shall perform their obligations as would an honest and careful manager." Whereas the third part of this section sets out that the board and council member is not liable for losses that they have caused to the company if they prove that they have acted as an honest and careful manager.

155 Decision by the Constitutional Court's 2nd Panel of 4 June 2020 on Refusal to Initiate a Case on the Basis of Application No. 103/2020.

Other requests by the applicants

Other issues also had been decided on in the decisions by the Constitutional Court's Panels in refusal to initiate a case. In the majority of cases, upon concluding that the application is incompatible with the requirements set in the Constitutional Court Law and, thus, the case should not be initiated, the Panel leaves such requests unexamined. At the same time, in some cases the applicant's request has a decisive impact on the further course of the application. For example, following the receipt of application No. 102/2020, its submitter submitted additions to the application, by which he revoked his application. This request by the person was examined first of all in the Panel's decision. The Panel noted that Section 18 of the Constitutional Court Law regulates submission of an application. Inter alia, the principle of application is enshrined in this section. This means that the Constitutional Court decides on initiation of a case only on the basis of an application that meets statutory requirements. Since the Court had received additions to the application by which the applicant revoked his applications, it had to be recognised that the application no longer complied with the principle of application, included in Section 18 of the Constitutional Court Law. Hence, a case should not be initiated at the Constitutional Court.[156]

The submitter of application No. 186/2020, in turn, requested that the documents, annexed to his application, were returned to him since these were the original copies of the respective documents. The Constitutional Court's Panel noted that it could be concluded from the application and the documents annexed to it that the applicant was in an institution for deprivation of liberty. Hence, he could experience objective difficulties in preparing the derivatives of documents. In view of the above and in compliance with the principle of good governance, the Panel recognised that the copies of documents annexed to the application should be transferred for storage to the Constitutional Court's archive, whereas the original documents, annexed to the application, should be sent to the applicant.[157]

Legal aid in legal proceedings before the Constitutional Court

Pursuant to the State Ensured Legal Aid Law, such legal aid is available also in legal proceedings before the Constitutional Court. During the reporting period, the Legal Aid Administration received seven applications but legal aid was provided in one case. Last year, in turn, in the Constitutional Court reviewed two cases, the applications in which had been prepared with the framework of the state ensured legal aid. In one case the contested norm was recognised as being compatible with the *Satversme* and as being incompatible – in the other case.

156 Decision by the Constitutional Court's 1st Panel of 15 June 2020 on Refusal to Initiate a Case on the Basis of Application No. 102/2020.

157 Decision by the Constitutional Court's 1st Panel of 14 October on Refusal to Initiate a Case on the Basis of Application No. 186/2020.

4 DIALOGUE

Dialogue, as one of the corner-stones of effective communication, creates relationships that are based on mutual trust and confidence. In Latvia as a democratic state governed by the rule of law, qualitative dialogue is needed to promote development of the state and society. The Constitutional Court develops dialogue on the national, European and international level. The dialogue, implemented by the Constitutional Court, on all levels, appropriate for each target audience, is aimed at providing correct, comprehensible and timely information, sharing of opinions and reinforcement of basic values established in the *Satversme*. Accessibility of information and active communication promotes public trust in the judicial power. The Constitutional Court actively communicates with society and mass media representatives on daily basis. The Constitutional Court's Justices are developing also a close dialogue with the highest officials of the state, colleagues in the institutions of judicial power on the national, European and international level.

Until March 2020, the Constitutional Court operated in the customary regime; however, afterwards Covid-19 pandemic caused significant changes and additional challenges, which influenced the development of the Constitutional Court's dialogue on all levels. On the national level, the scheduled events of the dialogue were held remotely, using the possibilities offered by technologies. Whereas the events of the dialogue on the European and international level were postponed for the next year, some events were held remotely.

The Court's work during Covid-19 pandemic

The Constitutional Court as a constitutional body of the state has an important role in reinforcing the rule of law and protecting fundamental human rights in Latvia. The emergency situation, which was declared twice, the requirements of epidemiological safety and precautionary measures to curb the spread of Covid-19 infection from March until the end of the reporting period had a significant effect on the organisation of the Court's work, communication strategy and the course of the planned events in the dialogue.

The Constitutional Court adjusted operatively to the new conditions, made strategically well-considered and effective decisions to ensure that the Court's work could continue in full and the cases were heard within the terms set in law, at the same time eliminating risks to the health of Justices, the Court's employees, participants in cases, and visitors.

On court hearings

After the emergency situation was declared in spring, the Constitutional Court's leadership decided to make maximum use of all technologies available in the Court and introduce new technical solutions to allow the Justices and the Court's employees to work remotely. It was of particular importance to ensure to the Justices the possibility to convene for deliberations and to introduce the necessary improvements needed to hold remotely also court hearings, in which the participants in the case were present.

Court hearings with the presence of participants in the case could not be organised in the court room since it was impossible to ensure the distancing measures established in the state. Instead, court hearings were convened in the new conference hall where the Justices' seats could be arranged so as to comply with 2 meters distance. The court hearings with the presence of the participants in the case were held remotely, using the video conferencing regime. The participants in the case and the summoned persons were informed about the procedure for participating remotely in such court hearings.

The pronouncement of rulings as well as the press conferences, organised after the ruling was pronounced, also were held remotely. Public court hearings,

pronouncement of the ruling and press conferences were streamed online on the Court's homepage and *YouTube* channel, where the video recordings are permanently accessible to all interested parties.

The Constitutional Court of Latvia is the only constitutional court in Europe, which continued hearing cases also during the emergency situation in spring and held public court hearings, using the possibilities provided by technologies. In April, for the first time in the Court's history, a remote hearing of the Constitutional Court was held with the presence of the participants in the case No. 2019-12-01 regarding provision of study programmes at private higher education institutions in the official language. During the reporting period, the Constitutional Court heard remotely six more cases: No. 2019-24-03 on the guaranteed minimum income level; No. 2019-27-03 on the amount of the state social security allowance; No. 2019-23-01 on the right to request recusal of judges who decide on the initiation of cassation proceedings in a civil case; No. 2019-29-01 on the amount of financing set in the state budget for studies in state established higher education institutions; No. 2019-33-01 on the rights of the mother's female partner to a leave after the birth of a child; No. 2020-07-03 on the minimum amount of the state old age pension.

On visitors to the Court

With declaration of the emergency situation in March, the procedure for receiving visitors also changed. The Constitutional Court regularly informed society about continuation of the Court's work and the way the submission of applications, familiarisation with the materials in the case for the participants in the case and the reception of visitors was organised in compliance with the epidemiological safety requirements.

To eliminate risks to health of the Court's employees and visitors, various restrictions were introduced for the Court's visitors. Before entering the Court, all visitors had to disinfect theirs hands, the use of face masks and distancing were mandatory. The Constitutional Court encouraged the applicants, participants in the case and summoned persons to use electronic means of communication or the mailbox at the entrance to the Court. The Court employees answered the visitors' queries by phone.

In autumn, the Constitutional Court developed guidelines, specifying the organisation of the Court's works in various conditions of the spread of Covid-19 infection. The Constitutional Court follows the strategic action plan and adjusts its work to the situation.

Responding to the public request made by the National History Museum of Latvia, the Constitutional Court transferred into the Museum's disposal several testimonies of the Court's work during the emergency situation in the spring of 2020.

Publicly accessible announcements by the Constitutional Court on its work during the Covid-19 pandemic

Press releases: 1; 2; 3; 4; 5 [in English]
Tweets: 1; 2; 3; 4; 5; 6 [in Latvian]

Changes to the Constitutional Court's leadership

Elections of the President and the Vice-president

During the emergency situation, on 6 May 2020, the elections of the Constitutional Court's President and Vice-president were held. The Constitutional Court's hearing was held remotely, in the video conferencing regime, the Justices for the first time used an electronic voting system to vote for the candidates to the offices. The court hearing was streamed online. The video recording of the court hearing is available in the Court's *YouTube* channel. Ineta Ziemele was re-elected President of the Constitutional Court, whereas Sanita Osipova was re-elected to the office of Vice-president.

In September, President of the Constitutional Court Ineta Ziemele convened a press conference to inform society about the decision adopted by the Council of the European Union on 2 September 2020 No. (EU) 2020/1251, by which she had been appointed to the office of the Judge of the Court of Justice of the European Union from Latvia. 2 October 2020 was the last day of work for the Constitutional Court's President Ineta Ziemele. On 6 October 2020, Ineta Ziemele gave the solemn promise of the Judge and entered office of the Judge of the Court of Justice of the European Union for the remaining term of mandate of the former Judge of the Court of Justice of the European Union Egils Levits until 6 October 2024. Until the election of the new President of the Constitutional Court, the President's duties of office were performed by Vice-president Sanita Osipova.

On 14 October 2020, at the Constitutional Court's hearing, remote election of the Constitutional Court's President was held. The Justices of the Constitutional Court unanimously elected current Vice-president Sanita Osipova to the President's office. She will be in the President's office until 17 August 2021 when her mandate of the Constitutional Court's Justice expires. The court hearing was streamed online.

On 28 October 2020, the election of the Constitutional Court's Vice-president was held at a remote court hearing. The Constitutional Court's Justices elected unanimously Aldis Laviņš to the office of the Constitutional Court's Vice-president for the term of three years. The court hearing was streamed online.

The Constitutional Court concluded the reporting period in the composition of six Justices. The candidates for confirmation to the office of the Constitutional Court's Justice are proposed by all three branches of the state power. Justice Ineta Ziemele had been proposed for confirmation to the office of the Constitutional Court's

Justice by the *Saeima*, representing the legislative power, therefore the new candidate for confirmation to the office of the Constitutional Court's Justice also will be proposed by the *Saeima*.

06.05.2020.
Election of the Constitutional Court's President and Vice-president.
Press release [in English]
Tweets: 1 [in Latvian]; 2; 3 [in English]
Video [in Latvian]

04.09.2020.
The Constitutional Court's President continues working at the Constitutional Court until giving the solemn promise at the Court of Justice of the European Union.
Press releases: 1; 2 [in Latvian]
Press conference [in Latvian]
Tweets: 1; 2 [in Latvian]

21.09.2020.
President of the Constitutional Court Ineta Ziemele will commence performing the official duties of the Judge of the Court of Justice of the European Union on 6 October.
Press release [in English]
Tweet [in English]

02.10.2020.
Until the new President of the Constitutional Court is elected, her duties will be performed by Vice-president Sanita Osipova.
Press release [in English]
Tweet [in Latvian]

14.10.2020.
Sanita Osipova elected President of the Constitutional Court.
Press release [in English]
Tweets: 1; 2 [in English]

28.10.2020.
Aldis Laviņš elected Vice-president of the Constitutional Court.
Press release [in English]
Tweets: 1; 2 [in English]

The Constitutional Court's Administration

During the reporting period, the position of the Head of the Constitutional Court's Administration was created to reinforce the management model for the Constitutional Court's Administration in compliance with the European best practice examples. The duty of the Head of Administration is to ensure the administrative functioning of the Constitutional Court, to participate in the planning and implementation of development, in compliance with the instructions given by the Court's President, to represent the Constitutional Court's Administration in Latvian, foreign and international institutions, ensure financial management, plan the Court's budget and control its implementation. Since the end of August, Marika Laizāne-Jurkāne performs the duties of the Head of the Constitutional Court's Administration.

By the establishment of the position of the Head of the Constitutional Court's Administration, ensuring two assistants to each Justice and moving into the new wing of the Court's building, an important stage of modernisation has been completed at the Constitutional Court.

31.08.2020.
Marika Laizāne-Jurkāne commences work as the Head of the Constitutional Court's Administration
Press release [in English]
Tweet [in Latvian]

From the left: Justice of the Constitutional Court Jānis Neimanis, Justice of the Constitutional Court Daiga Rezevska, Vice-president of the Constitutional Court Aldis Laviņš, President of the Constitutional Court Sanita Osipova, Justice of the Constitutional Court Gunārs Kusiņš, Justice of the Constitutional Court Artūrs Kučs. Photo: Zanda Meinarte.

4.1. DIALOGUE WITH SOCIETY

The Constitutional Court regularly informs society about the cases that have been initiated and adjudicated, as well as about relevant issues in the Court's work and the dialogue events that are organised. It responds to the questions asked by mass media representatives and provides information on applications and cases that have attracted major public interest. The Constitutional Court informs society also about the Courts cooperation on the national, European and international level. The Constitutional Court also has undertaken to implement several national-level activities aimed at improving inhabitants' knowledge about the fundamental values of Latvia as a democratic state governed by the rule of law, included in the *Satversme*.

The Constitutional Court develops its dialogue with society in accordance with the Constitutional Court's Communication Strategy, abiding by the "Court Communication Strategy" and "Communication Guidelines of the System of Courts", approved by the Council for the Judiciary.

In view of the fact that the contemporary society needs easily accessible information, the Constitutional Court is engaged in active communication also on the social network *Twitter* and in *YouTube* channel. Succinct and easy-to-perceive tweets are published in *Twitter* account, the published information is supplemented by visual material, added to each tweet. Tweets are created to highlight issues related to legal proceedings, e.g., regarding initiation of cases, adopting a ruling, turning to the Court of Justice of the European Union, convening of public court hearings and press conferences. Tweets are also published to inform society about relevant issues unrelated to legal proceedings – the interviews given, events organised, participation in dialogue events and other activities. Findings expressed in the Constitutional Court's rulings, as well as vivid quotes from the Justices' presentations and interviews are highlighted in the tweets. During the reporting period, 466 entries have been made into the Court's *Twitter* account @Satv_tiesa, the account has 910 followers. *Twitter* tweet administration environment *Tweetdeck* testifies that, during the reporting period, tweets had had more than 949 500 views and more than 27 000 interactions. All video recordings, prepared by the Court, are stored in the Court's *YouTube* channel: court hearings with the presence of the participants in the case, webinars, videos from events, video greetings and other audio visual information. 238 followers have joined *YouTube* account and, during the reporting period, the channel had had 27 767 views.

Information about legal proceedings

To provide full and comprehensive information about an adopted ruling, for the third year already, in some cases, the Constitutional Court , in cooperation with the creative team of portal LV, crates video recordings of Justices. In this video, the Justice informs about the case, highlights the legal issues examined by the Court and the main findings, as well as draws attention to the ruling's impact on society. During the reporting period, twelve video commentaries [in Latvian] have been created on the following cases: on suspending a Member of the *Saeima*, against whom criminal prosecution has been commenced; No. 2019-09-03 on financing the work of Financial and Capital Market Commission; Nr. 2019-13-01 on the refusal to initiate cassation proceedings in civil procedure in the form of a resolution; No. 2019-11-01 on the refusal to initiate cassation proceedings in certain types of financial disputes; No. 2019-17-05 on clarifying the inhabitants' opinion regarding the intended changes to the boundaries of an administrative territory; No. 2019-21-01 on the amount of compensation for non-pecuniary damages; No. 2019-25-03 on recognising a person as being needy; No. 2019-31-01 on leaving a prison temporarily to attend the funeral of a close relative; No. 2019-22-01 on the clarity of the concept of public official in the Criminal Law ; No. 2019-35-01 on appealing against the prohibition to enter the state, established by the Minister for the Interior; No. 2019-37-0103 on compensation in the case if the regulation on using natural gas has been violated; No. 2020-16-01 on dismissing the Riga City Council because it allowed unlawful actions and failed to fulfil its autonomous function to organise household waste management.

If the case has been examined at a court hearing with the presence of the participants in the case, a press conference is organised after the ruling has been declared. Usually, the Court's President and the reporting Justice participate in such press conferences. Mass media representatives are invited to the press conference. Last year, press conferences were held remotely and were streamed online. All video recordings are preserved and are accessible to all those interested in the Constitutional Court's *YouTube* channel in Latvian. During the reporting period, seven press conferences were held on rulings in the following cases: No. 2019-12-01 on delivering study programmes at private higher education institutions in the official language; No. 2019-20-03 on the language of instruction at institutions of pre-school education; No. 2019-24-03 on the guaranteed minimum income level; No. 2019-27-03 on the amount of the state social security allowance; No. 2019-23-01 on the right of participants in the case to request recusal of judges in the stage of initiating cassation proceedings in civil procedure; No. 2019-29-01 on the amount of financing set in the state budget for studies at state-established higher education institutions; No. 2019-33-01 on a mother's female partner's right to a leave after the birth of a child.

Topicalities beyond legal proceedings

At the beginning of December 2019, Ketija Strazda, Assistant to the Constitutional Court's President, participated in the annual conference on human rights and good governance. She shared experience and spoke about the communications projects, implemented by the Constitutional Court, that helped to foreground such topics as the *Satversme*, fundamental rights and the basic values of Latvia as a democratic state governed by the rule of law.

Last April saw the publication of the bookazine, prepared by the Constitutional Court, "Article 92 of the *Satversme* of the Republic of Latvia: The Right to a Fair Trial. Judicature of the Constitutional Court". This is the first publication of the Constitutional Court in the series of publications dedicated to the Court's judicature in the matters of fundamental rights. The first edition was prepared by Advisors of the Constitutional Court Alla Spale, Elīna Podzorova, Gatis Bārdiņš, Sandijs Statkus, Kristaps Tamužs and Uldis Krastiņš, as well as Judge of the Administrative Regional Court Līga Biksiniece-Martinova, who, during the first half of 2019, acted as an Advisor of the Constitutional Court within the framework of judicial dialogue implemented by the Constitutional Court. More than 90 rulings by the Constitutional Court, adopted until 21 February 2019, were used in preparing the bookazine. This is the most comprehensive and sizeable edition, published in Latvia, dedicated to the content of the right to a fair trial. It includes a clear catalogue of principles and rights, included in Article 92 of the *Satversme*. This edition will be useful both to those who wish to defend their rights, defined in Article 92 of the *Satversme*, and the law policy makers. The bookazine was symbolically opened at the beginning of July. To mark the occasion, the Constitutional Court organised a webinar for the first time, highlighting the theme of the right to a fair trial. The webinar had more than 90 participants: judges, prosecutors, scholars of law, representatives of the *Saeima* Legal Bureau, the Ministry of Justice and other state institutions, faculty members, and lawyers.

At the beginning of May, the Constitutional Court participated in the events of the Democracy Week. Nine findings from the Constitutional Court's judgements were published on *Twitter* account, urging inhabitants to reflect on the fundamental values of Latvia as a democratic state governed by the rule of law.

In mid-July, the collection of articles by Justice Sanita Osipova "Nation, Language, Rule-of-Law State: Towards Tomorrow" was launched, it is dedicated to the historical path towards establishment of Latvia's statehood and the values, on which it is based. President Egils Levits also participated in the event.

At the end of August, a press conference was held at the Constitutional Court, in which President of the Constitutional Court Ineta Ziemele and Director of research centre Arnis Kaktiņš informed about the study [in Latvian], conducted for the first time, in which Latvia's inhabitants provided their view on the Constitutional Court and various aspects in its functioning. The data proved that the Constitutional Court was the most trusted institution of the judicial power – affirmative responses were given by 51 % of respondents. The research data show that only 30 % of respondents know the content of the *Satversme* "very well" or "known in general but not in detail". Whereas a large part of respondents – 54 % – have admitted that they have "have heard about it but do not known anything about it in greater detail", 14 % have said that they have not heard anything about the *Satversme*, 4 % have respondent that it was "hard to say". A similar break-down of answers is seen also in questions about being informed about the rights established in the *Satversme*, *inter alia*, the right to defend one's rights in a fair trial. Examination of the data regarding the inhabitants' awareness of the Constitutional Court shows that 23 % of the respondents have answered that they knew "very well" un "new in general but not in detail", 51 % of the respondents admitted that they "had heard something but do not know anything in greater detail", whereas 19 % of respondents said that they "had not heard anything", 7 % of the respondents have expressed the view that it was "hard to say". To characterise the public awareness of the Constitutional Court's functions, it must be noted that 28 %–54 % indicated the correct functions of the Court. However, a large part – 47 % of respondents – noted that the Constitutional Court reviewed judgements by lower instance courts and revoked them if they were incompatible with the *Satversme*, although the Constitutional Court does not have this competence. The research data show that the respondents' main source of information about the Constitutional Court's work is the Latvian Television,

Awards ceremony of the pupils' drawings and essay competition at the Constitutional Court. Photo: Toms Norde.

mentioned by 60 % of respondents. 30 % of respondents have mentioned TV3, 27 % of respondents – Facebook, 23 % of respondents – the Latvian Radio, 21 % of respondents – Tvnet.lv, 21 % of respondents – Delfi.lv, and 27 % respondents – other online news portals. 38% of respondents have agreed that the Constitutional Court's judgements "definitely are" "rather are" enforced, whereas 35 % of respondents have expressed the opinion that the judgments "rather are not" and "definitely are not" enforced. The data show that only 17 % of respondents believe that the possibilities to defend one's rights at the Constitutional Court are "fully sufficient" and "rather sufficient", whereas 53 % of respondents believe that the possibilities are "rather insufficient" or "totally insufficient", for 30 % of respondents it is "hard to say". Answering to the question why people turned to the Constitutional Court comparatively rarely, respondents mentioned insufficient knowledge, lack of information, excessive complexity and financial aspects as the most typical obstacles.

At the beginning of September, President of the Constitutional Court Ineta Ziemele and Justice Gunārs Kusiņš participated in discussions of issues relevant for Latvia's society, organised by the conversation festival LAMPA. Ineta Ziemele participated in the discussion "Building the rule of law together", organised by the Supreme Court", in the discussion "Is the Fight for Human Rights Over in Latvia" and in the online conversation, organised by the Public Law Institute, "About the *Satversme* and Justice". Gunārs Kusiņš participated in the online discussion, organised by the Public Law Institute "About the People and the State of Latvia".

Also last year the Constitutional Court encouraged inhabitants to use the database [in Latvian] of the Constitutional Court's judicature. It comprises the most important findings from the Constitutional Court's judgements, decisions on terminating legal proceedings and the Justices' separate opinions. These findings are arranged by keywords and categories. The database also provides information on applicants, contested norms, institutions that have issued these, as well as other information related to legal proceedings before the Constitutional Court. The database is accessible after downloading and installing software *Citavi* on one's computer.

Students and teachers

Throughout the previous year, the Constitutional Court continued the targeted dialogue with school students. The Constitutional Court drew the students' attention to the foundations of the Latvian State, the structure of legal system, explained why society needed the state and law. The importance of the *Satversme* and the fundamental lights was still highlighted, as well as the Constitutional Court's role in the development of Latvia as a democratic state governed by the rule of law.

Likewise, the tradition that was initiated on the 20th anniversary of the Constitutional Court was continued last year, i.e., Justices and employees of the Constitutional Court visit educational institutions to give educational lectures on the basic principles of the State's structure, the *Satversme* and the Constitutional Court. During the reporting period, two educational institutions were visited: the 2nd State Gymnasium of Riga and the 21st Secondary School of Riga. Several trips of the Constitutional Court's Justices and employees to educational institutions were cancelled due to the epidemiological situation.

The Constitutional Court also continued its cooperation with the youth magazine "Ilustrētā Junioriem". An interview with the Constitutional Court's Justice Artūrs Kučs on the importance of huma rights was published in January issue of 2020, whereas the article by Kristīne Zubkāne, assistant to the Constitutional Court's Justice Ineta Ziemele, on personal data protection, appeared in February issue of 2020.

In February, the final ceremony [in English] of the competition of students' drawings "My Fundamental Rights in the *Satversme*" and the essay competition "The Next Hundred Years of Latvian *Satversme*" was held. 100 schools applied for participation in the competition of creative works, 329 were submitted.

Students and teachers from 20 schools were invited to the awards ceremony. Officials from the Ministry of Education and Science, the Ministry of Culture, the Ministry of Justice, partners of cooperation in the competition – representatives from the Latvian Academy of Arts, magazine "Jurista Vārds", magazine "Ilustrētā Junioriem", magazine "Domuzīme", the Public Law Institute, as well as the great-granddaughter of the first President of Latvia Jānis Čakste Kristīne Čakste participated in the event. Insight into the award ceremony is provided by a video [in English]. To ensure that students' work could be seen throughout Latvia, last year, the Constitutional Court also published a catalogue [in Latvian] of students' work. It comprises 11 essays and 35 drawings, as well as dicta by the Constitutional Court's Justices on freedom and responsibility. Catalogues were sent to the schools, which participated in the competition, as well as the largest libraries in Latvia.

In September, in honour of the 99th anniversary of the *Satversme*, the Constitutional Court announced the fourth competition [in Latvian] of students' essays and drawings on fundamental values, included in the *Satversme*. The creative work competition was launched in an unusual way, by organising a webinar [in Latvian] for students of Grades 9 and Grades 12 "Pupil – a Responsible Citizen of Latvia". The Constitutional Court's President Ineta Ziemele spoke about equality and human rights in a democratic state governed by the rule of law, whereas Vice-president Sanita Osipova told young people about the *Satversme* and its role in Latvia's development. Forms from 66 schools participated in the webinar, covering all regions of Latvia. Educational informative video [in Latvian], prepared for the students, on the Constitutional Court and its work was presented during the webinar. The recording of the webinar and the prepared presentations were forwarded electronically to all schools in Latvia for future use.

The webinar introduced the topics of the competition for school students: the topic for the 6th graders competition of drawings is "Every child is equal in his or her rights", the topic for the competition of essays of 9th graders is "How can I help my family and schoolmates exercise their equal rights", and for the essay competition of 12th formers – "How does the *Satversme* help me develop into a responsible citizen of Latvia?" All Justices of the Constitutional Court will evaluate the submissions. The winners of the competition, recipients of writs of recognition and their teachers will be invited to the awards ceremony in February 2021. The topics of the competition were highlighted also by the creative team of Radio 5, who invited the Constitutional Court's President Ineta Ziemele for an interview and created the content for the social site *TikTok*.

Law students and student organisations

In June, the Constitutional Court's Justice Artūrs Kučs and Justice's assistant Eva Vīksna headed the student team of the Faculty of Law, the University of Latvia, which participated remotely in VIII European Human Rights Moot Court Competition, organised by the European Law Students Association, and won the first place in the finals. Kristiāna Pētersone, the assistant to Justice Daiga Rezevska, was also a member of the team.

In August, President of the Constitutional Court Ineta Ziemele participated in the third Professor Kārlis Dišlers Public Law Summer School, remotely giving the introductory lecture in the idea and value of privacy in the digital age.

The Justices and legal staff of the Constitutional Court supported Professor Kārlis Dišlers XXII Moot Constitutional Court, organised by Professor Kārlis Dišlers Foundation and the European Law Students Association (ELSA Latvia), which was held remotely.

Last year, the customary visits by local and foreign students at the Constitutional Court did not take place. Neither did the Constitutional Court offer internship opportunities to law students at the Legal Department. The annual co-operation with the Ombudsman's office in organising the final session of the moot court in the Constitutional Court's premises had to be cancelled.

Scholars of law

At the beginning of the reporting period, the second thinktank of the constitutional law experts [in Latvian] was held at the Constitutional Court, organised in honour of the 23rd anniversary of the Constitutional Court. Researchers of constitutional law, renown in Latvia, gathered for the event. Participants of the thinktank shared their views on the following themes: improving the process of legislation as the basis for the development of a democratic state governed by the rule of law and the significance of the Constitutional Court's rulings in Latvia.

In February, President of the Constitutional Court Ineta Ziemele participated in the discussion, organised by President Egils Levits, in honour of the 25th anniversary of Latvia's accession to the Council of Europe. The participants of the discussion spoke about the significance of Latvia's membership in the Council of Europe in reinforcing the rule of law and human rights in Latvia and the present and future challenges for the Council of Europe.

In February, the plenary session of the programme of legal science of the 78th International Scientific Conference of the University of Latvia was held, it was opened by the Constitutional Court's Justice Artūrs Kučs. He gave a presentation on application of international human rights at the Constitutional Court. Lolita Buka, an assistant to a Justice, also participated at the conference, she spoke about the right to be forgotten and the alternatives to this right.

In September, the edition of "Commentaries to the *Satversme* of the Republic of Latvia, Chapter II. "The

Conversation about Latvia "Personality and the State" at the National Library of Latvia. From the left: writer Rudīte Kalpiņa, President of the Constitutional Court Sanita Osipova and scholar of book publishing Viesturs Zanders. On the screen: Judge of the Court of Justice of the European Union Ineta Ziemele, pedagogue Zane Ozola, head of "Ziedot.lv" Rūta Dimanta and economic anthropologist Andris Šuvajevs. Photo: Ketija Strazda.

Saeima"" was solemnly launched at the *Saeima*. The sizeable publication included explanations on Chapter II of the *Satversme*. This edition concluded the series of scientific commentaries on the *Satversme*. The Constitutional Court's Justices Gunārs Kusiņš and Jānis Neimanis, as well as Head of the Court's Legal Department Alla Spale were among the participants of the event. Justice Gunārs Kusiņš is the author of the commentary on Article 15 of the *Satversme* and also serves on the scientific editorial board. Justice Jānis Neimanis, in turn, prepared commentary on Article 24 of the *Satversme*. Alla Spale, the Head of the Court's Legal Department, also was involved in the creation of this volume, being a co-author of the commentary on Article 28 of the *Satversme*. The project of scientific commentaries to the *Satversme* began in the summer of 2008. It is a collective study by scholars of law, experts, faculty members and professionals of the field, providing insight into the historical origins of the articles of the *Satversme*, explaining the scope and contemporary understanding of an article. Several former and incumbent Justices of the Constitutional Court, as well as the Court's lawyers, explaining the norms of the *Satversme*, have contributed greatly to the creation of commentaries.

In October, Justice of the Constitutional Court Jānis Neimanis participated as an expert in the webinar organised by the Ministry of Justice and the Court Administration "The Role of Courts in Economic Development". The Justice provided insight into the role of the justice and the rule of law in the national economic development.

In November, Vice-president of the Constitutional Court Sanita Osipova participated remotely in the annual conference on topical human rights issues in Latvia, held by the Riga Graduate School of Law and the Ministry of Foreign Affairs. In her presentation, Sanita Osipova spoke about several cases, adjudicated by the Constitutional Court last year, which revealed the concept of human dignity and pertained to various aspects in respecting fundamental human rights. Former President of the Constitutional Court, Judge of the Court of Justice of the European Union Ineta Ziemele also participated in the conference.

Representatives of creative industries

The Constitutional Court continued the tradition, initiated in the spring of 2018 together with the National Library of Latvia, to organise interdisciplinary conversations between representatives of various sectors about Latvia, the state, society and the basic values, enshrined in the *Satversme*. Participants of these conversations, seeking inspiration in the most vivid episodes of Latvian history and cultural heritage and the most important works, discuss various topics affecting society, the existence and substance of the Latvian State. Two *Conversations about Latvia* were held during the reporting period. In view of epidemiological safety measures, both events were held remotely, without the presence of the invited guests. All those interested could follow the streamed conversations.

In mid-June, the fifth *Conversation about Latvia* "Is responsibility freedom?" was held. This time, it inspired an exchange of opinions on the sentence included in the fifth paragraph of the Preamble to the *Satversme*: "Each individual takes care of oneself, one's relatives and the common good of society by acting responsibly toward other people, future generations, the environment and nature". The content of this conversation was revealed by journalist Marta Selecka, philosopher Raivis Bičevskis, director Viesturs Kairišs and physician Kārlis Rācenis. The discussion was moderated by the leading researcher of the National Library of Latvia Vija Daukšte. At the end of the conversation, President of the Constitutional Court Ineta Ziemele provided a summary of it.

At the end of October, the sixth *Conversation about Latvia* "Personality and the State" was held. The conversation was introduced by a quote from Kārlis Skalbe's fairy-tale "How I Went in Search of

a Nordic Maiden" – "How low, how low their sky was!". This time the conversation was an exchange of opinions on the interaction between a personality and the state. It was opened by President of the Constitutional Court Sanita Osipova and moderated by writer Rudīte Kalpiņa. Pedagogue Zane Ozola, head of "Ziedot.lv" Rūta Dimanta, economic anthropologist Andris Šuvajevs and researcher of book publishing Viesturs Zanders expressed their opinions. In conclusion, the summary of the conversation was provided by former President of the Constitutional Court, Judge of the Court of Justice of the European Union Ineta Ziemele.

Conferences, discussions and other relevant developments

09.12.2019.
Information about the 23rd anniversary of the Constitutional Court.
Tweet [in Latvian]

10.12.2019.
Ketija Strazda, assistant to the Constitutional Court's President, participates in the annual conference on human rights and good governance.
Tweet [in Latvian]

13.12.2019.
The second thinktank of constitutional law experts held in honour of the Court's 23rd anniversary.
Press release [in Latvian]
Video [in Latvian]
Tweets: 1; 2; 3 [in Latvian]
Photo

13.12.2020.
Opening of the Constitutional Court's conference hall.
Tweet [in Latvian]

24.12.2019.
The Constitutional Court's Christmas and New Year's greetings to the people of Latvia.
Greetings [in Latvian]

29.01.2020.
Vice-president of the Constitutional Court gives an educational lecture at the 2nd State Gymnasium of Riga.
Press release [in Latvian]
Tweet [in Latvian]
Photo

29.01.2020.
Book "Procedural Rights of the Constitutional Court's Proceedings" by Justice of the Constitutional Court Jānis Neimanis published.
Tweet [in Latvian]

10.02.2020.
President of the Constitutional Court participates in the discussion, organised by President Egils Levits, dedicated to the 25th anniversary of Latvia's accession to the Council of Europe.
Press release [in Latvian]
Tweet [in Latvian]
Photo

10.02.2020.
Justice of the Constitutional Court Artūrs Kučs opens the plenary session of the programme of legal science of the 78th International Scientific Conference of the University of Latvia, Lolita Buka, an assistant to the Justice, also gives a presentation at the conference.
Press release [in Latvian]
Tweets: 1; 2 [in Latvian]

15.02.2020.
Information about the 98th anniversary of the *Satversme*.
Tweet [in Latvian]

17.02.2020.
The awards ceremony of the competition of drawings for pupils of Grade 6 and the competition of essays for pupils of Grade 9 and Grade 12 held at the Constitutional Court.
Press releases: 1; 2 [in Latvian]
Video [in Latvian]
Tweets: 1; 2; 3; 4 [in Latvian]
Photo

08.04.2020.
The Constitutional Court publishes its first bookazine "Article 92 of the *Satversme* of the Republic of Latvia: The Right to a Fair Trial. The Constitutional Court's Judicature".
Press release [in English]
Tweet [in English]

12.04.2020.
The Constitutional Court's Easter greetings to the people of Latvia.
Greetings [in Latvian]

01.05.2020.
The Constitutional Court's greetings to the people of Latvia on the centenary of convening the Constitutional Assembly and the 30th anniversary of adopting the Declaration of Independence.
Greetings [in Latvian]

01.05.2020.
President of the Constitutional Court Ineta Ziemele and the Constitutional Court's Justice Gunārs Kusiņš lay flowers at the monument to the first President of Latvia Jānis Čakste.
Tweet [in Latvian]
Photo

01.–09.05.2020.
The Constitutional Court participates in the Democracy Week, by publishing findings expressed in its rulings.
Tweets: 1; 2; 3; 4; 5; 6; 7; 8; 9 [in Latvian]

04.05.2020.
The Constitutional Court's Justices participate in the flower laying ceremony at the Freedom Monument in honour of the 30th anniversary of adopting the Declaration of Independence.
Tweet [in Latvian]
Photo

05.06.2020.
Students of the University of Latvia, led by the Constitutional Court's Justice Artūrs Kučs and his assistant Eva Vīksna, win at a prestigious international moot court competition.
Press release [in English]
Tweet [in English]

09.05.2020.
The Constitutional Court's greetings on Europe Day to the people of Latvia.
Greetings [in Latvian]

14.06.2020.
President of the Constitutional Court Ineta Ziemele participates in the flower laying ceremony at the Freedom Monument on the Memorial Day for the Victims of Communist Genocide.
Tweet [in Latvian]
Photo

17.06.2020.
The Constitutional Court, in cooperation with the National Library of Latvia, organises the fifth *Conversation about Latvia* on the topic "Is responsibility freedom?".
Press release [in Latvian]
Video [in Latvian]
Tweets: 1; 2; 3; 4; 5 [in Latvian]
Photo

21.06.2020.
The Constitutional Court's greetings to the people of Latvia on Midsummer Solstice.
Greetings [in Latvian]

09.07.2020.
The Constitutional Court organises a webinar on the topic "Protection of the Rights Included in Article 92 of the *Satversme* at the Constitutional Court".
Press release [in English]
Video [in Latvian]
Tweet [in Latvian]
Photo

17.07.2020.
The book launch event of the collection of articles "Nation, Language, Rule-of-Law State: Towards Tomorrow" by Vice-president of the Constitutional Court Sanita Osipova held at Constitutional Court.
Press release [in English]
Tweet [in Latvian]
Photo

21.08.2020.
President of the Constitutional Court Ineta Ziemele and Vice-president Sanita Osipova attend the discussion organised by the Programme Youth Delegates to the United Nations "Human Capital of Latvia – Youth".
Tweet [in Latvian]

24.08.2020.
President of the Constitutional Court Ineta Ziemele participates in the third Professor Kārlis Dišlers Public Law Summer School.
Tweet [in Latvian]

27.08.2020.
President of the Constitutional Court Ineta Ziemele and Director of research centre SKDS Arnis Kaktiņš inform about the research, conducted for the first time, on public trust in the Constitutional Court.
Press release [in English]
Press conference [in Latvian]
Tweets: 1; 2; 3 [in Latvian]
Research [in Latvian]

03.–04.09.2020.
President of the Constitutional Court Ineta Ziemele and Justice Gunārs Kusiņš participate in discussions organised by conversation festival LAMPA.
Press release [in Latvian]
Video: 1; 2; 3; 4 [in Latvian]
Tweets: 1; 2; 3; 4 [in Latvian]

07.09.2020.
President of the Constitutional Court Ineta Ziemele visits the memorial site "Likteņdārzs", where a site of remembrance to the founders of the State of Latvia and those who restored its independence was unveiled.
Tweet [in Latvian]

08.09.2020.
The Constitutional Court's Justices Gunārs Kusiņš and Jānis Neimanis, as well as Head of the Court's Legal Department Alla Spale participate at the book launch event of the volume of commentaries on the *Satversme* held at the *Saeima*.
Press release [in Latvian]
Tweet [in Latvian]
Photo

23.09.2020.
President of the Constitutional Court Ineta Ziemele participates in the commemorative event, organised by President Egils Levits, in honour of the reburial in Latvia of Miķelis Valters, the outstanding Latvian statesman and public figure.
Tweet [in Latvian]
Photo

28.09.2020.
The Constitutional Court holds a webinar to launch the school students' drawing and essay competition on the *Satversme*.
Press release [in Latvian]

Video [in Latvian]
Tweet [in Latvian]

28.09.2020.
The Constitutional Court published an informative video on the Court's competence, Justices and employees of the Constitutional Court, as well as the specificity of the Court's work.
Video [in English]

08.10.2020.
The Constitutional Court's Justice Artūrs Kučs participated in the book launch event of the bookazine, published by "Jurista Vārds", on data protection and security in the age of technologies.
Video [in Latvian]
Tweet [in Latvian]

09.10.2020.
The Constitutional Court's Justice Artūrs Kučs and his assistant Eva Vīksna participate in the conference organised by the Programme of Youth Delegates to the United Nations "Human Rights and Health".
Tweet [in Latvian]

15.10.2020.
President of the Constitutional Court Sanita Osipova participates in the discussion, organised by President Egils Levits, dedicated to the Official Language Day.
Photo [in Latvian]
Tweet [in Latvian]

21.10.2020.
The Constitutional Court's Justice Jānis Neimanis participates in the webinar organised by the Ministry of Justice and the Court Administration "The Role of Courts in the Economic Development".
Press release [in Latvian]
Video [in Latvian]
Tweet [in Latvian]

27.10.2020.
The Constitutional Court, in cooperation with the National Library of Latvia, organises the sixth *Conversation about Latvia* on the topic "Personality and the State".
Press releases: 1; 2 [in Latvian]
Video [in Latvian]
Tweets: 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11 [in Latvian]
Photo

11.11.2020.
The Constitutional Court's greetings to the people of Latvia on Lāčplēsis Day - the Latvian Freedom Fighters Remembrance Day
Greetings [in Latvian]

17.11.2020.
President of the Constitutional Court Sanita Osipova participates in the event in honour of the 102nd anniversary of the Proclamation of the Republic of Latvia, held by the University of Latvia.
Video [in Latvian]
Tweets: 1; 2 [in Latvian]

18.11.2020.
The Constitutional Court's greetings on the 102nd anniversary of the Republic of Latvia.
Greetings [in Latvian]
Video [in Latvian]

18.11.2020.
Justices of the Constitutional Court participate in the flower laying ceremony in honour of the 102nd anniversary of the Republic of Latvia.
Tweet [in Latvian]

27.11.2020.
President of the Constitutional Court Sanita Osipova participates remotely in the annual conference on relevant human rights issues in Latvia, held by the Riga Graduate School of Law and the Ministry of Justice.
Press release [in Latvian]
Tweets: 1; 2 [in Latvian]

30.11.2020.
Vice-president of the Constitutional Court Aldis Laviņš receives the Certificate of Gratitude from the Ministry of Justice for significant contribution to the work of the standing working group on the Civil Procedure Law and development of civil procedure.
Tweet [in Latvian]

4.2. DIALOGUE WITH PUBLIC INSTITUTIONS

In a democratic state governed by the rule of law, a constant dialogue between public institutions is needed to ensure effective functioning of the mechanism of checks and balance in the relations between the branches of state power. From the perspective of effective functioning of the state, it is important that all branches of state power perform their functions duly, do not exceed the limits of competence granted to them and would respect one another. Close cooperation between constitutional bodies is particularly important in conditions of an emergency situation.

The Constitutional Court organises annual meetings with the heads of all constitutional bodies, as well as the Minister for Justice. Last year the Minister for Culture was also invited to the meeting in connection with the upcoming centenary of the *Satversme* in 2022.

The main topics of the dialogue were the continuity of the Constitutional Court's work in the conditions of an emergency situation and timely and effective enforcement of the Constitutional Court's rulings. Relevant issues of constitutional law in Latvia and other important aspects related to increasing the public trust in the judicial power and reinforcing the rule of law in Latvia also were discussed.

The discussion "The State Council's Role in Legislation", co-organised by the Chancery of the President of Latvia and the Constitutional Court, was held in February in the *Saeima*. Its aim was to facilitate an exchange of opinions on the idea of establishing an independent State Council in Latvia, which would improve the quality of legislative procedure and foster the sustainability of the state.

In March and September, President of the Constitutional Court Ineta Ziemele participated in the joint sittings of the heads of the national constitutional bodies, convened by President Egils Levits, to discuss the basic principles of functioning for the branches of state power – legislative, executive and judicial power – in the state in the conditions of Covid-19 pandemic. The officials jointly decided on the way to ensure continuous functioning of the state constitutional structure. This joint meeting was important for the inhabitants to feel safe and convinced that the situation in the state was stable and under control. It attested to the ability of the constitutional bodies' representatives to be united and coordinated, in dealing with issues important for all inhabitants of Latvia.

07.02.2020.
Discussion "The State Council's Role in Legislation", co-organised by the Chancery of the President of Latvia and the Constitutional Court, held.
Press release [in English]
Video [in Latvian]
Tweets: 1; 2 [in Latvian]
Photo

23.03.2020
President of the Constitutional Court Ineta Ziemele participates in the joint sitting of the heads of the state constitutional bodies, convened by President Egils Levits.
Press release [in English]
Tweet [in Latvian]
Press conference [in Latvian]
Joint declaration by the state constitutional bodies to society [in Latvian]

03.06.2020.
The Constitutional Court's Justices meet with President Egils Levits.
Press release [in English]
Tweet [in Latvian]
Photo

15.06.2020.
President of the Constitutional Court Ineta Ziemele meets with Minister for Culture Nauris Puntulis.
Tweet [in Latvian]

08.09.2020.
The Constitutional Court's Justices meet with Speaker of the *Saeima* Ināra Mūrniece.
Press release [in English]
Tweet [in Latvian]
Photo

30.09.2020.
President of the Constitutional Court Ineta Ziemele participates in the second joint sitting of the heads of the state constitutional bodies, convened by President Egils Levits.
Tweet [in Latvian]
Photo

03.11.2020.
President of the Constitutional Court Sanita Osipova meets with President Egils Levits.
Press release [in English]
Tweet [in Latvian]
Photo

13.11.2020.
President of the Constitutional Court Sanita Osipova meets with Minister for Justice Jānis Bordāns during an official visit.
Press release [in Latvian]
Tweet [in Latvian]

4.3. JUDICIAL DIALOGUE WITHIN THE EUROPEAN LEGAL SPACE

The European legal space is formed by the legal spaces of the Member States of the European Union, which are encompassed by the legal system of the European Union and where the European Convention for the Protection of Human Rights and Fundamental Freedoms is directly applicable. The Constitutional Court' dialogue with other courts in Latvia, constitutional courts of other Member States of the European Union, as well as with the Court of Justice of the European Union and the European Court of Human Rights takes place in the European legal space. This judicial dialogue allows sharing experience, gaining new knowledge, engaging in constructive discussions and exchanging opinions on relevant constitutional law matters and issues of law not only on the national but also on the European and global level.

Judicial dialogue in Latvia

In September, the Constitutional Court's Justices met for the first time for on-site dialogue with Judges of the Supreme Court. During the meeting, the parties discussed relevant matters of the judicial power, debated several legal issues and discussed the most recent findings in the Constitutional Court's judgements.

To strengthen the constitutional structure of the State of Latvia and to promote judicial dialogue, in October, the Constitutional Court, in co-operation with the Ministry of Justice and the Court Administration, announced the fourth successive competition, inviting judges from courts of general jurisdiction and administrative courts to apply for a six-months period of experience sharing at the Constitutional Court. During this period, the selected judge will be able to participate in reviewing applications, work on cases in various stages of the legal proceedings before the Constitutional Court, as well as study the Constitutional Court's judicature.

The judicial dialogue between the Justices of the Constitutional Court and judges of Vidzeme Regional Court, scheduled for autumn, has been postponed to 2021.

Judicial dialogue on the European and international level

At the very beginning of the reporting period, President of the Constitutional Court Ineta Ziemele and Advisor to the Constitutional Court's President Inguss Kalniņš paid an official visit to the Constitutional Court of Slovenia. During the solemn court hearing, Ineta Ziemele gave the presentation "Human Dignity in the Age of Technologies and the Role of Constitutional Courts therein". She highlighted the special duty of the constitutional courts in the age of technologies

Justices of the Constitutional Court meet with the Supreme Court's Judges. Photo: Supreme Court.

to upkeep the values included in their national constitutions, among which human dignity takes a special place in the democratic world. In the framework of the visit, the President of the Constitutional Court met with President of Slovenia Borut Pahor.

At the end of January, Justice of the Constitutional Court Daiga Rezevska went on an experience sharing visit to the General Court of the European Union in Luxemburg. She met with Judge Inga Reine of the said Court and legal staff members of the judge's office. During the visit, Justice Daiga Rezevska gained insight into the process of organising the daily work of the General Court, in the process of preparing and hearing cases, she also attended four court hearings. Justice Daiga Rezevska discussed with Judge Inga Reine and employees of her office several relevant matters of law, *inter alia*, the General Court's judicature thus far in cases pertaining to the civil service of the European Union, competition law, intellectual property, and public procurement.

At the beginning of February, President of the Constitutional Court Ineta Ziemele attended the annual solemn opening of the judicial year of the European Court of Human Rights in Strasbourg, France. The judicial year was opened by an international seminar, in which participants from all Member States of the Council of Europe discussed the development of the European Convention for the Protection of Human Rights and Fundamental Freedoms, assessing the judicature of the European Court of Human Rights from the perspective of science and technological development.

The Constitutional Court, in co-operation with the Court of Justice of the European Union, had planned to organise an international conference "United in Diversity: Between Shared Constitutional Traditions and National Identity in the European Union" in Riga in March. For several months, both Courts were engaged in large-scale preparatory work; however, due to the fast outbreak of Covid-19 infection and the emergency situation, declared in the state, the conference was not held in March. It was postponed to the autumn of 2021.

In the beginning of December, the Constitutional Court's Justices met remotely with Justices of the Federal Constitutional Court of Germany. During two sessions, Justices discussed the Courts' work during the previous year, talked about the content of the principle of human dignity in recent rulings by both Courts, and shared their experience in holding a dialogue with the Court of Justice of the European Union.

Several bilateral and trilateral meetings of the Constitutional Court's Justices with their colleagues from Austria, France, Estonia, Italy, Lithuania and Slovenia had been scheduled. Likewise, several Justices of the Constitutional Court had planned to go on experience sharing visits to the Supreme Court of the Netherlands and the Federal Constitutional Court in Germany. Also the experience sharing visit of the employees to the Court of Justice of the European Union was postponed. The postponed activities will be implemented when the spread of Covid-19 is curbed and the general situation in Europe has stabilised.

19.12.2019.
President of the Constitutional Court Ineta Ziemele and Advisor to the Constitutional Court's President Inguss Kalniņš pay an official visit to the Constitutional Court of Slovenia and meet with the President of Slovenia Borut Pahor.
Press release [in English]
Tweets: 1; 2 [in English]
Photo

27.–31.01.2020.
Justice of the Constitutional Court Daiga Rezevska visits the General Court of the European Union in Luxemburg.
Press release [in English]
Tweet [in English]

29.01.–03.02.2020.
President of the Constitutional Court Ineta Ziemele attends the annual solemn event for the opening of the judicial year of the European Court of Human Rights in Strasbourg, France .
Press release [in English]
Video [in English]
Tweets: 1[in English]; 2 [in Latvian]

21.04.2020.
President of the Constitutional Court Ineta Ziemele participated in the webinar of the academic blog *Strasbourg Observers*.
Press release [in English]
Video [in English]
Tweets: 1 [in English]; 2 [in Latvian]

25.09.2020.
Justices of the Constitutional Court meet with the Judges of the Supreme Court.
Press release [in Latvian]
Tweet [in Latvian]
Photo

22.10.2020.
The Constitutional Court, in co-operation with the Ministry of Justice and the Court Administration, announced a competition for the judges of the courts of general jurisdiction and administrative courts, inviting to apply for experience sharing.
Press release [in Latvian]
Tweet [in Latvian]

08.12.2020.
Justices of the Constitutional Court in remote meeting with Justices of the Federal Constitutional Court of Germany.
Press release [in English]
Tweet [in English]

4.4. INTERNATIONAL COOPERATION

In recent years, the Constitutional Court and its Justices have gained extensive recognition on the international level – it has been facilitated by the Justices' frequent participation in various international conferences and events. The Constitutional Court's Justices are regularly invited to attend international conferences and forums held by foreign states and to give presentations at the events. During the reporting period, the majority of the scheduled international events were cancelled or postponed to 2021. However, some organisers undertook organisation of some discussions remotely, thus facilitating active dialogue on legal issues also during the period of Covid-19 pandemic. At this time, it is important to maintain communication with foreign colleagues to share information and ideas, exchange opinions, discuss relevant matters of law and be inspired by each other.

In February, before the onset of pandemic, Justice of the Constitutional Court Artūrs Kučs and his assistant Eva Vīksna visited Kishinev to participate in the conference, dedicated to the 25th anniversary of the Constitutional Court of Moldova, "The Constitutional Court and the Public Response: when the Solutions by the Constitutional Court do not Coincide with the Public Opinion of Majority". Justice of the Constitutional Court Artūrs Kučs gave a presentation on the Constitutional Court's experience in developing a dialogue with society.

In August, Justice Artūrs Kučs participated remotely in the international conference held by the Constitutional Council of Kazakhstan "Constitution of the 21st Century – Rule of Law, Value of a Human Being and Effectiveness of the State", where he spoke about the importance of the *Satversme* in Latvia and the role of the Constitutional Court in the development of the rule of law un fundamental human rights. In September, he gave a remote presentation on the situation related to the rule of law in Latvia at the international conference, organised by the Ministry of Foreign Affairs of the Kingdom of the Netherlands and the Netherlands' Embassy to Europe, on the impact of Covid-19 pandemic on the rule of law and freedom of speech in Europe.

In September, President of the Constitutional Court Ineta Ziemele participated remotely in the online conference, organised by Mykolas Romeris University, "70 Years of the European Convention on Human Rights: Challenges and Prospects". In her presentation, she spoke about the challenges caused by Covid-19 pandemic to the European states and shared the experience, how, in the spring, the Latvian constitutional bodies ensured continuity of their functioning during the emergency situation.

Also in 2020, the Constitutional Court engaged in active cooperation with the authorised representatives of foreign states in Latvia. To discuss constitutional law matters of relevance for the states, linked to reinforcing of the constitutional identity and developing public awareness of constitutional values, President of the Constitutional Court Ineta Ziemele met with new Ambassador Extraordinary and Plenipotentiary of the French Republic to Latvia Aurélie Royet-Gounin, Ambassador of Slovenia to Latvia Ladislav Babčan, and Ambassador of the Kingdom of the Netherlands to Latvia Govert Jan Cornelis Bijl de Vroe. At the beginning of February, all Justices visited the Embassy of the Republic of France in Latvia, where they were welcomed by Odile Soupison, the Ambassador Extraordinary and Plenipotentiary of the French Republic to Latvia.

In November, Justices of the Constitutional Court met remotely with the diplomatic representatives of foreign states. A meeting like this was held for the second time. This tradition was initiated last May, when representatives of the diplomatic corps visited the Constitutional Court and met with the Justices to discuss relevant matters of constitutional law in Latvia. The meeting was opened by President of the Constitutional Court Sanita Osipova, who told diplomats about the Constitutional Court's experience during the emergency situation, ensuring that the Court continued its work in full scope. She underscored the outcomes of the public opinion survey, conducted in July, which reflected the public opinion of the Constitutional Court and various aspects of its work. Justice Artūrs Kučs informed representatives of the diplomatic corps about high profile cases, related to the relations between the majority and the minority in a democratic state governed by the rule of law. Diplomats

from 24 states, as well as a representative from the Representation of the European Commission in Latvia participated in the event.

An experience-sharing project "Reinforcing the Capacity of the Legal Service of the Constitutional Court of Ukraine" was implemented at the Constitutional Court in October and at the beginning of November. In the framework of this project, the Constitutional Court's experts – project manager Alla Spale, Advisors of the Constitutional Court Elīna Podzorova and Kristaps Tamužs – prepared extensive theoretical and practical study materials, organised lectures, discussions and independent work for the employees of the Legal Service of the Constitutional Court of Ukraine. Lectures and discussions were held remotely as webinars.

The content of the training was prepared to allow the colleagues from the Constitutional Court of Ukraine gain insight into the Constitutional Court's work and study in-depth the Latvian model of constitutional complaint, as well as to master various methodologies that the Constitutional Court used to review the compliance of contested norms with legal norms of higher legal force. The project was financed by the Ministry of Foreign Affairs, in accordance with the Latvian Development Cooperation Policy Plan for 2020 and its section "Transferring Latvia's expertise to partner countries". The project is implemented for the second year. It was held for the first time in 2019 when the Constitutional Court organised experience sharing with Justices and lawyers from the Constitutional Court of Moldova.

10.02.2020.
The Constitutional Court's Justices visit the Embassy of the Republic of France.
Tweet [in English]

19.–20.02.2020.
Justice of the Constitutional Court Artūrs Kučs and Justice's assistant Eva Vīksna participate in the conference dedicated to the 25th anniversary of the Constitutional Court of Moldova "The Constitutional Court and the Public Response: when the Solutions by the Constitutional Court do not Coincide with the Public Opinion of Majority".
Press release [in English]
Tweet [in English]
Photo

21.02.2020.
President of the Constitutional Court Ineta Ziemele meets with Ambassador of Slovenia to Latvia Ladislav Babčan.
Press release [in English]
Tweet [in English]

23.07.2020.
President of the Constitutional Court Ineta Ziemele meets with Ambassador of the Republic of France to Latvia Aurélie Royet-Gounin.
Tweet [in English]

27.08.2020.
Justice of the Constitutional Court Artūrs Kučs participates remotely in the international conference held by the Constitutional Council of Kazakhstan. President of the Constitutional Court Ineta Ziemele greets the Constitutional Council of Kazakhstan on the 25th anniversary of the state's constitution.
Press release [in English]
Video [in English]
Tweet [in English]
Greetings [in English]

28.08.2020.
President of the Constitutional Court Ineta Ziemele and Advisor to the Constitutional Court's President Inguss Kalniņš meet with Ambassador of the Kingdom of the Netherlands to Latvia Govert Jan Cornelis Bijl de Vroe.
Press release [in English]
Tweet [in English]

18.09.2020.
President of the Constitutional Court Ineta Ziemele participates in the online conference organised by Mykolas Romeris University "70 Years of the European Convention on Human Rights: Challenges and Prospects".
Press release [in English]
Video [in English]
Tweet [in English]

05.–16.10.2020.
Stage I of the experience sharing project "Reinforcing the Capacity of the Legal Service of the Constitutional Court of Ukraine" implemented at the Constitutional Court.
Press releases: 1; 2; 3; 4 [in English]
Photo: 1; 2; 3; 4; 5
Tweets: 1; 2; 3; 4 [in English]; 5 [in Latvian]

09.–12.11.2020.
Stage II of the experience sharing project "Reinforcing the Capacity of the Legal Service of the Constitutional Court of Ukraine" implemented at the Constitutional Court.
Photo: 1; 2

19.11.2020.
Justices of the Constitutional Court in a remote meeting with foreign diplomatic representatives in Latvia.
Press release [in English]
Tweets: 1 [in English]; 2; 3 [in Latvian]

30.11.2020.
Justice of the Constitutional Court Artūrs Kučs participates remotely in the international conference, organised by the Ministry of Foreign Affairs of the Kingdom of the Netherlands and the Netherlands' Embassy to Europe, on the rule of law and freedom of speech in Europe and the impact of Covid-19 pandemic on these values.
Press release [in English]
Tweet [in English]

4.5. OPENING OF THE CONSTITUTIONAL COURT'S JUDICIAL YEAR

At the beginning of January, the second solemn hearing [in English] of the Constitutional Court was held for the symbolic opening of the Constitutional Court's new judicial year in the presence of officials from all branches of state power. The solemn hearing was opened by President of the Constitutional Court Ineta Ziemele, who gave a presentation on the relevant constitutional law issues in Latvia in the light of the Constitutional Court's rulings of 2019. The guest of honour – President Egils Levits – also gave a presentation at the solemn hearing. The hearing was followed by a press conference to present the Report on the Constitutional Court's work in 2019. The solemn hearing of the Constitutional Court and the press conference that followed it were streamed online.

Speech by President of the Constitutional Court Ineta Ziemele at the solemn hearing for the opening of the Constitutional Court's judicial year on 10 January 2020

I. Introduction

Highly esteemed Mr President, highly esteemed Mr Prime Minister, honourable Madam Vice-speaker, highly esteemed Mr Chief Judge of the Supreme Court, honourable Madame State Auditor and highly esteemed Mr Ombudsman, ladies and gentlemen,

Exactly a year ago, the Constitutional Court for the first time opened its new judicial year at a solemn hearing. At the time, the Constitutional Court's role in the development of Latvia as a democratic state governed by the rule of law was highlighted, it is the Constitutional Court to whom the sovereign has granted the competence to review, whether legal acts comply with the *Satversme*, and the substance of the solemn hearing was revealed – to develop a dialogue between the branches of state power that is appropriate for the contemporary challenges, at the same time respecting the fact that it is important for the judicial power to retain its independence.

The Constitutional Court is one of the two constitutional bodies that exercise the judicial power in Latvia. It is the task of the Constitutional Court to ensure that the judicial power is seen, heard and is better understood. Of course, in moments of national importance, the legislative and the executive powers are foregrounded; however, a democratic state governed by the rule of law is constituted by three branches of state power. Thus, this solemn hearing is one of the ways, in which the Constitutional Court can draw attention to relevant social trends it has observed and promote reciprocal respect between the constitutional bodies.

In 2019, the Constitutional Court specified the principle of interinstitutional loyalty that followed from the principle of separation of powers and which the public institutions of a democratic state governed by the rule of law should respect in their relationships. This principle requires such actions that promote the fulfilment of the obligations of all constitutional bodies and reciprocal respect.[158] Your presence at this solemn hearing is a sign of respect for the Constitutional Court, its independence and role in a democratic state governed by the rule of law.

Within the legal space of the European Union, the Constitutional Court of the Republic of Latvia is not the only supreme national court that addresses in this way both the other branches of state power and society in general. In launching this tradition in Latvia, the Constitutional Court has been inspired by several examples of the European states. Moreover, it should be recognised that currently – in the age of technologies – also the judicial power must address society actively, *inter alia*, to safeguard the values and principles of a democratic state governed by the rule of law and reinforce the state's immunity against possible threats, which could be fostered by technological development. I wish this tradition to become an indispensable and meaningful part of the democratic legal culture.

II. Statistics

This morning, the Constitutional Court published the Report on its work in 2019. The Report outlines relevant trends of development within the Latvian legal system

158 The Constitutional Court's Judgement of 6 March 2019 in Case No. 2018-11-01, Para 18.3.1.

and also how way this development had been furthered by the legislator and the executive power complies with the *Satversme*. The Report includes detailed information about the quantitative and qualitative performance indicators of the Constitutional Court in 2019.

The quantitative indicators of the Constitutional Court's work show that, in 2019, compared to 2018, the number of initiated cases has increased by approximately 40 per cent. Whereas the number of received applications has stayed almost unchanged – the Court has received 182 applications. A significant increase is seen in the number of cases, initiated on the basis of constitutional complaints, i.e., in 2019, the number of cases, initiated on the basis of applications, in which persons have pointed to an infringement of fundamental rights included in the *Satversme*, has increased by approximately 70 per cent. The number of legal norms reviewed by the Constitutional Court also has increased – in 2019 it was by approximately 35 per cent higher than in the previous year. I.e., 38 legal norms (acts) were reviewed in 17 judgements and 15 norms (acts) were recognised as being incompatible with the *Satversme*. 23 legal norms, in turn, were recognised as being compatible with the *Satversme*. Legal proceedings were terminated in three cases. The Court has expressed its assessment on 768 pages, which is by 200 pages more than in 2018.

The quantitative data relating to the Constitutional Court's work is only one reflection of its work. The Constitutional Court has continued working to become more visible and understandable both in Latvia and the common European legal space. Justices and employees of the Constitutional Court have visited Kapsēde Basic School, Dagda Secondary School, Basic School "Rīdze", Kuldīga, Liepāja, Sigulda, Madona, Rūjiena to give presentations and to bring the touring exhibition of children's drawings. Close cooperation with the Federal Constitutional Court of Germany, the supreme judicial instances of France and the Council of State, the Constitutional Court of Slovenia, trilateral cooperation with the Constitutional Courts of Belgium and Czechia has turned into a tradition. Trilateral dialogue with Judges of the Constitutional Court of Lithuanian and of the Supreme Court of Estonia, initiated by the Latvian Constitutional Court, continues. In 2019, the dialogue with the Constitutional Court of Austria and the Constitutional Court of Armenia was strengthened. The experience, accumulated by the Constitutional Court, has become useful in the Eastern Partnership Programme, implemented by Latvia, in training the Judges and lawyers of the Constitutional Court of Moldova. An interesting and labour-intensive dialogue with both European courts also continues. The rulings by one or both European courts have been extensively analysed in 70 per cent of rulings adopted during the reporting period. Moreover, in one case relating to the General Data Protection Regulation, the Constitutional Court has suspended legal proceedings and requested a preliminary ruling from the Court of Justice of the European Union.

The most important European-level event of the Court's judicial year, held in Riga on 20 and 21 March, will be the conference, organised jointly by the Constitutional Court and the Court of Justice of the European Union, entitled "*United in diversity: between common constitutional traditions and national identities*". The conference aims to develop a reliable and structured dialogue between the Court of Justice of the European Union and the Constitutional Courts of the Member States of the European Union. A dialogue like this is one of the essential factors in the future processes of the European Union.

III. Relevant developments in the Constitutional Court's judicature

For 24 years already, the Constitutional Court, through its judicature, has been developing increasingly broader and uniform understanding of the *Satversme* – the legal framework, in which we live and develop ourselves and this state. At the same time, the Constitutional Court ensures also stability and predictability, which is normal in countries with ancient traditions of democracy, but still rather unusual in Latvia since we have been living all the time in a continuous regime of changes. The previous year was a striking example of the fact that ten years old and even older findings by the Court have an important role not only in the work of the Court itself but are also practically applicable in the decision making process for the other branches of power. In its judgements, the Constitutional Court has developed and used methodology that outlines a clear and legal path for arriving at legal political decisions. In view of the role of the *Satversme* and, hence, also of the Constitutional Court in the continuous development of our society, one of the objectives of this hearing is to highlight some cases heard by the Constitutional Court last year and some concrete findings made by the Court to provide guidance with respect to essential themes of the new year, to reinforce legal processes in the state.

The rulings delivered last year cover various areas of the legal relations existing in the society. Last year, the Court reviewed such issues as the clarity of regulation establishing criminal liability, accessibility of social benefits, payment for overtime work, prohibition on organising gambling, a prohibition for the spouse to adopt the child of the other spouse, some aspects in the right to property. I would like to draw attention to two issues, which have been in common to all cases adjudicated by the Court. I.e., in 2019, the Constitutional Court had to specify the content of human dignity in Latvia and give significant messages with respect to the principle of good legislation.

IV. Human dignity

The fourth paragraph in the Preamble to the *Satversme* of the Republic of Latvia (hereafter – the *Satversme*) provides that Latvia, as a democratic state governed by the rule of law, is based on human dignity. It is human dignity as a constitutional value that characterises a human being as the supreme value of a democratic state governed by the rule of law. It must be protected

both in relations between the State and a person and in interpersonal relations. Each human being is a value for the state as a whole, and, in a democratic state governed by the rule of law, both the legislator, in adopting legal norms, and the parties that apply legal norms, in the application thereof, must respect human dignity.[159] This is how the Constitutional Court ruled on human dignity last year.

It is important to note that the Constitutional Court is not the only constitutional body, which has had to speak about human dignity. The guest of honour of this solemn hearing – President Egils Levits – has encouraged the constitutional bodies, society and each inhabitant of Latvia to engage in a conversation about solidarity. Having asked the question – what does Latvia currently need the most? – the President has answered: "Solidarity and justice. Solidarity is the key to decreasing alienation in society. [..] Society of solidarity and justice offers to everyone the possibility to live a good life. It reinforces the feeling of being affiliated with one's state."[160] The President's vision relates to the Constitutional Court's statements made in various cases, *inter alia*, tax cases. I.e., in 2017, reviewing cases relating to introduction of the solidarity tax, the Court noted that, in accordance with the Preamble to the *Satversme*, everyone should care not only about oneself and one's relatives but also for the common good of society. The Court noted that performing each obligation to pay taxes was a manifestation of the solidarity principle. By paying taxes, people assume shared responsibility for providing for society's needs and upkeeping the State of Latvia. The Court recalled that the State's obligation to implement just, solidary, effective and timely taxation policy to ensure public welfare followed from the principle of a socially responsible state.[161] Thus, the Constitutional Court has specified what kind of taxation policy is required by the *Satversme*, has pointed to importance of participation of all inhabitants, creating a society of solidarity, *inter alia*, by tax payments, appropriate for one's means. The human dignity of each person can be best respected in a society of solidarity.

Society, the state and law are based on generally recognised values of this society, which an organised society usually includes in its basic law. The principle of separation of state powers, dialogue between the branches of state power and the timely, effective and solidary taxation policy, referred to above, is not an end in itself. These are important mechanism for arriving at such decisions by the State that foster respect for the dignity of a free human being in Latvia. To put it simply, the state is a mechanism for ensuring continuous self-improvement of the people, who constitute this state, to ensure long-term existence of the nation. Those who have been entrusted by the sovereign with the important task of exercising the stare power should exercise it in a way to strengthen the freedom and dignity of each human being.

The Constitutional Court has recognised in its judicature that human dignity and the value of each individual is the essence of human rights. Democracy and human dignity are interdependent and mutually reinforcing values. Due assessment, complying with the principle of justice and aimed at the protection of human dignity, of a restriction on fundamental rights means that the interests of involved persons are weighed and balanced, viewing each person as the supreme value in a democratic state governed by the rule of law.[162] The purpose of the state – to protect human dignity – comprises also the obligation to ensure to persons equal opportunities for exercising their rights. It was set out already in Article 1 of the Universal Declaration of Human Rights: "All human beings are born free and equal in their dignity and rights." Equal rights and equal opportunities as an aspect of human dignity were examined in several cases that were heard last year.

In cases regarding the language of instruction[163], the Constitutional Court recognised that each person's ability to function independently in the state and society depended on the quality of general education. Education provides an opportunity to a person to develop into a free personality, improve oneself and to gain the knowledge, abilities and social skills required for a fulfilling life. It is the State's obligation to establish a system of education that is accessible to all learners and in which, *inter alia*, it is possible to master the official language.

The Constitutional Court underscored that the right to education was characterised by, at least, three-fold nature. It is characterised, *inter alia*, by an element of solidarity, which is applicable to certain societal groups (for example, persons with special needs) and requires support of the State, society and learners themselves so that certain societal groups could exercise their right to education. Moreover, the Court concluded that, in Latvia, the official langue was the uniting element for democratic society. The Court, in particular, underscored that mastering of the official language and exercising of minority rights were not aims to be set off each other. If, in the process of general education, a person does not master the official language on the sufficient level that would allow the person to be proficient in it, the education provided to this person cannot be deemed to be qualitative. An individual who is proficient in the official language has the possibility to compare and assess critically the information obtained to participate qualitatively in the public discourse,

159 The Constitutional Court's Judgement of 5 March 2019 in Case No. 2018-08-03, Para 11.

160 Valsts prezidenta Egila Levita runa Latvijas Republikas proklamēšanas dienai veltītajā svētku koncertā Latvijas Nacionālajā teātrī 2019. gada 18. novembrī [Speech by President Egils Levits at the festive concert dedicated to the Day of Proclamation of the Republic of Latvia at the National Theatre of Latvia on 18 November 2019]. Available: https://www.president.lv/

161 The Constitutional Court's Judgement of 19 October 2017 in Case No. 2016-14-01, Para 26.

162 The Constitutional Court's Judgement of 19 December 2017 in Case No. 2017-02-03, Para 20.

163 The Constitutional Court's Judgement of 23 April 2019 in Case No. 2018-12-01, and Judgement of 13 November 2019 in Case No. 2018-22-01.

which is an indispensable part of a democratic society. The Court also highlighted one of the aims of the State of Latvia – reinforcing the learning of languages of the European Union to ensure the participation of Latvia's inhabitants in shaping the future of united Europe to the fullest extent possible. In other words, to ensure that internally free, creative and enterprising people live in Latvia, providing modern and quality education is an urgent task for the present.

The right to education was analysed also in the case regarding the right of prison inmates to use a personal computer with a special software needed for doctoral studies.[164] The Constitutional Court recognised that the right to continue doctoral level studies applied also to prison inmates, insofar it was compatible with the purpose of serving the sentence and the prison regime. The restrictions envisaged in prisons should be minimal and proportional. The Court also underscored that education was one of the main means of social rehabilitation, therefore accessibility of education to prison inmates was of particular importance. Whereas in the case regarding the professorate of higher education institutions[165], the Court noted that education played an invaluable role in the development of the state and society, and education had been recognised as being the best investment that the State can make. Higher education and science area an essential part of the sustainable development of an individual and culture, economy and environment of society in general.

In another case[166], the Constitutional Court examined, whether the legal regulation, which envisaged a different regime for serving the sentence for men compared to women, complied with the equality principle. The Court reiterated that all human beings were born equal in their dignity and rights. Therefore the State has the right and, sometimes, the obligation to establish special measures for the protection of such groups of persons who are subject to inequality. However, such measures should be revoked as soon as equal opportunities and equal treatment have been attained. The Court called upon the legislator to examine the compatibility of the policy for serving sentences, implemented in Latvia, with the *Satversme*.

The said shows that the Constitutional Court continues specifying the content of human dignity and, within the framework of cases that reach the Court, assessing the way in which regulations on legal relations, adopted by the legislator, have considered and weighed various possible interests to find the best possible solution for the protection of human dignity. Abiding by the principle of legislation in the legislative process also ensures such best possible solutions.

V. Principle of good legislation

In several cases, the Constitutional Court had to examine, whether the *Saeima*, in adopting the contested norm, had acted in compliance with the principle of good legislation. The Constitutional Court outlined the importance of the principle of good legislation in law making already in its judgements delivered in 2016 and 2017.[167] In 2019, however, the content of the principle of good legislation was specified, revealing several important aspects in it.[168]

Certain requirements with respect to the process of legislation follow from the principle of a state governed by the rule of law. General legal principles, procedural preconditions and requirements regulated in the *Satversme* and the Rules of Procedure of the *Saeima* must be complied with in this process, also with respect to the course of adopting draft laws relating to the state budget. The legislator must examine the compliance of legal norms included in the draft law with legal norms of higher legal force, *inter alia*, the *Satversme*, provisions of international and European Union law, and must align the intended legal norms of the draft law with the already existing legal norms, in accordance with the principle of a rational legislator. In the course of adopting a legal norm, the legislator must examine the arguments regarding the alleged incompatibility of this norm with the established judicature of the Constitutional Court on this matter.

In accordance with the Preamble to the *Satversme*, the actions by the State must be aimed at sustainable development. Thus, the legislative process should be aimed at drafting sustainable legal regulation. Hence, in creating legal norms, in particular, where fundamental rights are restricted, the legislator must use as the basis the study of the social impact of the intended legal regulation and must consider the measures needed for introducing and enforcing this legal regulation. The legislator must consider the risk estimates presented by the specialists of the sectors.

These requirements constitute the content of the principle of good legislation. These are the main but not the only elements that specify the principle of good legislation, which allow understanding, *inter alia*, why the legislator has established the particular restriction on fundamental human rights and what are the considerations that make this restriction admissible in a democratic state governed by the rule of law. Compliance with the principle of good legislation promotes understanding of the way the State functions among people and, thus, promotes people's trust in the State and law.

The principle of good legislation does not guarantee the particular desired outcome to one person or a

164 The Constitutional Court's Judgement of 24 October 2019 in Case No. 2018-23-01.

165 The Constitutional Court's Judgement of 7 June 2019 in Case No. 2018-15-01.

166 The Constitutional Court's Judgement of 7 November 2019 in Case No. 2018-25-01.

167 For example, the Constitutional Court's Judgement of 19 October 2017 in Case No. 2016-14-01, and Judgement of 12 April 2018 in Case No. 2017-17-01.

168 The Constitutional Court's Judgement of 6 March 2019 in case No. 2018-11-01.

group of persons; however, compliance with it creates the assurance for all that the particular matter has been democratically discussed, i.e., different opinions have been expressed and analysed, and the best possible balance between various conflicting rights and interests has been sought. Implementation of such process of legislation would lead to dismissal and refutation of the opinion, basically incompatible with a state governed by the rule of law but, yet, often expressed in Latvia, that legislation is adjusted to a particular case and interests of separate groups.

VI. Conclusion

Democratic republic governed by the rule of law is a structure of the state that always seeks to protect the rights of each individual, ensuring human dignity and freedom, on the one hand, and to ensure the common good of society, looking for the best possible solution aimed at sustainability of the people and the state, on the other hand. Such solutions require everyone's responsibility and solidarity. Control (overview) of balance that is compatible with the *Satversme* is and will be the main task for the Constitutional Court. Therefore, it is in the interests of each inhabitant and national sustainability to ensure such legal framework that regulates the functioning of the Constitutional Court that would guarantee genuine independence of the Constitutional Court, that the best lawyers of their generation are confirmed as the Court's Justices, also, that the Court would have access to the resources it needs to perform the function of constitutional review in full and appropriately for the special challenges of the age. In order for Latvia to become the place where its people can develop best of all and implement their ideas, each constitutional body, the Constitutional Court including, must develop fast. It should be understood that the constitutional structure of the state, established in the *Satversme*, is not an end in itself but rather means for reinforcing dignity and freedom of the people of Latvia and for fostering development.

Speech by President Egils Levits at the solemn hearing for the opening of the Constitutional Court's judicial year on 10 January 2020[169]

Honourable Madam Chair,

Honourable Justices,

Esteemed members of Latvia's constitutional bodies,

Last year Constitutional Court started a new tradition. A very European, modern and progressive tradition that suits the legal culture. Annual opening sittings, a ceremony like the one today with all constitutional bodies. Why constitutional bodies? Because it is your everyday responsibility to enforce the *Satversme* (the Constitution). You all have received the 2019 Annual Report of the Constitutional Court. It contains a detailed information about last year's priorities, challenges of legal system and recent opinions of Constitutional Court.

It is vital for the Constitutional Court to disseminate its most recent findings and opinions to constitutional bodies and general public. Other constitutional bodies need these findings and opinions because it is their duty to follow these instructions. These findings cannot be confined to judgements, should not remain only on paper. These are practical guidelines that the *Saeima* (Parliament), Cabinet of Ministers and other constitutional institutions have to consider once the ruling is delivered.

As Madam Chair mentioned, last year was very productive for Constitutional Court. It made several milestone judgements that will have profound impact on the development of our society and legal system. Since Madam Chair already highlighted them, I will not mention particular judgements and will rather focus on two important aspects.

One of them is education reform. According to Constitutional Court, education reform should promote social solidarity, reduce ghettoisation in our society and consolidate our society around Latvian language and culture. Reform should ensure that schools instil these values in schoolchildren and at the same time ethnic minorities have possibilities – possibilities protected by constitution – to nurture, enrich and enjoy their language and culture. However, these possibilities are not to be considered an alternative to shared language, the official language. Judgments of the Constitutional Court make it absolutely clear. Moreover, after a thorough consideration Constitutional Court has ruled that the envisaged reform approved by the government and parliament is acceptable.

The other important aspect in judgements of Constitutional Court is good law. According to Constitutional Court, it is an area of improvement and it is the current task of the government and the *Saeima* to address the challenges in this area. There are ways and plans for addressing these challenges. One of such ways is to create National Council, a new constitutional body because right now nobody is responsible for good law. I would like to reiterate, none of the existing bodies, and it is subject to further discussions on how to solve this. Allow me to stress once again that Constitutional Court has made a valuable input in the development of our legal system in 2019. It has at least indicated what improvements are needed. Constitutional Court has also provided opinion on the positive aspects of proposals put forward by the government and parliament. The strengths and opportunities of education reform.

169 Speech by President Egils Levits at the solemn hearing for the opening of the Constitutional Court's judicial year on 10 January 2020. Available: https://www.president.lv/en/news/news/address-of-the-president-of-latvia-egils-levits-the-2020-opening-sitting-of-the-constitutional-court-of-latvia-26093#gsc.tab=0

In recent years, Constitutional Court has strengthened its role and exposure at the European and international level, and thus has entered a new phase in its development. First of all, because that is how the Constitutional Court operates. And, secondly, because globalisation leads to closer integration of national legal systems and various legal arrangements are quickly transferred from one country to another, from one legal system to another. That is why constitutional courts, and I might even say all courts, are compelled to cooperate closer.

I believe that our Constitutional Court is probably one of the most active constitutional courts in Europe in this regard. I think, and this is my personal opinion, there is only one other court which is as active as our Constitutional Court. I am talking about the Federal Constitutional Court of Germany. Both of these courts together with the European Court of Justice are the main organisers of the 1st European Union Conference on Constitutional Law in Riga. Before I became the President of Latvia, I was among those CJEU judges who supported this CJEU's initiative because it would allow us to create an EU network of constitutional courts.

Let me now address several national nuances of the rule of law (tiesiskums) in Latvia. Rule of law has become a widely used notion in Latvia. If you think about it, the 'rule of law' does not have the same application in other languages. English 'justice', French 'justice' and German 'die Rechtlichkeit' have slightly different application compared to the way we use 'rule of law'. It is a rather peculiar, let us say, characteristic of Latvian legal culture. These notions mean similar things, but not quite the same. You have, for example, state governed by the rule of law that you can also find in the Preamble of *Satversme*, and the difference between the rule of law and a state governed by the rule of law is that, to me, rule of law is the principle that is embedded in public governance, the conduct of public officials and bodies, whereas natural persons must act according to the law. Contrary to, for example, 'justice' (in English) or 'justice' (in French) which apply exclusively to public bodies. For instance, when I buy a newspaper at *Narvesen*, transaction must comply with principles of rule of law. 'State governed by rule of law' is an overlapping notion. It has direct application in other language s. In German you have 'der Rechtsstaat' and in English it is the 'rule of law'. State governed by the rule of law is a system where rule of law determines how the system works, whereas the concept of the rule of law applies to all members of the society who interact and are a part of this society – society based on the rule of law.

Rule of law is an integral element of Latvia's constitutional identity. Latvia is a state governed by the rule of law. That means our system of government ensures the rule of law. In other words, all aspects of the state governed by the rule of law are there and constitutional bodies ensure that these aspects are maintained, and Constitutional Court is the final court of appeal for the rule of law. If other constitutional bodies fail to ensure the rule of law in its entirety, the final court of appeal is Constitutional Court. Its role in constitutional system is to ensure that rule of law prevails.

Rule of law and justice are overlapping notions. However, justice is not the same as rule of law. The way I see it, justice is about the substance. About whether something is just or not. Whereas, the rule of law is a procedural principle that provides for enforcement of justice.

Although there is no clear line between them, we can all generally agree that the rule of law is a procedural principle. According to this principle, all our actions – 24/7 – all actions of Latvian inhabitants must comply and live by the law. Country governed by the rule of law is a constitutional system that ensures that all actions comply with the law. If such actions breach law, there are consequences to be faced and ways of dealing with such breaches.

Rule of law, justice and state governed by the rule of law are parts of a single system. And this system forms the unamendable core of the *Satversme*. I would even say that it is the central element of the unamendable core. In other words, no constitutional body is allowed to compromise it, neither the *Saeima* nor Cabinet of Ministers, any court when hearing a case, or any group of citizens. As long as the *Satversme* exists, this unamendable core cannot either be revoked or modified. This is one of the strengths of this system.

Rule of law is intrinsic to our society. Society driven by pursuit of justice and rights as a way of ensuring the rule of law. All three notions have similar bearings but are not identical. Each of them has its own implications and together they form a single integrated system. Integrated system that characterises our society.

State governed by rule of law is not merely a constitutional construct or statement. Rule of law must be implemented in the way a state is run. It is the duty of the state governed by law. However, the task of implementing it is not limited to courts, constitutional bodies and their institutions. The whole society must internalise this framework, which is one of the core values of our constitution. All people must consider whether their actions fall in line with law. They do not need to be, let us say, lawyers to be able to see that.

Anyway, society needs to be aware. Like many other values, this awareness is not inherited. A day-old infant does not have that kind of awareness. So, it is the duty of society to give children such awareness and ensure that when they reach adulthood such awareness is formed and embedded in decision-making.

It is, by the way, one of the duties of education system which shall create this awareness. Such awareness does

not come only from textbooks. Such awareness forms gradually in a young mind as a result of observing the surrounding world, including what goes on in the streets, family, school and, of course, there is also the awareness that comes from conscious cognitive effort.

Education reform also shows us that we need to start building public and national awareness of the rule of law by giving it to youth. That way we can ensure that the whole society follows the rule of law.

In 1942, liberal philosopher Popper wrote his influential "The Open Society and its Enemies". He wrote it while in exile in New Zealand because Europe was heavily involved in war at the time. His book is about open society. His view of democracy was minimalist. He believed that better than any other system, democracy allows its citizen to change the government. If people lose trust in government, democracy allows them to change its. However, he also claimed that democracy does not guarantee that we will have good government. In only gives us instruments for replacing a bad one once it fails. If citizens are unhappy with the government, they choose another one. That is what functioning democracy does.

Let me rephrase the title of his book *The Open Society and its Enemies* to 'rule of law and its enemies'. Who are these enemies? I think there are four of them. First, there is legal nihilism. It is a kind of system or society can operate on everyday basis. People go to work in the morning and go to bed at night. However, neither government bodies nor people have any regard for law. That is what legal nihilism means. In a society like that decisions are, of course, driven by other considerations. All societies need to make decisions. Whereas the law, at least in Western understanding of the law, is adopted through a democratic procedure, more or less based on views of the society and its majority. Societies where legal nihilism is ripe are driven by this one strong aspect. Historically states ruled by law and the rule of law developed only recently. I would say about 150-200 years ago.

If we take our Livonian era, and a new book on Livonian history was published quite recently, we can see that there was no rule of law. Those who had more men in their army were the ones who collected taxes and ruled the area. That is legal nihilism.

Legal nihilism is no longer something that concerns Latvia, although in the 90-ies legal nihilism was wide-spread, mainly due to what sociologists call anomy – breakdown of norms.

The other enemy of the rule of law is when laws are treated as a mere formality. This is something that still haunts us. Our legal system is still heavily influenced by occupation era practices that were imposed on us. I would say that we are currently making a transition. We have almost completed it, especially if we consider the case-law of the Constitutional Court. Constitutional Court has demonstrated that it is fully capable to interpret the law based on its merits.

However, now and then we can still see laws being treated as a mere formality. We still have instances when everybody knows that what has been done does not strictly fall in line with law, but officials still claim they have complied with all legal requirements. Dear colleagues, that is unacceptable. State governed by rule of law, state that respects the rule of law, should not tolerate such behaviour. That means that we here in our Latvia must do more to eradicate behaviour that treats law as a mere formality.

Another enemy of the rule of law is circumventing of law. This is not about treating laws as a mere formality. This is about circumventing the law to escape liability under the law. It is one of the ways of 'selective compliance' or a way to avoid the essential requirements. This is different than treating law as a formality. Our civil law and, as far as I know, civil laws of other countries that I am aware of declare that a transaction is deemed void when parties have circumvented a law. However, courts must know how to apply this legal principle embedded in our Civil Law to prevent any attempts to bypass law.

And there is one more enemy of rule of law as I said. That is the abuse of law. Abuse of law occurs when an individual uses rights for bad purposes. As we know, European Union has developed a rather comprehensive case-law regarding the abuse of law. I am not, however, really aware of how our legal system fights the abuse of law that threatens the rule of law. Formally speaking, if somebody tries to claim their rights, judge may decide that due to malicious intent to abuse the law these rights may also be denied. I believe that abuse of law is still new to our legal system and there is no response yet, but we also have a clear guidance provided in the Section 1 of the Civil. Therefore, all legal relationship must be based on good faith, without malice.

For example, civil laws of other countries have more explicit provisions, and Article 2 of Swiss Civil Code even says, 'The manifest abuse of a right is not protected by law.' As clear as that.

These enemies are still strong in Latvia. Some visible, some less visible. Those who enforce the law on daily basis, courts and also other constitutional bodies, should fight these enemies of the rule of law. One of the main challenges is that there are still some public officials who are not aware of these enemies of the rule of law. Constitutional Court should educate them through their case-law, the findings, and, let us say, other platforms for raising problems. That way rule of law will be completely ensured in Latvia. Rule of law the way we understand it here in Latvia in our national context and the way other countries define it using other concepts.

Dear colleagues,

I would like to conclude by sharing my thoughts on one more issue. Implementation of Constitutional Court's judgements. Constitutional Court is the main constitutional body responsible for the rule of law in our country, and Constitutional Court has its own tools. I am talking about judgements, rulings. Like the Supreme Court and other courts. However, the Constitutional Court has special responsibility here. Every time a judgment is delivered, it must be preceded by careful consideration and meticulous analysis. Often judgements of Constitutional Court also give instructions to other constitutional bodies.

As far as I am aware, President of Latvia has not received any guidance from the Court as of yet. But I do know that other bodies have been given instructions. It is perfectly understandable because political power is mostly held by the parliament and the Cabinet of Ministers. Cabinet of Ministers and the *Saeima* have received a number of instructions on how to ensure the rule of law. There is one weakness though. There are no tools for making sure these instructions are actually followed. Theoretically it is possible to submit another claim to the Constitutional Court but that is not the most efficient solution. It might not lead to actual implementation of instructions either. CJEU has such tool, the so-called repeat proceedings. For example, if Court of Justice of the European Union has delivered a ruling, and there are very few cases of non-compliance with CJEU's judgements, and Commission refers the case to the CJEU for the second time because the initial judgement has not been complied with. There, indeed, have been only few such cases because most member states prefer to abide by law. However, this is an interesting tool available to the Court of Justice of the European Union. If the second judgement is not complied with, CJEU will 'start the clock' and apply penalty for each day of delayed implementation of the second judgement starting from the next day of its announcement. There is a special formula for calculating the penalty a member state must pay. Formula is based on the size of population, gross-domestic product and severity of infringement. That is an efficient way to make sure judgements are followed. Usually member states allude to protracted parliamentary debate or use other excuses to explain why implementation of judgement is delayed. However, once the second ruling comes and each day of non-compliance costs you 100 000 euros, laws get passed with 'enviable resolve'. I am not saying that this is something Latvia needs. All I am saying is that it is a good example of an instrument that can help ensure compliance with court's decision.

Maybe, we do not need such a 'stick' in our legislation. Nevertheless, one thing is clear – such instruments are a part of modern legal culture. Maybe, we should give a warning first and say, 'If you do not deal with this matter, we will have to make a law.' I do not know whether that is the right way. Anyhow, that is a challenge I wanted to underline. Something for you to consider. Maybe, to ensure the rule of law we need such legal tool in our legislation.

Ladies and gentlemen,

Thank you for inviting me to share some of my thoughts about the Constitutional Court and the rule of law in Latvia, for letting me speak about the essence of the rule of law and its relations with other similar notions, for example, state governed by the rule of law and justice. There are other overlapping notions such as legality, legitimacy each of which have slightly different implications. However, all of these concepts fall under the same umbrella of rule of law.

After 30 years since restoration of our independence we have become a state that is fully governed by the rule of law. I am certain that today we are a state governed by the rule of law. Otherwise we would not be an EU member state. Just like any other country, Latvia has its flaws and such flaws can be found in any system of any legal tradition and country. There are no perfect states.

The more instruments we create to address those flaws, less flaws we will have. The efficiency of the rule of law at national level can also be judged on the basis of what balancing mechanisms it has at the court, Constitutional Court and other institutional levels. I have to admit that our current balancing mechanisms are weaker than they should be, and the error rate is also probably above permissible threshold. I am not saying that we are falling behind other EU member states. Definitely not. According to various rankings we are somewhere in the middle and Madam Chair is well aware of our ranking. EU's annual justice scoreboard compares the justice systems on all 28 member states, and we are somewhere in the middle. Of course, it is not bad. At the same time, our goals are much more ambitious, and we should continue to make our system better.

I have identified four *enemies* of the rule of law which I have deliberately decided to call enemies to emphasise the nature of threats because there are quite a few public officials who fail to recognise these enemies. There is legal nihilism, which, however, is less relevant nowadays. It is an enemy who has 'retreated to the woods'. Then we also have the issue of laws being treated as a mere formality. Then there is a big problem of laws being circumvented and, dear colleagues, that is something you should consider very closely. And there is also the abuse of law. It primarily extends to natural persons who try to game the government and judicial system to gain undue personal advantages thus making government and judicial system its 'accomplice'. These are the main weaknesses our rule of law has today.

Dear colleagues,

Thank you for inviting me to share some of my ideas on the issue. Let me also wish Constitutional Court a very productive year.

4.6. PUBLICATIONS

This section lists the publications by the Constitutional Court's Justices and employees of the reporting period – books and articles include in books, articles in periodicals, interviews, speeches, blogs and encyclopaedia entries.

INETA ZIEMELE

BOOKS:

Ziemele I. Par grāmatu [About the Book]. Grām.: Osipova S. Nācija, valoda, tiesiska valsts: ceļā uz rītdienu. Rakstu krājums. Rīga: Tiesu namu aģentūra, 2020, 13.–16. lpp.

Ziemele I. Priekšvārds [Foreword]. Grām. : Pārskats par *Satversme*s tiesas darbu 2019. Rīga: Latvijas Republikas *Satversme*s tiesa, 2020, 9. lpp.

Ziemele I. Priekšvārds [Foreword]. Grām.: Tiesības uz taisnīgu tiesu: Latvijas Republikas *Satversme*s 92. pants. Rīga: Tiesu namu aģentūra, 2020, 4.–5. lpp.

Ziemele I. A Non-Recognition Policy with Regards to the Occupation of Latvia. In: Sprūds A., Ščerbinskis V., Bukovskis K. The Centenary of Latvia's Foreign Affairs. Global Thought and Latvia. Riga: Latvian Institute of International Affairs, 2020, pp. 100–116.

Ziemele I. Foreword. In: Report on the work of the Constitutional Court of the Republic of Latvia in 2019. Riga: Constitutional Court of the Republic of Latvia, 2020, p. 9.

Ziemele I. Preface. In: Ziemele I. (Ed.) International Law from a Baltic Perspective. Leiden: Brill–Nijhoff, 2020, pp. 1–2.

Ziemele I. Redefining the Balance between Freedom of Expression and the Right to Privacy in the Digital Age: The Role of the Judiciary. In: Leysen R. et al (Eds.) Semper perseverans. Liber amicorum André Alen. Antwerpen: Intersentia, 2020, pp. 839–848.

Ziemele I. State Continuity, Succession and Responsibility: Reparations to the Baltic States and their Peoples? In: Ziemele I. (Ed.) International Law from a Baltic Perspective. Leiden: Brill–Nijhoff, 2020, pp. 54–76.

Ziemele I. The Functions of the International Law Commission: Identifying Existing Law or Proposing New Law? In: Seventy Years of the International Law Commission. Drawing a Balance for the Future. Brill–Nijhoff, 2020, pp. 265–276.

Ziemele I., Spale A., Jurcēna L. The Constitutional Court of the Republic of Latvia. In: von Bogdandy A., Huber P. M., Grabenwarter C. (Eds.) The Max Planck Handbooks in European Public Law. Volume III. Constitutional Adjudication: Institutions. Oxford: Oxford University, 2020, pp. 505–564.

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Photo: Aleksandrs Kravčuks.

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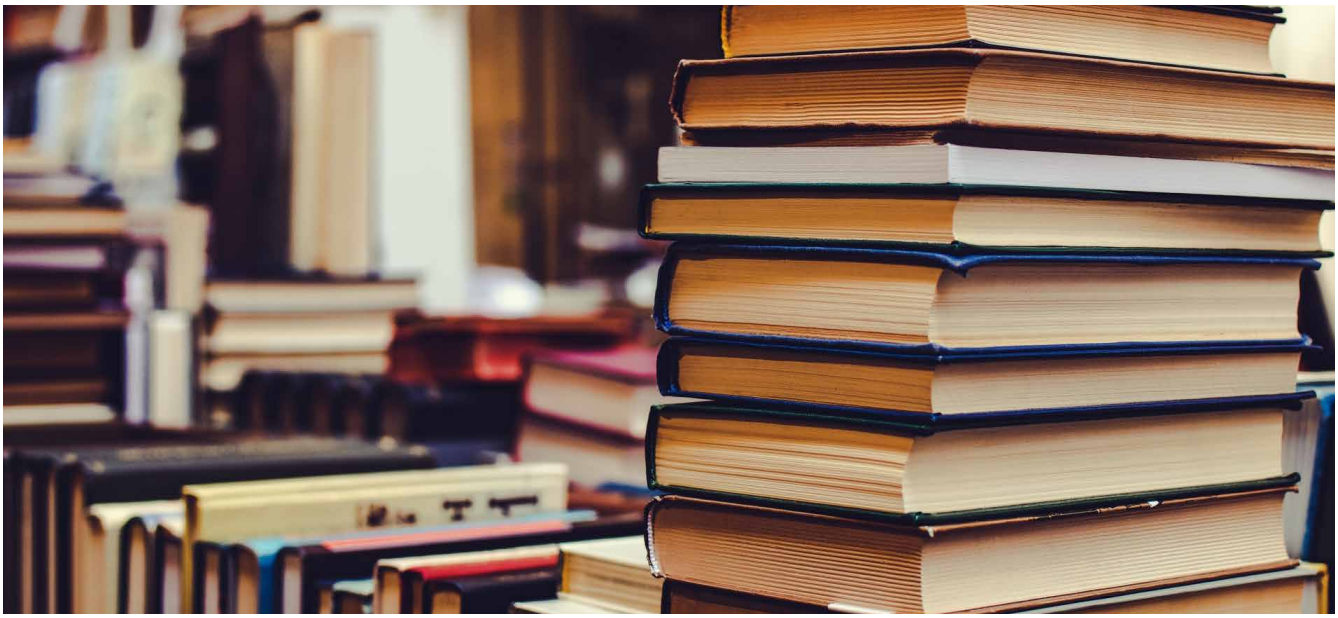

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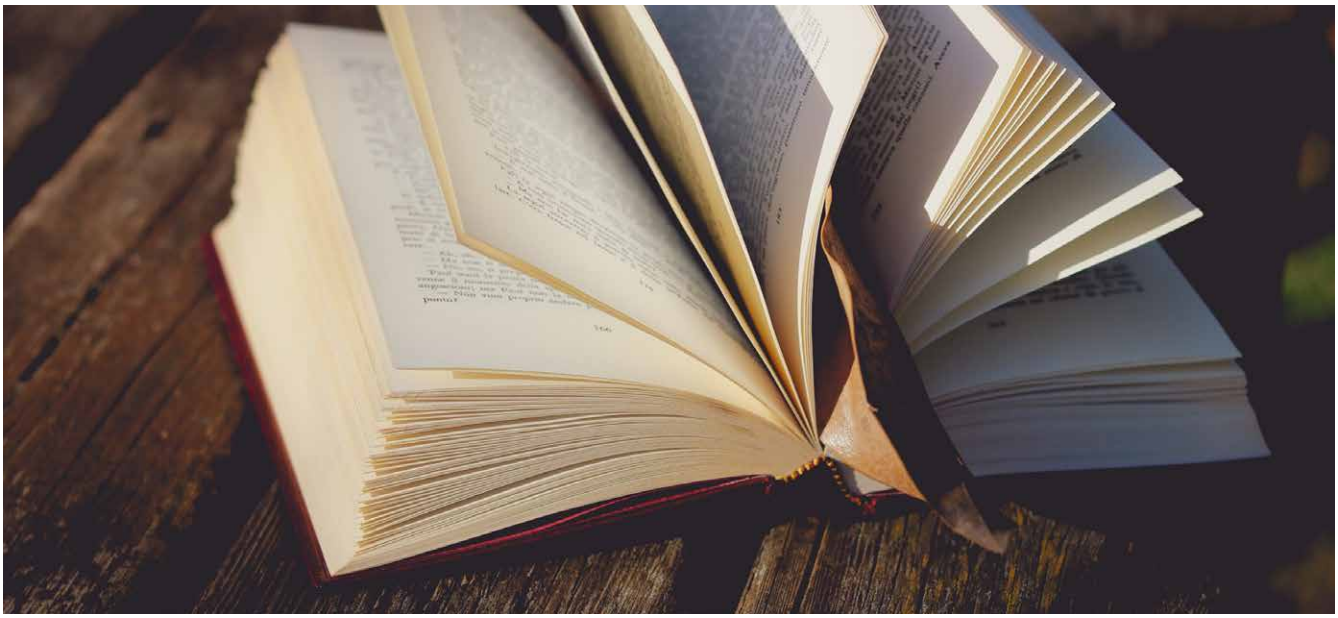

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Kučs A. Importance of Legislative Process in Evaluation of Human Rights. Limitations in Case Law of the European Court of Human Rights and the Constitutional Court of Latvia. In: Legal Science: Functions, Significance and Future in Legal Systems II. Collection of Research Papers in Conjunction with the 7th International Scientific Conference of the Faculty of Law of the University of Latvia. Riga: University of Latvia, 2020, pp. 231–240.

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Kučs A. Speech at the Conference "XXI Century Constitution – Rule of Law, Value of Person and Effectiveness of State". 27 August 2020. Available: https://www.youtube.com/

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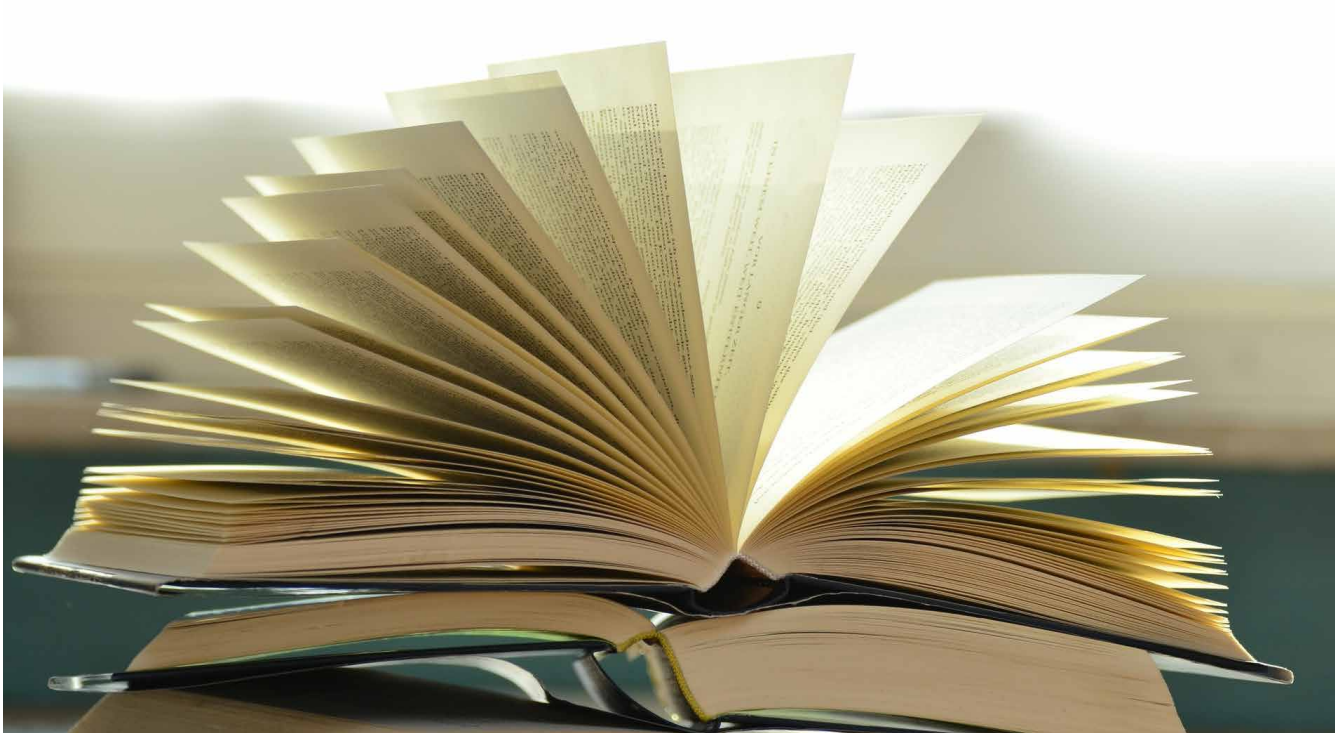

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Vīksna E. Eiropas Cilvēktiesību tiesas nolēmumi janvārī [Rulings by the European Court of Human Rights in January]. 18.03.2020. Available: www.cilvektiesibas.info/

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4.7. FINDINGS FROM PUBLICATIONS

This section comprises findings from the publications referred to above. Findings on such topics as society, the state, the *Satversme* and courts are presented.

Society

Contemporary society holds together only because the State keeps it together. This is because society no longer has one religion, as it used to for a very long time, accordingly – no single value, no single stereotype of the correct conduct. Therefore it is normal that in this post-modern society, information society, the State is the one that holds people together.[170]

For society to exist, egoism needs to be in synergy with altruism. Focusing only on one's own good, actually, is unnatural because a human being needs society and the state, without the services, infrastructure and security provided by which he would not be able to exist as an individual. Overcoming of egoism is needed for our self-respect and development.[171]

We all live a large part of our time in our social bubble – and this is the greatest danger for democracy. The power of democracy lies in everyone's involvement in the discussions of shared relevant issues and problems.[172]

State

We have regained ours state to ensure to each of us as successful coexistence as possible because each human being is a value.[173]

Personal self-expression unleashes creativity, creates new ideas and reinforces society and the state. The State, in turn, must ensure that the flow of creative ideas is permanent.[174]

The state should be organised in a way that would allow a person to realise his possibilities and ideas without unnecessary obstacles. If the structure does not allow it, the right attitude is to go and fight for it.[175]

Although it is generally known, our state, going through all possible crises, has not had the time to stop and reflect on what the central value of the state is and how we facilitate its implementation. Of course, the state exists for each person, for his or her dignified life.[176]

Human dignity is the main value of a democratic state governed by the rule of law. The parliament and the government, in adopting new legal acts, must take this value into account.[177]

The State should be beside a person when there is no one else to help him.[178]

If a person, at a moment of his life, is unable to create life worthy of human dignity at least in minimum scope, a meaningful and systemic social security system should have been established in the state to restart this person.[179]

The State may not act as if a person who has not been lucky in life is of lesser value than a person who has fared better. If the people of Latvia have said that our

170 Ozoliņš A. Es joprojām ticu ideāliem. Intervija ar S. Osipovu. Ir, 09.11.2020. Available: https://ir.lv/
171 Laganovskis G. Ineta Ziemele: Valsts pastāv cilvēka dēļ. Intervija ar I. Ziemeli. LV portāls, 08.10.2020. Available: http://www.lvportals.lv/
172 Broka I. Jaunā ES Tiesas tiesnese Ineta Ziemele: "Cilvēks nav viņa amats". Intervija ar I. Ziemeli. Jauns.lv, 27.10.2020. Available: https://jauns.lv/
173 Ziemele I. Tauta, *Satversme* un *Satversme*s tiesa. Ir.lv, 02.12.2020. Available: https://ir.lv/
174 Ziemele I. Cilvēka cieņa tehnoloģiju virzītā pasaulē: Konstitucionālo tiesu loma. Runa Slovēnijas Konstitūcijas pieņemšanas gadadienas svinībās Ļubļanā 2020. gada 9. janvārī. Available: www.satv.tiesa.gov.lv/
175 Laganovskis G. Ineta Ziemele: Valsts pastāv cilvēka dēļ. Intervija ar I. Ziemeli. LV portāls, 08.10.2020. Available: http://www.lvportals.lv/
176 Ibid.
177 Libeka M. "Mūsu spriedums nav saprasts." Intervija ar A. Laviņu. Latvijas Avīze, 08.07.2020., Nr. 128, 5. lpp.
178 Ozoliņš A. Es joprojām ticu ideāliem. Intervija ar S. Osipovu. Ir, 09.11.2020. Available: https://ir.lv/
179 Laganovskis G. Ineta Ziemele: Valsts pastāv cilvēka dēļ. Intervija ar I. Ziemeli. LV portāls, 08.10.2020. Available: http://www.lvportals.lv/

state is a socially responsible state then sufficient social assistance should be provided to a person who is in a disadvantageous situation so that he would be able to provide for his basic needs.[180]

The Soviet state accustomed us to expecting something from the state, to believing that the state constantly owes us something. And, currently, we expect from the Republic of Latvia that what the Soviet state promised to us. At the same time, the Soviet state degraded our attitude towards the state, towards the common property. There was an opinion that stealing from the state was not a sin. It was impossible to evade paying of taxes in the Soviet state. Well, except for those who were engaged in some private activities. Currently, we expect from the state everything to lead a life worthy of human dignity but do not want to put anything into "the common pot". And this leads to that disbalance in the budget – not everything that should end up in the common pot ends up there.[181]

Unfortunately, we find, from year to year, that society's trust in the State is a serious problem. The course of the legislative process does not foster trust either. People have the feeling that state institutions sit "on the top pf a glass mountain" and do not understand them.[182]

If people do not believe that the legal system works on their behalf, they have less resilience. Resilience is a long-term project for overcoming future vulnerabilities.[183]

Democracy can exist only in transparent process, by discussing publicly all that is relevant. In such a case, such decisions will be understood by society and, accordingly, recognised.[184]

In a democratic state governed by the rule of law, the decision makers, i.e., politicians, self-evidently apply to themselves the principle of democratic responsibility – they adopt decisions in society's interests not because of impending punishment for contrary actions but because of their sense of responsibility. We still lack the political and legal culture of this level, characterised by self-evident sense of democratic responsibility, when a person adopts the best decision with respect to a group of person, for which he is responsible, abiding by the general interests of societal development.[185]

The parliamentary political forces have not landed from Mars. They are our choice and attest to the society as it currently is.[186]

For the existence of our own state to be self-evident in eternity, the people should constan tly cherish their state, safeguard and strengthen it. Safeguarding the state beings with each person, each persons' wish of self-improvement, continuous development of everyone's civic and legal culture in the changing world. To let each inhabitant of Latvia improve themselves, the model of Latvia as a democratic state governed by the rule of law must be genuinely implemented, because free people live only in such order of the state, where

180 Libeka M. "Mūsu spriedums nav saprasts." Intervija ar A. Laviņu. Latvijas Avīze, 08.07.2020., Nr. 128, 5. lpp.
181 Ozoliņš A. Es joprojām ticu ideāliem. Intervija ar S. Osipovu. Ir, 09.11.2020. Available: https://ir.lv/
182 Gailīte D. *Satversme*s tiesas tiesnešiem "visas antenas" ir jānoregulē uz procesiem, kas notiek sabiedrībā. Intervija ar I. Ziemeli. Jurista Vārds, 17.11.2020., Nr. 46, 13.–14. lpp.
183 Ziemele I. Cilvēka cieņa tehnoloģiju virzītā pasaulē: Konstitucionālo tiesu loma. Runa Slovēnijas Konstitūcijas pieņemšanas gadadienas svinībās Ļubļanā 2020. gada 9. janvārī. Available: www.satv.tiesa.gov.lv/
184 Libeka M. "Brīvības sajūta ir jāaudzina". Intervija ar S. Osipovu. Latvijas Avīze, 18.02.2020., Nr. 34, 4. lpp.
185 Laganovskis G. Ineta Ziemele: Valsts pastāv cilvēka dēļ. Intervija ar I. Ziemeli. LV portāls, 08.10.2020. Available: http://www.lvportals.lv/
186 Libeka M. "Brīvības sajūta ir jāaudzina". Intervija ar S. Osipovu. Latvijas Avīze, 18.02.2020., Nr. 34, 4. lpp.

the arbitrariness of the state power is not allowed and human rights are respected.[187]

The *Satversme*

The *Satversme* is the consent of each inhabitant of Latvia that, together as society, as the people of Latvia, we create our present and future in accordance with the values and principles that are included in the *Satversme*.[188]

The *Satversme* obviously represents such societal agreement, typical of West European cultural space, on such values as the dignity and equivalence of all human beings, diversity of opinions, freedom of choice, freedom of religion, etc.[189]

The Preamble to the *Satversme* is not flat. It is multi-layered and multi-dimensional. The choices made by the people of Latvia in the course of its history in favour of its own state, its democratic legal order, a free and responsible human being and the rights of each inhabitant of the state intertwine therein.[190]

Perhaps the greatest achievement of the authors of the *Satversme* is found in the fact that the *Satversme* has been written in way to include that what cannot be defined, because human legal relationships cannot be precisely defined and cut in stone. The *Satversme* includes open concepts and allow the people, through democracy and mechanism of their state, time and again formalise the needed legal relation.[191]

Courts

The role of judicial power in strengthening democracy in general and trust in a state, based on the rule of law, is rapidly increasing.[192]

A court's judgement is "a snapshot" – of the way law functions in "this particular time and space". Possibly, after some time, the social reality and the legislator's understanding of the particular social interaction will have changed. A judge clarifies the content of law in interconnection with these continuous processes of society's development.[193]

Justices of the Constitutional Court must constantly point "all radars" towards the processes occurring in Latvia's society. And, of course, in legal science in Latvia and Europe, and in the case law of other countries. Hence, this process is very complicated and also very qualitative, as it should be.[194]

In the logics of constitutional structure, the Constitutional Court has very important and special competence. It is a court than stands between politics and law and whose task is to prevent arbitrary decisions

187 Ziemele I. *Satversme*s sapulces sasaukšanas simtgades nozīmīgums. Delfi.lv, 01.05.2020. Available: https://www.delfi.lv/
188 Ziemele I. Tauta, *Satversme* un *Satversme*s tiesa. Ir.lv, 02.12.2020. Available: https://ir.lv/
189 Ibid.
190 Ibid.
191 Ibid.
192 Ziemele I. Cilvēka cieņa tehnoloģiju virzītā pasaulē: Konstitucionālo tiesu loma. Runa Slovēnijas Konstitūcijas pieņemšanas gadadienas svinībās Ļubļanā 2020. gada 9. janvārī. Available: www.satv.tiesa.gov.lv/
193 Gailīte D. *Satversme*s tiesas tiesnešiem "visas antenas" ir jānoregulē uz procesiem, kas notiek sabiedrībā. Intervija ar I. Ziemeli. Jurista Vārds, 17.11.2020., Nr. 46, 11. lpp.
194 Ibid.

by the State, and this is one of the most important things in a democratic state governed by the rule of law.[195]

The Constitutional Court does not have the right to retain within the Latvian legal system a legal norm that is incompatible with the *Satversme* and norms of higher legal force. This obligation follows from its competence to ensure that the principle of the state governed by the rule of law is abided within the legal system in a way that allows weeding out of legal norms that are contrary to the principles that constitute the legal system of a state governed by rule of law.[196]

The Constitutional Court, in applying the European Union law, must always verify, whether these norms comply with the foundations of the state, included in the *Satversme*, i.e., the constitutional core of the state, included in the *Satversme*. The Constitutional Court would not have the right to apply such a norm of the European Union law or any other norm of international law that might endanger the constitutional identity of the state.[197]

The Constitutional Court enjoys a very high level of trust among educated people, who understand what we do. And the majority of those, who do not know what we do, do not trust the Constitutional Court.[198]

It is not quite clear in Latvia, what is the feedback after the Constitutional Court's judgement. It is a weak point in our state governed by the rule of law.[199]

In a mature society, the discussion should focus on what the Constitutional Court's judgement requires from the parliament and the government. And asking in a while – has it been done?[200]

The entire constitutional structure of the state is based on the reciprocal loyalty of the constitutional bodies – we respect one another and notice one another. We expect the legislator and the government to respect our rulings in their work. If a person doubts, whether our ruling has been enforced, legal proceedings begin anew.[201]

195 Ibid., 9.–10. lpp.
196 Ziemele I. Eiropas Savienības tiesību konstitucionalitātes kontrole Latvijā. Jurista Vārds, 07.07.2020., Nr. 27, 15. lpp.
197 Ibid.
198 Ozoliņš A. Es joprojām ticu ideāliem. Intervija ar S. Osipovu. Ir, 09.11.2020. Available: https://ir.lv/
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