

REPORT ON THE WORK OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA IN 2017





INTRODUCTION

This Report reflects the work performed by the Constitutional Court in 2017. The Report consists of several parts, which illustrate the Constitutional Court's work in the field of legal proceedings and legal science, cooperation between branches of power and international cooperation, as well as in developing and consolidating the legal thought.

The Report is introduced by the Foreword by Ineta Ziemele, the President of the Constitutional Court, followed by statistics regarding the number of applications submitted to the Constitutional Court, the number of initiated and adjudicated cases.

Major part of the Report comprises information about the case law of the Constitutional Court. This, first of all, covers the rulings passed by the Constitutional Court in cases that were heard in the previous year. The cases have been divided according to five branches of law. The branch of fundamental rights is the first. Although in almost all cases heard by the Constitutional Court some of the fundamental rights are examined, this section includes only those cases, which are not closely linked also to another branch of law. The second is the branch of international law and the European Union law. The third branch that was chosen is the one of state law, in the narrow meaning of it, since only those cases that are linked to the regulation envisaged in the first seven chapters of the Constitution of the Republic of Latvia (hereinafter – the *Satversme*) or the institutional part of the *Satversme* are included in the section dedicated to it. A separate section is allocated to the field of administrative law, highlighting, in particular, the field of tax and budget law. The final branch is criminal law. No section of the Report has been dedicated to the branch of civil law because, in 2017, the Constitutional Court has not examined a single case falling within this branch.

The division of cases according to branches of law is based upon the issues examined in the cases. However, this division is rather relative, since the same case may concern various branches of law.

First of all general observations are made regarding the cases belonging to the particular branch of law. These characterise the existing case law of the Constitutional Court, revealing both the range of issues that have been resolved and the most significant findings. A description of the development trends in the case law of the Constitutional Court in the previous year follows. Then an insight into the judgements passed in the previous year, the Justices' separate opinions appended to these, as well as into the most important decisions on terminating legal proceedings in a case is provided. Those decisions on terminating legal proceedings in a case, which deal only with procedural issues, are examined in a separate section of the Report. This section is dedicated to the decisions by the Constitutional Court's Panels that reflect the interpretation of the Constitutional Court Law and the issues that had been dealt with when deciding on initiating cases.

For readers' convenience, each judgement, decision or separate opinion described in the Report is followed by a link to the homepage of the Constitutional Court, where the text of the document is available.

Alongside information on the case law of the Constitutional Court, the Report comprises also information about those activities of the Constitutional Court that are not directly linked to the administration of justice. It covers implementation of various projects, as well as cooperation with other branches of power and international cooperation. The Report includes a list of publications by the Justices and employees of the Constitutional Court, which reflects the Constitutional Court's contribution to the legal science.

It is intended to create the Constitutional Court's Reports as bookazines, reflecting not only a year in the work of the Constitutional Court but also the Court's achievements throughout the years of its existence. The digital form chosen for the Reports is a tribute the contemporary digital age.



CONTENT

Foreword	6
1. Statistics	9
2. Case Law of the Constitutional Court	13
2.1. Fundamental Rights	14
Case No. 2016-06-01	16
Case No. 2016-11-01	18
Case No. 2016-12-01	19
Case No. 2017-01-01	20
Case No. 2017-02-03	21
Case No. 2017-03-01	23
Case No. 2017-07-01	24
2.2. International Law and the European Union Law	27
Case No. 2016-04-03	28
2.3. State Law (Institutional Part of the <i>Satversme</i>)	30
Case No. 2016-23-03	33
Case No. 2016-31-01	34
2.4. Administrative Law	36
Case No. 2016-24-03	39
Case No. 2017-08-01	40
2.5. Tax and Budget Law	43
Case No. 2016-14-01	44
Case No. 2016-16-01	46
2.6. Criminal Law	49
Case No. 2016-07-01	50
Case No. 2016-13-01	52
Case No. 2017-10-01	54
2.7. Decisions on Terminating Legal Proceedings in a Case	57
Case No. 2016-09-01	59
Case No. 2016-10-01	59
Case No. 2016-20-01	60
2.8. Decisions by the Panels	62
3. Activities of the Constitutional Court	69
3.1. Projects	70
3.2. Dialogue between the Branches of State Power	72
3.3. International cooperation	72
3.4. Publications	74

FOREWORD



Ineta Ziemele, President of the Constitutional Court. Photo: Reinis Inkēns.

The reader is offered a report on the Constitutional Court's work in 2017. This work has been reflected from various vantage points, taking into consideration the place of the Constitutional Court within the constitutional system.

The sections "Statistics" and "Case Law of the Constitutional Court" are dedicated to the classical function of the Constitutional Court – ensuring the constitutional justice.

The Constitutional Court as a constitutional body belonging to the judicial power predominantly addresses society through its rulings. The Report comprises a focussed overview of the main rulings passed in 2017. It, *inter alia*, includes information on how other insti-

tutions comply with the *Satversme*. It is fitting too remind here that the Constitutional Court is not the sole institution ensuring the rule of law and human rights in the country. All institutions have the obligation to abide by the *Satversme* and respect fundamental human rights and freedoms. The Constitutional Court acts as the main and the final mechanism of control.

"Statistics" section of the Report reflects the Court's work in numbers. However, the content of rulings and the legal issues examined are more important than the numbers. Analysis of numerous legal issues has required immense intellectual effort, as well as large time and human resources. To measure the Court's workload, in a month the *corps* of the Court prepares one book of serious size and of no less serious content on legal issues. It is worth recalling that one of the Constitutional Court's purposes is to examine as extensive as possible range of legal issues that are constitutionally significant, thus improving the legal system and promoting the rule of law.

On the national level, by performing its main obligation – administering justice and resolving disputes in a concrete case, the Constitutional Court develops the doctrine of constitutional law, increases society's knowledge about the Latvian legal system, creates awareness of the rule of law and facilitates trust in the State of Latvia. The Constitutional Court, through its rulings, has been explaining the complex events in Latvia's history, has facilitated Latvia's recognisability in Europe and promoted consolidation of public welfare. The Constitutional Court's contribution to the development of legal culture is manifested as application of the general principles of law, a person's possibilities to exercise his or her rights, understanding of application of regulatory enactments in compliance with the *Satversme*, cooperation between constitutional institutions, as well as creation of regulatory enactments, because the legislator takes into consideration the findings included in rulings by the Constitutional Court.

The Constitutional Court has one of the central roles in the development of a dialogue between the branches of state power in the 21st century. It maintains this dialogue both in the framework of legal proceedings and outside thereof, by meeting the requirement of coope-

ration between branches of power and institutions that follows from the principle of separation of powers, thus strengthening democracy in the interests of the people. The Constitutional Court's activities in this area are reflected in the sections "Case Law" and "Dialogue between the Branches of Power" of the Report.

The Constitutional Court as an institution of constitutional review is an important element in the order of a democratic state governed by the rule of law. The Constitutional Court, by implementing the supremacy of general legal principles and the constitution, by legal means and within the limits of its jurisdiction, is dealing with both issues of law and law policy, thus promoting consolidation of democracy and the rule of law. It safeguards constitutional values, educates society and influences all processes that are regulated by the basic law of the State. Thus, the Constitutional Court is an active participant in the democratic legal discourse, which is really needed by the contemporary society. The Constitutional Court's activities in this field are reflected in sections "Case Law" and "Projects" of the Report.

The role of constitutional courts is gaining importance also on the international level. Europe has evolved into an open and united space of legal culture; therefore today the constitutional courts work in a legal environment that is formed by the national, European, and international law. This interaction places a particular obligation on the national constitutional court, the Latvian Constitutional Court among them. In the globalised world, we encounter increasingly more complex challenges. Environmental, security and economic issues have no borders; they cannot be resolved within one state. Today, problems can be solved only through effective and concerted cooperation. Therefore, in the globalised world, the constitutional courts become partners in long-term cooperation. At the same time, also legal systems become more interconnected and interdependent, awareness of the unity of international and national law is growing. Thus, today, an effective dialogue between the constitutional courts of various states and international courts, based on unity and diversity, cooperation and independent adjudication, balancing of national and European values, as well as promoting integration and consolidating identity, is more than ever important.

Here we need to make the distinction between the formal dialogue, which proceeds within the framework of a procedure regulated by regulatory enactments, and the informal dialogue, which is manifested as cooperation between institutions and officials.

Article 267 of the Treaty on the Functioning of the European Union provides for the judicial dialogue between the Court of Justice of the European Union and the national courts within the framework of the preliminary ruling procedure. In 2017, the Constitutional Court for the first time became involved in this formal dialogue by referring a question to the Luxembourg Court. Information about it is included in the section "International Law and the European Union Law" of the Report (case

No. 2016-04-03). Whereas Protocol 16 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter also – the Convention), which, regretfully, has not been ratified by Latvia yet, envisages a new mechanism of a formal dialogue within the system for protection of human rights included in the Convention – the possibility for the supreme courts of the states to request advisory opinion of the European Court of Human Rights.

The Report's section "International Cooperation" comprises information on the activities of the Constitutional Court through participation in the informal dialogue. The informal dialogue of the courts is implemented intensively and successfully, both by using the case law of foreign constitutional courts and by organising and participating in bilateral and multilateral cooperation. The Constitutional Court participates in the creation of CODICES database of the Venice Commission of the Council of Europe and also in the Venice Forum, providing information on the case law of the Constitutional Court and on legal issues in Latvia. In 2017, the Constitutional Court joined the network of supreme courts established by the European Court of Human Rights, as well as the network of courts created by the Court of Justice of the European Union.

It should also be noted that the Constitutional Court has been preparing annual reports already since 2008; however, for the first time the report on the previous years was translated into English only in 2017. Ensuring that the Report of the Constitutional Court is made accessible to a broader circle of interested persons is a tool that can be used to promote the dialogue between courts of different states. Moreover, the Report allows us to inform the international community on the quality of the rule of law in Latvia and about the trends, which is important for assessing Latvia's potential for development.

I entrust the assessment of whether this has been a successful work year of the Constitutional Court to the reader. However, it is clear that the Constitutional Court needs constant improvement and development. The past experience shows that the Constitutional Court has been doing this successfully for more than 20 years. The Constitutional Court's opportunities for development are influenced, *inter alia*, also by available human resources. Therefore, in 2017, we continued serious work on the long-term development vision for the Court, planning the tasks for 2018 and in further on to promote the recognisability of the Constitutional Court in Latvia and in the world, to reorganise the structure of the Constitutional Court with the aim of increasing the capacity of the Legal Department and decrease the administrative burden for the Justices, to sort out the issue of the status of the Constitutional Court and the Justice of the Constitutional Court in compliance with requirements of a democratic state governed by the rule of law, and also to promote improvement of the lawyers' and advocates' qualifications required to prepare applications to the Constitutional Court.

The Constitutional Court is characterised by regular changes in its composition. In 2017, the term in office expired for the Justice and the Vice-president of the Constitutional Court Uldis Ķinis and the Justice of the Constitutional Court Kaspars Balodis. We are very grateful to them for the work they have contributed in the course of a decade. Whereas on 3 April 2017, the Justice of the Constitutional Court Jānis Neimanis entered office, but on 21 April – the Justice of the Constitutional Court Artūrs Kučs. Predictable and gradual replacement of the Constitutional Court's Justices is essential for ensuring effective work of the Court. It should be noted that I started performing the duties of the President of the Constitutional Court on 8 May 2017, replacing in this office the previous President of the Constitutional Court Aldis Laviņš.

Our aim, in preparing and publishing the Report on the work of the Constitutional Court, is to ensure, to the extent possible, transparency in the Court's activities and to provide to society a comprehensive view of the Court's role and contribution to the development of Latvia as a democratic state governed by the rule of law. By this we hope to foster trust not only in the Constitutional Court but also in the judicial power and the State in general.

The Constitutional Court's Report of 2017 is published in 2018, when the State of Latvia celebrates its centenary. This event, being a certain dividing line, is an appropriate time for reflecting on achievements, for analysing topical issues, searching for solutions to identified problems and planning the future of the State in unified Europe, developing appropriate legal framework. The Constitutional Court also has scheduled a series of [events](#) to reach these aims.

Being convinced that all of us respect and abide by the values of a democratic state governed by the rule of law, included in the *Satversme*, the protection of which is our shared goal, on behalf of the Constitutional Court, I pass on for your assessment Report on the Work of the Constitutional Court in 2017.

President of the Constitutional Court
Ineta Ziemele

A handwritten signature in black ink, appearing to read 'Ziemele', written in a cursive style.

1 | **STATISTICS**



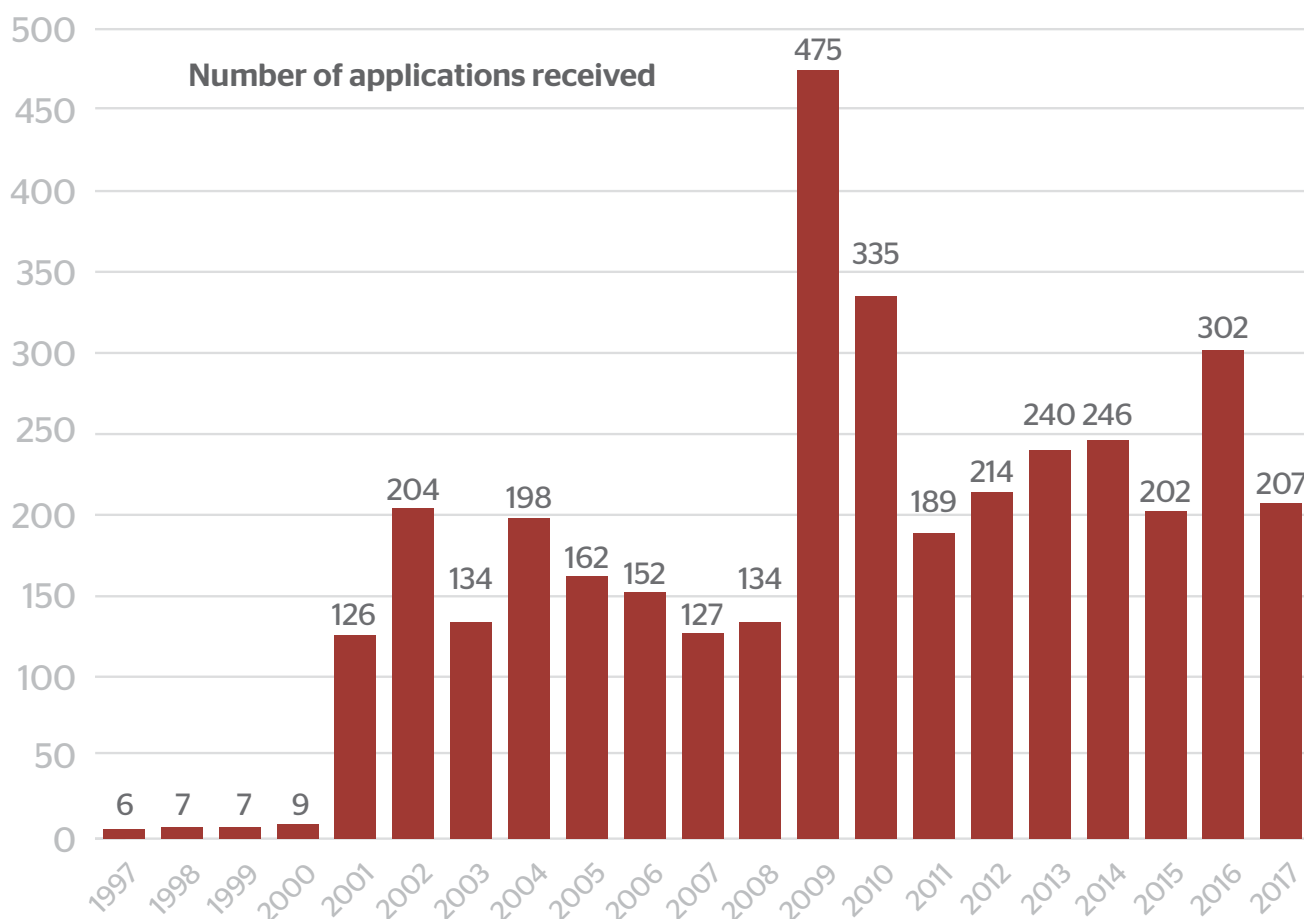
Justices of the Constitutional Court. From left: Jānis Neimanis, Daiga Rezevska, Sanita Osipova, Ineta Ziemele, Aldis Laviņš, Gunārs Kušņš, Artūrs Kučs.
Photo: Toms Norde.

In 2017, 390 applications were submitted to the Constitutional Court. Of these, 183 were recognised as being obviously outside the jurisdiction of the Constitutional Court but 207 were registered as applications and transferred for examination to the Panels of the Constitutional Court.

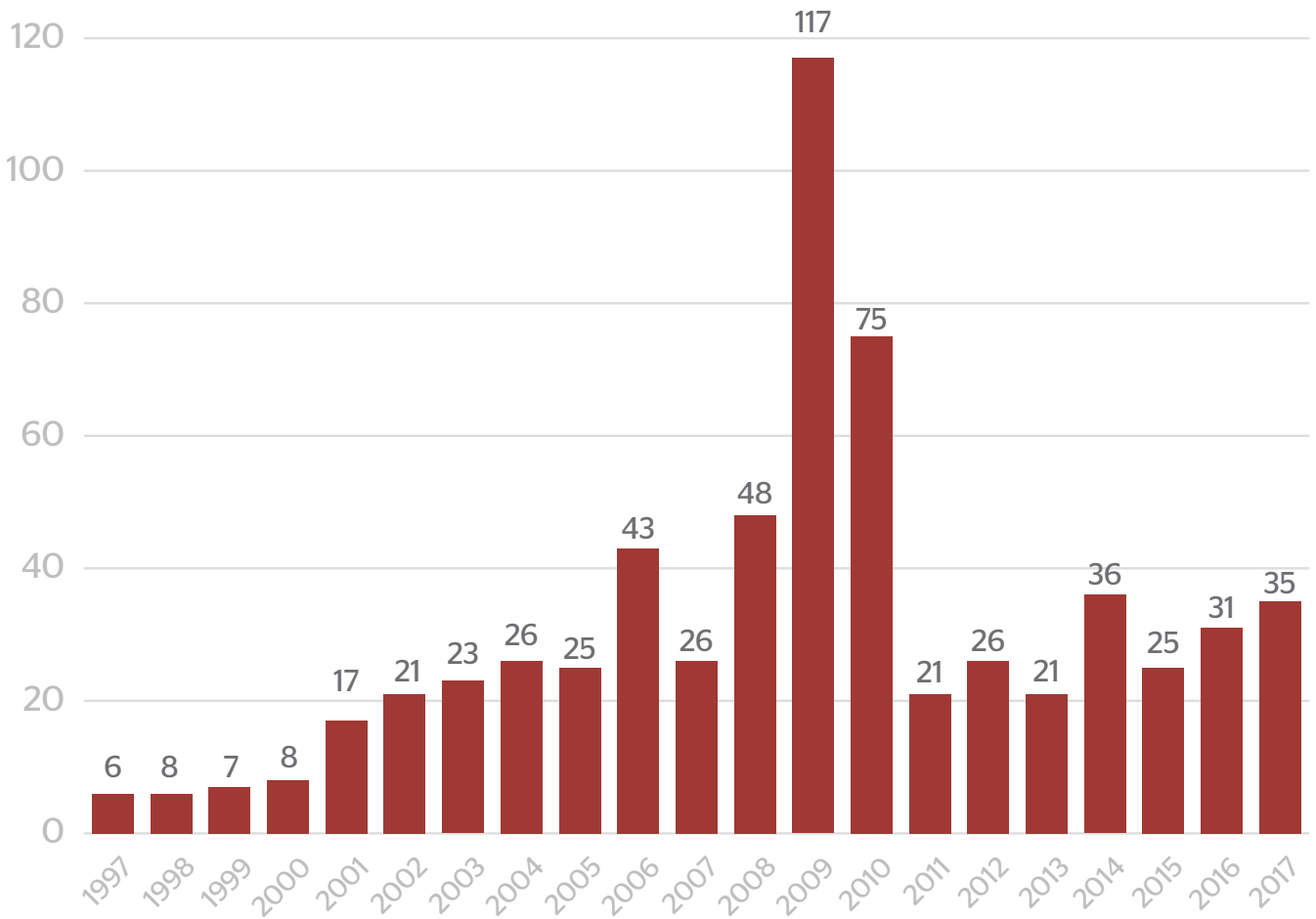
Last year the Constitutional Court initiated 35 cases. 20 cases were initiated on the basis of a constitutional complaint; seven cases were initiated on the basis of an application submitted by a court of general jurisdiction or an administrative court, four – on the basis of the

Ombudsman's application. Two cases were initiated with respect to an application by members of the Parliament (hereinafter – the *Saeima*), and one each – with respect to an application by the Prosecutor General and a local government council.

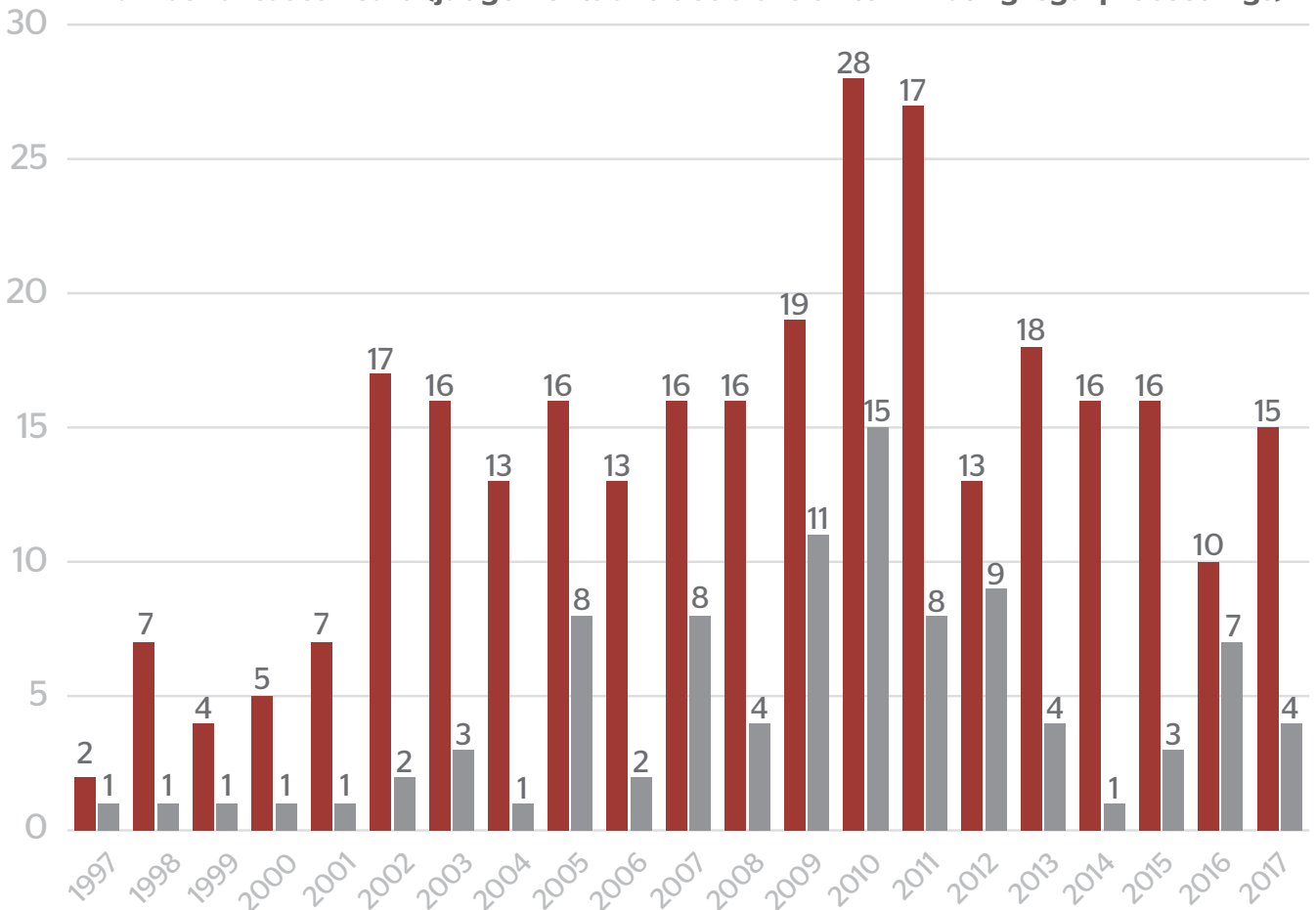
In 2017, the Constitutional Court heard 19 cases. Legal proceedings were terminated in four cases; in 15 cases judgements were passed. In total, in 11 judgements a legal norm was recognised as being incompatible with the *Satversme*. Justices of the Constitutional Court have appended their separate opinions to four judgements.



Number of initiated cases



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



2

**CASE LAW OF THE
CONSTITUTIONAL
COURT**

2.1. FUNDAMENTAL RIGHTS

General Observations

The fundamental rights or the human rights that are included in the *Satversme* are one of the constitutional values of Latvia as a democratic state governed by the rule of law. Even more so – human rights follow from the basic norm of a democratic state governed by the rule of law, therefore they have the nature of the general principles of law.

The Constitutional Court has recognised that the State has the obligation to respect, protect and ensure a person's fundamental rights. The obligation to respect fundamental rights means the State's obligation to abstain from interfering into a person's rights. The obligation to protect fundamental rights means the State's obligation to protect a person's fundamental rights against interference into these rights by other private persons. The obligation to ensure fundamental rights means the State's obligation to take certain measures for exercising fundamental rights.¹

In examining these obligations, the Constitutional Court has identified differences between, on the hand, civil and political rights and, on the other hand, economic, social and cultural rights. With respect to civil and political rights the State, basically, has the obligation not to interfere into a person's internal freedom; however, in the case of economic, social and cultural rights, the State has the obligation to provide for a person's need at least on the minimum level and to provide appropriate services.² These differences have an impact upon the nature of the State's obligations. For example, social rights are defined as the State's general obligations, the performance of which depends upon the State's economic situation and available resources.³ Moreover, in the field of social rights, decisions are usually taken rather on the basis of political considerations than legal ones.⁴ Thus, as the Constitutional Court currently holds that in this field as stringent requirements as with respect of its noninterference into realisation of a person's civil and political rights cannot be set for the legislator.⁵

Article 89 of the *Satversme* provides that the State recognises and protects fundamental human rights in accordance with the *Satversme*, laws and international agreements binding upon Latvia. The Constitutional Court has concluded that, thus, the legislator's aim had not been contrasting the human rights provisions included in the *Satversme* with the international human rights provisions but quite to the contrary – achieving harmony between these norms.⁶ I.e., international human rights provisions are a means for establishing the content and scope of human rights; moreover, insofar these provisions are legally binding upon Latvia, they are directly applicable.⁷ At the same time it has been recognised that the *Satversme* cannot envisage a lesser scope of protection for fundamental rights than any of the international human rights acts binding upon Latvia.⁸ Moreover, international human rights provisions and the application thereof cannot lead to narrowing of the human rights included in the *Satversme*.⁹

These findings are reflected in the Constitutional Court's considerations regarding the application of the European Convention for the Protection of Human Rights and Fundamental Freedoms. If it follows from the norms of the Convention that the human rights, enshrined in it, cover a particular situation then usually this situation also falls within the scope of the respective fundamental rights enshrined in the *Satversme*.¹⁰ However, if the human rights enshrined in the Convention do not cover the particular situation, this *per se* does not mean that this situation does not fall within the scope of the respective fundamental rights enshrined in the *Satversme*. In a case like this, it must be verified, whether the *Satversme* does not set a higher level of human rights protection.¹¹ I.e., the Convention envisages the minimum standard of human rights; the State, however, may guarantee a broader scope and higher protection for them.¹²

In verifying compliance of a contested norm with norms of higher legal force, the Constitutional Court uses different tests, depending on whether it has to exa-

1 Judgement by the Constitutional Court of 29 December in Case No. 2008-37-03, Para 12.1.2.

2 Judgement by the Constitutional Court of 11 December 2006 in Case No. 2006-10-03, Para 14.1.

3 Judgement by the Constitutional Court of 26 June 2001 in Case No. 2001-02-0106, Para 4.

4 Judgement by the Constitutional Court of 8 November 2006 in Case No. 2006-04-01, Para 16.

5 Judgement by the Constitutional Court of 8 November 2006 in Case No. 2006-04-01, Para 16.

6 Judgement by the Constitutional Court of 30 August 2000 in Case No. 2000-03-01, Para 5 of the Findings.

7 Judgement by the Constitutional Court of 2 July 2015 in Case No. 2015-01-01, Para 11.1.

8 Judgement by the Constitutional Court of 14 September 2005 in Case No. 2005-02-0106, Para 10.

9 Judgement by the Constitutional Court of 29 October 2010 in Case No. 2010-17-01, Para 7.1.

10 Decision by the Constitutional Court of 3 April 2014 on Terminating Legal Proceedings in Case No. 2013-11-01, Para 13.

11 Judgement by the Constitutional Court of 19 October 2011 in Case No. 2010-71-01, Para 12.1.

12 Judgement by the Constitutional Court of 10 February 2017 in Case No. 2016-06-01, Para 29.2.

mine restriction of fundamental rights or complying with the positive obligations of the State. In the case of a restriction on fundamental rights, the Constitutional Court examines, whether the restriction has been established by law, whether the restriction has a legitimate aim, and whether the restriction is proportionate.¹³ Whereas in those cases, where it is doubted if the State has fulfilled its positive obligations to ensure fundamental rights, the Constitutional Court establishes, whether the legislator has implemented measures to ensure that rights are exercised, whether persons have been ensured the possibility to exercise their rights at least in the minimum scope, and whether the general principles of law that follow from the *Satversme* have been abided by.¹⁴ The test regarding performance of the State's positive obligations is mainly used in assessing compliance of the contested norms with social rights.

In the majority of cases, the test regarding restriction of fundamental rights is used in examining constitutionality of the contested norms. The Constitutional Court has recognised that the legislator has the right to introduce such restrictions that are considered to be necessary, expedient and proportionate in a democratic society.¹⁵ However, at the same time the legislator must choose the most appropriate and effective restriction,¹⁶ it may not be arbitrary.¹⁷ The main purpose of laws in a democratic state governed by the rule of law is to ensure justice, whereas a law that places disproportionate restrictions upon a person's fundamental rights cannot be considered as being just.¹⁸

Since 2001, when private persons and courts also were granted the right to turn to the Constitutional Court, cases regarding compliance of the contested norms with the fundamental rights included in the *Satversme* are the most frequently examined cases by the Constitutional Court. The Constitutional Court has examined compliance of the contested norms with almost all fundamental rights envisaged in the *Satversme* – only the right to freely move and to choose one's place of residence (Article 97 of the *Satversme*) remains unexamined. The right to equal treatment (Article 91 of the *Satversme*), the right to property (Article 105 of the *Satversme*), and the right to a fair trial (Article 92 of the *Satversme*) have been analysed most frequently.

Trends of Development

Article 116 of the *Satversme* includes five legitimate aims, for the reaching of which the State has the right to restrict a person's fundamental rights. Until now, the Constitutional Court had applied four of them – protecting the rights of other people, the democratic structure of the State, and public safety and welfare. However, in case No. 2017-07-01, the Constitutional Court

referred to the protection of morals for the first time. Already in 2006, in case No. 2006-03-0106, the Constitutional Court recognised that inflexible restrictions on fundamental rights established in legal norms as absolute prohibitions could seldom be recognised as being a more lenient measure, because it was difficult for the person applying the legal norm, in the particular actual circumstances, to apply the respective norm reasonably. Whereas in case No. 2017-07-01 it was concluded that the legislator, in envisaging an absolute prohibition, had the obligation to assess and to substantiate that the absolute prohibition was the only possible way for reaching the legitimate aim of the restriction on fundamental rights established in the legal norm.

The Constitutional Court has repeatedly examined compliance of various legal norms with both Article 111 and Article 115 of the *Satversme*. However, in case No. 2017-02-03, it simultaneously examined for the first time compliance of a legal norm with both these Articles in their interconnection. Moreover, human dignity, which is the supreme value of any democratic state governed by the rule of law, was recognised as being one of the most essential elements uniting the content of Article 111 and Article 115 of the *Satversme*.

Thus far, in the majority of cases, the Constitutional Court has applied the test of restriction upon fundamental rights or the test regarding performance of the State's positive obligations. However, in case No. 2016-06-01 and No. 2016-12-01, in examining compliance of the contested norms with Article 92 of the *Satversme*, the Court used a different test. I.e., the Constitutional Court established, whether the contested norms ensured procedural rights compatible with the first sentence of Article 92 of the *Satversme* and whether a person had been denied access to court in the institutional meaning of this concept.

In case No. 2002-20-0103 and in case No. 2005-07-01 it was recognised, at the time, that in cases that pertained to issues of official secrets a person might not be granted the right to access the court. Whereas in case No. 2016-06-01 it was concluded that the social reality and the context of legal relationships had changed and that the general prohibition to turn to court in matters pertaining to official secrets was no longer compatible with the procedural justice safeguarded by the first sentence of Article 92 of the *Satversme*.

Finally, the Constitutional Court still has to encounter issues, whether the regulation provided in the regulatory enactments of the Union of Soviet Socialist Republics (hereinafter – the USSR) is applicable in Latvia as a democratic state governed by the rule of law. The

13 Judgement by the Constitutional Court of 14 April 2011 in Case No. 2010-62-03, Para 8.

14 Judgement by the Constitutional Court of 9 April 2013 in Case No. 2012-14-03, Para 13.

15 Judgement by the Constitutional Court of 5 March 2003 in Case No. 2002-18-01, Para 5.2.1. of the Findings.

16 Judgement by the Constitutional Court of 23 November 2006 in Case No. 2006-03-0106, Para 33.

17 Judgement by the Constitutional Court of 10 May 2013 in Case No. 2012-16-01 Para 25.

18 Judgement by the Constitutional Court of 11 April 2007 in Case No. 2006-28-01, Para 20.1.



Photo: From the Archive of the Constitutional Court.

Constitutional Court recognised in case No. 2016-11-01 that the legal regulation of the USSR regarding granting the disability status to a child obviously established a smaller scope of rights' protection than the international documents for human rights protection that were in force at the time. Such legal regulation adopted in a totalitarian state cannot serve as the grounds for depriving a person of rights that are ensured to other persons.

Case No. 2016-06-01

[Judgement \[in Latvian\]](#)

[Judgement \[in English\]](#)

[Press release \[in English\]](#)

On 10 February 2017, the Constitutional Court pronounced the judgement in case No. 2016-06-01 "On Compliance of the Fifth Part of Section 11 and the Third and Fourth Part of Section 13 of the Law "On Official Secrets" with the First Sentence of Article 92, Article 96 and the First Sentence of Article 106 of the *Satversme* of the Republic of Latvia".

Legal norms, which define the procedure for annulling the special permit for accessing official secrets, were examined in the case.

The case was initiated on the basis of a private person's constitutional complaint. The applicant's special permit to access official secrets had been annulled and because of this legal employment relationship with him had been terminated. The applicant requested the Court

to examine the compliance of a number of norms of the law "On Official Secrets" with the *Satversme*. The norms provided that 1) a person could appeal the decision on annulling the special permit for accessing official secrets to the Prosecutor General, whose decisions was not subject to appeal; 2) annulment of the special permit was the grounds for transferring the person to another job or for terminating legal employment relationship; 3) after annulment of the special permit, the person was prohibited from receiving such a permit in the future. The applicant held that the contested norms were incompatible with the right to a fair trial, the right to private life, as well as the right to freely choose one's vocation.

Prior to examining constitutionality of the contested norms, the Constitutional Court decided on a number of procedural issues. It rejected the *Saeima's* argument that the claim regarding constitutionality of the contested norms already had been adjudicated in case No. 2002-20-0103. However, the Constitutional Court upheld the *Saeima's* opinion that the contested norms did not restrict the applicant's right to private life; therefore it terminated legal proceedings in the part regarding compliance of the contested norms with Article 96 of the *Satversme*.

First of all, the Constitutional Court examined the norm that established the annulment of the special permit as the grounds for transferring a person to another job or for terminating legal employment relationship.

It was recognised that a person's right to retain his job also after annulment of the special permit would subject the national security interests to risk, because in such a case persons, whose ability to keep official secrets was questioned, would be able to access official secrets. Moreover, the special permit is required to perform the respective job duties in full. Thus, in this case the interests of national and public security should be given priority.

Secondly, the Constitutional Court examined the norm that prohibited a person from receiving such a permit in the future after the special permit had been annulled. It was concluded that at least in the case, where the reasons for annulling the special permit had been eliminated, there would be no grounds to prohibit the person from receiving the special permit repeatedly. Thus, it would be possible to define in the law specific cases and term, when repeated application for the special permit would be admissible. Therefore, a general unlimited prohibition to receive the special permit repeatedly after it had been annulled places disproportionate restriction upon the right to choose one's workplace.

Finally, the Constitutional Court assessed, whether in adopting the decision on the special permit the right to access to court and the right to procedural justice, which followed from the first sentence of Article 92 of the *Satversme*, were ensured to a person.

The Constitutional Court had examined this issue already in its judgement of 23 April 2003 in case No. 2002-20-0103. At that time it was found that access to court could be restricted, *inter alia*, in cases related to official secrets. However, if access to court is denied, then the alternative procedure should give to a person the possibility to protect his or her rights at as high level as possible. At that time, the Constitutional Court also found that in the particular case the procedure, in which the decision was adopted regarding accessing official secrets, placed disproportionate restrictions upon a person's rights and caused doubts regarding the objectivity of decisions that were adopted. However, these deficiencies were to be eliminated through application of law by using interpretation of legal norms that was compatible with the *Satversme*, *inter alia*, by ensuring to a person the right to be heard.

In case No. 2016-06-01, the Constitutional Court predominantly based its opinion on the findings expressed in the judgement in case No. 2002-20-0103 and the following judgement of 29 April 2014 by the European Court of Human Rights in case "Ternovskis v. Latvia". It was recognised that annulment of the special permit could restrict the rights envisaged in the first sentence of Article 106 of the *Satversme* and, in such a case, a person should have the possibility to defend his rights in way that complied with the first sentence of Article 92 of the *Satversme*.

The Constitutional Court found that the contested norms did not ensure to a person access to "court" in

the institutional meaning of the word, since in the field of protecting official secrets the Prosecutor General could not be considered as being "a court". Moreover, in the procedure for adopting and appealing against a decision that was established in the contested norms, a person's procedural rights in compliance with the first sentence of Article 92 of the *Satversme* were not ensured either. These rights include the right to be heard, which, *inter alia*, is linked to a person's right to be informed about the circumstances that are the grounds for annulment of the special permit. If the national security agencies have at their disposal facts that allow questioning a person's suitability for accessing official secrets, then eliminating a threat to the national security interests is the priority, rather than ensuring a person's procedural rights. However, after the decision on annulment of the special permit has been adopted, a person's right to be heard, as well as the right to be informed about the circumstances that are the grounds for the decisions must be ensured in such a scope that would allow a person to exercise his right to a fair trial.

Insofar national security interests allow it, a person should be informed about the reasons for annulling the special permit before the initial decision on annulling a special permit is adopted. Following the adoption of this decision, a person's right to be informed about circumstances upon which the decision is based, as well as a person's right to be heard is to be ensured in scope that would allow a person to exercise his right to fair trial.

Since in the procedure of annulling the special permit a person is not ensured access to "court" in the institutional meaning of this word, nor due procedural rights, a person is substantially denied the right to a fair trial. Hence, the Constitutional Court found that the contested norms were incompatible with the first sentence of Article 92 of the *Satversme*.

Comparison of this judgement and the judgement in case No. 2002-20-0103 reveals a difference in the Constitutional Court's position with respect to the way, in which a decision on the special permit is adopted, is regulated. In case No. 2002 20 0103, the Constitutional Court found it admissible that this procedure was not extensively regulated. In finding that the law did not define the procedural rights of the person who was screened, the Constitutional Court only noted that the law did not prohibit from ensuring these rights and that they should be ensured by such interpretation of legal norms that would be compatible with the *Satversme*. However, in the judgement under discussion,

the Constitutional Court underscored that a person's procedural rights were substantially restricted in the process of annulling special permits, moreover, a part of this procedure was not regulated by such generally binding regulatory enactments that would be publicly accessible. Even more, the state institutions, which were involved in the procedure for annulling special permits and appealing against the respective decisions, each had its own understanding of a person's procedural rights to be ensured in this process and the scope thereof. Thus, ensuring of these rights is left in the care of parties applying legal norms and depends upon their understanding of procedural justice. Such procedure is unacceptable, because restrictions upon a person's fundamental rights must be established by law, which clearly defines the scope and the limits of the restriction upon fundamental rights. Arbitrary restriction on fundamental rights is inadmissible.

Case No. 2016-11-01
[Judgement \[in Latvian\]](#)
[Press release \[in English\]](#)

On 15 June 2017, the Constitutional Court passed the judgement in case No. 2016-11-01 "On Compliance of Section 11(4) of the Law "On State Pensions" with the First Sentence of Article 91 and Article 109 of the *Satversme* of the Republic of Latvia".

The procedure, in which old-age pension is awarded five years before reaching the retirement age set in the general law, if a person has cared for a disabled child for more than eight years, was examined.

The case was initiated on the basis of an application by the Department of Administrative Cases of the Supreme Court. The Supreme Court held that the legislator, by including in the contested norm criteria for granting early old-age pension, had not granted the right to early retirement to all parents, whose children's health status actually complied with the criteria for granting the disability status. Thus, allegedly, the contested norm is incompatible with the principle of equality and infringes on a person's right to social security.

First, the Constitutional Court found that the contested norm, insofar it set the requirement to establish, whether the child's disability had been recognised in compliance with the criteria for establishing disability that had been in force at the time when the child had been cared for, denied to a person the right to receive early old-age pension. Thus, this norm restricts the fundamental rights defined in the *Satversme*.

Secondly, the Constitutional Court rejected the argument presented by the *Saeima* that the case was based on an untypical situation that had not been envisaged by the legislator and that fair regulation could be found by applying the legal norm.

Thirdly, the Constitutional Court pointed out that the compliance of the contested norm with Article 109 of the *Satversme* had to be examined in interconnection

with the principle of equality that fell within the scope of the first sentence of Article 91 of the *Satversme*. I.e., if the State has envisaged the possibility of early retirement in a law, then Article 109 of the *Satversme* requires the actions of the State with respect to this issue to comply with the general principles of law that are derived from the basic norm of a democratic state governed by the rule of law, *inter alia*, the principle of equality.

Fourthly, in examining compliance of the contested norm with the principle of equality, the Constitutional Court found that all persons, who at least for eight years had cared for children, who at least for eight years prior to reaching the age of 18 had had the same diseases or the same pathological condition, were in similar and according to concrete criteria comparable circumstances. However, the contested norm places in a different situation those persons, who are denied the right to early retirement, because the criteria for establishing disability that had been in force at the time of caring for the child, in difference to criteria adopted later, did not include the disease or the pathological condition that the child had been diagnose with as the grounds for establishing disability and therefore it was impossible to establish the child's disability for at least eight years prior to reaching the age of 18. Thus, the contested norm causes differential treatment of persons, depending on the child's date of birth and the criteria for establishing disability that had been envisaged by regulatory enactments that had been in force at the time the child was cared for. The analysis of the aim of the differential treatment led to the finding that the differential treatment had been established with the aim of protecting public welfare because the contested norm ensured and effective and predictable system for granting social security.

In assessing, whether the differential treatment was proportionate, the Constitutional Court found that the contested norm comprised a reference to the legal regulation of the USSR. The legal regulation of another state, i.e., the USSR, on granting the disability status to children as to the criteria it included obviously fell behind developments in the protection of the rights of disabled children and their family members, enshrined in international human rights documents, it also differed significantly from regulation adopted by a democratic state governed by the rule of law, i.e., by Latvia, which envisaged much broader range of criteria for granting the disability status to be directly applied to children. Until the moment when Latvia's regulatory enactments came into force, the children of particular parents already could have had diseases or pathological conditions indicated in these regulatory enactments; however, pursuant to regulatory enactments applied in the USSR, the disability status was not recognised. Such criteria defined by a totalitarian state may not be the grounds for denying a person the rights that are ensured to another person, who is in similar and comparable circumstances.

In the particular situation, the legislator has not exa-

mined, pursuant to equality principle, the best way for exercising the fundamental rights of parents of disabled children, if the child at the moment when legal regulation was replaced in 1990 was older than ten years and had had already prior to that a concrete disease or a pathological condition that met the criteria for granting the disability status only after the criteria for granting the disability status adopted in the Republic of Latvia entered into force. Application of regulatory enactments adopted after restoration of Latvia's independence, insofar they comply with the principles for protecting the rights of disabled children and their family members, also with respect to caring for the child in the previous period, could be considered as one of the possible alternative measures that would infringe to a lesser extent upon persons' fundamental rights enshrined in the *Satversme*. Also, this would not destabilise the system of social security because the number of parents, to whom the contested norm applies and in whose period of caring for the child the criteria for granting disability status included in regulatory enactments of the USSR applied, is comparatively small.

Hence, the Constitutional Court ruled that the contested norm, insofar it denied to a person the right to retire before reaching the full retirement age and demanded establishing that the child's disability had been recognised in accordance with criteria for granting disability status envisaged in regulatory enactments of the USSR, had to be recognised as being incompatible with the first sentence of Article 91 and Article 109 of the *Satversme*.

The contested norm comprises a reference to the legal regulation of the USSR, which obviously fell behind developments in the protection of the rights of disabled children and their family members, enshrined in international human rights documents. The Latvian legislator, in adopting the contested norm, should have abided by the principle of the priority of the child's best interests and the need to ensure special protection to disabled and children and their family members in the course of development and on the basis of equality.

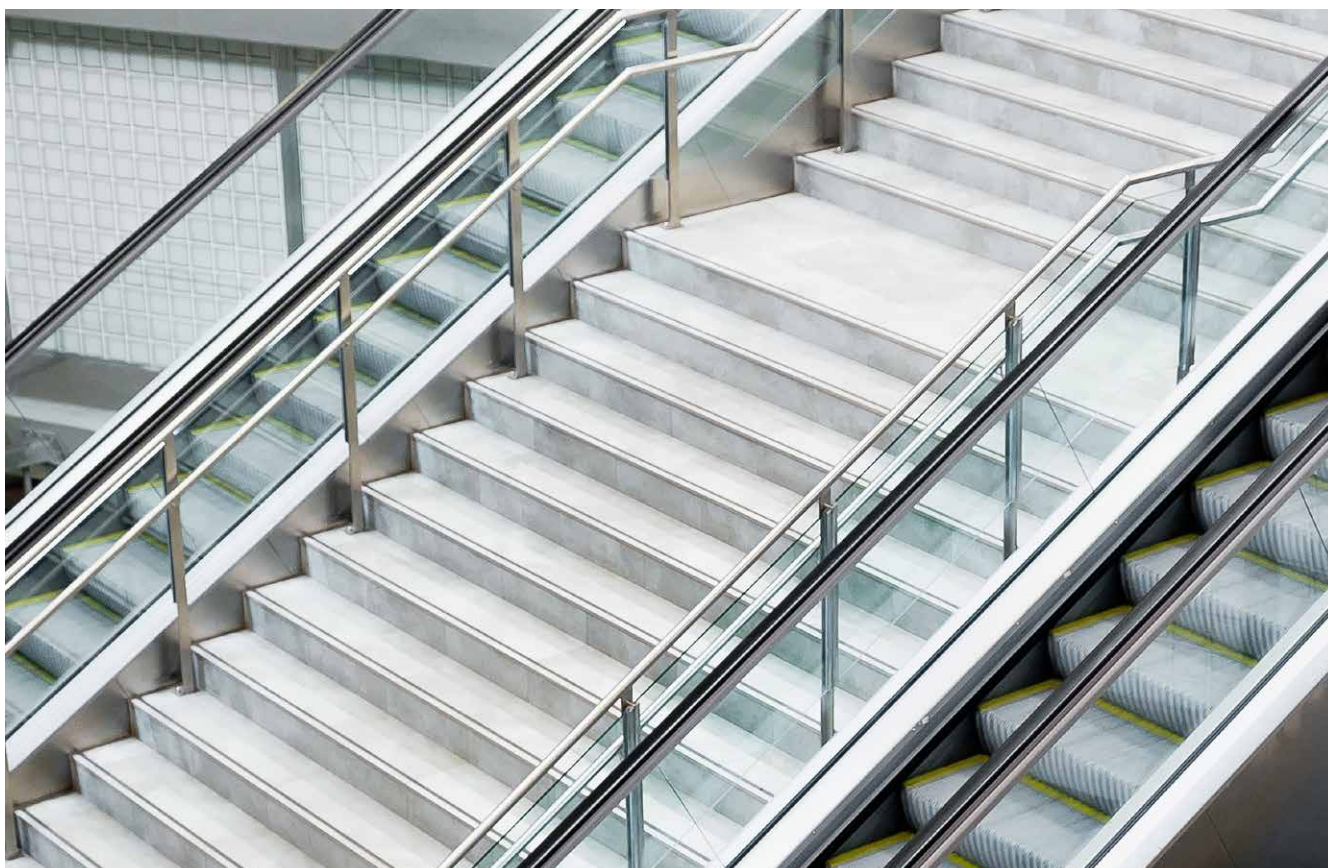
Case No. 2016-12-01

[Judgement \[in Latvian\]](#)

[Press release \[in English\]](#)

On 18 May 2017, the Constitutional Court passed the judgement in case No. 2016-12-01 "On Compliance of Section 50²¹(5) of the Sentence Execution Code of Latvia with the First Sentence of Article 92 of the *Satversme* of the Republic of Latvia".

The prohibition to appeal against a decision by which the regime of serving the sentence is reinforced was examined in the case.



The case was initiated on the basis of an application by the Department of Administrative Cases of the Supreme Court. It was noted in the application that a decision by a prison's evaluation committee on reinforcing the regime for serving the sentence significantly affected the sentenced person's right to private life and, therefore, it should be possible to appeal against this decision in court.

First, the Constitutional Court established, whether the contested norm had to be applied in the administrative case that was the basis for the case under review. It was found that the contested norm had to be applied in the administrative case and, thus, legal proceedings in the case under review had to be continued.

Secondly, the Constitutional Court recognised that compatibility of the contested norm with the first sentence of Article 92 of the *Satversme* had to be examined insofar this norm applied to the decision, by which a sentenced prisoner's regime of serving the sentence was reinforced, because the applicant saw incompatibility of the contested norm with the *Satversme* exactly with respect to reinforcing the regime for serving a sentence. Moreover, also the *Saeima* has examined constitutionality of the contested norm, on the basis of arguments regarding reinforcing the regime for serving a sentence.

Thirdly, the Constitutional Court concluded that the evaluation committee, in adopting a decision on changing the regime for serving a sentence, essentially, decided on issues related to conditions, in which a sentence linked to deprivation of liberty was served. By reinforcing the regime of serving the sentence, the scope of rights to private life that can be exercised in the institution for deprivation of liberty is decreased for the sentenced person. Hence, the contested norm, insofar it applies to a decision, by which the regime for serving a sentence is reinforced, restricts such right of a sentenced person the protection of which should be ensured in a fair trial. Thus, the contested norms restricts the rights of sentenced persons, the protection of which falls within the scope of the first sentence of Article 92 of the *Satversme*.

Fourthly, by analysing the scope of the first sentence of Article 92 of the *Satversme* in interconnection with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Constitutional Court noted that the findings regarding the neutrality of a court were equally applicable also to an institution, which on the institutional level reviewed the decision on reinforcing the regime for serving a sentence. The established legal remedy, i.e., reinforcing the regime for serving the sentence and reviewing of the respective decision only within structures of the executive power, irrespectively of the procedure that is implemented, cannot be considered as such that can be designated as "court". A legal remedy like this does not prevent all risks linked to assessing the validity of the decisions and, thus, creates doubts as to the independence and objectivity of the

party adopting the decision. Therefore the sentenced person must be ensured at least the minimum right to turn to court; i.e. the right to have the case examined at least in one judicial instance.

Thus, the Constitutional Court recognised the contested norm, insofar it applied to a decision on reinforcing a sentenced prisoner's regime for serving the sentence, as being incompatible with the first sentence of Article 92 of the *Satversme*.

Justices of the Constitutional Court Aldis Laviņš and Jānis Neimanis appended to the judgement their joint "**separate opinion**" [in Latvian]. It is noted in the separate opinion that narrowing of the claim and applying it only to such decisions by which the regime for serving a sentence is reinforced is incompatible with two basic principles of legal proceedings before the Constitutional Court – the principle of objective investigation and the principle *iuria novit curia*, as well as the legal system of Latvia and the established case law of the Constitutional Court.

The findings regarding the neutrality of a court are equally applicable also to an institution, which on the institutional level reviews the decision on reinforcing the regime for serving a sentence. Reinforcing the regime for serving the sentence and reviewing of the respective decision only within structures of the executive power, irrespectively of the procedure that is implemented, does not prevent all risks linked to assessing the validity of the decisions and, thus, creates doubts as to the independence and objectivity of the party adopting the decision.

Case No. 2017-01-01

[Decision \[in Latvian\]](#)

[Press release \[in English\]](#)

On 17 November 2017, the Constitutional Court decided to terminate legal proceedings in case No. 2017-01-01 "On Compliance of Section 18(1) and Section 21(1) of the Official Language Law with Article 96 of the *Satversme* of the Republic of Latvia".

Prohibition to indicate the name of the street on the number sign of the building, alongside Latvian, also in a foreign language was examined in the case.

The case was initiated on the basis of a constitutional complaint by a private person. The applicant stated that

she had placed to an immovable property in her ownership a number sign of the building, on which the name of the street had been, alongside the official language, indicated also in foreign languages – in English and in Russian. The applicant was made administratively liable because such sign of the number of the building violated the norms established in the Official Language Law. The applicant held that the prohibition to indicate on the number sign of the building the name of the street also in a foreign language alongside the Latvian language restricted her right to inviolability of her private life and home.

First of all, the Constitutional Court examined, whether legal proceedings in the case should be terminated. The *Saeima* requested termination of legal proceedings, noting that the contested norm that was applied to the applicant – Section 21(1) of Official Language Law – could not have restricted the applicant's fundamental rights, because was not applicable to her.

The Constitutional Court found that it followed from Section 21(1) of the Official Language Law that the purpose of this norm was to establish provision of information only in the official language in those cases, where the provider of information performed a public function, excluding from the circle of subjects of this norm those persons, who acted in the private sphere. Although it was not established in the case of the administrative violation that performance of a public function had been delegated to the applicant by a law or another regulatory enactment, the applicant was made administratively liable, *inter alia*, on the basis of Section 21(1) of the Official Language Law. The Constitutional Court noted that an erroneous application of a legal norm was not the grounds for reviewing the constitutionality of a legal norm. Since Section 21(1) of the Official Language Law did not pertain to the applicant as a private person and, consequently, does not affect her fundamental rights established in Article 96 of the *Satversme*, the Constitutional Court decided to terminate legal proceedings in this part.

Secondly, the Constitutional Court established, whether Section 18(1) of Official Language Law, which provided that in the Republic of Latvia place names had to be created and used in the official language, was applicable also to a private person. It was concluded that the obligation to use place names in the official language could not be narrowed by applying it only to institutions of public power – this obligation applied also to private persons.

Thirdly, the Constitutional Court drew attention to the fact that that the obligation established by Section 18(1) of the Official Language Law both to an institution of public power and a private person to use place names in the official language (within the territory of the Liiv Coast – also in the Liiv language) was a manifestation of the principle of a nation state. Strengthening of language in public visual information is essential for mastering the language and facilitating awareness of social

cohesion. Place names are part of the Latvian cultural heritage, and the State has the obligation to safeguard and protect it. The Latvian language must be protected, irrespectively of the breadth of its actual use or the level of threats that it is subjected to.

Fourthly, the Constitutional Court recognised that the creation and placement of the sign denoting the number of the building and the street name were actions of public nature. The purpose of such a sign is promoting clear identification of the respective geographical object and ensuring that the public finds its bearings in the environment (including the urban environment). The number of the building and the street name were not a manifestation of the privacy of the owner or legal possessor of the building. Presentation of the content of the sign and the placement thereof do not constitute a private or individual communication between the owner or the legal possessor of the building and the society or an individual representative of society.

In view of the above, the Constitutional Court found that Section 18(1) of Official Language Law, insofar it envisaged a prohibition to indicate the name of the street on the number sign of the building also in a foreign language, alongside the Latvian language, did not pertain to the applicant's right to inviolability of private life and home, established in Article 96 of the *Satversme*. Consequently, legal proceedings were terminated also in this part of the case.

Actions, which substantially are public and the aim of which is not personal development or establishing relationships of personal nature, do not fall within the scope of the right to inviolability of private life.

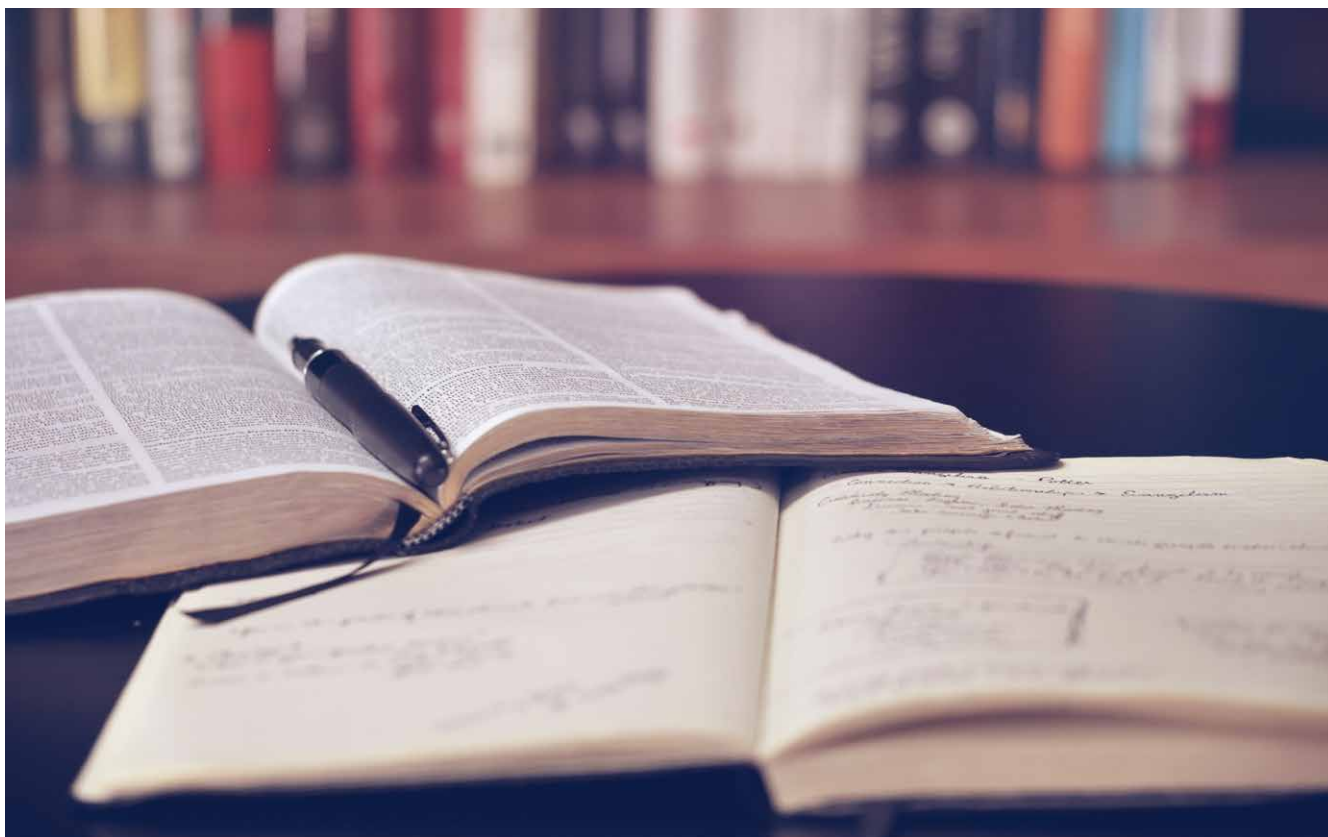
Case No. 2017-02-03

[Judgement \[in Latvian\]](#)

[Press release \[in English\]](#)

On 19 December 2017, the Constitutional Court passed the judgement in case No. 2017-02-03 “On Compliance of Para 2 of Annex 2 to the Cabinet Regulation of 7 January 2004 No. 16 “Procedure for Assessing and Managing Noise” with Para 7 of Section 3 and Section 18¹(3) of the Law “On Pollution” and Article 111 and Article 115 of the *Satversme* of the Republic of Latvia, as well as Subpara 2.4. of this Regulation, insofar it Applies to Public Auto and Moto Sports Events which are Held in Open-air Auto and Moto Racing Tracks Located in a Populated Area (City or Village) and for which a Permit for Organising a Public Event has been Issued in the Procedure set out in the Law on Safety of Public Entertainment and Festivity Events with Para 7 of Section 2 of the Law “On Pollution” and Article 111 and Article 115 of the *Satversme* of the Republic of Latvia”.

The threshold values of noise set for auto and moto ra-



cing tracks were examined in the case.

The case was initiated on the basis of applications submitted by the Administrative District Court and the Ombudsman. It was noted in the applications that the noise caused by moto racing tracks infringed upon persons' right to live in a benevolent environment and had a hazardous impact upon persons' health. Noise should be assessed as one kind of pollution, which might have harmful influence upon human health. Therefore the State, allegedly, had the obligation to limit sources of noise and ensure that the level of noise did not exceed the threshold above which it could become harmful for persons' health.

First, the Constitutional Court recognised that the right to health and the right to live in a benevolent environment comprised also the right to healthy environmental conditions. Therefore both Article 111 and Article 115 of the *Satversme* are applicable to the protection of a person's health against noise and constitutionality of the contested norms had to be assessed by examining both respective Articles in their interconnection. The Constitutional Court also found that in the case under examination it had to be verified, whether the State had duly performed its positive obligations, which followed from Article 111 and Article 115 of the *Satversme*. To dot that, it must be verified, whether the State had implemented measures aimed at ensuring and protecting these fundamental rights, and also if these obligations had been performed in due procedure. Whereas in examining, whether these measures had been implemented in due procedure, it must be verified, whether in protecting a person's right to health, principles of environmental law had been abided by and whether a fair balance between the interests of all stakeholders had

been reached.

Secondly, the Constitutional Court recognised that in a democratic state governed by the rule of law the legislator, in adopting legal norms, and also the party applying legal norms in the application thereof had to respect human dignity. Everyone has the right to live in an environment, where he or she can function and develop in full, in conformity with human dignity. Whereas in accordance with the precautionary principle, the State has the obligation to do everything possible to prevent effectively harm to human health or, to the extent possible, decrease if before it has occurred. The Constitutional Court found that the noise that was allowed by the contested norms was not only close to noise that caused harmful consequences to human health, but in some cases even exceeded it. Thus, a person living in the vicinity of racing tracks may be subjected to the noise of such level that has a harmful impact upon his or her health. At the same time it was also emphasized that the Cabinet of Ministers knew about the possible harmful consequences, and yet the Cabinet did not consider these. Thus, the Cabinet has not acted in compliance with the precautionary principle, ensuring and protecting human dignity as the supreme value of a democratic state governed by the rule of law.

Thirdly, the Constitutional Court noted that the Cabinet had to ensure a fair balance between the competing interests. The contested norms had been adopted mainly to facilitate organising of international auto and moto sports competitions in Latvia, thus, primarily supporting the interests of sportsmen and the respective merchants. Moreover, training sessions and competitions in auto and moto racing tracks bring

economic benefits to society and provide possibilities to persons, including children, to engage in sports. However, the Cabinet has the obligation to consider not only economic and other lawful interests but also the possible harmful impact upon human health. Moreover, the measures that are envisaged for preventing the possible negative impact on human health should be effective. This kind of balance was not ensured.

In view of the above, the Constitutional Court recognised the contested norms as being incompatible with Article 111 and Article 115 of the *Satversme*. Hence, compatibility of the contested norms with Para 7 of Section 2 of the law “On Pollution” was not examined.

Human dignity and the value of each individual is the essence of human rights. Therefore in a democratic state governed by the rule of law the legislator, in adopting legal norms, and also the institutions, in applying legal norms, must respect human dignity.

Case No. 2017-03-01

[Judgement \[in Latvian\]](#)

[Press release \[in English\]](#)

On 21 December 2017, the Constitutional Court passed the judgement in case No. 2017-03-01 “On Compliance of the Fourth and the Sixth Part of Section 30, the Fifth and the Sixth Part of Section 48, Para 5 of Section 50, and Para 2¹ of the First Part of Section 51 of Education Law with the First Sentence of Article 100 and the First Sentence of Article 106 of the *Satversme* of the Republic of Latvia”.

Loyalty to the Republic of Latvia and its *Satversme* as a precondition for working as the head of an institution of education or a teacher was assessed in the case.

The case was initiated with respect to an application submitted by twenty members of the 12th *Saeima*. It was noted in the application that the contested norms prohibited a person from being a head of an educational institution and a teacher if he or she did not comply with the obligation to be loyal to the State of Latvia and its *Satversme*, as well as to bring up decent, honest, and responsible people – patriots of Latvia, to strengthen affiliation with the Republic of Latvia. Allegedly, this prohibition placed disproportionate restrictions on a teacher’s right to freedom of speech. I.e., the contested norms, allegedly, required the teacher not only to be loyal to the Republic of Latvia in his or her actions and express opinion that was loyal to the Republic of Latvia and its *Satversme*, but also to hold such internal conviction. Moreover, the said requirement applied to all aspects of the freedom of expression both in a teacher’s professional activities and in his or her private life. It was maintained that disproportional restrictions upon a teacher’s right to employment had been placed,

because a teacher was prohibited from working in his or her profession, if incompatibility with the requirements included in the contested norms was found.

First, the Constitutional Court recognised that the contested norms restricted the right of a head of an educational institution and a teacher to freely express his or her opinion; however, they did not restrict the internal, unexpressed thoughts and beliefs. The right to freely choose one’s vocation is also restricted because if the obligations that are envisaged in the contested norms are not fulfilled the legal employment relationship may be terminated and a prohibition for a year to work as a teacher or a head of an educational institution may be imposed.

Secondly, the Constitutional Court found that the restriction on fundamental rights, which followed from the contested norms, was established by law adopted in due procedure. The contested norms, which were adopted by the law of 18 June 2015 “Amendments to Education Law”, were worded with sufficient clarity allowing a person to understand the content of rights and obligations that followed from them. The concept of loyalty as a general clause has been embedded in the legal system and the meaning of its content, essentially, is clear. An action or an opinion that denying the State of Latvia or the principles that are included in the *Satversme* is to be recognised as being disloyal. Likewise, the contested norms, which are included in the law of 23 November 2016 “Amendments to Education Law”, are sufficiently clearly worded. Moreover, the inclusion of these norms on the package of draft laws accompanying the draft law “On the State Budget for 2017” complies with the provisions of Para 87¹ of the *Saeima* Rules of Procedure.

Thirdly, the Constitutional Court noted that high quality process of education is such that provides to students not only knowledge but also understanding of and respect for the values of the State of Latvia and the *Satversme*, as well as reinforces the awareness of themselves as part of the civil society of Latvia. Thus, the democratic state order is ensured and safeguarded both at the present and in the future. If a teacher or a head of an educational institution, who was not loyal to Latvia as a democratic state governed by the rule of law and to the principles of the *Satversme* and through his actions or words expressed disloyal opinions, participated in the process of education and influenced the students, then it would be impossible to ensure high quality education and to reach the aims of education.

The loyalty requirement does not restrict a person’s right to be engaged in social, i.e., civic and political activities. They allow a person to exercise his freedom of speech in a way that complies with the *Satversme* and a teacher’s ethics, *inter alia*, by critically analysing political and social processes, actions taken by officials or the Government. Likewise, the loyalty requirements do not prohibit a teacher from organising the classes and the upbringing work in a way that facilitates cri-

tical thinking, develops the ability to express, listen to and analyse various opinions. However, the opinion that is expressed or the action taken may not undermine loyalty to the State of Latvia and the principles of the *Satversme*.

All students in Latvia have the right to receive education that, *inter alia*, complies with the principle of a democratic state governed by the rule of law, the principle of Latvia as a nation state and ensures that the student becomes a full fledged member of the democratic civil society. Members of society, who are aware of and respects the values, on which the *Satversme* is founded, is the precondition for the existence of a democratic state governed by the rule of law. Moreover, the primary objective of the process of education – to ensure to students the right to receive such education and upbringing that would allow developing and strengthening the feeling of being affiliated to Latvia – complies with the interests of society, not only those of the students. Thus, the legislator, by adopting the contested norms, has reached a balance between the interests of society and those of an individual, and the restriction that is established by the contested norms is proportionate.

In view of the above, the Constitutional Court recognised the contested norms as being compatible with the first sentence of Article 100 and the first sentence of Article 106 of the *Satversme*.

Since the restoration of independence, democratic values and civil society have consolidated in Latvia; however, the State, taking into consideration the historical experience, must take special care also in the future to protect and consolidate values of democracy in the field of education.

Case No. 2017-07-01

[Judgement \[in Latvian\]](#)

[Press release \[in English\]](#)

On 24 November 2017, the Constitutional Court passed the judgement in case “On compliance of Para 1 of Section 50 of Education Law, insofar it denies a person, who has been punished for serious or particularly serious crimes, to work as a teacher, with Article 106 of the *Satversme* of the Republic of Latvia.”

The absolute prohibition to work as a teacher to any person, who had been punished for a serious or a particularly serious crime, was examined in the case.

The case was initiated on the basis of a private person’s constitutional complaint. It was noted in the complaint that the restriction on fundamental rights included in the contested norm was not proportionate, because,

even if the criminal record had been set aside or extinguished, an absolute prohibition to work as a teacher had been applied to a person. Likewise, the contested norm prohibits the competent institution from assessing a person’s suitability for a teacher’s work.

First, the Constitutional Court established the scope in which and the persons with respect to who it should examine the regulation included in the Education Law, which prohibited a person from working as a teacher, because it applied to an extensive set of different situations. It was recognised that a situation, in which the Constitutional Court would have to initiate and examine new cases involving the same issue of constitutional law, which could be adjudicated in the framework of the case under review, would be contrary to the principle of procedural economy. Moreover, in accordance with the principle of objective investigation, after a case has been initiated, the Constitutional Court uses not only the arguments and evidence submitted by the participants of the case – the applicant and the institution, which issued the contested act, but is also looking for them itself. I.e., the meaning and the essence of the legal proceedings before the Constitutional Court is closely linked to the Court’s active role in establishing circumstances that are legally significant in the adjudication of the case and in collecting evidence. Since the materials in the case were sufficient, the Constitutional Court found that it should examine the legal consequences caused by the contested norms not only for a person, who has been punished for intentionally committing a serious crime, but also a person, who has been punished for intentionally committing a particularly serious crime. This ensures comprehensive and objective hearing of the case, as well as procedural economy and the existence of such legal system, in which regulation that is incompatible with the *Satversme* or other legal norms (acts) of higher legal force is eliminated as fully and comprehensively as possible.

Secondly, the Constitutional Court found that the legislator enjoyed discretion to set requirements with respect to particular professional activity, insofar public interests required this. The profession of a teacher should be considered as being a profession of public importance – it is linked to the need to ensure to all persons the right to education established in Article 112 of the *Satversme*. A teacher has an essential role not only in ensuring the quality of education and knowledge but also in forming a student’s attitudes and values. Therefore the legislator has the right to set strict requirements for persons, who wish to work as teachers, that apply not only to the professional qualification and skills but also to their personality and previous experience. If the legislator has envisaged such requirements, then these, *inter alia*, must be assessed as restrictions on the fundamental right established in Article 106 of the *Satversme* to freely choose one’s vocation. Thus, a person’s right to freely choose one’s vocation has been restricted by the contested norm. This restriction was established by a law that had been adopted in due procedure. Moreover, this restriction has a legitimate aim, i.e., protection of other persons’ rights, public morals and welfare.

Thirdly, the Constitutional Court found that the prohibition included in the contested norm applied to all persons, who had been punished for intentionally committing a serious or a particularly serious crime. It allows no exceptions. Moreover, this prohibition is established for life, it is in force for an unlimited term also of the criminal record is set aside or extinguished. Therefore this prohibition is to be considered as being absolute. In assessing proportionality of an absolute prohibition, the Constitutional Court must verify, whether the legislator has:

1) substantiated the need for an absolute prohibition; 2) assessed the essence of the absolute prohibition and the consequences of application thereof; 3) provided substantiation that, by envisaging exemptions from this absolute prohibition, the legitimate aim of the restriction on fundamental rights would not be reached in the same quality.

The Constitutional Court noted that the legislator had provided substantiation for the need to retain an absolute prohibition to work as a teacher for all persons, who had been punished for intentionally committing a serious or a particularly serious crime. However, the materials of drafting the contested norm do not provide a confirmation that the legislator had examined, whether, indeed, in all cases, where by committing a criminal offence certain interests of a person, the society or the State are threatened, the prohibition to work as a teacher is substantiated. Also following the adoption of the contested norm the legislator did not reexamine the need to retain the absolute prohibition. Moreover, the legislator, in establishing an absolute prohibition, not only had to substantiate the need for such a prohibition but also had to verify, whether an absolute prohibition was the only measure allowing to reach the legitimate aim of the restriction on fundamental rights. The documents related to drafting and adopting the contested norm did not confirm that an absolute prohibition to work as a teacher for all persons, who had been punished for intentionally committing a serious or a particularly serious crime, was the only measure for reaching the legitimate aims.

Fourthly, the Constitutional Court found that other, more lenient measures existed, which, in view of the interests jeopardised by the criminal offences, would be less restrictive on the fundamental rights established in Article 106 of the *Satversme*. By taking into consideration only the fact that a person has been punished for intentionally committing a serious or a particularly serious crime and without an individual assessment of the particular case, it is not always possible to become fully convinced that the fact of criminal record has left an irreversible impact on the personality of the prospective teacher.

The possibility to assess, whether a person, who had been punished for intentionally committing a serious or a particularly serious crime, could work as a teacher, would allow reaching the legitimate aims of the restric-

tion on fundamental rights – protection of other persons' rights, public morals and welfare – in the same quality as it is done now. At the same time, this would restrict to a lesser degree the fundamental rights of persons, who have been punished for intentionally committing serious or particularly serious crimes, because in some cases, where the State Education Quality Service had concluded that it would not harm the interests of students, these persons could work as teachers.

Thus, the Constitutional Court found that the restriction established by the contested norm was incompatible with the principle of proportionality and, hence, the contested norm was incompatible with Article 106 of the *Satversme*.

In assessing proportionality of an absolute prohibition, the Constitutional Court must verify, whether the legislator has: 1) substantiated the need for an absolute prohibition; 2) assessed the essence of the absolute prohibition and the consequences of application thereof; 3) provided substantiation that, by envisaging exemptions from this absolute prohibition, the legitimate aim of the restriction on fundamental rights would not be reached in the same quality.

2.2. INTERNATIONAL LAW AND THE EUROPEAN UNION LAW

General Observations

The Constitutional Court has noted in its rulings that international law and the European Union law interact with the Latvian legal system.

The Latvian legal system is characterised by openness to international law. Pursuant to the doctrine of monism, in Latvia, the norms of international law that are binding upon the Republic of Latvia are applied directly.¹⁹ The validity of international law provisions, as well as the rights and obligations of states upon assuming international commitments are regulated by international law itself, first and foremost, the Vienna Convention on the Law on Treaties (hereinafter – the Vienna Convention) and the norms of customary international law.²⁰ The Constitutional Court has noted that each state member of an international treaty must respect justice and fulfil the obligations that follow from treaties and other sources of international law. A state may not set its national law against international commitments (law).²¹

In respecting international law (commitments), the State acts as a united subject of international law, and it is not important who – the *Saeima*, the Cabinet or a ministry – has not fulfilled an obligation imposed by an international treaty, the consequences – the failure to meet commitments – are important.²² Also the parties applying legal norms, *inter alia*, courts, upon identifying an incompatibility between a norm of international law and a norm of the Latvian national law, must apply the norm of international law.²³

The content of the Vienna Convention and nuances of its application,²⁴ well as application of the international customary law²⁵ have been explained in the rulings by the Constitutional Court. The Constitutional Court has also pointed out how unratified international treaties should be applied.²⁶

The Constitutional Court has repeatedly reminded that international law and application thereof may serve as the means for establishing the content of legal norms and principles defined in the *Satversme*.²⁷ Article 89 of the *Satversme* shows that the legislator's aim had not been setting the norms of human rights included in the *Satversme* against the norms of international human rights but quite to the contrary – achieving harmony between them. In those cases, where doubts arise as to the content of human rights included in the *Satversme*, these rights should, to the extent possible, interpreted in accordance with the interpretation that is used in applying international human rights.²⁸ This obligation follows both from Article 89 of the *Satversme* and the principle of the *Satversme*'s openness.²⁹ Thus, on the level of constitutional law, the norms of international human rights and the practice of application thereof serve as a means of interpretation to establish the content of human rights and the principles of a state governed by the rule of law, insofar this does not lead to decreasing or restricting human rights that are included in the *Satversme*.³⁰

The task of the Constitutional Court, on the one hand, is to ensure for full legal protection of the *Satversme* as the basic law of the State, but, on the other hand, the Constitutional Court, within the limits of its jurisdiction, has the obligation to ensure that the Republic of Latvia undertakes its international commitments in the procedure established by the *Satversme*.

I.e., the Constitutional Court has the obligation to ensure supremacy of the *Satversme*, at the same time seeing to it that after the particular international treaty has entered into force the procedure, in which the State has assumed concrete international commitments, cannot be contested.³¹ In two cases the Constitutional Court has assessed compliance with the *Satversme* of

19 Separate Opinion by the Justices of the Constitutional Court Sanita Osipova and Ineta Ziemele in Case No. 2015-19-01, Para 5.

20 Judgement by the Constitutional Court of 29 November 2007 in Case No. 2007-10-0102, Para 75.1.

21 Judgement by the Constitutional Court of 7 July 2004 in Case No. 2004-01-06, Para 6 of the Findings.

22 Judgement by the Constitutional Court of 7 July 2004 in Case No. 2004-01-06, Para 3.2. of the Findings.

23 Judgement by the Constitutional Court of 21 October 2002 in Case No. 2002-05-010306, Para 7 and Judgement of 7 July 2004 in Case No. 2004-01-06, Para 6 of the Findings.

24 For example, Judgement by the Constitutional Court of 29 November 2007 in Case No. 2007-10-0102.

25 Judgement by the Constitutional Court of 13 May 2005 in Case No. 2004-18-0106 and Judgement of 29 November 2007 in Case No. 2007-10-0102.

26 Judgement by the Constitutional Court of 27 November 2003 in Case No. 2003-13-0106, Para 1.1. of the Findings.

27 For example, Judgement by the Constitutional Court of 7 April 2009 in Case No. 2008-35-01, Para 13.

28 Judgement by the Constitutional Court of 30 August 2000 in Case No. 2000-03-01, Para 5.

29 Ziemele I. Role of the Constitutional Courts in Upholding and Applying the Constitutional Principles: the Case of Latvia. Paper presented at the XVIIth Congress of the Conference of European Constitutional Courts, Batumi, 29 June 2017. Available: <http://www.satv.tiesa.gov.lv/>

30 Judgement by the Constitutional Court of 13 May 2005 in Case No. 2004-18-0106, Para 5.

31 Judgement by the Constitutional Court of 7 April 2009 in Case No. 2008-35-01, Para 11.1.



laws, by which international treaties had been ratified.³² In once case it was examined, whether national legal norms complied with a bilateral agreement on facilitation and mutual protection of investments.³³ It follows from the case law of the Constitutional Court that compliance of a legal norm with an international treaty is to be examined *in abstracto*.

The Constitutional Court has recognised that, with the ratification of the Treaty on Latvia's Accession to the European Union, the law of the European Union has become an integral part of the Latvian law. Pursuant to this treaty, legal acts adopted by institutions of the European Union are also binding upon Latvia.³⁴ Thus, legal acts of the European Union and interpretation thereof that has been consolidated in the case law of the Court of Justice of the European Union must be abided by in applying national regulatory enactments to avoid possible conflicts between the Latvian law and the European Union law.³⁵

In addition to that, the Constitutional Court has defined the legislator's obligations in implementing directives of the European Union. The legislator is obliged to ensure that requirements set in the directives of the European Union are transposed precisely – to transpose all commitments of the Member State that follow from the norms of the particular directive into the national legal system and also do that clearly and precisely, so that persons would be able to understand their obligations and rights.³⁶

The Constitutional Court has examined the possibility of referring a question for a preliminary ruling to the Court of Justice of the European Union in several cases.³⁸

Trends of Development

In 2017, the Constitutional Court in one case examined matters pertaining to interaction between the European Union law and the Latvian law. I.e., in case No. 2016 04 03, the Constitutional Court adopted its first decision on referring a question to the Court of Justice of the European Union for a preliminary ruling.

Case No. 2016-04-03

[Decision on referring questions to the Court of Justice of the European Union for preliminary ruling \[in English\]](#)

[Decision on the procedure of adopting a decision to refer a question to the Court of Justice of the European Union for preliminary ruling \[in English\]](#)

[Press release \[in English\]](#)

At the hearing of 28 February 2017 with the participation of participants in the case, the Constitutional Court examined case No. 2016 04 03 "On Compliance of the Cabinet of Ministers Regulation of 14 April 2015 No. 187 "Amendment to the Cabinet of Ministers Regulation of 30 November 2004 No. 1002 "Procedure for Implementing the Programming Document "Latvia's Rural Development Plan for the Implementation of Rural Development Programme for 2004–2006"" with Article 105 of the *Satversme* of the Republic of Latvia"

32 Judgement by the Constitutional Court of 29 November 2007 in Case No. 2007-10-0102 and Judgement of 7 April 2009 in Case No. 2008-35-01.

33 Judgement by the Constitutional Court of 6 October 2010 in Case No. 2009-113-0106.

34 Judgement by the Constitutional Court of 7 June 2004 in Case No. 2004-01-06, Para 7 and Judgement of 17 January 2008 in Case No. 2007-11-03, Para 24.2.

35 Judgement by the Constitutional Court of 2 May 2012 in Case No. 2011-17-03, Para 13.3.

36 Judgement by the Constitutional Court of 29 December 2014 in Case No. 2014-06-03, Para 21.2.

37 Judgement by the Constitutional Court of 19 October 2011 in Case No. 2010-71-01, Para 24.

38 Judgement by the Constitutional Court of 28 May 2009 in Case No. 2008-47-01, Judgement of 19 October 2011 in Case No. 2010-71-01, and Judgement of 13 October 2015 in Case No. 2014-36-01. See more: Laviņš A., Tamužs K. *Satversmes tiesas pieredze saistībā ar prejudiciālajiem jautājumiem*. Jurista Vārds, 06.12.2016., Nr. 49, 32.–35. lpp.

and decided to refer a question for preliminary ruling to the Court of Justice of the European Union.

Early retirement support to those elderly owners of farms, who do not wish to of, for various reasons, are unable to continue and develop their business activities and therefore transfer the farm to another person was examined.

The application to the Constitutional Court was submitted by the Administrative District Court, which was hearing a case regarding discontinuation of disbursement of the inherited early retirement pension. The agreement on early retirement envisaged that the pension would be paid to the farmer or his heirs until 2021; however, the disbursement thereof was discontinued in 2015 – after the contested norm was adopted.

Initially, the Constitutional Court examined the case in written procedure. However, in the course of hearing the case, such circumstances were disclosed that required holding a court hearing with the participation of the participants in the case.

Upon hearing the participants in the case and the summoned persons, the Constitutional Court concluded that it was questioned in the case, whether the provisions of the Council Regulation (EC) No. 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations (hereinafter – Regulation No. 1257/1999) prohibited the Member States to include in their regulatory enactments the institution of inheriting the early retirement support. It was established that in the legal and actual matter under examination the case law of the Court of Justice of the European Union had not evolved. Therefore the norms of the Regulation No. 1257/1999 could be considered as not being such that envisaged clear and precise obligations, which as to their performance or consequences did not depend upon adoption of any further act. Thus, in the particular case, *acte clair* doctrine would not be applicable, and it was doubted, whether the Regulation No.

1257/1999, indeed, prohibited the Member States from including into their regulatory enactments the institution of inheriting the early retirement support. Thus, it was necessary to refer a question to the Court of Justice of the European Union for a preliminary ruling regarding interpretation of the norms of the Regulation No. 1257/1999.

Neither the Constitutional Court Law, nor the Rules of Procedure of the Constitutional Court regulate *expressis verbis* the cases, where a decision has to be adopted on referring a question to the Court of Justice of the European Union for a preliminary ruling. Therefore the Constitutional Court established the procedure for adopting a decision like this.

The Constitutional Court suspended legal proceedings until the date when the ruling by the Court of Justice of the European Union entered into force.

Neither the Constitutional Court Law, nor the Rules of Procedure of the Constitutional Court regulate expressis verbis the cases, where a decision has to be adopted on referring a question to the Court of Justice of the European Union for a preliminary ruling. Thus, the procedure for adopting a decision like this is to be considered as a procedural issue that is not regulated either by the Constitutional Court Law or the Rules of Procedure of the Constitutional Court. This issue was regulated by the Constitutional Court in examining case No. 2016-04-03.



2.3. STATE LAW (INSTITUTIONAL PART OF THE SATVERSME)

General Observations

In the case law of the Constitutional Court, the content of the norms included in the institutional part of the *Satversme* has been revealed by characterising the constitutional identity of the State of Latvia, the democratic order, the principles of a state governed by the rule of law, as well as relationships of constitutional institutions.

The Constitutional Court has defined elements of the constitutional identity. I.e., Latvia is founded on such fundamental values that comprise fundamental rights and freedoms, democracy, the sovereignty of the State and of the people, separation of powers, and the rule of law. The State has an obligation to guarantee these values, and they cannot be infringed on by amendments to the *Satversme* that have been introduced only by law.³⁹

The Constitutional Court has attributed fundamental importance to the doctrine of state continuity. The restored Latvia identifies itself with the prewar Latvia. The constitutional institutions of the State of Latvia substantiate their position with the fact that following the events of 1940 Latvia as the subject of international law did not lose this status. Following the restoration of independence, Latvia continues its statehood (*integratio ad integrum*).⁴⁰ The doctrine of state continuity, developed by the Constitutional Court, is constituted by the judgement in case No. 2007-10-0102, the judgement in case No. 2009-94-01, and the judgement in case No. 2010-20-0106.

The Constitutional Court also has defined sources of the Latvian constitutional law. The constitutional regulation of the State of Latvia basically is summarised in the *Satversme*; however, the Act on Proclaiming the Republic of Latvia of 18 November 1918, the declaration of 4 May 1990 “On the Restoration of Independence of the Republic of Latvia” and the constitutional law of 21 August 1991 “On the Statehood of the Republic of Latvia” have retained their legal force alongside it. The *Satversme* and the four acts of constitutional level jointly constitute the constitutional regulation of the

Republic of Latvia. General principles of law also form the content of the *Satversme*. The Constitutional Court has underscored that all parties applying the law must apply the *Satversme* directly and immediately.⁴³

The case law of the Constitutional Court comprises references to methods for interpreting the *Satversme*. For example, the principle of unity of the *Satversme* prohibits interpretation of some constitutional norms in isolation from other norms of the *Satversme* because the *Satversme*, as a united document, influences the scope and content of each separate norm.⁴⁴ Each wording in the *Satversme* has been given certain content, and it must be taken into account to apply the respective norm of the *Satversme* correctly.⁴⁵

The concept of Latvia as a democratic state governed by rule of law has been characterised in the case law of the Constitutional Court. The principles of a democratic state governed by the rule of law are based upon existence of a balance within society between the fundamental values and exercise of rights. Decisions adopted by the constitutional institutions must create trust that these have been adopted in compliance with the principle of justice. In a democratic state governed by the rule of law, each constitutional institution should perform the functions entrusted to it by society honestly, effectively and fairly, its actions must comply with the *Satversme*.⁴⁶

The Constitutional Court has noted that the *Satversme* recognises only a democratic order of the State.⁴⁷ The *Satversme* provides for a number of ways, in which citizens can express their will. In the framework of the election procedure the people elect the *Saeima* (Article 6–9, 14 of the *Satversme*). The people themselves may act as the legislator, by submitting draft laws and deciding on them in a national referendum (Article 64, 65, 78–80 of the *Satversme*). Likewise, the totality of citizens may decide in a national referendum on the laws or amendments to the *Satversme* adopted by the *Saeima* (Article 72–75, 77, 79 and 80 of the *Satversme*), as well as on other issues put for a national referendum

39 Judgement by the Constitutional Court of 7 April 2009 in Case No. 2008-35-01, Para 17.

40 Judgement by the Constitutional Court of 29 November 2007 in Case No. 2007-10-0102, Para 33.2.

41 Judgement by the Constitutional Court of 29 November 2007 in Case No. 2007-10-0102, Para 62.

42 Judgement by the Constitutional Court of 11 January 2011 in Case No. 2010-40-03, Para 10.

43 Judgement by the Constitutional Court of 18 December 2013 in Case No. 2013-06-01, Para 15.2.

44 Judgement by the Constitutional Court of 16 December 2005 in Case No. 2005-12-0103, Para 13.

45 Judgement by the Constitutional Court of 7 April 2009 in Case No. 2008-35-01, Para 19.3.

46 Judgement by the Constitutional Court of 24 March 2000 in Case No. 04-07 (99), Para 3.

47 Judgement by the Constitutional Court of 12 February 2014 in Case No. 2013-05-01, Para 15.

(Article 48, the third and fourth part of Article 68 of the *Satversme*). The *Satversme* and the respective laws set a number of prerequisites both for the procedure of elections and a national referendum.⁴⁸ Restrictions on the right to vote⁴⁹ and compliance of the regulation on national referendums⁵⁰ with norms of higher legal force have been assessed in the case law of the Constitutional Court. The Constitutional Court has underscored that citizens must trust the legitimacy of constitution and that the *Satversme* is implemented in a democratic process. A certain procedure should be in place, in which legally binding decisions on proposals of political nature are adopted. Issues that are of interest to society must be decided on even if there is no consensus regarding them; however, decisions always must be adopted in a procedure that allows considering them as being legitimate. A reasonable procedure for decision taking is the prerequisite for the legitimacy of the majority's power. The existence of such a procedure does not always guarantee an impeccable result; however, it allows presuming that the decision has been adopted in a correct way.⁵¹

The division of jurisdiction between institutions of state power or the foundation for the principle of separation of powers is embodied in the norms of the institutional part of the *Satversme*.⁵² Hence, the Constitutional Court has paid special attention to the content of the principle of separation of powers. The Constitutional Court has noted that this principle guarantees balance and a mechanism of mutual control between the constitutional institutions to prevent trends of usurpation of power and promote moderation of power.⁵³ Moreover, in a democratic state governed by the rule of law the principle of separation of powers not only separates the branches of power but also comprises the requirement of their cooperation.⁵⁴ The principle of separation of powers should not be perceived in a dogmatic and formalistic way but should be juxtaposed with its aim to prevent centralisation of power in the hands of one institution or official.⁵⁵ The aim of the principle of separation of powers is to ensure implementation and protection of the fundamental values of a democratic state governed by the rule of law.⁵⁶ The Constitutional Court has recognised that some deviations are admissible, if they make the performance of the functions of the state power more effective, strengthens the independence

of an institution of state power from another power or ensures the functioning of the system of checks and balances of three powers.⁵⁷

The *Satversme* divides the jurisdiction of the State of Latvia between the so-called constitutional institutions that it refers to – the totality of Latvia's citizens, the *Saeima*, the President of the State, the Cabinet of Ministers, the State Audit Office, courts, and the Constitutional Court.⁵⁸ The constitutional institutions of state power may exercise the jurisdiction of the State of Latvia themselves or may establish for this purpose, for example, institutions of public administration. Thus, one of the constitutional institutions of the state power or of the institutions established by them has jurisdiction over all matters in the life of the State and society and has the jurisdiction to act and to resolve the particular matter, insofar their legal regulation is founded upon the provisions of the *Satversme*. Hence, only such legal situation, where at least one constitutional institution of the state power or an institution established by it has the obligation to ensure that provisions of the *Satversme* are complied with, is compatible with the *Satversme*.⁵⁹

The Constitutional Court also has underscored that, in compliance with the principle of separation of powers that follows from Article 1 of the *Satversme*, the legislator decides on the jurisdiction of constitutional institutions, insofar it has not been already defined in the *Satversme*. The matters of the jurisdiction of constitutional institutions may be decided in two ways; the legislator may define in a law *expressis verbis* the authorisation of a constitutional institution and the procedure for implementing it or by abstaining from granting it to a constitutional institutions. However, the principle of separation of the state power may not be understood in the way that the subjective rights of constitutional institutions to demand that authorisation or rights preferable to them should be granted to them would follow from this principle.⁶⁰ In characterising the relationships between constitutional institution, the Constitutional Court has noted that a constitutional institution, in adopting a decision that affects another constitutional institutions has the obligation to: firstly, hear the opinion of this institution, respecting it in compliance with the principle of separation of powers; secondly, provide

48 Judgement by the Constitutional Court of 12 February 2014 in Case No. 2013-05-01, Para 14.4.

49 For example, Judgement by the Constitutional Court of 23 September 2002 in Case No. 2002-08-01, Judgement of 5 March 2003 in Case No. 2002-18-01, Judgement of 22 February 2010 in Case No. 2009-45-01.

50 Judgement by the Constitutional Court of 19 May 2009 in Case No. 2008-40-01 and Decision of 19 December 2012 on Terminating Legal Proceedings in case No. 2012-03-01.

51 Judgement by the Constitutional Court of 12 February 2014 in Case No. 2013-05-01, Para 15.

52 Judgement by the Constitutional Court of 11 January 2011 in Case No. 2010-40-03, Para 6.

53 Judgement by the Constitutional Court of 16 October 2006 in Case No. 2006-05-01, Para 10.1.

54 Decision by the Constitutional Court of 28 March 2012 on Terminating Legal Proceedings in Case No. 2011-10-01, Para 30.

55 Judgement by the Constitutional Court of 1 October 1999 in Case No. 03-05 (99), Para 1.

56 Judgement by the Constitutional Court of 18 December 2013 in Case No. 2013-06-01, Para 11.

57 Judgement by the Constitutional Court of 21 November 2005 in Case No. 2005-03-0306, Para 7.

58 Judgement by the Constitutional Court of 16 October 2006 in Case No. 2006-05-01, Para 10.3.

59 Decision by the Constitutional Court of 19 December 2012 on Terminating Legal Proceedings in Case No. 2012-03-01, Para 19.2.

60 Judgement by the Constitutional Court of 14 March 2011 in Case No. 2010-51-01, Para 11.3.

61 Decision by the Constitutional Court of 8 June 2012 on Terminating Legal Proceedings in Case No. 2011-18-01, Para 17.1.

substantiation for the adopted decision in such a scope that in case, if the court had to examine its compliance with the *Satversme*, this substantiation would provide all information required to assess it; thirdly, even if this opinion is not taken into consideration or is taken into consideration only partially, should provide substantiation for its actions in the amount that, in case, if the court had to examine its compliance with the *Satversme*, it would provide all information that is necessary for the proportionality test.⁶¹

The Constitutional Court analyses interpretation of norms included in the institutional part of the *Satversme* and the interaction of constitutional institutions by examining the legislator's authorisation to issue external regulatory enactments. Pursuant to the *Satversme*, the executive power's function falls within the jurisdiction of the Cabinet, although some actions of the executive power can be entrusted also to other institutions. Issuing external regulatory enactments, when the legislator, in compliance with the *Satversme*, has authorised an institution of executive power to issue such, is one of the activities by the public administration. Since issuing of such regulatory enactments is an activity by the public administration, the Cabinet or another institution of executive power specifies the political will included in a law or establishes a procedure for implementing a law. The content of acts adopted in the framework of such activity is mainly procedural norms, which function mainly as a tool for embodying the rights that have been previously established in law. In some cases the content thereof may comprise also substantial norms; however, these should be adopted on the basis of authorisation granted by the legislator. External regulatory enactments that have been issued on the basis of authorisation constitute the part of regulatory enactments that has been created not by drafting laws but by implementing laws.⁶²

The Constitutional Court has explained that the requirement that the legislator itself should decide on all matters in the life of the State in the process of legislation in the complex living conditions of contemporary society has become unrealistic. The legislator does not have the possibility to decide through legislating on all issues that require regulation. Often such actions by the legislator would come too late, because the process of legislation is cumbersome and time consuming.⁶³ To ensure more effective exercise of state power, exceptions to the principle of legislator's supremacy are admissib-

le. These exceptions follow from the *Satversme*. Their aim is to make the legislative process more effective, as well as to ensure swifter and more adequate response to the need of amending legal regulation.⁶⁴ Thus, one of the most important activities of public administration is issuing external regulatory enactments when the legislator has granted special authorisation to do that to an institution of executive power.⁶⁵ In difference to performing other activities of the executive power, issuing of external regulatory enactments requires appropriate democratic legitimisation. Hence, the *Satversme* allows the right of autonomous institutions of public administration to issue external regulatory enactments in the framework of activities by the administration, if such institutions have received appropriate democratic legitimisation.⁶⁶ At the same time, the Constitutional Court has underscored that the legislator itself should decide on regulating such important issues in the life of the State and society that require conceptual decisions and a political discussion. In assessing the importance of a particular issue and its connection to fundamental rights, the legislator should decide on the extent to which this issue should be regulated by law.⁶⁷

The case law of the Constitutional Court with respect to external regulatory enactments issued within the framework of authorisation covers cases regarding compliance of the Cabinet's regulations, regulations issued by autonomous institutions of public administration and binding local government regulations with legal norms of higher legal force. To establish, whether an external regulatory enactment has been issued in compliance with authorisation, the Constitutional Court assesses the content and aim of the authorising norms, as well as whether the respective institutions has not exceeded the scope of authorisation granted by the legislator. The Constitutional Court has noted that the legislator's authorisation to issue external regulatory enactments must maintain the relationship of checks-and-balances of the power and also should comply with other principles of a state governed by the rule of law.⁶⁸ In its case law, the Constitutional Court has recognised as being incompatible with the *Satversme* such regulatory enactments that had been issued by exceeding jurisdiction or not abiding by the limits of authorisation, i.e., *ultra vires*. The totality of findings included in the case law provides, *inter alia*, that the right to regulate an issue with a regulatory enactment may be established only by the legislator's authorisation and the Cabinet has acted *ultra vires* by issuing external re-

62 Judgement by the Constitutional Court of 2 March 2016 in Case No. 2015-11-03, Para 21.1.

63 Judgement by the Constitutional Court of 21 November 2005 in Case No. 2005-03-0306, Para 7.

64 Judgement by the Constitutional Court of 2 March 2016 in Case No. 2015-11-03, Para 21.1.

65 Judgement by the Constitutional Court of 9 October 2007 in Case No. 2007-04-03, Para 14.

66 Judgement by the Constitutional Court of 2 March 2016 in Case No. 2015-11-03, Para 21.1.

67 Judgement by the Constitutional Court of 11 January 2011 in Case No. 2010-40-03, Para 10.1.

68 Judgement by the Constitutional Court of 11 January 2011 in Case No. 2010-40-03, Para 10.2.

69 For example, Judgement by the Constitutional Court of 21 November 2005 in Case No. 2005-03-0306, Para 10 and Judgement of 27 June 2013 in Case No. 2012-22-03, Para 18.

70 Judgement by the Constitutional Court of 12 December 2014 in Case No. 2013-21-03, Para 11.2. and Judgement of 2 March 2016 in Case No. 2015-11-03, Para 23.

71 Judgement by the Constitutional Court of 18 January 2010 in Case No. 2009-11-01, Para 5.

regulatory enactments (regulations), exceeding the limits of authorisation granted to it.⁶⁹ *Ultra vires* doctrine is applicable also to compliance of regulatory enactments issued by other institution authorised by the legislator and by a local government with legal norms of higher legal force.⁷⁰

The Constitutional Court, in interpreting norms of the *Satversme*, has defined also its aim and objectives. The Constitutional Court, in examining compliance of laws with the *Satversme*, implements the principle of constitutional supremacy, thus, ensuring constitutional justice. Neither the *Satversme*, nor the Constitutional Court Law grants to the Constitutional Court the right to refuse assessing compliance of a law or another legal norm with the *Satversme*, just like no one is given the right to prohibit the Court from performing its functions or to restrict the Court in the performance of its functions. Hence, the Constitutional Court has the jurisdiction to examine the constitutionality of decisions adopted by other branches of the state power also in those cases, where these decisions affect the judicial power.⁷¹

Trends of Development

In 2017, the Constitutional Court has dealt with issues pertaining to relationships of constitutional institutions. Case No. 2016-31-01 is already the fifth case before the Constitutional Court, in which the system of judges' remuneration and the principles of functioning thereof was assessed. In this case, the Constitutional Court consistently applied Article 83 of the *Satversme* to define those principles, which the judges' system of remuneration should comply with. In addition to that, the content of the principle of separation of powers and the need to have due dialogue between constitutional institutions was explained. It is important that in this particular case the application was submitted by the Council for the Judiciary, which exercised this right for the first time.

Whereas in case No. 2016-23-03 the Constitutional Court examined the quality, in which the legislator's authorisation to the Cabinet had been exercised. This case is one of the few, in which the principle of separation of powers is examined on several levels, including the local government. In this case, the interaction between the principle of separation of powers and the principle of self-governance was examined.

Case No. 2016-23-03

Judgement [in Latvian]

Press release [in English]

On 29 June 2017, the Constitutional Court passed the judgement in case No. 2016-23-03 "On Compliance of Para 12.1.1 and Para 60 of the Cabinet Regulation of 13 October 2015 No. 591 "Procedure in which Learners are Enrolled at and Discharged from Institutions of General Education and Special Preschool Education Groups, as well as Moved to a Higher Form" with Article 1 of the *Satversme* of the Republic of Latvia".

It was examined in the case, whether the Cabinet, by establishing the procedure, in which learners are enrolled at and discharged from institutions of general education and special preschool education groups, had acted in compliance with the *Satversme*.

The case was initiated on the basis of an application by the Council of Jaunjelgava District. It was noted in the application that Jaunjelgava Secondary School was subordinated to the applicant. This secondary school was said to be the only institution of education in Jaunjelgava District where students could obtain general secondary education. The school was said to be no longer able to comply with requirements set in the contested norms with regard to the minimum number of students in a form. Due to this reason in the school year of 2016/ 2017 the 10th form was not opened at Jaunjelgava Secondary School. The contested norms prohibit from performing the function transferred into the autonomous jurisdiction of a local government – to ensure the inhabitants' right to acquire general secondary education. The contested norms are said to envisage the number of students as the only criterion for existence of a secondary school, and, thus, local governments have no possibility to decide on the existence of secondary school, by individually assessing also other circumstances, for example, the performance of students of the particular educational institution at centralised examinations, as well as demographic situation and possible changes to it in the future.

First, the Constitutional Court rejected the Cabinet's arguments that the contested norms did not infringe upon the applicant's rights and that legal proceedings in the case should be terminated. It was found that an infringement upon a local government's right could be manifested also in the fact that the contested act restricted the local government in performance of its autonomous functions. To ensure inhabitants' right to education, the legislator has transferred into the applicant's jurisdiction the autonomous function to provide for inhabitants' education. Whereas the contested norms restricted the Applicant's discretion in selecting the form, in which general secondary education is ensured.

Secondly, the Constitutional Court established, whether the applicant's discretion in performing the autonomous function had been restricted legally. A local government's discretion in performing an autonomous function might be regulated by an external regulatory enactment; however, this enactment must be legal. Therefore, first and foremost, it had to be verified, whether the contested norms had been adopted in due procedure and whether the Cabinet, in issuing the contested norms, had acted within the limits of the legislator's authorisation.

The Constitutional Court established that the contested norms had been issued on the basis of Para 18 of Section 4 of the General Education Law. This legal norm provides that the Cabinet is authorised to determine the procedure for enrolling students in general educational institutions and discharging from them (except boarding schools and special educational institutions) and the

mandatory requirements for moving them up into the next grade. In accordance with grammatical interpretation of a legal norm, the Cabinet was not authorised to determine the minimum number of students in forms. In accordance with historic interpretation of legal norms the Constitutional Court established that previously the legislator had specially authorised the Cabinet to determine the minimum number of students in forms; however, later this authorisation to the Cabinet was excluded from the General Education Law. Thus, special authorisation granted by the legislator was required for issuing the contested norms. Therefore, the current the scope of authorisation granted to Cabinet prohibited it from adopting the contested norms. Also in accordance with the systemic and teleological interpretation of legal norms, the Cabinet was not authorised to adopt the contested norms.

Thus, the Cabinet of Ministers, in adopting the contested norms, had acted contrary to the principle of separation of powers, had exceeded authorisation granted by the legislator and had acted *ultra vires*.

If the legislator has defined a certain function as the autonomous function of a local government, then it is the obligation of a local government to perform it. The local government has the obligation, within the limits of its jurisdiction, to ensure that inhabitants' rights are exercised in the most appropriate way. The scope, in which autonomous functions are performed, is defined by legal norms. Thus, a local government, in performing its autonomous functions, enjoys discretion; insofar it is not restricted by legal norms. However, the legal norms that define the local government's discretion in performing its autonomous functions must be legal. I.e., they must comply with the principle of a state governed by the rule of law.

Case No. 2016-31-01

[Judgement \[in Latvian\]](#)

[Press release \[in English\]](#)

On 26 October 2017, the Constitutional Court pronounced the judgement in case No. 2016-31-01 "On Compliance of Section 4(9) and Section 6¹(1) of "Law on Remuneration of Officials and Employees of State and Local Government Authorities" with Article 83 and Article 107 of the *Satversme* of the Republic of Latvia".

The case was initiated on the basis of an application by the Council for the Judiciary. It held that the contested norms violated the principle of judges' independence

and therefore were incompatible with Article 83 and Article 107 of the *Satversme*.

First, the Constitutional Court established the limits of the claim and determined the procedure for examination thereof. It was concluded that the case comprised dispute only with respect to one element of judges' remuneration – the monthly salary. Since both contested norms constitute a united system for calculating judges' monthly salary, envisaging linking the amount of each judge's monthly salary to the maximum amount of monthly salary of a head of legal structural unit at a state direct administration institution or the 12th group of monthly salaries, they would be examined as a united regulation on judges' remuneration for work.

The Constitutional Court pointed out that the criteria that should be used to assess, whether judges had been ensured appropriate remuneration for work in the meaning of Article 107 of the *Satversme* followed directly from Article 83 of the *Satversme*. Therefore, if it were found that the contested norms did not comply with Article 83 of the *Satversme*, it would also mean that they did not ensure to judges appropriate remuneration for work and were incompatible also with Article 107 of the *Satversme*.

Secondly, the Constitutional Court examined compatibility of the contested norms with the principle of judges' independence included in Article 83 of the *Satversme*.

It was recognised that the legislator had an obligation, which followed from the principle of separation of powers, to respect the status of a judge; i.e., to treat the judicial power in a way that would ensure balance between the three branches of state power. The legislator's attitude towards the judicial power should be reflected, *inter alia*, in the legal regulation on judges' remuneration. The legislator had the right to establish a system of judges' remuneration by choosing the amount of remuneration set for an official of the executive power as a point of reference. However, in such a case, a judge's remuneration may not depend on the principles for setting remuneration that are typical of another branch of state power.

The legislator, in deciding on the compliance of judges' remuneration, should ensure that remuneration for the work of every judge should comply with the principle of independence of judges, irrespectively of the level of a court or the period served in the judge's office. Hence, the Constitutional Court examined, whether the contested norms ensured to a judge of a district (municipal) court, without taking into consideration possible supplement for the length of service, such remuneration for work that complied with the criteria that followed from the principle of judges' independence, included in Article 83 of the *Satversme*. It was found that a system of remuneration for judges, where the remuneration of a judge depended on the principles for setting remuneration that were typical of another branch of state power,

was incompatible with the principle of judges' independence.

Thirdly, the Constitutional Court defined the content of judges' financial security. Article 83 of the *Satversme* protects the actual value of judges' remuneration, which is to be established by the standard of living that the actual remuneration received by a judge in absolute numbers can provide to him. Judges' financial security must be understood as the State's obligation to envisage for judges such remuneration that would ensure to them appropriate standard of living throughout the judge's career, taking into account the economic situation of the state and the general standard of living. A judge's financial security includes not only his subsistence, but, in view of the public importance of a judge's office, also a certain quality of life. A judge's financial security is not jeopardised only if the remuneration that a judge receives allows him to maintain an appropriate standard of living and provide for the welfare of his family. Judges' remuneration, for it to ensure a judge's financial security, should be commensurate with the requirements and restrictions set for the judge's office and it should be competitive.

High requirements with respect to qualification and social competence have been set for a judge's office, as well as certain restrictions have been imposed upon their rights. However, judges had been set such remuneration, the actual value of which is lower compared to that of an official, to whose monthly salary a judge's monthly salary was linked. Moreover, the practice of applying norms of the Law on Remuneration of Officials and Employees of State and Local Government Authorities (hereinafter – the Remuneration Law) in public administration intensifies the threat to judges' financial security, thus decreasing the actual value of judges' remuneration, which has been established as inappropriately low by the contested norms. Thus, judges' remuneration established by the contested norms does not ensure judges' financial security.

Fourthly, the Constitutional Court examined, whether the contested norms ensured that the actual value of judges' remuneration for work was retained. The legislator should establish such system of judges' remuneration that would comprise a mechanism for retaining the actual value of judges' remuneration. The actual value of judges' remuneration might be retained, if the legislator established such system of judges' remuneration that made the actual amount of judges' remuneration depend on the economic indicators or by setting a term for reviewing the amount of judges' remuneration and concrete criteria, according to which the actual amount of judges' remuneration had to be examined.

The existing system of judges' remuneration did not comprise a mechanism for retaining the actual value of judges' remuneration, since the norms of the Remuneration Law that pertained to reviewing remuneration and salaries applied only to the heads of state and municipal institutions.

Since the linking of judges' remuneration set in the contested norms does not ensure compliance of judges' remuneration with the requirements that follow from the principle of judges' independence, the contested norms are incompatible with Article 83 of the *Satversme*, as well as Article 107 of the *Satversme*.

The Justice of the Constitution Court Ineta Ziemele appended her [separate opinion](#) to the judgement [in Latvian]. The Justice upheld the findings included in the judgement, as well as its substantive part. However, the Justice held that it was necessary to highlight those principles of a democratic state governed by the rule of law, following which it had been obvious already at the time of drafting the Remuneration Law that the system of judges' remuneration, established by the contested norms, was incompatible with the *Satversme*. As it follows from the findings expressed in the rulings in cases regarding judges' remuneration that the Constitutional Court has adopted in the course of seven years, the legislator's response to the aforementioned rulings does not testify to successful dialogue between the Constitutional Court and the legislator. The Remuneration Law proves that the principle of separation of powers and the principle of the independence of the judicial power had been ignored in establishing the system of officials' remuneration or that the understanding of these principles has been unfoundedly narrow. It is underscored in the separate opinion that the legislator, in establishing judges' system of remuneration, should ensure its quality both as to its content and form. The principles of the independence of the judicial power and of the separation of powers must be complied with in every stage of the functioning of the judges' system of remuneration. Judges' remuneration is an extremely important factor; however, it is only one among all those factors, which, in their totality, should ensure an appropriate status and working conditions of a judge. Therefore, currently, it would be of particular importance to focus on this totality of factors in Latvia, to find effective and wellconsidered solutions.

The independence of a court and judges is not an end in itself but rather a tool for ensuring and strengthening democracy and the rule of law, as well as mandatory prerequisite for exercising the right to a fair trial. Therefore the principle of independence of the court and judges, included in Article 83 of the *Satversme*, must be examined in interconnection with the principles of rule of law and separation of powers, which are derived from the basic norm, as well as the first sentence of Article 92 of the *Satversme*, which provides for a person's right to defend his rights and lawful interests in a fair court.

2.4. ADMINISTRATIVE LAW

General Observations

Case law of the Constitutional Court comprises assessment of such issues of administrative law as the rights of an organisation of administration, substantive administrative law, administrative procedure law, and administrative violations law.⁷²

The rights of an organisation of administration have been scrutinised in cases pertaining to autonomous institutions of public administration,⁷³ local governments,⁷⁴ civil servants⁷⁵ and in other cases. It has been recognised in these cases that, pursuant to the principle of the rule of law, public administration is subject to legal acts and law and operates within the framework of its jurisdiction defined in regulatory enactments. Moreover, actions by an institution of public administration should be such that would be able to ensure due governance and would perform its functions as effectively as possible.⁷⁶ Thus, the structure of public administration should be designed in a way that would ensure its effective, democratic and legal functioning.⁷⁷

Pursuant to the principle of unity of public administration, public administration is organised in a united hierarchic system, where institutions of public administration are subordinated to the Cabinet of Ministers. However, as the Constitutional Court has noted, there are exceptions to the aforementioned principle. In a contemporary democratic state governed by the rule of law, it is impossible to transfer all functions of the executive power to the Cabinet of

Ministers and institutions of public administration subordinated to it. A discrete sphere of public administration can be taken outside the jurisdiction of the Cabinet and transferred to an autonomous institution of public administration, if it is found that in this field an institution subordinated to the Cabinet will not be able to ensure due governance.⁷⁸

Public administration consists not only of the institutions that are subordinated to the Cabinet and the autonomous institutions but also of local governments. In a democratic state, the central power is unable to govern in full the territory of the State without the involvement of local governments. In this instance, decentralisation of the functions of public administration is implemented by transferring some functions to democratically legitimised local governments for performing thereof.⁷⁹

In cases regarding civil service, the Constitutional Court has noted that civil servants embody the principles of a democratic state governed by the rule of law.⁸⁰ Therefore the State needs honest, competent and motivated civil servants.⁸¹ The Constitutional Court has also emphasised that civil servants, just like all those working in public administration, have special relationship with the State – the rights of these persons are restricted and they have been imposed special obligations.⁸² Moreover, political loyalty or loyalty to the State, on the behalf of which one works, is demanded from these persons.⁸³

72 Compare: Briede J., Danovskis E., Kovaļevska A. *Administratīvās tiesības. Mācību grāmata*. Rīga: Tiesu namu aģentūra, 2016, 12.–13. lpp.

73 Judgement by the Constitutional Court of 16 October 2006 in Case No. 2006-05-01, Decision of 8 June 2012 on Terminating Legal Proceedings in Case No. 2011-18-01, Judgement of 2 March 2016 in Case No. 2015-11-03.

74 Decision by the Constitutional Court of 16 April 2008 on Terminating Legal Proceedings in Case No. 2007-21-01, Decision of 20 January 2009 on Terminating Legal Proceedings in Case No. 2008-08-0306, Judgement of 30 October 2009 in Case No. 2009-04-06.

75 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.

76 Judgement by the Constitutional Court of 17 January 2008 in Case No. 2007-11-03, Para 23.2.

77 Judgement by the Constitutional Court of 30 January 2004 in Case No. 2003-20-01, Para 9.1.

78 Judgement by the Constitutional Court of 16 October 2006 in Case No. 2006-05-01, Para 12 and Para 16.3.

79 Decision by the Constitutional Court of 20 January 2009 on Terminating Legal Proceedings in Case No. 2008-08-0306, Para 16.

80 Judgement by the Constitutional Court of 10 May 2007 in Case No. 2006-29-0103, Para 18.

81 Judgement by the Constitutional Court of 18 December 2003 in Case No. 2003-12-01, Para 9.2.

82 Judgement by the Constitutional Court of 11 April 2006 in Case No. 2005-24-01, Para 7.

83 Judgement by the Constitutional Court of 11 April 2006 in Case No. 2005-24-01, Para 11.2.

Alongside the rights of an organisation of administration, also substantial administrative law has been extensively analysed in the case law of the Constitutional Court, inter alia, in such fields as privatisation,⁸⁴ tax administration,⁸⁵ public procurement,⁸⁶ construction,⁸⁷ spatial planning⁸⁸ and regulation on public services.⁸⁹ The following findings of the Constitutional Court illustrate these fields: the fundamental task of the State is to ensure persons' right to privatisation and not retaining an object of property in state ownership;⁹⁰ the legislator's task is to find a balance between effective tax administration and a person's fundamental rights;⁹¹ the requirement to apply procurement procedure is aimed at facilitating competition and effective use of the state and local government recourses, as well as decreasing the cost of services;⁹² in the process of construction nongovernmental organisations have extensive rights to follow, whether the spatial planning and requirements of environmental protection have been complied with;⁹³ it is the task of a local government, in the course of developing spatial planning, to be an objective and neutral mediator between the interests of the developer of the particular territory and those of the stakeholders in society;⁹⁴ two interests always must be taken into account in regulating public services – the supplier's interest to ensure economic

activities and development of the company, as well as consumers' interest to receive uninterrupted, safe and high quality public services for proportionate tariffs.⁹⁵

Some issues of the administrative procedure law have also been analysed in the Constitutional Court's rulings – the essence of administrative procedure has been characterised,⁹⁶ features of an administrative act have been evaluated,⁹⁷ and the following principles of administrative procedure have been examined: the principle of respecting a private person's rights,⁹⁸ the principle of prohibition of arbitrariness,⁹⁹ the principle of lawful basis,¹⁰⁰ the principle of proportionality¹⁰¹ and the principle of good governance.¹⁰² The Constitutional Court has underscored that a state governed by the rule of law has the task to ensure an effective control over the activities of public administration – both at a higher standing institution within public administration and later – in court.¹⁰³

Although the Constitutional Court has recognised that cases of administrative violations, essentially, can be equalled to criminal cases,¹⁰⁴ the case law of the Constitutional Court in cases of administrative violations is to be included in the case law on administrative law.

84 Judgement by the Constitutional Court of 31 October 2000 in Case No. 2000-06-04, Judgement of 11 November 2002 in Case No. 2002-10-04, Judgement of 10 January 2003 in Case No. 2002-17-0103.

85 Judgement by the Constitutional Court of 11 April 2007 in Case No. 2006-28-01, Judgement of 3 April 2008 in Case No. 2007-23-01, Judgement of 19 June 2010 in Case No. 2010-02-01, Judgement of 15 April 2013 in Case No. 2012-18-01, Judgement of 15 November 2016 in Case No. 2015-25-01.

86 Judgement by the Constitutional Court of 19 April 2010 in Case No. 2009-77-01, Judgement of 3 November 2011 in Case No. 2011-05-01, Judgement of 6 December 2012 in Case No. 2012-01-01.

87 Decision by the Constitutional Court of 2 March 2015 on Terminating Legal Proceedings in Case No. 2014-16-01.

88 Judgement by the Constitutional Court of 9 March 2004 in Case No. 2003-16-05, Judgement of 14 December 2005 in Case No. 2005-10-03, Judgement of 8 February 2007 in Case No. 2006-09-03, Judgement of 26 April 2007 in Case No. 2006-38-03, Decision of 28 November 2007 on Terminating Legal Proceedings in Case No. 2007-16-03, Judgement of 21 December 2007 in Case No. 2007-12-03, Judgement of 17 January 2008 in Case No. 2007-11-03, Judgement of 27 March 2008 in Case No. 2007-17-05, Judgement of 24 September 2008 in Case No. 2008-03-03, Decision of 11 November 2008 on Terminating Legal Proceedings in Case No. 2008-24-03, Judgement of 12 November 2008 in Case No. 2008-05-03, Decision of 13 February 2009 on Terminating Legal Proceedings in Case No. 2008-23-03, Judgement of 24 March 2009 in Case No. 2008-39-05, Judgement of 6 July 2009 in Case No. 2008-38-03, Judgement of 19 November 2009 in Case No. 2009-09-03, Judgement of 24 February in Case No. 2010-48-03, Judgement of 14 April 2011 in Case No. 2010-62-03, Judgement of 3 May 2011 in Case No. 2010-54-03, Judgement of 12 May 2011 in Case No. 2010-56-03, Judgement of 12 October 2011 in Case No. 2010-74-03, Decision of 4 November 2011 on Terminating Legal Proceedings in Case No. 2011-07-03, Judgement of 5 April 2013 in Case No. 2012-20-03, Decision of 5 November 2013 on Terminating Legal Proceedings in Case No. 2013-10-05, Judgement of 9 October 2014 in Case No. 2013-19-03, Judgement of 10 October 2014 in Case No. 2014-04-03.

89 Judgement by the Constitutional Court of 24 December 2002 in Case No. 2002-16-03.

90 Judgement by the Constitutional Court of 11 November 2002 in Case No. 2002-10-04, Para 3 of the Findings.

91 Judgement by the Constitutional Court of 11 April 2007 in Case No. 2006-28-01, Para 14.

92 Judgement by the Constitutional Court of 6 December 2012 in Case No. 2012-01-01, Para 15.

93 Decision by the Constitutional Court of 13 February 2009 on Terminating Legal Proceedings in Case No. 2008-23-03, Para 13.

94 Decision by the Constitutional Court of 28 November 2007 on Terminating Legal Proceedings in Case No. 2007-16-03, Para 7.

95 Judgement by the Constitutional Court of 24 December 2002 in Case No. 2002-16-03, Para 5.

96 Judgement by the Constitutional Court of 4 January 2005 in Case No. 2004-16-01, Judgement of 7 October 2010 in Case No. 2010-01-01.

97 Judgement by the Constitutional Court of 6 December 2004 in Case No. 2004-14-01, Judgement of 14 March 2006 in Case No. 2005-18-01, Judgement of 20 December 2006 in Case No. 2006-12-01, Judgement of 10 June 2014 in Case No. 2013-18-01.

98 Decision by the Constitutional Court of 11 June 2010 on Terminating Legal Proceedings in Case No. 2010-11-01, Judgement of 3 May 2012 in Case No. 2011-14-03.

99 Judgement by the Constitutional Court of 6 June 2006 in Case No. 2005-25-01.

100 Judgement by the Constitutional Court of 19 December 2001 in Case No. 2001-05-03.

101 Decision by the Constitutional Court of 28 February 2007 on Terminating Legal Proceedings in Case No. 2006-41-01.

102 Judgement by the Constitutional Court of 19 November 2009 in Case No. 2009-09-03.

103 Judgement by the Constitutional Court of 11 April 2007 in Case No. 2006-28-01, Para 11.

104 Judgement by the Constitutional Court of 28 March 2013 in Case No. 2012-15-01, Para 13.2.2.105 *Satversmes tiesas* 2014. gada 12.



For example, the following issues of administrative violations law have been examined by the Constitutional Court: administrative liability for making noise,¹⁰⁵ penalty for failure to place the national flag on a residential building,¹⁰⁶ releasing from administrative liability in the case of a minor violation,¹⁰⁷ application of penalty in cases, when a road traffic violation has been recorded by photo or video equipment,¹⁰⁸ seizing a vehicle until the imposed fine is paid,¹⁰⁹ as well as the state fee¹¹⁰ and appeal¹¹¹ in cases of administrative violations. The following findings from the case law of the Constitutional Court in administrative violations law can be highlighted: an individual has obligations vis-à-vis society, and establishment of such obligations by law is valid. However, establishing a penalty to ensure that obligations of civil nature are fulfilled is to be recognised as being proportionate only in exceptional cases. In a democratic state, alongside imperative measures, also preconditions for voluntary performance of civil nature should be created, which primarily are based on the awareness of the statehood rather than fear of punishment and find respective manifestation in a person's actions and behaviour.¹¹²

Trends of Development

In 2017, the Constitutional Court has heard two cases linked to administrative law. One of these is case No. 2016-24-03, in which the legality of spatial planning was examined. Until now, the Constitutional Court has examined approximately 25 cases of the kind. Therefore a clear test has been developed for examining the legality of legal acts issued in the field of spatial planning. Also in case No. 2016-24-03 the Constitutional Court consistently applied this previously developed test. Moreover, it should be underscored that in the recent years the number of cases before the Constitutional Court that pertain to spatial planning has significantly decreased. For example, in 2015 and 2016, the legality of spatial planning was not examined in a single case.

Whereas case No. 2017-08-01 is one of the few cases, in which an issue linked to the administrative procedure law is examined. The Constitutional Court assessed the right of an administrative court to amend an administrative act by analysing the jurisdiction of administrative courts from the vantage point of the right to a fair trial and the principle of separation of powers.

105 Judgement by the Constitutional Court of 12 December 2014 in Case No. 2013-21-03.

106 Judgement by the Constitutional Court of 2 July 2015 in Case No. 2015-01-01.

107 Judgement by the Constitutional Court of 19 November 2013 in Case No. 2013-09-01.

108 Judgement by the Constitutional Court of 28 March 2013 in Case No. 2012-15-01.

109 Judgement by the Constitutional Court of 24 October 2013 in Case No. 2012-23-01.

110 Judgement by the Constitutional Court of 4 January 2005 in Case No. 2004-16-01.

111 Judgement by the Constitutional Court of 20 June 2002 in Case No. 2001-17-0106 and Judgement of 7 October 2010 in Case No. 2010-01-01.

112 Judgement by the Constitutional Court of 2 July 2015 in Case No. 2015-01-01, Para 16.6.

Case No. 2016-24-03
Judgement [in Latvian]
Press release [in English]

On 6 October 2017, the Constitutional Court passed the judgement in case No. 2016-24-03 “On Compliance of Para 2361 “Use of Territory and Construction Rules” of Binding Regulation No. 8 of 24 March 2016 by Jūrmala City Council “On Approving the Graphic Part, Regulation on the Use of Territory and Construction in the Spatial Plan of Jūrmala City” with Article 115 of the *Satversme* of the Republic of Latvia”.

The case was initiated on the basis of an application by 12 natural persons. The applicants held that the contested norm, which allowed construction on a particular land plot, was incompatible with the right to live in a benevolent environment. Moreover, it was alleged that the Jūrmala City Council, in adopting the contested norm, had disregarded the principle of sustainability and the precautionary principle.

First, the Constitutional Court analysed the content and scope of Article 115 of the *Satversme*.

It was found that Article 115 of the *Satversme*, *inter alia*, imposed an obligation upon institutions of public power to establish and to ensure an effective system for environment protection. The right to live in a benevolent environment as a fundamental right comprises also an individual’s right to have a public person adopt and implement any decision related to the use of environment within a framework of an effective system for environment protection. Spatial planning, in turn, is one of the measures for reaching the aims of the national environment policy and, thus, is an area that is connected to environment. The Constitutional Court also noted that the norms of environmental law specified the content of Article 115 of the *Satversme*. Moreover, the state’s obligations in the field of safeguarding environment that are included in regulatory enactments should be interpreted in compliance with norms of international law that are binding upon the Republic of Latvia.

Secondly, the Constitutional Court specified the obligations of a local government in developing spatial planning documents of local level. Regulatory enactments grant to a local government broad discretion in determining the content of a spatial plan. Whereas the general principles of law, principles of public administration and principles of spatial planning determine the legal framework for exercising this discretion correctly.

The system for planning territorial development has been created in a form, where the planning documents of higher level are less detailed; these predominantly define a set of possible general development measures for reaching the set aims. Whereas planning documents of lower level define more specific requirements for the use of a territory and construction. I.e., the system of planning development of a territory comprises a number of various interconnected documents that differ as

to their aims and level of detail. Some obligations of a local government in the field of spatial planning may differ, depending upon the type of planning document, its aim and level of detail.

Thirdly, the Constitutional Court recognised that in certain cases the spatial plan adopted by the local government might be insufficient for implementing a development plan within a specific territory, because an additional, more detailed planning document has to be adopted. In such cases a mandatory prerequisite for implementing the construction plan is a valid detailed plan. It does not follow from the contested norm that on the particular land plot a new building design would be certainly implemented or that it would be implemented in accordance with all the parameters of construction allowed in the contested norm. I.e., a detailed plan drafted and approved in compliance with provisions of regulatory enactments will determine, whether and to what extent construction is allowed on the particular land plot. Thus, with respect to the particular land plot, the process of spatial planning has not been concluded yet, and this circumstance must be taken into consideration in examining compliance of the contested norm with Article 115 of the *Satversme*.

Fourthly, the Constitutional Court examined, whether significant violations had been committed in the process of spatial planning. It was concluded that in the procedure of drafting the Spatial Plan of 2016 strategic assessment of impact upon environment had been conducted and an environmental report was prepared, opinions by the institutions were received, and public discussions were organised. The contested norm, compared to the permitted use defined in the previous valid spatial planning of Jūrmala City, decreased the number of allowed storeys on the particular land plot, decreased threefold the permitted density of construction and allowed construction only of a particular type of resort object. As regards adoption of the contested norm, the preparatory materials for the Spatial Plan of 2016 confirm that the solution chosen by the local government is substantiated, and the public proposals have been examined and also partially included in the final wording of this spatial plan. Thus, in adopting the contested norm, the procedure established in regulatory enactments has been complied with.

Fifth, the Constitutional Court examined, whether, in developing the spatial plan of Jūrmala, the principle of sustainability and the precautionary principle had been abided by. Sustainability is one of the constitutional principles aimed at protection and implementation of aims and values included in the *Satversme*. This principle does not require placing environmental interests above economic and social interests in spatial planning; however, it does require assessing all these interests as being equally important. Moreover, the chosen solution must be carefully considered and substantiated. The precautionary principle, in turn, is implemented in adoption of a spatial plan through, *inter alia*, the procedure of strategic evaluation. Its objective is to prevent



or limit the negative impact of a planning document upon environment. Some requirements that followed from the principle of sustainability and precautionary principle could differ, depending upon the level of detail in the planning document. In the particular case, the inclusion of the contested norm in the Spatial Plan of 2016 does not violate the principle of sustainability and precautionary principle.

Finally, the Constitutional Court established, whether Jūrmala Spatial Plan ensured protection of territory, which was located in the protected zone of dunes and is partially covered in forest. The legal regulation that is currently in force and is applicable to the particular land plot is aimed at protecting values of nature found in the protected zone of dunes; however, it does not totally exclude further development of this territory. The local government, abiding by requirements of protection defined in norms of environmental law for the protected zone of dunes and the forest located therein, has the right to include in the spatial plan also norms that define construction as the permitted use of territory on a land plot that is located in the protected zone of dunes and is partially covered in forest. Thus, by adopting the contested norm, the Jūrmala City Council has acted within the limits of its discretion granted by the legislator.

Thus, Constitutional Court recognised the contested norm as being compatible with Article 115 of the *Satversme*.

Sustainability is one of the constitutional principles aimed at the protection and implementation of aims and values included in the *Satversme*. The sustainability principle is applied in many fields of law and is also, inter alia, the basic principle of spatial planning.

Case No. 2017-08-01

[Judgement \[in Latvian\]](#)

[Press release \[in English\]](#)

On 22 December 2017, the Constitutional Court passed the judgement in case No. 2017-08-01 “On Compliance of Section 253(3) of the Administrative Procedure Law with the First Sentence of Article 92 of the *Satversme* of the Republic of Latvia”.

The right of an administrative court to amend an administrative act and determine the content thereof only in cases envisaged in law was examined in the case.

The case was initiated with respect to two applications. They were submitted by the Administrative Regional Court, which was examining two administrative cases regarding revoking or amending decisions by the Competition Council. It is noted in the applications that pursuant to the contested norm a court may amend or determine concrete content of an administrative act instead of an institution only if such competence has

been envisaged for it in legal norms. However, neither the Competition Law, nor any other norms of competition law directly provide for the rights of an administrative court to amend the decisions adopted by the Competition Council. The applicant held that the contested norms restricted the jurisdiction of an administrative court and prohibited from ensuring a person's right to a fair trial.

First, the Constitutional Court decided that the constitutionality of the contested norm had to be examined irrespectively of the institution that had issued an unfavourable administrative act, with respect to which a judgement was being made in an administrative case.

Secondly, the Constitutional Court recognised that an institution of judicial power could be recognised as being "a fair court", in the meaning of the first sentence of Article 92 of the *Satversme*, only if it was independent, unbiased and competent. Moreover, the competence means not only the professional skill but also jurisdiction and the right to examine and decide on certain matters. For an administrative court, in exercising control over the decisions by the executive power, to be able to ensure a person's right to a fair trial, it should have the right to examine all circumstances that are essential in the case and verify the appealed decision both from the perspective of facts and of law. Ensuring a person's right to a fair trial requires revoking of a decision by the executive power, which is incompatible with legal norms, or specific actions taken by the public administration. Thus, in the administrative procedure, a comprehensive control over the decisions by the executive power must be implemented and, as the result of this control, consequences with respect to a person caused by an administrative act, which is incompatible with legal norms, must be eliminated.

Thirdly, the Constitutional Court recognised that the administrative procedure had to ensure simultaneously both protection of persons against unlawful actions by the executive power and had to implement the principle of separation of powers between the executive power and the judicial power. The regulation on the administrative proceedings in court is created to ensure that these objectives are met. The contested norm also is part of the system, which determines the jurisdiction of the administrative court in controlling actions by the executive power. In accordance with the principle of separation of powers, the initiation of an administrative case and issuing of an administrative acts fall within the competence of an institution. Whereas the court has the competence to decide on the legality of the administrative act. Thus, the legal regulation, which determines the competence of an administrative court, is concretisation of the principle of separation of power in the relationship between the executive power and the judicial power.

The control by an administrative court covers both the formal legality of actions by the executive power and the expedience as to its content. An administrative

court has the right to establish and assess both the actual circumstances of the case and legal considerations. Hence, comprehensive judicial control over the decisions by the executive power is performed in administrative proceedings.

Fourthly, the Constitutional Court found: if a court, on the basis of the first sentence of Section 253 of the Administrative Procedure Law, fully or partially revoked an administrative act, which was unfavourable to a person, or recognised it as being invalid, the consequences caused by this act with respect to a person had been eliminated. In this way, an effective final regulation is achieved in the administrative case. Consequently, there are no grounds to consider that exactly the contested norm must be applied to eliminate the consequences caused by an unfavourable administrative act. Rather than issuing instead of the institution another act unfavourable to a person, a regulation, pursuant to which a court revokes or recognises as being invalid an administrative act is more appropriate for the nature of the administrative procedure. Likewise, the right to a fair trial does not require that the court, in reviewing the legality of an administrative act unfavourable to a person, should always make considerations of expediency itself and, on the basis of these, determine a new content for the administrative act.

Thus, the Constitutional Court decided to recognise the contested norm as being compatible with the first sentence of Article 92 of the *Satversme*.

In administrative procedure, comprehensive judicial control over the decisions by the executive power must be performed, and, as the result of this control, consequences caused to a person by an administrative act, which is incompatible with legal norms, must be eliminated.

2.5. TAX AND BUDGET LAW

General Observations

The Constitutional Court in its ruling has revealed the content of the norms of the *Satversme* and of the general principles of law that determine the procedure for adopting the budget and the limits of the legislator's discretion in the field of tax law.

The concept of the state budget,¹¹³ has been defined in the Constitutional Court's judgements, they also analyse the jurisdiction of the *Saeima* and the Cabinet in drafting the state budget and assess the legality of the procedure for developing the state budget¹¹⁴ as well as the possibilities of other constitutional institutions to participate in the development of the state budget.¹¹⁵ The Constitutional Court has pointed out, which issues can be dealt with in the state budget law and the package of laws accompanying it, it has also defined the criteria that allow the *Saeima* to assess, whether all draft laws included in the state budget package, submitted by the Cabinet, are linked to adoption of the state budget.¹¹⁶ In addition to that, preparing of the state budget in conditions of economic recession has been characterised. It was concluded that financing could be decreased only and solely by abiding with the constitutional principles and constitutional procedures, i.e., respecting fundamental rights and freedoms, in particular, the principle of constitutional equality.¹¹⁷ The Constitutional Court has also indicated the procedure, in which an international loan can be taken.¹¹⁸ Likewise, the principles of developing the special budget of the state social insurance have been analysed.¹¹⁹

The Constitutional Court has recognised that the legislator's task is to see to it that there would be enough resources in the state budget and that due regulation for ensuring public welfare is developed.¹²⁰ In deciding on the state budget, in the longterm the national economic opportunities and the welfare of the whole society must be ensured.¹²¹ The State also must ensure for its sustainable development, *inter alia*, also in a way to ensure that the state budget would always have the resources that are required for performing the State's functions.¹²²

The Constitutional Court has often examined issues of the state budget in interconnection with tax regulation because taxes, predominantly, perform the fiscal function, which provides revenue for the state budget and the local governments' budgets. This revenue allows financing priority social and economic measures and also decreases the inequality in persons' income and welfare level. Likewise, tax laws perform economic (regulatory) function – balances the interests of the State and those of taxpayers, as well as influence the taxpayers' conduct.¹²³

The Constitutional Court has examined compliance with the *Satversme* of the regulation on the company income tax,¹²⁴ the personal income tax,¹²⁵ the value added tax,¹²⁶ the natural resources tax¹²⁷ and the subsidised electricity tax.²⁸ Both establishment of a new duty to pay tax,¹²⁹ as well as revoking of previously established tax exemptions¹³⁰ have been examined.

The Constitutional Court has noted in its rulings that establishing a tax is the legislator's exclusive constitutional

113 Judgement by the Constitutional Court of 27 November 1998 in Case No. 01-05 (98).

114 Judgement by the Constitutional Court of 3 February 2012 in Case No. 2011-11-01.

115 Judgement by the Constitutional Court of 25 November 2010 in Case No. 2010-06-01 and Decision of 8 June 2012 on Terminating Legal Proceedings in Case No. 2011-18-01.

116 Judgement by the Constitutional Court of 25 March 2015 in Case No. 2014-11-0103.

117 Judgement by the Constitutional Court of 18 January 2010 in Case No. 2009-11-01.

118 Judgement by the Constitutional Court of 21 December 2009 in Case No. 2009-43-01.

119 Judgement by the Constitutional Court of 19 December 2011 in Case No. 2011-03-01.

120 Judgement by the Constitutional Court of 19 December 2011 in Case No 2011-03-01, Para 18.

121 Judgement by the Constitutional Court of 3 February 2012 in Case No. 2011-11-01, Para 17.5.

122 Judgement by the Constitutional Court of 25 March 2015 in Case No. 2014-11-0103, Para 20.

123 Judgement by the Constitutional Court of 3 April in Case No. 2007-23-01, Para 15.

124 Judgement by the Constitutional Court of 20 May 2011 in Case No. 2010-70-01.

125 Judgement by the Constitutional Court of 11 April 2007 in Case No. 2006-28-01, Judgement of 8 June 2007 in Case No. 2007-01-01,

126 Judgement of 6 December 2010 in Case No. 2010-25-01, Judgement of 13 April 2011 in Case No. 2010-59-01 and Decision of 13 December 2011 on Terminating Legal Proceedings in Case No. 2011-15non-refoulement01.

127 Judgement by the Constitutional Court of 19 June 2010 in Case No. 2010-02-01.

128 Judgement by the Constitutional Court of 25 March 2015 in Case No. 2014-11-0103.

129 Judgement by the Constitutional Court of 3 July 2015 in Case No. 2014-12-01.

130 Judgement by the Constitutional Court of 25 March 2015 in Case No. 2014-11-0103 and Decision of 13 December 2011 on Terminating Legal Proceedings in Case No. 2011-15-01

competence.¹³¹ The *Saeima*, in defining and implementing its tax policy, enjoys broad discretion. It comprises the right to choose the tax rates and the categories of persons that these are applicable to, as well as the right to specify the details of the respective regulation. However, tax regulation should be substantiated by objective and rational considerations.¹³²

It has been recognised in the case law of the Constitutional Court that the obligation to pay a tax always means restriction on the property right and can also be linked to other restrictions defined in law, which must be compatible with the legitimate aim – protection of constitutionally important values. Thus, the Constitutional Court mainly assesses, whether paying of the tax is not a disproportionate burden for the addressee and whether the legal regulation on taxes complies with the general principles of law.¹³⁴ As to its nature, a tax may not be confiscatory.¹³⁵

The Constitutional Court has recognised that a person's obligation to pay a local government's fee, as to its economic nature, can be equalled to a person's obligation to pay a tax.¹³⁶

In the field of tax law, also issues pertaining to tax administration, establishing penalties for failure to pay taxes, as well as a court's jurisdiction to decide on the applied penalty have been examined. The obligation to pay taxes is inseparably linked to establishing measures for ensuring that this obligation is fulfilled. The State not only imposes an obligation on taxpayers to pay taxes in a certain amount but also defines the procedure for calculating, deducting and paying these taxes, as well as envisages liability for failure to perform this obligation. Hence, a taxpayer's dispute with the State regarding payment of a tax often pertains to the correctness of actions taken by tax administration and the validity of the applied penalty.¹³⁷ Proper tax administration comprises also timely and effective collection of taxes and at the same time prevents tax evasion.¹³⁸ Implementation of good and proper governance in tax administration, as well as protection of taxpayers' rights and lawful interests is impossible without full, fair, competent and effective judicial control.¹³⁹

Trends of Development

In 2017, the Constitutional Court examined compliance of tax regulation with the *Satversme* in two cases, i.e., in case No. 2016-14-01 and case No. 2016-16-01

compliance of the solidarity tax with the *Satversme* was examined. The judgement in case No. 2016-14-01 comprises innovative theses regarding the legislator's constitutional obligation in the field of tax policy. In defining the principles that the legislator must abide by in the field of taxation policy, the Constitutional Court has underscored the importance of the concept of sustainable economy in a democratic state governed by the rule of law. The Constitutional Court has clearly defined that in the field of tax law the legislator must comply with the principles of effectiveness, justice, solidarity and timeliness. In addition to that, the content of the principle of solidarity was for the first time specified in this judgement. This judgement is to be considered as being the turning point in the case law of the Constitutional Court in the field of tax law because this was the first time when a tax rate was found to be incompatible with legal norms of higher legal force. Whereas the judgement in case No. 2016-16-01 reiterates the Constitutional Court's findings in case No. 2016-14-01, emphasising the obligation to pay the solidarity tax with respect to employers.

Case No. 2016-14-01

[Judgement \[in Latvian\]](#)

[Press release \[in English\]](#)

On 19 October 2017, the Constitutional Court pronounced the judgement in case No. 2016-14-01 "On Compliance of Section 3, 5, 6, 7 and 9 of the law "On Solidarity Tax" with the First Sentence of Article 91 and Article 109 of the *Satversme* of the Republic of Latvia". It was examined in the case, whether the legislator had acted in compliance with the *Satversme* in introducing a new type of tax for employees.

The case was initiated with respect to applications submitted by 37 natural persons. All applicants were employees, who had the obligation to pay the solidarity tax. They requested the Constitutional Court to examine the norms, which defined the object of solidarity tax, the taxpayers, the tax rates, and the procedure for calculating the tax and for channelling the tax revenue into the basic budget of the State. The applicants held that the respective norms of the law "On Solidarity Tax" were incompatible with Article 109 of the *Satversme*, because they prohibited the applicants from receiving social security proportional to the social insurance contributions that they had paid, proportional to the salary and income equalled to it. Moreover, it was

131 Judgement by the Constitutional Court of 6 December 2010 in Case No. 2010-25-01, Para 10.

132 Judgement by the Constitutional Court of 20 May 2011 in Case No. 2010-70-01, Para 9.

133 Judgement by the Constitutional Court of 11 April 2007 in Case No. 2006-28-01, Para 19.1.

134 Judgement by the Constitutional Court of 8 June 2007 in Case No. 2007-01-01, Para 24.

135 Judgement by the Constitutional Court of 25 March 2015 in Case No. 2014-11-0103, Para 20.

136 Judgement by the Constitutional Court of 12 February 2016 in Case No. 2015-13-03, Para 15.2.

137 Judgement by the Constitutional Court of 11 April 2007 in Case No. 2006-28-01, Para 13.

138 Judgement by the Constitutional Court of 11 April 2007 in Case No. 2006-28-01, Para 19.1.

139 Judgement by the Constitutional Court of 11 April 2007 in Case No. 2006-28-01, Para 10.

alleged that the norms of the law “On Solidarity Tax” were incompatible with the equality principle included in Article 91 of the *Satversme* because they envisage different solidarity tax rates for persons, who were in comparable circumstances.

First, the Constitutional Court established, whether the norms of the law “On Solidarity Tax” fell within the scope of Article 109 of the *Satversme*. I.e., it was analysed, whether the contested norms pertained to fulfilment of the State’s positive obligation and whether they restricted the right to social security.

The Constitutional Court found that the solidarity tax was a new type of income tax. The aforementioned tax is not an insurance contribution and cannot be attributed to receipt of social insurance services. Hence, the solidarity tax does not pertain to the State’s obligation to create and maintain a social security system that would guarantee social security to every person. The legislator, in adopting the contested norms, did not restrict a person’s fundamental right to social security in cases envisaged by law either because all persons have the right to social security that is proportionate to the amount, in which a person has participated in accumulation of social security capital, as well as in other measures of social security guaranteed by the State. Since the solidarity tax does not fall within the scope of Article 109 of the *Satversme*, the Constitutional Court terminated legal proceedings in this part of the claim. Secondly, the Constitutional Court established, whether there were grounds for analysing the law “On Solidarity Tax” from the perspective of the first sentence of Article 91 of the *Satversme* – whether the payers of solidarity tax were in comparable circumstances and whether the regulation caused differential treatment. The Constitutional Court had to examine also, whether the differential treatment had been established by law adopted in due procedure and whether the differential treatment had a legitimate aim.

The Constitutional Court noted that following introduction of a new tax changes to regulation always defined two groups of persons, at the same time envisaging differential treatment of them, i.e., persons, who were tax payers, and persons, who were not obliged to pay the tax.

The Constitutional Court underscored that the feature that allowed comparing payers of the solidarity tax, was the object of solidarity tax, i.e., the amount of income, to which the solidarity tax was applied. Therefore all socially insured employees or selfemployed persons, whose income exceeds the minimum annual amount of mandatory social insurance object, are in comparable circumstances. The rates are different for all payers of solidarity tax, taking into consideration the social risks against which a person is ensured. Therefore, in the case under review, the differential treatment of comparable groups follows from the social tax rates that have been set.

Assessing the process of legislation and the legal technique, the Constitutional Court found that the solidarity tax had been established by law adopted in due procedure. Whereas, in analysing the legitimate aim of the differential treatment, it was recognised that the simplicity of tax administration in this case could not be the sole legitimate aim. Likewise, the significant amount of tax revenue (the fiscal effect of a tax) or the small number of payers of solidarity tax *per se* could not be used to substantiate restrictions upon fundamental rights in the meaning of the first sentence of Article 91 of the *Satversme*. Hence, the tax rates set in Section 6 of the law “On Solidarity Tax” are incompatible with the equality principle.

Thirdly, the Constitutional Court defined the legislator’s constitutional obligations in the field of tax policy. The legislator’s obligation with respect to development of tax policy is to establish a solidary and fair mechanism, based on particular criteria, for levelling out social economic differences, aimed at sustainable national development, moreover, not only in the formal meaning of it but also ensuring effective functioning of it and introducing the necessary changes to the tax policy in a well-considered and timely manner. Thus, the legislator, in exercising its discretion in the field of taxation policy, must abide by the principles of effectiveness, justice, solidarity and timeliness.

Fourthly, by referring to the Preamble of the *Satversme*, the Constitutional Court explained the importance of the solidarity principle in a socially responsible democratic state governed by the rule of law. Each tax, essentially, is a solidarity payment because it ensures revenue to the state budget, with the help of which measures that are important for society as a whole are financed. Thus, fulfilment of the obligation to pay any tax is a manifestation of the solidarity principle. Individuals, in accordance with their income, peculiarities of consumption, the value of property in their ownership or other social economic criteria make tax payments, thus implementing mutual solidarity in society. Payment of taxes is the way, in which persons’ assume common responsibility for ensuring the needs of society and maintaining the State of Latvia.

Fifth, the Constitutional Court found that the norms that defined the actions of the public administration with respect to calculation of solidarity tax and transferring it into the state budget, did not grant subjective rights to a person. Therefore the Constitutional Court terminated legal proceedings in the case in this part of the claim. The Constitutional Court terminated legal proceedings also in the part of the claim regarding the norms of the law “On Solidarity Tax”, which defined taxpayers and the taxable object, because these *per se* did not cause a violation of the equality principle.

Justice of the Constitutional Court Aldis Laviņš appended his [separate opinion](#) to the judgement [in Latvian]. The Justice did not support the opinion that the differential treatment, established by Section 6 of the

law “On Solidarity tax” had no legitimate aim. Linking of the procedure for administering the solidarity tax to the system for administering the state mandatory social insurance contributions is aimed at predictable monthly tax collection, and the aforementioned tax contributions can be used to decrease inequality or differences in inhabitants’ welfare level. Although the tax rates established by Section 6 of the law “On Solidarity Tax” are different for different groups of persons, they are aimed at decreasing the regressivity of labour taxes; i.e., maintaining a similar labour tax burden for each group of tax payers. Thus, the procedure for administering the solidarity tax fosters its effectiveness, regularity and predictability and is aimed at protection of public welfare. However, the legislator has not provided explanation based on objective and rational considerations regarding the rates of solidarity tax applicable to different persons and the differences there in.

Justice of the Constitutional Court Gunārs Kušīņš noted in his [separate opinion](#) [in Latvian] that he upheld the finding made in the judgement regarding incompatibility of Section 6 of the law “On Solidarity Tax” with the first sentence of Article 91 of the *Satversme*. However, he cannot uphold some of the findings included in the judgement. It cannot be maintained that the differential treatment, established by Section 6 of the law “On Solidarity Tax” had no legitimate aim, because setting of differential rates of the solidarity tax ensures that the revenue gained through this tax increases the state budget and can be used for public needs. In this meaning, different tax rates and the differential treatment caused by them have been set for the protection of public welfare. Thus, using the criterion of a legitimate aim in assessing the constitutionality of the differential treatment, allegedly, did not reflect the particularities of the solidarity tax. It is also underscored in the separate opinion that the judgement revealed problems in applying the methodology, used by the Constitutional Court to examine a possible violation of the equality principle, in tax cases – using the criterion of the legitimate aim in assessing taxes with pronouncedly fiscal function.

Justice of the Constitutional Court Daiga Rezevska in her [separate opinion](#) [in Latvian] noted that considerations of economic effectiveness had not been examined in the judgement and neither had been used in legal reasoning. The principle of justice in a contemporary democratic state governed by the rule of law requires the State to adopt economically effective decisions with respect to regulating the sovereign’s life, as this is the only way to reach harmony and balance, to ensure equality and proportional allocation of benefits. It was also noted in the separate opinion that the law “On Solidarity Tax” could not be recognised as being a law adopted in due procedure. The procedure of adopting this law does not prove that the law had been aimed at sustainable development of the State (this law was amended already during the first year after it entered into force), nor at well-considered and timely introduction of changes into taxation policy (the law was

included into the package of the state budget law, not as the result of well-considered, timely procedure aimed at ensuring justice and solidarity). The *Saeima* has abided by the legislative procedure, although formally, following the letter rather than the spirit of the *Satversme*. Therefore the law “On Solidarity Tax” cannot be considered as being a model of good legislation. Taking into account the fact that the law “On Solidarity Tax” was adopted in haste, the Justice urges to use, in the future, in the case law of the Constitutional Court the findings regarding rational *vacatio legis*.

The obligation of the State to implement a fair, effective and timely taxation policy to ensure public welfare follows from the principle of a socially responsible state.

Case No. 2016-16-01

[Judgement \[in Latvian\]](#)

[Press release \[in English\]](#)

On 16 November 2017, the Constitutional Court pronounced the judgement in case No. 2016-16-01 “On Compliance of Section 3, Section 5 and Section 6 of the law “On Solidarity Tax” with the First Sentence of Article 91 of the *Satversme* of the Republic of Latvia”.

It was examined in the case, whether the legislator, by introducing a new type of tax for employers, has acted in compliance with the *Satversme*.

The case was initiated with respect to applications by nine legal persons – employers who employ employees, whose income from salary annually exceeds the maximum amount of the compulsory contributions. Thus, pursuant to the contested norms, the employer’s obligation to pay the solidarity tax in the amount set in the law arises.

The applicants held that the employees’ and not the employers’ obligation to pay the solidarity tax followed from the purpose of the contested norms to decrease the regressivity of the taxes and supplement the basic state budget for financing expenditure of social nature. However, the largest part of the total burden of the solidarity tax was said to be paid by the employers. Moreover, the norms of the law “On Solidarity Tax” were said to be incompatible with the principle of equality included in the first sentence of Article 91 of the *Satversme* because they set different rates of the solidarity tax for persons, who were in similar and comparable circumstances.

First, the Constitutional Court noted that it had presented its considerations regarding the content of Article 91 of the *Satversme* with respect to the solidarity tax already in its judgement in case No. 2016-

14-01. The conclusions made in this judgement were applicable to the case under examination, insofar similarity existed as regards the content of the obligation to pay the solidarity tax.

The Constitutional Court found that the employer's obligation to pay the solidarity tax in cases provided for in law was envisaged in the contested norms and that it was compatible with the aim of the law "On Solidarity Tax". I.e., the solidarity tax consisted of both that part of tax payment, which was calculated and deducted from the employee's gross remuneration, and that part of tax payment, which was calculated and paid from the employer's resources. To decrease the regressivity of labour force's tax, the legislator introduced a new type of tax – the solidarity tax. Thus, pursuant to the purpose of the law "On Solidarity Tax", the burden of labour tax was levelled out both for employees and employers.

Secondly, the Constitutional Court established, whether there were grounds for analysing the law "On Solidarity Tax" from the perspective of the first sentence of Article 91 of the *Satversme*.

The common feature, according to which the groups of persons, which were in similar and comparable circumstances, should be identified in the case, was the object of solidarity tax or the amount of income, to which the solidarity tax was applied. Those employers, who employ such employees, whose annual income does not reach the limit, at which the obligation to pay the solidarity tax sets in, do not have this feature. Thus, these employers, essentially, cannot be compared to those employers, who employ such employees, whose income exceeds this limit. Whereas all those employers, who have the obligation to pay

the solidarity tax, are in similar and comparable circumstances.

Thirdly, in examining the legislative process and nuances of legal technique, the Constitutional Court found that the solidarity tax had been introduced by a law adopted in due procedure. Whereas with respect to the legitimate aim of the differential treatment envisaged in Article 6 of the law "On Solidarity Tax" it was recognised that the simplicity of tax administration could not be the sole legitimate aim in establishing differential treatment of comparable groups of payers of solidarity tax. Likewise, the significant amount of budget revenue (the fiscal effect of the tax) or the small number of payers of solidarity tax *per se* cannot be used to substantiate the restriction on the principle of equality that has been established in the *Satversme*. Thus, the differential treatment of the employers, which had been established by Section 6 of the law "On Solidarity Tax", lacks a legitimate aim. Therefore this contested norm also with respect to employers is incompatible with the first sentence of Article 91 of the *Satversme*. Fourthly, the Constitutional Court recognised that in this case, as in case No. 2016-14-01, the subject and object of the tax *per se* did not cause a violation of the equality principle. Therefore Section 3 and Section 5 of the law "On Solidarity Tax" are not to be examined in the framework of the first sentence of Article 91 of the *Satversme* because they do not cause restrictions on fundamental rights. Therefore legal proceedings in this part of the claim were terminated.

Justice of the Constitutional Court Aldis Laviņš appended his [separate opinion](#) [in Latvian] to the judgement. The Justice drew attention to the fact that,



pursuant to the methodology used by the Constitutional Court, “objective and reasonable grounds” was a broader concept, which might not include only assessment of the legitimate aim of the restriction on fundamental rights. In establishing, whether the differential treatment has a legitimate aim, the important interests, due to which the different rates of the solidarity tax had been established, had to be analysed. If important interests are identified, for which different rates of the solidarity tax have been set, then, in order to conclude, whether the restriction on fundamental rights caused by the obligation to pay the tax is compatible with Article 91 of the *Satversme*, it must be verified, whether the different tax rates *per se* can be reasonably explained by objective and rational considerations, i.e., whether the principle for calculating the tax has not been determined arbitrarily.

Although the different solidarity tax rates set also for employers, pursuant to the fiscal aim of this tax, increases revenue into the basic budget of the State, the amount of the solidarity tax rates cannot be substantiated by social insurance risks because the solidarity tax has other aims. Also in the course of hearing the case, the legislator has not provided an explanation, based on objective and rational considerations, for the concrete rates of the solidarity tax applicable to different groups of persons and the differences therein.

Justice of the Constitutional Court Gunārs Kušņis in his [separate opinion](#) [in Latvian] noted that, similarly to case No. 2016-14-01, the chosen different rates of the solidarity tax ensured the necessary revenue into the state budget and that, in this respect, they had reasonable grounds. However, in the particular case, for example, there were no objective and rational grounds for different tax rates (decreased or increased) in different years, comparing 2016 and 2017, and why they had changed exactly in this amount. Therefore, in case No. 2016-16-01, just like in case No. 2016-14-01, the use of the criterion of legitimate aim, in examining the constitutionality of differential treatment, did not reflect the particularities of the solidarity tax. The Justice holds that in both cases it had to be assessed, whether the contested regulation was based on objective and rational considerations. It would be sufficient to conclude that this regulation, even in one aspect of it, was not based on objective and rational considerations to recognise the regulation as being incompatible with the first sentence of Article 91 of the *Satversme*.

Justice of the Constitutional Court Daiga Rezevska in her [separate opinion](#) [in Latvian] underscored that she had stated her considerations that the law “On Solidarity Tax” could not be recognised as being a law adopted in due procedure already in her separate opinion in case No. 2016-14-01. In addition to that, the Justice drew attention to the fact that the situation was made even more unfair by the fact that

the obligation to pay the solidarity tax arose also for that employer, who was paying such a salary, which *per se* did not exceed the maximum amount of object of mandatory social insurance contributions set for an employee for the respective calendar year. I.e., if an employee’s total income, paid by several employers, exceeds the maximum amount of the object of mandatory insurance contributions, all employers, irrespectively of the amount of salary that they pay to the employee, have the obligation to pay the solidarity tax.

Justice of the Constitutional Court Osipova in her [separate opinion](#) [in Latvian] noted that, in the context of the first sentence of Article 91 of the *Satversme*, two groups of solidarity taxpayers should be differentiated between. Not only the employer, who is paying to his employee an annual remuneration that exceeds 48 600 euro, becomes a payer of the solidarity tax but also an employer, who is paying to an employee lower remuneration (even the minimum salary), if this employee is employed by several employers and his total income exceeds the maximum amount of the object of mandatory social insurance contributions. This leads to a situation, where to one person, who is paying to his employee annual remuneration below 48 600 euro, solidarity tax is not envisaged, whereas another person, who is also paying to his employee annual remuneration below 48 600 euro, becomes a payer of the solidarity tax. Moreover, an employer, who is paying to his employee annual remuneration below 48 600 euro, may even not know that he has become a payer of the solidarity tax because all data regarding an employee’s income are available only to the State Social Insurance Agency. Imposing a legal obligation, the existence of which is not known to a person, is inadmissible in a democratic state governed by the rule of law.

To decrease the regressivity of labour force’s tax, the legislator introduced a new type of tax - the solidarity tax. Thus, the burden of labour tax was levelled out both for employees and employers.

2.6. CRIMINAL LAW

The case law of the Constitutional Court in the field of criminal law comprises assessment of the constitutionality of legal norms included in the Criminal Law and the Criminal Procedure Law, as well as the Latvian Sentence Execution Code and in other regulatory enactments.

The Constitutional Court has examined norms of the Criminal Law that envisage a punishment for violating the honour and dignity of an official,¹⁴⁰ prohibited use of narcotic and psychotropic substances,¹⁴¹ as well as violating the rules on keeping animals.¹⁴² The norms of the Criminal Law on confiscation of property have also been examined.¹⁴³ Whereas in cases with regard to norms of the Criminal Procedure Law and the Latvian Sentence Execution Law, the Constitutional Court has examined the right to legal aid,¹⁴⁴ the right to familiarize oneself with the materials of the case,¹⁴⁵ the term of pre-trial criminal proceedings¹⁴⁶ and the term of detention¹⁴⁷ appealing against activities by the investigator and the prosecutor,¹⁴⁸ as well as the right to have the case heard *de novo* due to newly discovered circumstances.¹⁴⁹ In many cases, issues related to the rights of imprisoned persons have been dealt with, for example, the right to vote,¹⁵⁰ the right to exercise,¹⁵¹ the right to

meetings,¹⁵² the right to correspondence,¹⁵³ the right to phone conversations,¹⁵⁴ the right to appropriate food,¹⁵⁵ the right to appropriate living conditions,¹⁵⁶ the right to keep religious objects,¹⁵⁷ the right to receive food parcels and deliveries,¹⁵⁸ the right to receive remuneration appropriate for the work done,¹⁵⁹ the right to weekly days-off and the right to annual paid leave,¹⁶⁰ as well the right to be released from serving the sentence.¹⁶¹ Finally, such issues linked to the field of criminal law as the control over the legality of operative activities¹⁶² and maintenance of DNA database¹⁶³ have been examined.

The Constitutional Court has recognised that in order to regulate persons' behaviour and to deter them from committing criminal offences, the State must envisage a person's liability of unlawful actions. Application of punishment for committing a criminal offence is aimed at the protection of the democratic state order, public security and other persons' rights.¹⁶⁴ The legislator, in the political process, has the right to choose the most appropriate types of punishment and sanctions for criminal offences. Whereas the court determines the most appropriate punishment in each particular case, within the limits envisaged by the legislator.¹⁶⁵

140 Judgement by the Constitutional Court of 29 October 2003 in Case No. 2003-05-01.

141 Judgement by the Constitutional Court of 26 January 2005 in Case No. 2004-17-01.

142 Judgement by the Constitutional Court of 16 December 2008 in Case No. 2008-09-0106.

143 Decision by the Constitutional Court of 6 January 2011 on Terminating Legal Proceedings in Case No. 2010-31-01 and Judgement of 8 April 2015 in Case No. 2014-34-01.

144 Judgement by the Constitutional Court of 6 October 2003 in Case No. 2003-08-01.

145 Decision by the Constitutional Court of 3 April 2014 on Terminating Legal Proceedings in Case No. 2013-11-01 and Judgement of 23 May 2017 in Case No. 2016-13-01.

146 Judgement by the Constitutional Court of 29 April 2008 in Case No. 2007-25-01.

147 Judgement by the Constitutional Court of 27 June 2003 in Case No. 2003-03-01.

148 Judgement by the Constitutional Court of 11 October 2004 in Case No. 2004-06-01.

149 Judgement by the Constitutional Court of 5 March 2002 in Case No. 2001-10-01 and Judgement of 29 April 2016 in Case No. 2015-19-01.

150 Judgement by the Constitutional Court of 5 March 2003 in Case No. 2002-18-01.

151 Judgement by the Constitutional Court of 29 September 2009 in Case No. 2008-48-01.

152 Judgement by the Constitutional Court of 23 April 2009 in Case No. 2008-42-01.

153 Judgement by the Constitutional Court of 6 February 2006 in Case No. 2005-17-01, Judgement of 9 May 2008 in Case No. 2007-24-01, Judgement of 2 December 2009 in Case No. 2009-07-0103, Judgement of 18 December 2009 in Case No. 2009-10-01.

154 Judgement by the Constitutional Court of 7 October 2009 in Case No. 2009-05-01.

155 Judgement by the Constitutional Court of 9 March 2010 in Case No. 2009-69-03.

156 Judgement by the Constitutional Court of 20 December 2010 in Case No 2010-44-01 and Judgement of 22 October 2002 in Case No. 2002-04-03.

157 Judgement by the Constitutional Court of 18 March 2011 in Case No. 2010-50-03.

158 Judgement by the Constitutional Court of 19 December 2001 in Case No. 2001-05-03 and Judgement of 23 April 2004 in Case No. 2003-15-0106.

159 Judgement by the Constitutional Court of 14 June 2007 in Case No. 2006-31-01 and Judgement of 9 June 2011 in Case No. 2010-67-01.

160 Judgement by the Constitutional Court of 21 October in Case No. 2008-02-01.

161 Decision by the Constitutional Court of 8 June 2010 on Terminating Legal Proceedings in Case No. 2009-115-01.

162 Judgement by the Constitutional Court of 11 May 2011 in Case No. 2010-55-0106.

163 Judgement by the Constitutional Court of 12 May 2016 in Case No. 2015-14-0103.

164 Judgement by the Constitutional Court of 8 April 2015 in Case No. 2014-34-01, Para 17.

165 Judgement by the Constitutional Court of 8 April 2015 in Case No Nr. 2014-34-01, Para 18.

166 Judgement by the Constitutional Court of 6 October 2003 in Case No. 2003-08-01, Para 2 of the Findings.

The Constitutional Court has noted that the objective of criminal procedure is to detect criminal offences quickly and fully, to identify the perpetrators and to ensure correct application of laws, so that each person, who has committed a criminal offence, would be justly punished and no innocent person, in turn, would be made criminally liable and convicted.¹⁶⁶ The State power, in issuing acts of regulatory nature, must envisage a procedure that is aimed, to the extent possible, at ensuring that any punishment that is linked to restrictions on fundamental rights is applied only after all circumstances of the case have been comprehensibly established.¹⁶⁷ I.e., Article 92 of the *Satversme* requires establishment of such system, in which criminal cases would be heard by a fair and objective court and that these cases would be examined in a procedure that would ensure fair and objective adjudication thereof.¹⁶⁸ Thus, a fair outcome of legal proceedings or a fair judgement is an integral part of the fair trial. Procedural laws set a number of requirements, which are aimed at ensuring a fair judgement by the court, for example, objectivity and neutrality of the court, the principle of equality of parties, verification of evidence, the right to appeal against a ruling to an appellate instance court, and others. As the result of correct application of these requirements and interaction between these, a fair judgement can be reached.¹⁶⁹

The Constitutional Court has also emphasized that persons, who serve their sentences in a place for deprivation of liberty, retain their fundamental rights.¹⁷⁰ However, these rights may be restricted; moreover, restrictions for imprisoned persons may be stricter compared to those imposed on persons at liberty.¹⁷¹ It is essential that imprisoned persons be subjected only to such restrictions on fundamental rights that are absolutely necessary.¹⁷² All persons, who have been deprived of liberty, must be treated in a human way and their human dignity must be respected. The State has the obligation to ensure that all basic needs of imprisoned persons are met – *inter alia*, with respect to food, clothing, medical care, sanitary facilities, education, work, rest, lighting in cells, communication with the external world, exercise and privacy.¹⁷³ The State has no right, using considerations of economic nature as a pretext, to refuse fulfilling this basic obligation, if this leads to failure to meet minimum requirements regarding safeguarding of human rights.¹⁷⁴ The State must ensure such conditions in places for deprivation of liberty that do not humiliate human dignity and do not subject a person to such hardships and suffering that exceed the

admissible level of suffering, and also that the prison regime allows maintaining wellbeing that is appropriate for the health and the conditions.¹⁷⁵

Trends of Development

In 2017, the Constitutional Court has examined constitutionality of the norms of the Criminal Procedure Law in three cases. All three cases are linked to legal regulation on criminally obtained property. In case No. 2016-07-01, returning of the criminally acquired property to the original owner was examined; in case No. 2016-13-01 – the right to familiarise oneself with the materials in the case regarding criminally acquired property, and in case No. 2017-10-01 – possibility to appeal a decisions adopted in proceedings regarding criminally acquired property.

In case No. 2016-07-01, the principle of rights protection that regulates criminal law relationship and the principle of protecting the *bona fide* acquirer, which regulates civil law relationship, was analysed for the first time. The Constitutional Court dealt with the conflict existing between these two principles, thus reflecting the interaction between criminal law and civil law.

In case No. 2017-10-01, differences in various types of proceedings were examined. The Constitutional Court established, whether the right, envisaged in criminal procedure, to appeal against a court's decision in accordance with the principle of equality should be ensured also in proceedings regarding criminally acquired property. It was recognised that the different nature and aims of these proceedings prohibited from comparing these proceedings.

Whereas in case No. 2016-13-01, the Constitutional Court's case law with respect to various aspects of procedural fairness was developed – *inter alia*, the principle of equal opportunities and the objectivity of the decision-maker. The Constitutional Court underscored both that the restrictions on procedural fairness should be proportionate and the control over the decisions by the official directing the proceedings should be exercised by a court.

Case No. 2016-07-01

[Judgement \[in Latvian\]](#)

[Press release \[in English\]](#)

On 8 March 2017, the Constitutional Court passed judgement in the case No. 2016-07-01 “On Compliance of

167 Judgement by the Constitutional Court of 22 October 2002 in Case No. 2002-04-03, Para 7 of the Findings 7.

168 Judgement by the Constitutional Court of 5 March 2002 in Case No. 2001-10-01, Para 2 of the Findings.

169 Judgement by the Constitutional Court of 29 April 2016 in Case No. 2015-19-01, Para 12.2.

170 Judgement by the Constitutional Court of 21 October 2008 in Case No. 2008-02-01, Para 9.1.

171 Judgement by the Constitutional Court of 21 October 2008 in Case No. 2008-02-01, Para 10.

172 Judgement by the Constitutional Court of 23 April 2009 in Case No. 2008-42-01, Para 10.

173 Judgement by the Constitutional Court of 20 December 2010 in Case No. 2010-44-01, Para 8.1.

174 Judgement by the Constitutional Court of 20 December 2010 in Case No. 2010-44-01, Para 15.

175 Judgement by the Constitutional Court of 22 October 2002 in Case No. 2002-04-03, Para 5 of the Findings.

Section 356(2) and Section 360(1) of the Criminal Procedure Law with Article 1, the first sentence of Article 91, Article 92 and Article 105 of the *Satversme* of the Republic of Latvia”.

The procedure, in which during pre-trial criminal proceedings property was recognised as being criminally acquired, was examined in case. The Constitutional Court assessed also returning of the criminally acquired property to its owner or legal possessor.

The case was initiated on the basis of a legal person's application. The applicant had purchased property (an apartment) at an auction; however, the person in charge of proceedings during pre-trial investigation adopted a decision to recognise this property as being criminally acquired and return it to the owner, who had lost the immovable property as the result of a criminal offence – fraud. During criminal proceedings it had been established that the property that had been acquired through fraud was sold to another person, who had corroborated his right to property in the Land Register. The applicant held that the contested norms restricted its right to property and was incompatible with the principle of legal expectations. The State, allegedly, had the obligation to protect property rights that had been corroborated in the Land Register, *inter alia*, the property right of a *bona fide* acquirer.

First, the Constitutional Court terminated legal proceedings in the part of the claim because during the pre-trial criminal proceedings Para 1 of Section 356(2) of the Criminal Procedure Law had not been applied to the applicant and did not cause to it adverse legal consequences.

Secondly, the Constitutional Court established the limits of the claims and the sequence of examination thereof, because the applicant had requested examination of compatibility of a number of norms of the Criminal Procedure Law with a number of norms of the *Satversme*. The criterion, which determined the sequence of examining a number of claims, is efficiency. Therefore, the Constitutional Court decided to examine Para 2 of Section 356(2) and Section 360(1) as a united legal regulation in examining, first of all, compliance thereof with Article 1 and Article 105 of the *Satversme* and afterwards – with the first sentence of Article 91 and Article 92 of the *Satversme*.

Thirdly, the Constitutional Court established the content of the contested norms. It was concluded that, until now, the legislator's aim had been to cover with the contested regulation both movable and immovable property during pre-trial proceedings.

Fourthly, the Constitutional Court assessed, whether the contested regulation complied with Article 1 and Article 105 of the *Satversme*, because the principle of legal expectations is closely linked with the right to property. The Constitutional Court noted that the decision adopted by the person in charge of proceedings on recogni-

sing the applicant's property as being criminally acquired property and on returning it to the person, who had been deprived of it as the result of criminal offence, denied the applicant from exercising its full power over property in its ownership. Thus, the contested regulation restricted the applicant's right to property established in Article 105 of the *Satversme*. The Constitutional Court recognised that the restriction upon fundamental rights that followed from the contested regulation was established by law and that the restriction upon fundamental rights included in the contested regulation had a legitimate aim – protection of other persons' rights. The contested regulation was appropriate for reaching the legitimate aim and the legislator had selected the most lenient measure for reaching the legitimate aim, since there were no alternatives for reaching it by other measures that would be less restrictive upon a person's rights and lawful interests.

Fifth, the Constitutional Court specified the principle of public credibility and protection of the *bona fide* acquirer. The principle of public credibility exists in a democratic state governed by the rule of law, from which the principle of protecting a *bona fide* acquirer is derived and which in Latvia is implemented, *inter alia*, with the help of the Land Register. Although corroboration of immovable property in the Land Register and registration of rights in rem is mandatory and the respective entries have been ensured public credibility with respect to third persons, such entries that have been made into the Land Register following a criminal offence cannot be recognised as being legal. In the legal system, an exception to the principle of protecting the *bona fide* acquirer has been established in the Criminal Procedure Law as the principle of protecting the victim's rights. At the same time, it is not provided in the Civil Law that such an exception to the principle of protecting the *bona fide* acquirer cannot exist. Thus, pursuant to the principle of reasonable legislator, the regulation created by the legislator is internally consistent. In application of legal norms, both the principle of a rational legislator and the principle of the unity of the legal system must be taken into consideration. I.e., the legislator adopts mutually consistent legal norms, which function harmoniously within the framework of the legal system as a whole; moreover, legal norms included in various regulatory enactments must be interpreted as such that constitute a united legal system. Hence, to reach the aims and objectives of the criminal procedure and to protect the victim's rights in a democratic state governed by the rule of law an exception to the principle of protecting a *bona fide* acquirer is admissible.

A person, who has lost immovable property as the result of a criminal offence, should have measures available for regaining this immovable property. Thus, the contested regulation imposes proportional restrictions upon the applicant's fundamental rights and is compatible with Article 1 and Article 105 of the *Satversme*.

The Constitutional Court found that the currently existing regulation envisaged returning immovable property to a person, who has lost this as the result of criminal

offence; however, comprehensive regulation of legal relationships was not provided. Hence, the Constitutional Court obiter dictum noted that the legislator should envisage a clear mechanism for ensuring effectively the fundamental rights of persons involved in the proceedings. I.e., effective handling of the criminally acquired property should be ensured, so that the owner, who has lost it as the result of a criminal offence, would be able to achieve that the respective property is corroborated into the Land Register in his name, whereas the third person – the *bona fide* acquirer of this property or *bona fide* pledgee – would have effective possibilities to demand compensation of losses.

Finally, the Constitutional Court also examined compliance of the contested regulation with the principle of equality, taking into consideration legal relationships that were typical of both criminal proceedings and civil proceedings. It was found that in the case under review there were no groups of persons who would be in similar and comparable circumstances, which meant that the contested regulation was not incompatible with the equality principle included in the first sentence of Article 91 of the *Satversme*. The legislator has broad discretion to adopt procedural laws and determine the categories of cases that are examined in the respective proceedings. Likewise, the legislator has the right to establish a procedure for examining cases that complies with the fundamental rights. Objective differences exist between various legal proceedings, including such that pertain to the legal relationships that are affected, initiation of legal proceedings, the burden of proof, specialisation of a court or application of temporary measures. Comparison of the legal regulation on various legal proceedings would allow identifying a number of common or analogous features for all proceedings. However, this cannot serve as the grounds for a person's claim to make all these proceedings totally identical.

In view of the above, the Constitutional Court recognised that the contested regulation complied with Article 1, the first sentence of Article 91 and Article 105 of the *Satversme*.

Hence, to reach the aims and objectives of the criminal procedure and to protect the victim's rights in a democratic state governed by the rule of law an exception to the principle of protecting a bona fide acquirer is admissible. A person, who has lost immovable property as the result of a criminal offence, should have measures available for regaining this immovable property.

Case No. 2016-13-01
Judgement [in Latvian]
Press release [in English]

On 23 May 2017, the Constitutional Court passed the judgement in case No. 2016-13-01 "On Compliance of the Fifth Part of Section 629 of the Criminal Procedure Law with the First Sentence of Article 92 of the *Satversme* of the Republic of Latvia".

Legal norms that envisaged the possibility to prohibit a participant of criminal proceedings regarding criminally acquired property from familiarising himself with the case materials were examined in the case.

The case was initiated on the basis of a constitutional complaint submitted by a legal person. It was noted in the application that the applicant's representative in the framework of proceedings regarding criminally acquired property had submitted a request to the person directing proceedings for getting acquainted with the case materials; however, on the basis of the contested norm, this request had been rejected. The applicant held that the contested norm placed disproportional restrictions upon its right to a fair trial, since it did not ensure compliance with the principle of procedural equality.

First, the Constitutional Court rejected the *Saeima's* argument that the alleged infringement on the applicant's fundamental rights was not caused by the contested norm, but by the practice of application thereof.

Secondly, the Constitutional Court established the content and the scope of Article 92 of the *Satversme*. It is characteristic of proceedings regarding criminally acquired property that a person's guilt is not established in these proceedings but only a decision is taken regarding the criminal origins of property. These proceedings are aimed at timely and effective resolution of property issues within criminal proceedings. The safeguards set in the first part of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, in interconnection with safeguards defined in the first sentence of Article 92 of the *Satversme*, are applicable to these proceedings. Thus, in proceedings regarding criminally acquired property the State has a positive obligation to ensure the right to a fair trial in a way that envisages effective protection of rights. At the same time this means also the obligation of the State to ensure to a person procedural safeguards for protecting his right to property, so that in special proceedings the case would be decided on its merits, by respecting a person's right to a fair trial.

Thirdly, the Constitutional Court examined, whether the contested norms comprised also such safeguards, which were necessary for exercising the right to a fair trial. The Constitutional Court found that if a person connected to property did not agree to the decision by the person directing proceedings, which had been adopted on the basis of the contested norm, he could appeal against it only within the framework of the prosecutor's office in procedure established in Chapter 24

of the Criminal Procedure Law. Legal regulation did not envisage a court's jurisdiction to reexamine this decision by a person directing proceedings. The Constitutional Court recognised that a prosecutor could not be regarded as being an independent institution of judicial power complying with denomination "court", if he was also one of the participants in the case and the one adopting the final decision on the amount, in which a person would be ensured the right to get acquainted with case materials in proceedings regarding criminally acquired property.

The Constitutional Court recognised – to reach the purpose of criminal proceedings is met, in proceedings regarding criminally acquired property, protection of the investigative secret must be ensured. It is necessary in order not to jeopardise the course of criminal proceedings and ensure that other persons exercise their fundamental rights effectively. Disclosing and presenting case materials in proceedings regarding criminally acquired property without prior assessment would be contrary to other persons' right to a fair trial and might jeopardise successful course of pre-trial criminal proceedings. The person directing proceedings must ensure that investigative secret is protected not only in deciding on persons' right to get acquainted with case materials but also when giving this permission.

The Constitutional Court found that the person directing the proceedings, already now, in deciding on a person's right to get acquainted with case materials in proceedings regarding criminally acquired property,

had to take into account the general principles of law that were in force in the legal system, as well as legal regulation established by the legislator. In deciding on permission to get acquainted with case materials in proceedings regarding criminally acquired property, in each particular case the interests of persons involved in the case must be compared, taking into account the purpose of criminal procedure. However, neither investigative secret envisaged in the contested norm, nor the need to protect other persons' rights may serve as the grounds for not ensuring in proceedings regarding criminally acquired property the principle of equal opportunities of parties; i.e., the right to prepare properly for the examination of the case and the right to be heard. A fair court ruling on the merits can be reached only in a procedure that ensures the principle of equal opportunities of parties.

The Constitutional Court is of the opinion that the legislator should establish a procedure that would ensure the principle of equal opportunities of parties in such cases, providing the possibility to the court to examine the legality and validity of the decision by the person directing proceedings on a person's right to get acquainted with case materials in proceedings regarding criminally acquired property, thus, ensuring to a person effective protection of the right to property. The court is exactly the subject, which, in examining an issue on its merits, should at the same time perform the function of controlling whether fundamental rights of persons connected to property are respected.



Hence, the contested norm, insofar it does not ensure that the principle of equal opportunities of parties is abided by, is incompatible with the first sentence of Article 92 of the *Satversme*.

In a democratic state governed by the rule of law, in proceedings regarding criminally acquired property the State must ensure that the principle of equal opportunities of parties is respected, which, inter alia, is linked to a person's right to familiarise himself with materials in the case regarding criminally acquired property.

Case No. 2017-10-01

[Judgement \[in Latvian\]](#)

[Press release \[in English\]](#)

On 11 October 2017, the Constitutional Court passed the judgement in case No. 2017-10-01 “On Compliance of Section 629(5) of the Criminal Procedure Law with the First Sentence of Article 92 of the *Satversme* of the Republic of Latvia and on Compliance of the Second Sentence of Section 631(3) of the Criminal Procedure Law with the First Sentence of Article 91 of the *Satversme*.”

In this case, mainly the possibility to appeal against a decision adopted in a case regarding criminally acquired property was examined, because the issue of the right to familiarise oneself with materials in the case regarding criminally acquired property was already dealt with in case No. 2016-13-01.

The case had been initiated on the basis of an application by a legal person. The applicant noted that the second sentence of Section 631(3) of the Criminal Procedure Law was incompatible with the principle of equality, because this person had been unfoundedly denied the right to submit a cassation complaint regarding the decision by the appellate instance court in proceedings regarding criminally obtained property.

Firstly, the Constitutional Court examined the applicant's request expressed in its written opinion to broaden the limits of the claim. At the Constitutional Court, a case is prepared for hearing and is heard by taking into consideration the claim that is stated in the constitutional complaint and in the decision to initiate a case, as well as the legal reasoning regarding this claim that is included in the written reply by the *Saeima*. The request to broaden the limits of the claim, expressed in the applicant's written opinion, is to be recognised as a new constitutional complaint, on the basis of which, first of all, a decision should be adopted on initiation of a case, and the case would have to be prepared for hearing. Thus, in the stage of examining the case, broadening of the limits of the claim, would

be incompatible with the principles of proceedings before the Constitutional Court.

In addition to that, the Constitutional Court also examined the applicant's request to establish in the judgement that the applicant should be granted the right to use the new procedural regulation developed by the legislator and, thus, ensure the possibility to hear de novo the case regarding criminally obtained property, using the procedural safeguards that were included in the new procedural regulation.

The Constitutional Court noted that its task was to eliminate, to the extent possible, infringements upon a person's fundamental rights. If the Constitutional Court in its judgement recognises a legal norm as being incompatible with a legal norm of higher legal force, it decides on the way in which, to the extent possible, the infringement upon an applicant's fundamental rights should be eliminated. Hence, the Constitutional Court examined the applicant's request to establish in the judgement also that the applicant should be granted the right to use the new procedural regulation developed by the legislator in that part of the judgement, where it determined the date, as of which the legal norm became invalid.

The applicant also requested the Constitutional Court to indicate in the judgement that enforcement of the decisions by the court of general jurisdiction was suspended until the date, when the court heard the applicant's application regarding renewal of the proceedings regarding criminally acquired property due to newly disclosed circumstances. The Constitutional Court recognised that suspending enforcement of a ruling by a court of general jurisdiction, first and foremost, was a measure for ensuring that the legal proceedings before the Constitutional Court were effective and that the aims thereof were met, at the same time not causing a new infringement on a person's rights. Whereas protection of a person's fundamental rights after the judgement by the Constitutional Court has entered into force must be ensured in compliance with Section 29(2¹) and Section 32(2) of the Constitutional Court Law. Thus, after the ruling by a Constitutional Court has entered into force, safeguarding of a person's fundamental rights is ensured by the party applying legal norms, for example, a court, abiding by the findings included in the particular ruling. Hence, the Constitutional Court rejected the request to suspend enforcement of the court's ruling.

Secondly, the Constitutional Court decided, whether legal proceedings in the case should be terminated. The *Saeima* in its written reply requested terminating legal proceedings because the Constitutional Court already in case No. 2016-13-01 had ruled on compliance of Section 629(5) of the Criminal Procedure Law with the first sentence of Article 92 of the *Satversme*. Moreover, it was alleged that the second sentence of Section 631(2) of the Criminal Procedure Law did not envisage differential treatment of the applicant. The Constitu-

tional Court did not identify grounds for terminating legal proceedings and decided to continue legal proceedings.

Thirdly, the Constitutional Court analysed, whether the contested norm complied with the principle of equality included in the first sentence of Article 91 of the *Satversme*. I.e., the Constitutional Court established, whether and which persons (groups of persons) were in similar and according to particular criteria comparable circumstances, whether the contested norm provided for equal or differential treatment of these persons, and whether such treatment had objective and reasonable grounds.

The Constitutional Court noted that that in the case under review the affected owners of property in different proceedings regulated by the Criminal Procedure Law were being compared, i.e., in the basic criminal proceedings or in the special proceedings — regarding criminally acquired property. The essential feature shared by the persons was the owner's restricted right to handle its property, the criminal origins of and future actions with which were decided upon by a court. However, the Constitutional Court recognised that, in assessing compliance of legal norms with the equality principle, not only the existence of a common feature had to be established but also it should be established, whether these persons were in similar and comparable circumstances.

To establish, whether in the case under review persons were in comparable circumstances, the Constitutional Court examined the essence and purpose of special proceedings – proceedings regarding criminally acquired property. It was recognised that the aforementioned proceedings were separate and isolated proceedings, in the framework of which the court examined only one issue that had arisen in the case – the issue of property. The legislator's purpose, in isolating assessment of property issues in separate proceedings, is to ensure that property issues that have arisen in criminal proceedings are solved in a timely manner, taking into account the interests of procedural economy. In view of the fact that proceedings regarding criminally acquired property is an exception from the procedure for dealing with property issues in the basic criminal proceedings, these proceedings could have different rules aimed at speedy and effective reaching of its purpose. Thus, the regulation included in the second sentence of Section 631(3) of the Criminal Procedure Law, providing for examination of such matter in two instances, is one of the measures that ensure speedy and effective resolution of property issue. The Constitutional Court also noted in the case under review that the first sentence of Article 91 of the *Satversme* had to be examined in interconnection with general principles of law, *inter alia*, the principle of the rule of law and the principle of a fair trial, the scope of which did not include a person's subjective right to appeal a case of any category in the cassation instance.

Although property issues of a person may be dealt with both in the proceedings regarding criminally acquired property and the basic criminal proceedings, in view of the different essence and purpose of the proceedings regarding criminally acquired property, there are no grounds for comparing these two proceedings. Thus, persons are in different circumstances that are not comparable.

In view of the above, the second sentence of Section 631(3) is compatible with the first sentence of Article 91 of the *Satversme*.

Isolation of proceedings regarding criminally acquired property is linked also to the need to ensure a person's right to have criminal proceedings terminated within reasonable term. Therefore the proceedings regarding criminally acquired property is isolated exactly during the pre-trial proceedings.

2.7. DECISIONS ON TERMINATING LEGAL PROCEEDINGS IN A CASE

General Observations

If in the course of preparing a case such circumstances are disclosed that prohibit further course of the proceedings, the Constitutional Court adopts a decision on terminating legal proceedings. Pursuant to Section 29(1) of the Constitutional Court Law, legal proceedings in a case may be terminated until the judgement in the case at a Constitutional Court's decision:

- 1) following the written request of the applicant;
- 2) if the disputed legal norm (act) has ceased to be in force;
- 3) if the Constitutional Court establishes that a decision regarding initiation of a case does not comply with the requirements of Para 5, Section 20, Paragraph five of the Constitutional Court Law;
- 4) if a legal norm (act), the compliance of which is being disputed, has ceased to be in force;
- 5) if a judgement has been pronounced in another case regarding the same subject matter of a claim;
- 6) in other instances when continuation of judicial proceedings in a case is impossible.

The law provides for the right of the Constitutional Court to terminate legal proceedings in cases envisaged in Section 29(1) of the Constitutional Court Law but does not set the obligation to do so. The Constitutional Court must examine *ex officio*, whether such considerations exist that prove the need to continue legal proceedings and to examine the case on its merits, passing a judgement.¹⁷⁶ In some cases it may be necessary to continue legal proceedings in a case to eliminate an infringement upon the applicant's fundamental rights or a substantial threat to public interests.¹⁷⁷ Thus, the Constitutional Court must examine in each case, whether such considerations exist, due to which legal proceedings in a case should be terminated or should be continued.

Legal proceedings before the Constitutional Court are held in public interests. Agreement between the participants of the case *per se*, unless some other important circumstances are present, cannot serve as the grounds for terminating legal proceedings initiated by the Constitutional Court.

For example, in deciding on termination of legal proceedings initiated on the basis of a constitutional com-

plaint, it is the task of the Constitutional Court, within its jurisdiction, to ensure the existence of such legal system, which would eliminate, as fully and comprehensibly as possibly, such legal regulation that is incompatible with the *Satversme* or other norms (acts) of higher legal force, as well as to provide its assessment on issues of constitutional importance.¹⁷⁸

Para 2 of Section 29(2) of the Constitutional Court Law provides that legal proceedings in the case may be terminated if the contested legal norm has ceased to be in force. This legal norm is aimed at ensuring procedural economy of the legal proceedings before the Constitutional Court, so that the Constitutional Court should not pass judgements in cases, in which the dispute no longer exists.¹⁷⁹ Thus, to decide on terminating legal proceedings on the basis of Para 2 of Section 29(1) of the Constitutional Court Law, the Constitutional Court must establish: 1) whether the contested norm has ceased to be force, and 2) whether circumstances requiring continuation of legal proceedings do not exist. Amendments to the contested norm, declaring the regulatory enactment as no longer being in force and inclusion of the contested norm into another regulatory enactment which, essentially, does not resolve the dispute, cannot be recognised as being sufficient grounds for terminating legal proceedings in those cases, where continuation of legal proceedings is necessary to protect the fundamental rights of the submitter of the constitutional complaint. Thus, the Constitutional Court must verify, whether the regulation established by the legislator is different as to its content or whether the legislator has decided to regulate this issue no longer. In those cases, where the content of the legal regulation has been changed but the text of the contested norm has not been excluded from the regulation, the Constitutional Court must establish the scope of changes made to conclude that the content of the legal norm has substantially changed. Otherwise, the issue of legal norms would introduce only editorial amendments into the text that would always serve as formal grounds for requesting termination of legal proceedings in the case. A situation like this would be incompatible with the principle of a state governed by the rule of law, it would not promote protection of a person's fundamental rights, nor implementation of the State's and society's interests.¹⁸⁰ The Constitutional Court has re-

176 Judgement by the Constitutional Court of 3 February 2012 in Case No. 2011-11-01, Para 9.

177 Decision by the Constitutional Court of 4 April 2013 on Terminating Legal Proceedings in Case No. 2013-11-01, Para 10.

178 Judgement by the Constitutional Court of 5 April 2013 in Case No. 2012-20-03, Para 5.

179 For example, Judgement by the Constitutional Court of 12 February 2008 in Case No. 2007-15-01, Para 4.

180 Decision by the Constitutional Court of 12 February 2013 on Terminating Legal Proceedings in Case No. 2013-11-01, Para 10.1.

peatedly noted that its rulings are very important for ensuring the principle of the rule of law. Therefore the Constitutional Court has the obligation to provide its assessment of a constitutionally important matter, even of the contested norm is no longer in force.¹⁸¹

If the Constitutional Court finds that the decision on initiating a case does not meet the requirements set in Section 20(5) of the Constitutional Court Law, legal proceedings are terminated because such circumstances have arisen, with respect to which there had been doubts or which were not known when the case was initiated. A number of categories of cases exist as regards these grounds for terminating legal proceedings. The majority of legal proceedings are terminated because no infringement on fundamental rights is identified.¹⁸² In some cases, the Constitutional Court has not examined compliance of the contested norms with the article of the *Satversme* indicated in the constitutional complaint because, in making the judgement, it has found that sufficient legal substantiation is not provided in the constitutional complaint to examine compliance of the contested norm with the particular article of the *Satversme*.¹⁸³ Sometimes legal proceedings have been terminated because the applicant has not used all general legal remedies.¹⁸⁴

Para 4 of Section 29(1) of the Constitutional Court Law provides that legal proceedings in a case may be terminated if the norm (act), the compliance with which was contested, has become invalid. This norm also aims to ensure economy of legal proceedings before the Constitutional Court, so that the Constitutional Court would not have to make a judgement in cases, where a dispute no longer exists.¹⁸⁵ The Constitutional Court has terminated legal proceedings on the basis of this legal norm three times.¹⁸⁶

If a judgement has been pronounced in another case regarding the same subject of claim then the dispute has been substantially resolved within the framework of another case and therefore there are no grounds for continuing legal proceedings. Also this norm aims to ensure economy of legal proceedings before the Constitutional Court, so that the Constitutional Court would not have to make a judgement in cases, where the dispute no longer exists.¹⁸⁷ Usually, legal proceedings are terminated on these grounds also when several cases have been initia-

ted with respect to the same subject of claim, which are in different procedural stages and therefore cannot be joined, to examine all claims with the framework of the same legal proceedings.

Usually, legal proceedings in a case are impossible if the restriction on fundamental rights is caused by the application of a legal norm. The jurisdiction of the Constitutional Court allows it to examine only compatibility of the legal norm with the *Satversme*, not the actions by the parties applying it.¹⁸⁸ Likewise, legal proceedings in a case are impossible if there are other circumstances that prohibit from examining the case on its merits. For example, in examining restrictions on the professional activities of administrators of insolvency proceedings, the Constitutional Court has terminated legal proceedings in a case, where the certificate of an administrator of insolvency proceedings had expired before the case was heard at the Constitutional Court. However, it should be taken into consideration that the respective case had been initiated with regard to an infringement on fundamental rights that might have occurred in the future; however, due to the fact that the certificate of an administrator of insolvency proceedings had expired, an infringement upon a person's fundamental rights could not have occurred also in the future.¹⁸⁹

The procedure of the Constitutional Court allows terminating legal proceedings in the respective case in any stage of the proceedings prior to the pronouncement (publication) of a judgement. If a request has been made in the case to terminate legal proceedings, the Constitutional Court usually decides on it first of all, unless some aspects of the case should be examined on their merits before taking this decision.¹⁹⁰

Section 29(2¹) of the Constitutional Court Law provides that the interpretation of a legal norm provided in a decision on terminating legal proceedings is mandatory to all state and local government institutions (also – to courts) and officials, and also to natural and legal persons. This provision allows the Constitutional Court, in situations where it is impossible to pass a judgement, to provide an interpretation of the respective norm and thus achieve that the contested norms are applied in compliance with legal norms of higher legal force.

Trends of Development

181 For example, Judgement by the Constitutional Court of 3 February 2012 in Case No. 2011-11-01, Para 9.

182 Decision by the Constitutional Court of 21 August 2007 on Terminating Legal Proceedings in Case No. 2007-07-01, Judgement of 15 April 2010 in Case No. 2009-88-01, Decision of 8 November 2012 on Terminating Legal Proceedings in Case No. 2012-04-03, Decision of 6 October 2015 on Terminating Legal Proceedings in Case No. 2014-35-03.

183 See, for example, Judgement by the Constitutional Court of 15 February 2005 in Case No. 2004-19-01, Para 10.

184 Decision by the Constitutional Court of 10 July 2009 on Terminating Legal Proceedings in Case No. 2009-06-01.

185 Decision by the Constitutional Court of 3 February 2009 on Terminating Legal Proceedings in Case No. 2008-46-0306, Para 4.

186 Decision by the Constitutional Court of 12 June 2007 on Terminating Legal Proceedings in Case No. 2007-06-03, Decision of 20 January 2009 on Terminating Legal Proceedings in Case No. 2008-08-0306 and Decision of 3 February 2009 on Terminating Legal Proceedings in Case No. 2008-46-0306.

187 Decision by the Constitutional Court of 12 June 2007 on Terminating Legal Proceedings in Case No. 2007-06-03, Para 11.2.

188 Judgement by the Constitutional Court of 30 March 2011 in Case No. 2010-60-01, Para 16.2.

189 Decision by the Constitutional Court of 13 November 2016 on Terminating Legal Proceedings in Case No. 2016-02-01.

190 Judgement by the Constitutional Court of 19 October 2011 in Case No. 2010-71-01, Para 11–14.

Each decision on terminating legal proceedings in a case is linked to specific circumstances that prohibit from examining constitutionality of legal norms on their merits. In 2017, in a number of cases such circumstances were identified due to which legal proceedings in the case were impossible. Such grounds for terminating legal proceedings are not often encountered in the case law of the Constitutional Court because, predominantly, legal proceedings in a case are terminated because the contested norm is no longer in force or because a judgement has been pronounced in another case with respect to the same subject of claim.

Case No. 2016-09-01

[Decision \[in Latvian\]](#)

[Press release \[in English\]](#)

On 18 January 2016, the Constitutional Court decided to terminate legal proceedings in case No. 2016-09-01 “On Compliance of the word “the Internet” in Section 32(1) of “Pre-election Campaign Law” with Article 100 of the *Satversme* of the Republic of Latvia”.

In this case it was requested to examine a legal norm, which prohibited to place pre-election campaign materials on the Internet on the election day and the day prior to it.

The case was initiated with respect to an application submitted by twenty members of the 12th *Saeima*. It was noted that the concept “the Internet” had been defined too broadly in the contested norm, thus placing disproportional restrictions upon the right to freedom of speech.

Section 32(1) of “Pre-election Campaign Law” was

amended by the law of 16 June 2016 “Amendments to “Pre-election Campaign Law””, defining precisely that on the election day and the day before the election day only such pre-election campaign on the Internet, which is performed as paid service, is prohibited.

In assessing, whether no circumstances existed that would require continuing legal proceedings, the Constitutional Court took into consideration the fact that the case had been initiated on the basis of an application submitted by twenty members of the *Saeima* and that abstract review of norms had to be carried out on the basis of such application. Moreover, the applicants noted in their additional explanations to the Constitutional Court that circumstances requiring continuation of legal proceedings did not exist.

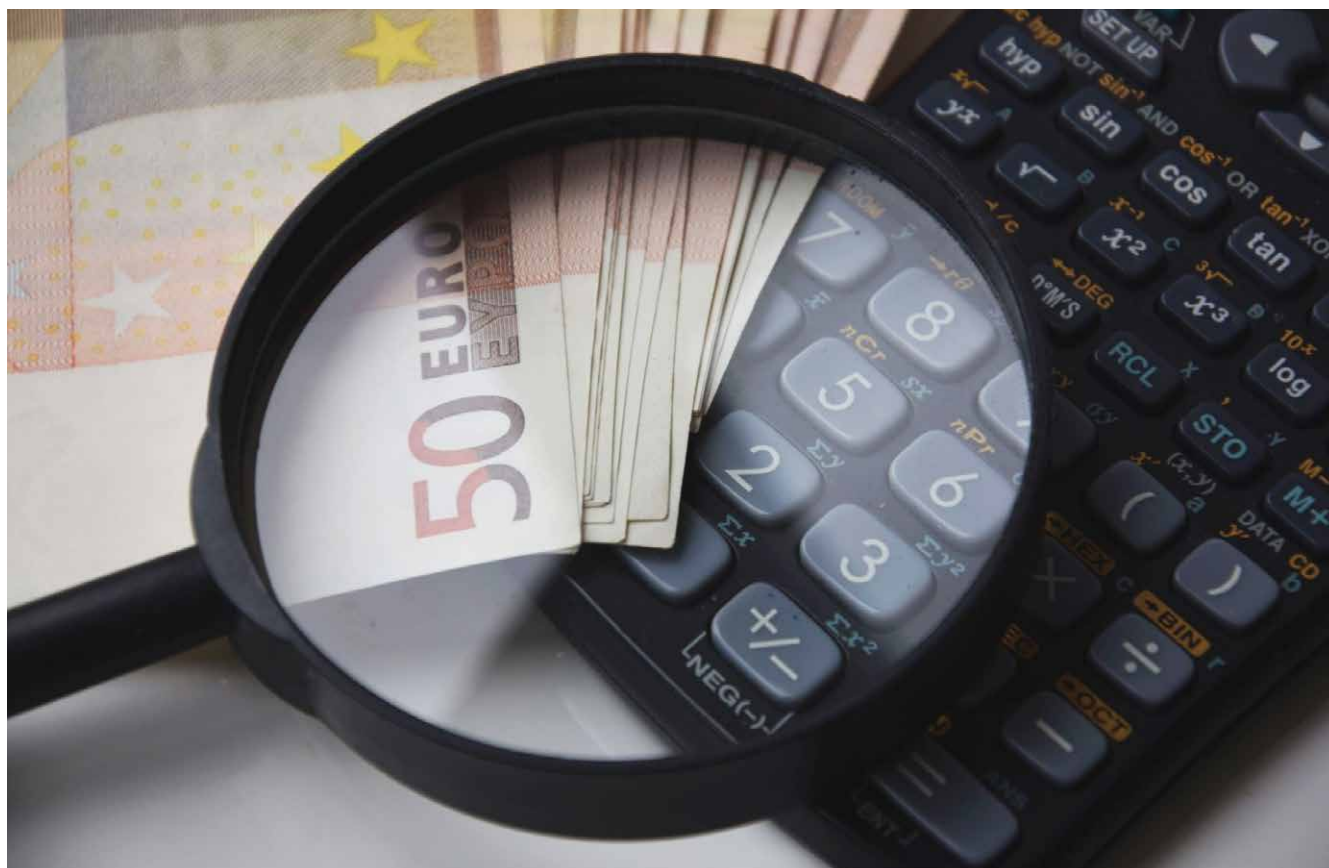
The Constitutional Court noted that the applicant’s legal substantiation for the alleged incompatibility of the contested norm with the *Satversme* was based upon the assumption that the contested norm defined the concept of “the Internet” too broadly. Since the legislator, by amendments introduced to Section 32(1) of “Pre-election Campaign Law” on 16 June 2016, has defined exactly what kind of campaigning on the Internet on the election day, as well as the day before the election day, is prohibited, the case under review no longer contains a dispute. Hence, legal proceedings in the case were terminated.

Case No. 2016-10-01

[Decision \[in Latvian\]](#)

[Press release \[in English\]](#)

On 6 April 2017, the Constitutional Court adopted



a decision to terminate legal proceedings in case No. 2016-10-01 “On Compliance of the Second Sentence of Section 9(1) of Insolvency Law and Para 26 of Section 4(1) and Para 22² of Transitional Provisions of the Law “On Prevention of Conflict of Interest in Activities of Public Officials” with the First Sentence of Article 91 of the *Satversme* of the Republic of Latvia”.

In the case, it was requested to examine the regulation that envisaged equalling administrators of insolvency proceedings to public officials. The contested norms establish the status of a public official to administrators of insolvency proceedings, as well as the term for submitting the declaration of a public official for those insolvency administrators who simultaneously also have the position of a sworn advocate.

The case was initiated with respect to an application submitted by a number of administrators of insolvency proceedings. The applicants noted that the regulation, which envisaged differential treatment of administrators, who were concurrently also sworn advocates, compared to other concrete groups of administrators was incompatible with the equality principle.

First of all, the Constitutional Court examined the possibility to expand the scope of the claim because such request had been expressed by the applicants after they had familiarised themselves with the materials in the case.

The Constitutional Court found that the contested norms were closely linked to Section 24(1¹) of the law “On Prevention of Conflict of Interest in Activities of Public Officials”. This legal norm sets out special rules with respect to scope of information to be provided in the declaration of a public official for those public officials, who are concurrently also advocates. The Constitutional Court decided that within the framework of the case under review also compliance of Section 24(1¹) of the law “On Prevention of Conflict of Interest in Activities of Public Officials” with the first sentence of Article 91 of the *Satversme* should be examined.

The Constitutional Court noted that compliance of the second sentence of Section 9(1) of the Insolvency Law and of Para 26 of Section 4(1) of the law “On Prevention of Conflict of Interest in Activities of Public Officials” with the *Satversme* had already been examined in the judgement of 21 December 2015 by the Constitutional Court in case No. 2015-04-01. Hence, whether the aforementioned norms infringe upon the fundamental rights established in the first sentence of Article 91 of the *Satversme* should be examined in interconnection with the findings that the Constitutional Court has expressed before.

The Constitutional Court underscored that the *Satversme* did not prohibit the legislator from deciding, which persons were public officials in the meaning of the law “On Prevention of Conflict of Interest in Activities of Public Officials”. Thus, the legislator had the right to

provide that all administrators of insolvency proceedings in their official activities were to be equalled to public officials. Taking into consideration that the second sentence of Section 9(1) of the “Insolvency Law and Para 26 of Section 4(1) of the law “On Prevention of Conflict of Interest in Activities of Public Officials” provide that all administrators of insolvency proceedings have the status of a public official, it is impossible to examine compliance of these norms with the equality principle enshrined in the first sentence of Article 91 of the *Satversme*. These norms did not infringe upon the applicants’ fundamental rights enshrined in the first sentence of Article 91 of the *Satversme*, and, thus, it was impossible to continue legal proceedings regarding this part of the claim.

With respect to Section 24(1¹) and Para 22² of the Transitional Provisions of the law “On Prevention of Conflict of Interest in Activities of Public Officials”, the Constitutional Court found that administrators of insolvency proceedings, who were concurrently also advocates, and administrators of insolvency proceedings, who combined their professional activities with other vocations of the private sector, *inter alia*, qualified lawyers and sworn auditors, were in different and incomparable circumstances. In the case under review the obligation to envisage equal treatment of persons, who are in different and incomparable circumstances, does not follow from the equality principle, and, thus, it was impossible to continue legal proceedings regarding this part of the claim.

Case No. 2016-20-01

[Decision \[in Latvian\]](#)

[Press release \[in English\]](#)

On 3 May 2017, the Constitutional Court adopted the decision to terminate legal proceedings in case No. 2016-20-01 “On Compliance of Section 17(3¹) of the Insolvency Law with the First Sentence in Article 106 of the *Satversme* of the Republic of Latvia”.

In the case, it was requested to examine the regulation that envisaged terminating the operation of an administrator’s certificate.

The case was initiated with respect to constitutional complaints submitted by a number of private persons. The applicants were insolvency administrators, the operation of whose certificates could have been terminated on the basis of the contested norms. The applicants held that the contested norm placed disproportionate restrictions upon their right to retain the employment of their choice.

On 6 January 2017 the law “Amendments to the Insolvency Law” entered into force, by which, *inter alia*, Section 17 was deleted from the Insolvency Law.

The Constitutional Court found that the provisions of the Insolvency Law that were currently in force did not comprise such grounds for terminating the operation of an administrator’s certificate as those that were included in the contested norm. Legal regulation on ter-

minating the operation of an administrator's certificate and removing an administrator from office has changed substantially. Thus, the contested norm had become invalid.

In examining, whether no circumstances existed requiring continuation of legal proceedings, the Constitutional Court assessed, whether the fact that the contested norm had become invalid was sufficient grounds for considering that the violation of a person's fundamental rights caused by the contested norm had been eliminated. It was recognised that the contested norm did not violate the applicant's fundamental rights, since the administrative cases regarding terminating the operation of administrator's certificates that had been issued to them had been terminated. I.e., the applicants still had valid administrators' certificates. Hence, legal proceedings in the case were terminated.

2.8. DECISIONS BY THE PANELS

The legal proceedings before the Constitutional Court begin by a decision to initiate hearing of the case by one of the Panels of the Constitutional Court. The Panel examines compatibility of an application with the requirements set in the Constitutional Court Law and decides on initiating a case or refusal to initiate a case.¹⁹¹

Examination of applications and preparing decisions by the Panels is time consuming and constitutes an important part in the work of the Constitutional Court. Issues of constitutionality are becoming more complex, therefore the decisions by the Panels comprise extensive and elaborated reasoning.¹⁹² It must be taken into consideration that the legal findings included in the Panels' decisions may serve as an interpretative tool for establishing the content of fundamental rights and principles of a state governed by the rule of law.¹⁹³ Thus, these decisions may be useful in preparing applications regarding initiation of a case and conducting research dedicated to the legal proceedings before the Constitutional Court.

The decisions by the Panels of the Constitutional Court on initiating a case are published on the homepage of the Constitutional Court, in the section "Initiated and Examined Cases". In addition to that, in the section of Constitutional Court's homepage "Panels' Decisions on Refusal to Initiate a Case", a selection of those decisions that illustrate nuances in the application of the Constitutional Court Law are published. Thus, information is clearly presented on the types of applications and some issues regarding application of law, for example, the content of the legal reasoning in an application, establishing the infringement on the fundamental rights of the submitter of a constitutional complaint and the way the term for submitting an application is reviewed. Although the number of the Panels' decisions is growing,

they reflect a consistent understanding of the requirements set for an application.

In 2017, the Constitutional Court received a large number of applications requesting examination of compliance of norms of civil procedure¹⁹⁴ and criminal procedure¹⁹⁵ as well as the procedure for examining cases of administrative violations¹⁹⁶ with the right to a fair trial included in Article 92 of the *Satversme*. The majority of applications pertain to compliance of norms of the Civil Procedure Law with the *Satversme*. Constitutional complaints make up the largest part of applications.

In 2017, 207 applications regarding initiation of a case have been transferred to the Panels of the Constitutional Court for examination, and 35 cases have been initiated. Seven cases have been initiated on the basis of an application by a court of general jurisdiction or an administrative court, four – on the basis of an application by the Ombudsman, two – on the basis of an application by the members of the *Saeima*. One case has been initiated on the basis of an application by the Prosecutor General, and one – by a local government council.

Decisions on initiating a case

The initiated cases pertain to various issues of law – *inter alia*, such that are linked to the amount of forced land lease, the right of a heir of deceased patient to demand compensation from the Treatment Risk Fund for the harm caused to a patient's life and health, the right of a minister to suspend a decision by the local government council on establishing permanent committees and electing members thereof, the obligation to indicate in the application in civil proceedings the defendant's declared place of residence, the binding regulations of local governments regarding the rate of

191 See more: Rodiņa A., Amoliņa D. Lietas ierosināšana *Satversmes* tiesā. Central and Eastern European Legal Studies, 2013, No. 1. Available: <https://eplpublications.eu/publication/digital-edition/lietas-ierosinasana-Satversmes-tiesa>.

192 See more: Semeņuka E. *Satversmes* tiesas kolēģija: vēsture, kompetence, prakse. Jurista Vārds, 06.12.2016., Nr. 49, 42.–48. lpp.

193 Decision by the Constitutional Court of 8 March 2011 on Terminating Legal Proceedings in Case No. 2010-52-03, Para 8.

194 For example, Application regarding Initiation of Case No. 190/2017, Application regarding Initiation of Case No. 184/2017, Application regarding Initiation of Case No. 175/2017, Application regarding Initiation of Case No. 170/2017, Application regarding Initiation of Case No. 165/2017, Application regarding Initiation of Case No. 163/2017, Application regarding Initiation of Case No. 162/2017, Application regarding Initiation of Case No. 162/2017, Application regarding Initiation of Case No. 160/2017, Application regarding Initiation of Case No. 156/2017, Application regarding Initiation of Case No. 150/2017, Application regarding Initiation of Case No. 140/2017, Application regarding Initiation of Case No. 137/2017, Application regarding Initiation of Case No. 128/2017, Application regarding Initiation of Case No. 111/2017, Application regarding Initiation of Case No. 105/2017, Application regarding Initiation of Case No. 96/2017, Application regarding Initiation of Case No. 88/2017, Application regarding Initiation of Case No. 87/2017, Application regarding Initiation of Case No. 86/2017.

195 For example, Application regarding Initiation of Case No. 164/2017, Application regarding Initiation of Case No. 148/2017, Application regarding Initiation of Case No. 141/2017, Application regarding Initiation of Case No. 139/2017 and Application regarding Initiation of Case No. 83/2017, Application regarding Initiation of Case No. 65/2017, Application regarding Initiation of Case No. 33/2017.

196 For example, Application regarding Initiation of Case No. 108/2017, Application regarding Initiation of Case No. 13/2017 and Application regarding Initiation of Case No. 10/2017.

immovable property tax, compulsory insurance of the civil liability of motor vehicle owners, running for the *Saeima* election, remuneration to health care personnel, access to court in cases of administrative violations and the procedure for examining cassation complaints in criminal cases.

If the application that is submitted complies with the requirements of the Constitutional Court Law, the Panel adopts a decision on initiating a case. Due to this reason, usually, decisions on initiating a case do not comprise an extended analysis of the content and form of the application.¹⁹⁷ However, in some cases contestable procedural issues may be left to be decided upon in the Court's judgement.¹⁹⁸ Most frequently, such situations arise in examining the grounds provided in constitutional complaints regarding infringement on a person's fundamental rights. The Constitutional Court has recognised that in order to initiate a case on the basis of a constitutional complaint it must be established, whether the application includes legal substantiation for a person's opinion regarding probable infringement on a person's fundamental rights; however, the Panels do not have the obligation to examine this "opinion" in full. The case should be initiated only if the Panel is convinced that an infringement like this is present. However, the issue, whether the fundamental rights of the submitter of a constitutional complaint, indeed, have been infringed upon must be decided by the Court, when examining the case on its merits.¹⁹⁹ Moreover, it is also possible to refuse initiating a case in a part of the claim – usually because legal substantiation has not been provided for the particular claim.²⁰⁰

In examining an application, the Panel of the Constitutional Court must establish, *inter alia*, whether the claim should not be recognised as being already adjudicated. To assess, whether an application has not been submitted with respect to an already adjudicated claim, it must be ascertained, whether: 1) the claim has been already (formally) adjudicated; 2) the claim has changed on its merits; 3) essential circumstances exist, due to which the claim cannot be recognised as being already adjudicated.²⁰¹ For example, the Panel established that the claim included in application No. 152/2017 was identical to the claim examined in the judgement

in case No. 2005-13-0106. However, the Panel also found that essential new circumstances existed due to which the applicant's claim could not be recognised as being already adjudicated.²⁰²

In 2017, the Constitutional Court received applications with identical claims and similar presentation of the facts of the case and legal substantiation. Due to considerations of procedural economy and expedience, the Panels of the Constitutional Court examine such applications jointly and adopt one decision with respect to them.²⁰³ Whereas in those cases, where several applications regarding initiation of a case have similar claims and several cases have been already initiated before examination of the respective applications, the Panels note in their decisions on initiating a case that is not necessary to request the institution, which has issued the contested act, to submit its written reply on the facts of the case and legal substantiation.²⁰⁴ This is also done due to considerations of procedural economy because cases regarding similar or identical claims are usually joined to facilitate comprehensive and swift adjudication thereof.

In 2017, applicants have frequently requested suspending the enforcement of a court's ruling. The Constitutional Court has recognised that suspending the enforcement of ruling should be recognised as an extraordinary measure in legal proceedings that should be applied solely for reaching important aims – for example, to ensure protection of a person's rights in those cases, where enforcement of a ruling the respective case of a general jurisdiction court before the ruling by the Constitutional Court entered into force might turn the enforcement of the ruling by the Constitutional Court impossible or might cause significant harm to the applicant. Hence, a Panel of the Constitutional Court, in deciding on suspending enforcement of a court's ruling, must examine: 1) whether substantiation for this request has been included in the application; 2) whether such circumstances exist in the case, due to which enforcement of the ruling before the ruling by the Constitutional Court has entered into force might turn the enforcement of the ruling by the Constitutional Court impossible or might cause significant harm to the applicant.²⁰⁵ Last year, in the majority of cases

197 See more: Rodiņa A., Amoliņa D. *Lietas ierosināšana Satversmes tiesā*. Central and Eastern European Legal Studies, 2013, No. 1. Available: <https://eplopublications.eu/publication/digital-edition/lietas-ierosinasana-Satversmes-tiesa>

198 For example, Decision by the 2nd Panel of the Constitutional Court of 17 July 2007 on Initiating a Case regarding Application No. 61/2007.

199 For example, Judgement by the Constitutional Court of 10 May 2013 in Case No. 2012-16-01, Para 21.2.

200 For example, Decision by the 3rd Panel of the Constitutional Court of 24 November 2017 on Initiating a Case regarding Application No. 180/2017 and Decision by the 1st Panel of the Constitutional Court of 8 November 2017 on Initiating a Case regarding Application No. 176/2017.

201 For example, Judgement by the Constitutional Court of 29 April 2016 in Case No. 2015-19-01, Para 10.1.–10.5.

202 Decision by the 3rd Panel of the Constitutional Court of 18 October 2017 on Initiating a Case regarding Application No. 152/2017.

203 For example, Decision by the 3rd Panel of the Constitutional Court of 24 November 2017 on Initiating a Case on regarding Applications No. 181/2017 and No. 188/2017.

204 For example, Decision by the 3rd Panel of the Constitutional Court of 20 December 2017 on Initiating a Case regarding Application No. 202/2017 and Decision by the 1st Panel of the Constitutional Court of 11 December 2017 on Initiating a Case regarding Application No. 174/2017. 205 *Satversmes tiesas* 2014. gada 19. jūnija rīcības sēdes lēmuma lietā Nr. 2014-09-01 4. un 5. punkts.

205 Decision by the Assignments Sitting of the Constitutional Court of 19 June 2014 in Case No. 2014-09-01, Para 4 and Para 5.

the applicants either had not provided substantiation for their request or the Panel did not gain confirmation from the application and the document appended to it that such circumstances existed due to which enforcement of a court's ruling had to be suspended.²⁰⁶

The applications, apart from requests regarding initiation of a case and request regarding suspending enforcement of a court's ruling, more frequently comprise also other requests. For example, one application included a request to join the initiated case with case No. 2017-16-01 "On Compliance of Section 289²⁰(7) of the Latvian Administrative Violations Code with the first sentence of Article 92 of the *Satversme* of the Republic of Latvia". With respect to this request, the Panel of the Constitutional Court noted that the Justice, who was preparing the case for examination, could take a decision on joining cases. Whereas the decision on joining cases that are in different stages of legal proceedings is taken by the assignments sitting. Hence, deciding on this request did not fall into the competence of the Panel.²⁰⁷ Another case comprises a request to examine the case by 31 December 2017. In this case, the Panel recognised that cases were examined within the term defined in the Constitutional Court Law. Pursuant to Section 22(10) of the Constitutional Court Law, the issue of the time and place of the court hearing is decided after the case has been transferred for examination at the assignments sitting. Thus, the particular request could be decided on only at the assignments sitting.²⁰⁸

Decisions on refusal to initiate a case

In 2017, the Panels of the Constitutional Court have adopted 131 decisions on refusal to initiate a case. In a number of cases, the request to the Court was not presented clearly and understandably. For example, the legal norm, which could cause an infringement upon the applicant's fundamental rights established in the *Satversme*, was not indicated in the application. Thus, it was impossible to identify, on the basis of the application and the documents appended thereto, the constitutionality of which norm should be examined.²⁰⁹ Whereas in another case the contested legal norm was indicated; however, the norm of higher legal force was

not identified. Although a number of norms of the *Satversme* were quoted in the application and general reference to the fundamental norms guaranteed in the *Satversme* was made, also in this case it was impossible to identify clearly on the basis of the application and the documents appended thereto, which fundamental rights of the applicant established in the *Satversme* were infringed upon and what the Court should examine in this instance.²¹⁰

A person may include in a constitutional complaint only a claim regarding examination of a regulatory enactment with a legal norm of higher legal force. I.e., the Constitutional Court, in examining a constitutional complaint, does not have the right to examine the legality of decisions adopted by constitutional institutions, public administration or a local government. Every year the Panels of the Constitutional Court refuse to examine a case at least once because the claim does not fall with the jurisdiction of the Constitutional Court. For example, in 2017, a private person requested examining a decision by the Jelgava City Council on setting the tariffs of public transport services in the routes of municipal importance in the transport network in Jelgava City. This decision is not an external regulatory enactment, therefore the Constitutional Court does not have jurisdiction over a claim like this.²¹¹

The Panels of the Constitutional Court often refuse to initiate a case because an infringement upon the applicant's fundamental rights cannot be established. I.e., no direct link can be identified between the probable infringement upon the applicant's fundamental rights and the contested norm, or the submitted constitutional complaint is *actio popularis*, or substantiation has not been provided as to how the particular right falls within the content and the scope of the norms of the *Satversme*.²¹² Considerations as to whether and in what way the contested norm has directly infringed upon the applicant's fundamental rights or caused to him adverse consequences in another way must be indicated in each constitutional complaint.²¹³ For example, a Panel has refused to initiate a case in an instance, where the possible infringement upon fundamental rights

206 Decision by the 2nd Panel of the Constitutional Court of 7 November 2017 on Initiating a Case regarding Application No. 167/2017, Decision by the 2nd Panel of the Constitutional Court of 23 September 2017 on Initiating a Case regarding Application No. 142/2017 and Decision by the 2nd Panel of the Constitutional Court of 4 September 2017 on Initiating a Case regarding Application No. 12/62017.

207 Decision by the 2nd Panel of the Constitutional Court of 18 September 2017 on Initiating a Case regarding Application No.134/2017.

208 Decision by the 1st Panel of the Constitutional Court of 19 July 2017 on Initiating a Case regarding Application No. 107/2017.

209 Decision by the 4th Panel of the Constitutional Court of 16 November 2017 on Refusal to Initiate a Case regarding Application No. 173/2017.

210 Decision by the 1st Panel of the Constitutional Court of 4 August 2017 on Refusal to Initiate a Case regarding Application No. 116/2017.

211 Decision by the 4th Panel of the Constitutional Court of 24 November 2017 on Refusal to Initiate a Case regarding Application No. 177/2017.

212 For example, Decision by the 2nd Panel of the Constitutional Court of 28 June 2017 on Refusal to Initiate a Case regarding Application No. 100/2017, Decision by the 1st Panel of the Constitutional Court of 1 February 2017 on Refusal to Initiate a Case regarding Application No. 11/2017.

213 For example, Judgement by the Constitutional Court of 18 February 2010 in Case No 2009-74-01, Para 12. cation No. 162/2017.

could be caused to a commercial company rather than its only participant, who had submitted the complaint in his own name as a natural person.²¹⁴

Sometimes the probable infringement upon a person's fundamental rights is not caused by norms of higher legal force but rather by the application thereof.²¹⁵ The Constitutional Court has repeatedly underscored that assessment if application of legal norms by public administration and a court, pursuant to Article 85 of the *Satversme* and Section 16 of the Constitutional Court Law, does not fall within its jurisdiction.²¹⁶ The Constitutional Court may not re-examine issues of application and interpretation of legal norms.²¹⁷

Last year a number of the submitted constitutional complaints pertained to an infringement upon fundamental rights to be expected in the future. An infringement to be expected in the future may be the grounds for initiating a case and examining it on its merits only in those cases, where the adverse consequences that would be caused to a person by application of the legal norm would cause a significant harm to the person.²¹⁸ I.e., the person must provide appropriate legal substantiation in the constitutional complaint.²¹⁹ Moreover, it is essential that in the case of an infringement upon fundamental rights to be expected in the future, requirements of the second and fourth part of Section 192 of the Constitutional Court Law are not applicable to the application..²²⁰

In 2017, the Panels of the Constitutional Court have indicated in a number of decisions also the way in which the authorisation should be drawn up for signing the application and for representing a person at the Constitutional Court. If the application is signed on behalf of a person by his or her authorised representative, then this authorisation should be drawn up in a way that allows the Constitutional Court to verify whether the authorised person, indeed, has the right to act on behalf of the person. In a situation, where one natural

person had signed an application on behalf of another person and had annexed to the application a copy of an extract from a notarial deed, signed by the person himself, the Panel refused it, indicating that, pursuant to Section 101 of the Notariate Law, in respect of the notarial deed recorded in the notarial deed book, the sworn notary had to issue notarially certified extracts of the notarial deed book and copies of notarial deeds. Thus, an extract or a copy of the notarial deed issued and certified by a sworn notary must be annexed to the application.²²¹

The principle of subsidiarity is of essential importance in legal proceedings before the Constitutional Court. The applicant has the obligation to exhaust general legal remedies, if such exist for resolution of the particular dispute. If fundamental rights have been infringed upon by an act of applying law, the persons must use general legal remedies that provide for the possibility to contest or appeal against the act on applying law through which the legal norm has infringed upon a person's fundamental rights.²²² In 2017, the Panels of the Constitutional Court have refused to initiate a case a number of times because general legal remedies had not been used.²²³ For example, a Panel has noted that an administrative court, pursuant to Section 104(3) of the Administrative Procedure law, can recognise a norm of the Cabinet Regulation or of the binding regulation of a local government as being incompatible with law. Therefore, in such a case, general legal remedies must be used. However, an administrative court cannot recognise a norm of a law or binding regulation of a local government as being incompatible with the *Satversme* because the jurisdiction has been granted only to the Constitutional Court. Therefore, with respect to a request to the Constitutional Court to examine compliance of a norm of a law and of other regulatory enactments with the *Satversme*, challenging an administrative act and appealing against it at an administrative court cannot be recognised as being a legal remedy.²²⁴ A Panel has noted that submitting of a prosecutor's protest or

214 For example, Decision by the 2nd Panel of the Constitutional Court of 20 December 2017 on Refusal to Initiate a Case regarding Application No. 196/2017.

215 For example, Decision by the 4th Panel of the Constitutional Court of 30 October 2017 on Refusal to Initiate a Case regarding Appli

216 For example, Judgement by the Constitutional Court of 3 June 2009 in Case No. 2008-43-0106, Para 12.

217 For example, Decision by the 1st Panel of the Constitutional Court of 18 September 2017 on Refusal to Initiate a Case regarding Application No. 137/2017.

218 For example, Judgement by the Constitutional Court of 10 May 2013 in Case No. 2012-16-01, Para 23.2.

219 For example, Decision by the 3rd Panel of the Constitutional Court of 20 December 2017 on Initiating a Case regarding Application No. 202/2017.

220 For example, Decision by the 3rd Panel of the Constitutional Court of 16 May 2017 on Refusal to Initiate a Case regarding Application No. 69/2017 and Decision by the 1st Panel of the Constitutional Court of 19 July 2017 on Refusal to Initiate a Case regarding Application No. 107/2017.

221 For example, Decision by the 3rd Panel of the Constitutional Court of 24 November 2017 on Refusal to Initiate a Case regarding Application No. 189/2017.

222 For example, Decision by the 2nd Panel of the Constitutional Court of 19 October 2017 on Refusal to Initiate a Case regarding Application No. 159/2017.

223 Decision by the 2nd Panel of the Constitutional Court of 19 October 2017 on Refusal to Initiate a Case regarding Application No. 159/2017, Decision by the 2nd Panel of the Constitutional Court of 29 September 2017 on Refusal to Initiate a Case regarding Application No. 146/2017, Decision by the 3rd Panel of the Constitutional Court of 24 August 2017 on Refusal to Initiate a Case regarding Application No. 129/2017, Decision by the 4th Panel of the Constitutional Court of 6 June 2017 on Refusal to Initiate a Case regarding Application No. 81/2017, Decision by the 1st Panel of the Constitutional Court of 24 May 2017 on Refusal to Initiate a Case regarding Application No. 78/2017 and Decision by the 4th Panel of the Constitutional Court 10 May 2017 on Refusal to Initiate a Case regarding Application No. 64/2017.

224 For example, Decision by the 4th Panel of the Constitutional Court of 23 October 2017 on Refusal to Initiate a Case regarding Application No. 157/2017.

initiation of a disciplinary case against a judge cannot be considered as being a general legal remedy in the meaning of the Constitutional Court Law.²²⁵ However, if a person requests examining compliance of regulation on the use of territory and on construction developed by a local government with the *Satversme*, then, prior to submitting the application, he must submit an application regarding the contested norm to the Minister for Environmental Protection and Regional Development, in the procedure established in Section 27(1) of the Spatial Development Planning Law.²²⁶ The application has been recognised as being incompatible with the requirements set in the second part and Para 2 of the sixth part of Section 19² of the Constitutional Court Law also in the case, where a person, to protect his fundamental rights, had the possibility to submit a court claim on the basis of general rules of the Civil Law.²²⁷

However, to comply with the subsidiarity principle, all real and effective possibilities to protect the fundamental rights that have been infringed upon must be exhausted, not just any theoretically possible legal remedies that might in any way pertain to the applicant's situation. I.e., substantive law outcome can be reached only by using a real and effective legal remedy, which eliminates the possible infringement upon fundamental rights.²²⁸ For example, a Panel of the Constitutional Court has examined, whether a person has real and effective possibilities to protect the fundamental rights that have been infringed upon in case, where the cassation court has provided an interpretation of the contested norm and the case been transferred for adjudication de novo to an appellate instance court. Pursuant to Section 476(1) of the Civil Procedure Law, the interpretation of law provided in a judgement by the cassation instance court is mandatory for the court, which examines this case de novo. Thus, in the particular case it has recognised that applicant did not have real and effective possibilities to protect her fundamental rights that had been infringed upon.²²⁹

Recognising examination of a constitutional complaint as being of general importance or identifying possible significant harm for the submitter of the constitutional court is an exception to the procedure established by Section 19²(2) of the Constitutional Court Law, allowing a Panel of the Constitutional Court to initiate a

case before a person has exhausted all available general legal remedies. A person may request recognising the application as being of general importance, if he has not started to use all available general legal remedies or the use of general legal remedies has been started but has not been concluded yet. The Panels' decisions of 2017 include criteria that allow assessing, whether examination of a constitutional complaint should be recognised as being of general importance. To recognise examination of a constitutional complaint as being of general importance, it must be established that the legal situation described in it affects not only the particular applicant but also other persons, and also that the particular legal situation *per se* should be recognised as being of particular importance and requiring immediate resolution. Whereas "significant harm", in the meaning of the Constitutional Court Law is such harm, which causes to a person's rights and interests such consequences that are simultaneously harmful and irreversible.²³⁰ In 2017, the Panels have not recognised examination of any constitutional complaint as being of general importance, neither have they concluded that protection of rights by using general legal remedies could not prevent significant harm for the applicant.

The Constitutional Court has recognised that the term set for submitting a constitutional complaint is a rule that constitutes the content of a constitutional complaint, and the failure to abide by it denies access to the Constitutional Court. It is a measure that guarantees legal certainty and stability in the state, and it does not prohibit a person from turning to the Constitutional Court to protect his rights and lawful interests. Section 19²(4) of the Constitutional Court Law exhaustively defines, what is to be considered as the beginning for counting the procedural term – the ruling by the final institution or the moment, when the infringement upon fundamental rights occurred. For example, a person indicated in the application that the term for submitting a constitutional complaint should be counted from the decision by the appellate instance court on postponing examination of the case. However, the Panel found that in the particular case the term should be counted from the moment, when the infringement upon fundamental rights occurred, i.e., as of the date when the Department of Civil Cases of the Supreme Court in its judgement interpreted and applied the contested

225 For example, Decision by the 2nd Panel of the Constitutional Court of 23 October 2017 on Refusal to Initiate a Case regarding Application No. 155/2017.

226 For example, Decision by the 4th Panel of the Constitutional Court of 16 October 2017 on Refusal to Initiate a Case regarding Application No. 153/2017.

227 For example, Decision by the 3rd Panel of the Constitutional Court of 20 May 2017 on Refusal to Initiate a Case regarding Application No. 88/2017.

228 For example, Judgement by the Constitutional Court of 19 October 2011 in Case No. 2010-71-01, Para 14 and Judgement of 24 October 2013 in Case No. 2012-23-01, Para 14.

229 For example, Decision by the 2nd Panel of the Constitutional Court of 6 January 2017 on Refusal to Initiate a Case regarding Application No. 293/2016.

230 For example, Decision by the 2nd Panel of the Constitutional Court of 19 October 2017 on Refusal to Initiate a Case regarding Application No. 159/2017.

231 For example, Judgement by the Constitutional Court of 26 November 2001 in Case No. 2002-09-01, Para 1 of the Findings.

norm.²³² The term set in Section 19²(4) of the Constitutional Court Law is sufficiently long, allowing a person to draft and submit a constitutional complaint.²³³ The Constitutional Court Law does not provide for renewal of the term for submitting an application. In 2017, the Panels of the Constitutional Court have repeatedly refused to initiate cases because persons had not missed the term for submitting a constitutional complaint.²³⁴

A decision on refusal to initiate a case does not deny a person the right to submit repeatedly an application with respect to the same matter; insofar the term for submitting a constitutional court has not been missed. Persons are using this possibility more frequently – in 2017, more than 20 applications were submitted repeatedly.²³⁵ In preparing a repeated application, the person must eliminate the deficiencies that the panel had previously pointed to. However, changes in the presentation and structure of the arguments included in the application, elaborating or expanding the scope thereof *per se* cannot be regarded as such that change substantially the content of the legal reasoning and the facts of the case included in the application. If new substantial arguments are not added to the legal reasoning in the application, which have not been yet examined by the Panel at the time of reviewing the previous application, it will refuse initiation of a case on the basis of Para 5 of Section 20(5) of the Constitutional Court Law.²³⁶ Moreover, also formal changes, amendments to the application or adding another contested norm to it do not mean that the legal substantiation of the application has substantially changed.²³⁷

The analysis of decision by the Panels of the Constitutional Court shows that the most frequent grounds for refusal are deficiencies in the legal substantiation. I.e., no legal substantiation has been provided

in the application at all or it is obviously insufficient for satisfying the claim. In the meaning of the Constitutional Court Law, legal substantiation is such legal arguments, which substantiate incompatibility of the particular contested norm with the legal norm of higher legal force indicated in the application.²³⁸ Legal substantiation comprises analysis of legal norms, explanations as to the way in which the contested norms restrict the applicant's fundamental rights, evaluation of the legality of the procedure, in which the contested norms were adopted, as well as an assessment of the legitimate aim and proportionality of the restriction upon fundamental rights. An account given of the facts of the case and legal norms without the required legal arguments cannot be considered as being legal substantiation in the meaning of the Constitutional Court Law. Likewise, quotes from the judgement by the Constitutional Court, the Supreme Court and the Court of Justice of the European Union, as well as the findings expressed by legal scholars cannot be considered as being legal substantiation. In 2017, the Constitutional Court has underscored, with respect to applications submitted by courts, that legal substantiation, in the meaning of the Constitutional Court Law, is a set of legal arguments, which is necessary and also at the same time sufficient for satisfying the claim²³⁹

It must be borne in mind that legal argumentation consists also of arguments regarding other elements in the legal proceedings before the Constitutional Court. For example, an applicant can specify in his claim the date, as of which the contested norms should be recognised as being invalid. In requesting recognising a legal norm as being invalid *ex tunc*, substantiation for this request must be included in the application. A simple reference or a request without arguments is not sufficient.²⁴⁰ In

232 Decision by the 2nd Panel of the Constitutional Court of 6 January 2017 on Refusal to Initiate a Case regarding Application No. 293/2016.

233 For example, Decision by the 1st Panel of the Constitutional Court of 1 April 2015 on Refusal to Initiate a Case regarding Application No. 37/2015.

234 For example, Decision by the 3rd Panel of the Constitutional Court of 7 September 2017 on Refusal to Initiate a Case regarding Application No. 139/2017, Decision by the 2nd Panel of the Constitutional Court of 6 June 2017 on Refusal to Initiate a Case regarding Application No. 82/2017, Decision by the 1st Panel of the Constitutional Court of 24 May 2017 on Refusal to Initiate a Case regarding Application No. 77/2017.

235 For example, Application regarding Initiation of Case No. 42/2017, Application regarding Initiation of Case No. 46/2017, Application regarding Initiation of Case No. 91/2017, Application regarding Initiation of Case No. 106/2017, Application regarding Initiation of Case No. 125/2017, Application regarding Initiation of Case No. 169/2017, Application regarding Initiation of Case No. 191/2017, etc.

236 For example, Decision by the 1st Panel of the Constitutional Court of 28 November 2017 on Refusal to Initiate a Case regarding Application No. 183/2017, Decision by the 1st Panel of the Constitutional Court of 3 August 2017 on Refusal to Initiate a Case regarding Application No. 120/2017.

237 For example, Decision by the 1st Panel of the Constitutional Court of 10 May 2017 on Refusal to Initiate a Case regarding Application No. 59/2017, Decision by the 1st Panel of the Constitutional Court of 26 April 2017 on Refusal to Initiate a Case regarding Application No. 50/2017.

238 Decision by the 3rd Panel of the Constitutional Court of 16 February 2015 on Refusal to Initiate a Case regarding Application No. 6/2015.

239 Decision by the 4th Panel of the Constitutional Court of 2 February 2017 on Refusal to Initiate a Case regarding Application No. 17/2017.

2017, a Panel of the Constitutional Court has examined also an applicant's request to suspend the operation of a legal norm. Although this request, substantially, is a temporary remedy, which might ensure enforcement of a judgement by the Constitutional Court, it is not an unregulated procedural issue, which the Court would have the right to decide on.²⁴¹

240 See more: Rodiņa A., Amoliņa D. *Lietas ierosināšana Satversmes tiesā*. Central and Eastern European Legal Studies, 2013, No. 1. Available: <https://eplpublications.eu/publication/digital-edition/lietas-ierosinasana-Satversmes-tiesa>

241 For example, Decision by the 2nd Panel of the Constitutional Court of 18 September 2017 on Refusal to Initiate a Case regarding Application No. 138/2017. See also Decision by the Assignments Sitting of the Constitutional Court of 4 February 2015 in Case No. 2015-03-01.

3



**ACTIVITIES OF THE
CONSTITUTIONAL
COURT**

3.1. PROJECTS

In 2017, the Constitutional Court was actively involved in public activities that promote public awareness raising and reinforcing the values of a democratic state governed by the rule of law in society. The Constitutional Court chose the following target audiences for its activities: employees of the institutions of the Latvian judiciary system; Latvian law students and students' organisations, foreign students and employees of institutions, school students and youth, as well as society in general.

Employees of the Latvian judiciary system

To reinforce the constitutional order of the Latvian State and promote judicial dialogue, a new initiative was launched on 1 September 2017. The Constitutional Court, in co-operation with the Ministry of Justice and the Court Administration, announced a competition, giving an opportunity to judges of general jurisdiction courts and administrative court to apply for an internship at the Constitutional Court. The purpose of the internship is to give to a judge the possibility to share experience and update his or her professional knowledge. As the result of the competition, from 1 January to 30 June 2018, Judge Valdis Vazdiķis from the Riga Regional Court will perform the duties of an advisor to the President of the Constitutional Court.

On 27 November 2017, the Constitutional Court organised an open lecture on cryptocurrencies and blockchain law. Jeļena Streļņikova, lecturer at the China Blockchain Research Centre, explained the structure of blockchain technology and provided an insight into the legal issues linked to the use of cryptocurrencies in the world. The Constitutional Court plans to continue the tradition of open lectures also throughout the year of Latvia's centenary.

Latvian law students and students' organisations

The Constitutional Court every year supports organisations that hold moot court competitions. In 2017, young lawyers had the possibility to hold two final moot court hearings in the courtroom of the Constitutional Court. I.e., on 29 April 2017, for the second successive year the final of the moot court contest organised by the Ombudsman of the Republic of Latvia was held at the Constitutional Court, whereas on 2 December 2017, the final round of Professor Kārlis Dišlers XIX Constitutional Moot Court, organised by ELSA Latvia, took place in the court room of the Constitutional Court.

Every year law students are given internship possibilities at the Constitutional Court. The interns become part of the Constitutional Court's team for a while, they

perform various duties linked to analysis of legal issues and get acquainted with the working environment at the Constitutional Court. In 2017, the Constitutional Court welcomes seven students- interns.

Foreign students and employees of institutions

In 2017, the Constitutional Court welcomed a number of foreign students' delegations paying study visits to the Court. Likewise, employees of various foreign institutions also visited the Constitutional Court to share experience and facilitate co-operation. During the visits, representatives of the delegations met with the Justices and employees of the Constitutional Court, acquainted themselves with the work and functions of the Constitutional Court, issues of constitutional review.

School students and youth

On 15 February 2017, the Constitutional Court participated in "Shadow Day 2017", organised by business education association "Junior Achievement Latvija". School students from eight Latvian schools visited the Constitutional Court on this day. "Shadows" could acquaint themselves with the work of the Court, meet the Justices and employees, discuss issues linked to choosing one's vocation and daily work in the field of law, as well as participate in the festive events to commemorate the 95th anniversary of the adoption of the *Satversme* held in the *Saeima*.

Continuing the initiative that was launched in the year of the 20th anniversary of the Constitutional Court, in 2017, the Justices and employees of the Constitutional Court visited the schools that they had attended. They met teachers and students and gave an education lecture, speaking about the vocation of a judge, Latvia's legal system, and the Constitutional Court. Being aware of how important it is to encourage school students' to think about their future vocation, issues related to the choice of career path were discussed with the students. It is planned to continue this initiative in the following year, including schools from all regions of Latvia.

The Constitutional Court, in cooperation with youth magazine "Ilustrētā Junioriem" [Illustrated for Juniors], in the summer of 2017 created an educational article about the *Satversme* and the Constitutional Court. The article was published in September 2017 issue of the magazine. It tells about the *Satversme* and the Constitutional Court, highlighting the most important facts that should be known to every youth. Thus, a material has been developed that tells in a way that is understand-

dable to young people about complicated topics, providing general information about the basic law of the State and the Constitutional Court.

On 25 September 2017, the Constitutional Court launched an unprecedented project. A contest of school students' drawings and essays was announced, to celebrate Latvia's centenary and the 96th anniversary of the adoption of the *Satversme*. The Constitutional Court invited teachers to register for the competition of drawings "My *Satversme*" 6th graders from institutions of general and special education, whereas for the participation in the competition of essays "My Latvia and *Satversme*" – students from 9th and 12th grades of institutions of general, special and vocational education. The competition was announced in order to reinforce students' awareness of statehood and facilitate their participation in the affairs of the state, through their creative self-expression, as well as to facilitate their interest in and understanding of the *Satversme*. The *Satversme* and several informative materials were annexed to the competition rules. 48 schools applied for the competition, covering all regions of Latvia. The works submitted for the competition are surprising as to their creativity and breadth of vision. They make up a unique material that will stay on the pages of the history of our State. The awards ceremony will be held in 15 February 2018 at the Constitutional Court.

To promote education of school students, in 2017, the Constitutional Court started cooperation with the creative team of the erudition game "Gudrs, vēl gudrāks" [Smart, Even Smarter] of the Latvian Television. As part of this cooperation, 17 questions were prepared regarding the *Satversme*, the Constitutional Court,

judge's profession, and the Latvian legal system. The Justices of the Constitutional Court participated in filming the questions for the contest. The questions were put to students of grades 9, 10, 11, and 12. The episodes of the erudition show "Gudrs, vēl gudrāks", in which the questions put by the Constitutional Court will be asked, will be broadcast during the first half of 2018. The Constitutional Court appreciates this cooperation as an excellent opportunity to address a broader audience of students, drawing attention to those legal issues that should be known to everybody.

Society

On 22 April 2017, the Constitutional Court's team participated in the Big Clean-Up Day, bringing in order Alderi Park located in Ādaži Municipality. On 7 February 1888, Fēlikss Cielēns, one of the fathers of the *Satversme*, outstanding lawyer, politician, writer and public figure was born in Alderi Manor. Continuing the celebrations of the 95th anniversary of the adoption of the *Satversme*, this Clean-up Day was a symbolic homage to Fēlikss Cielēns, his family and the beautiful place that he came from. The Clean-up Day was organised in co-operation with Ādaži Municipal Council and the Culture Centre of Ādaži. During this event, an informative material, providing information on Fēlikss Cielēns' life and his contribution to the drafting of the *Satversme*'s text, was developed.

To facilitate direct and unmediated communication with society, in 2017, the Constitutional Court provided comprehensive information on the cases heard to the media, including three press conferences.



Employees of the Constitutional Court. Photo: Toms Norde.

3.2. DIALOGUE BETWEEN THE BRANCHES OF STATE POWER

12.01.2017.

The President of the Constitutional Court Aldis Laviņš meets with the Chief Judge of the Supreme Court Ivars Bičkovičs at the Supreme Court.

[Press release \[in Latvian\]](#)

14.02.2017.

Meeting of the President of the Constitutional Court Aldis Laviņš with the President of the State Raimonds Vējonis at Riga Castle.

[Press release \[in Latvian\]](#)

[Photo](#)

31.05.2017.

The President of the Constitutional Court Ineta Ziemele meets with the Minister for Justice Dzintars Rasnačs at the Constitutional Court.

[Press release \[in Latvian\]](#)

11.10.2017.

The meeting of the Justices of the Constitutional Court with the President of the State Raimonds Vējonis at the Constitutional Court.

[Press release \[in Latvian\]](#)

[Photo](#)

3.3. INTERNATIONAL COOPERATION

27.01.2017.

The President of the Constitutional Court Aldis Laviņš participates in the international seminar in Strasbourg “*Non-refoulement* as a principle of international law and the role of the judiciary in its implementation”.

[Press release \[in Latvian\]](#)

02.03.2017.

The President of the Constitutional Court Aldis Laviņš and the Head of the Legal Department of the Constitutional Court Alla Spale participate in the international conference in Moldova, Chisinau “Evolution of Constitutional Control in Europe: Lesson Learned and New Challenges”.

[Press release \[in Latvian\]](#)

26.03.2017.-28.03.2017.

President of the Constitutional Court Aldis Laviņš participates in Judges’ meeting in Luxemburg. The meeting is organised in honour of the 60th anniversary of the signing of the Rome Treaty.

[Press release \[in Latvian\]](#)

28.04.2017.

The Justice of the Constitutional Court Ineta Ziemele participates in the international conference organised by the Council of Europe and the Supreme Court of Cyprus “The Right to the Freedom of Speech in Internet Environment”.

[Press Release \[in English\]](#)

16.05.2017.

The Justices of the Supreme Court meet with H.E. Nigmatilla Yuldashev, the Chairman of the Senate of the Parliament of Uzbekistan Oliy Majlis and the delegation headed by him.

[Press release \[in English\]](#)

23.05.2017.

The Justice of the Constitutional Court Daiga Rezevska participates in the conference dedicated to the 25th anniversary of the Romanian Constitutional Court “A Quarter of a Century of Constitutionalism” in Bucharest, Romania.

[Press release \[in English\]](#)

[Photo](#)

25.05.2017.

The Justice of the Constitutional Court Jānis Neimanis participates in the annual congress of the association “Societas Iuris Publici Europaei” (SIPE) in Milan, Italy.

[Press release \[in English\]](#)

01.06.2017.

The President of the Constitutional Court Ineta Ziemele meets with the Ambassador of the Czech Republic to Latvia Miroslav Kosek at the Constitutional Court.

[Press release \[in English\]](#)

01.06.2017.

The Justices of the Constitutional Court Aldis Laviņš and Gunārs Kusiņš participate in the international the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions (BBCJ).

[Press release \[in Latvian\]](#)

01.06.2017.

The Justice of the Constitutional Court Artūrs Kučs participates in the conference organised by the University of Konstanz on the rulings by the European Court of Human Rights in Konstanz, Germany.

[Press release \[in Latvian\]](#)

08.06.2017.-09.06.2017.

The Justices and representatives of the Lithuanian Constitutional Court visit the Constitutional Court. Conference of the Latvian and the Lithuanian Constitutional Courts “Legality (Lawfulness) Assessment in the Judgments of the Constitutional Court: Principles and the Criteria of Assessment”.

[Press release \[in English\]](#)

[Press release \[in English\]](#)

19.06.2017.-30.06.2017.

The President of the Constitutional Court Ineta Ziemele participates in the Summer School organised by the Faculty of Law and Political Science of *Aix-Marseille Université*, giving a keynote presentation.

28.06.2017.

The President of the Constitutional Court Ineta Ziemele and the Advisor to the President of the Constitutional Court Laila Jurcēna participate in XVII Congress of the Conference of European Constitutional Courts.

[Press release \[in English\]](#)

19.07.2017.-20.07.2017.

The Vice-president of the Constitutional Court Sanita Osipova participates in the international symposium “Judicial Protection of the Family: Too Little or Too Much?” at the Faculty of Law, the University of Białystok, Poland.

[Press release \[in English\]](#)

11.09.2017.-14.09.2017.

The delegation of the Constitutional Court participates in IV Congress of the World Conference on Constitutional Justice in Vilnius, Lithuania.

[Press release \[in English\]](#)

11.09.2017.

The delegation of the Constitutional Court meets with the Ambassador of Latvia to Lithuania Einars Semanis at the Embassy of Latvia in Vilnius, Lithuania.

[Photo](#)

13.09.2017.

The Vice-president of the Constitutional Court Sanita Osipova, the Justice of Constitutional Court Daiga Rezevska and the Head of the Legal Department of the Constitutional Court Alla Spale meet with the delegation of the Council of Europe Congress of Local and Regional Authorities at the Constitutional Court.

[Press release \[in English\]](#)

02.10.2017.

The delegation of the Constitutional Court visits the Constitutional Court of Slovenia in Ljubljana, Slovenia. The President of the Constitutional Court Ineta Ziemele meets with Milan Brglez, the Speaker of the National Assembly of Slovenia in Ljubljana, Slovenia.

[Press Release \[in English\]](#)

[Photo](#)

19.10.2017.-21.10.2017.

The President of the Constitutional Court Ineta Ziemele and the Head of the Legal Department of the Constitutional Court Alla Spale participate in XXII Yerevan International Conference “The Role of Constitutional Courts in Overcoming Constitutional Conflicts”.

[Press release \[in English\]](#)

06.12.2017.

International discussion organised by the Constitutional Court and the *Saeima* “Ensuring the Quality of Legal Acts”. Delegation of the Council of State of France also participated in the discussion.

[Press release \[in Latvian\]](#)

07.12.2017.

Delegations of the Constitutional Court of Belgium and the Constitutional Court of the Czech Republic visit the Constitutional Court in the framework of tri-lateral cooperation.

[Press release \[in English\]](#)

[Photo](#)

08.12.2017.

The annual international conference of the Constitutional Court “Constitutional Review of the State Budget”. The Conference was organised in co-operation with the Budget and Finance (Taxation) Committee and the Legal Committee of the *Saeima*. Delegations of the Council of State of France, of the Constitutional Court of Belgium and the Constitutional Court of the Czech Republic also participated in the Conference.

[Press release \[in English\]](#)

[Photo](#)

3.4. PUBLICATIONS

This section provides a summary of the publications by the Justices and employees of the Constitutional Court in 2017 – books and articles included in books, as well as articles in periodicals, and interviews.

Justices of the Constitutional Court

INETA ZIEMELE

BOOKS:

Ziemele I. *Separate Opinions at the European Court of Human Rights*. Rīga: Riga Graduate School of Law, 2017, 335 p.

Ziemele I. *Valsts turpināšanās starptautisko tiesību teorijā un praksē*. [State Continuity in the Theory and Practice of International Law.] Grām.: *Nepārtrauktības doktrīna Latvijas vēstures kontekstā*. Rīga: LZA Baltijas stratēģisko pētījumu centrs, 2017, 15.–57. lpp.

Ziemele I. *Latvijas Republikas starptautiskās līgumsaistības*. [International Treaty Commitments of the Republic of Latvia.] Grām.: *Nepārtrauktības doktrīna Latvijas vēstures kontekstā*. Rīga: LZA Baltijas stratēģisko pētījumu centrs, 2017, 384.–392. lpp.

Ziemele I. *Starptautisko tiesību dimensija: tiesiskās pašāvības un tiesiskās drošības principi starptautiskajās tiesībās – jaunākās tendences*. [The International Law Dimension: the Principles of Legal Expectations and Legal Certainty in International Law – the Recent Trends.] Grām.: Balodis R. (red.) *Vispārējie tiesību principi: tiesiskā drošība un tiesiskā pašāvība. Valsts pārvalde. Bizness. Jurisprudence. Rakstu krājums*. Rīga: Tiesu namu aģentūra, 2017, 31.–49. lpp.

PERIODICALS:

Ziemele I. *Satversmes tiesas loma konstitucionālo principu aizsardzībā un piemērošanā*. [The Role of the Constitutional Court in the Application and Protection of Constitutional Principles.] *Jurista Vārds*, 21.11.2017., Nr. 48, 20.–24. lpp.

Ziemele I. *Tiesiskuma audits: vai Latvija ir tiesiska valsts*. [Audit of the Rule of Law: Is Latvia a State Governed by the Rule of Law.] *Jurista Vārds*, 07.11.2017., Nr. 46, 12.–15. lpp.

Ziemele I. *Eiropas Cilvēktiesību konvencijas loma Satversmes tiesas judikatūrā*. [The Role of the European Convention of Human Rights in the Case Law of the Constitutional Court.] *Jurista Vārds*, 16.05.2017., Nr. 21, 13.–16. lpp.

Ziemele I. *Ievainojamā pasaules kārtība*. [The Vulnerable Global Order.] *Jurista Vārds*, 02.05.2017., Nr. 19, 8.–10. lpp.

Ziemele I. *Likumdošanas procesa pilnveidošana: jauna konstitucionāla orgāna piedāvājums*. [Improving the Legislative Process: a Proposal for a New Constitutional Body.] *Jurista Vārds*, 07.03.2017., Nr. 10, 10.–13. lpp.

Ceļā uz *Satversmes* ideālo Latviju. [Towards the Ideal Latvia of the *Satversme*.] *Jurista Vārds*, 14.02.2017., Nr.7, 8.–19. lpp.

Ziemele I. *International Law Matters for the European Court of Human Rights*. // Конституционное Правосудие: Вестник Конференции органов конституционного контроля стран новой демократии. Конституционный Суд Республики Армения, 2(76) 2017, 44.–54. c.

INTERVIEWS:

Apanasova T. Mūsu vieslektore – *Satversmes* tiesas priekšsēdētāja Ineta Ziemele – viena no redzamākajām Latvijas juristēm. Intervija ar I. Ziemeli. [Our Guest Lecturer – the President of the Constitutional Court Ineta Ziemele. – One of the Most Visible Lawyers in Latvia.] *Juridiskās Koledžas Vēstnesis*, 2017, Nr. 8, 1.–2. lpp.

Domburs J. ‘Delfi TV ar Jāni Domburu’: *Satversmes* priekšsēdētāja Ineta Ziemele. Intervija ar I. Ziemeli. [Delfi TV with Jānis Domburs: The President of the Constitutional Court Ineta Ziemele. An Interview with I. Ziemele.] www.DELFI.lv, 22.11.2017. Available: <http://www.delfi.lv/>

Zirnis E. Skatīsimies atvērtām acīm. Intervija ar I. Ziemeli. [Let’s Look with Our Eyes Open. An Interview with I. Ziemele.] *Sestdiena*, 29.09.2017., Nr. 189, 10.–15. lpp.

Skuja A. *Satversmes* tiesas priekšsēdētāja Ineta Ziemele rīta ziņu raidījumam: Latvijas informatīvajā telpā ir jāveicina tāda diskusija, kas veido mūsu tiesisko kultūru. Intervija ar I. Ziemeli. [Ineta Ziemele to the Morning News Programme: The Latvian Informative

Space should Foster a Discussion that Develops our Legal Culture.] LNT rīta ziņu raidījums “900 sekundes”, 18.09.2017. Available: <https://skaties.lv/>

Tomsons A., Ābola I. ST priekšsēdētāja Ineta Ziemele par norisēm pirms vēlēšanām un aktualitātēm tiesu darbā. Intervija ar I. Ziemeli. [The President of the Constitutional Court on the Processes before Elections and Topicalities in the Work of Courts. An Interview with I. Ziemele.], Latvijas Radio 1 “Krustpunkta”, 06.06.2017. Available: <http://lr1.lsm.lv/>

Ozoliņš A. Esam mazliet iesprūduši. Intervija ar I. Ziemeli. [We are Slightly Stuck. An Interview with I. Ziemele.] Ir, 06.06.2017. Available: <https://irir.lv/>

Lulle B. ST priekšsēdētāja: būtu traģiski, ja ST nebūtu. Intervija ar I. Ziemeli. [The President of the Constitutional Court; it would be Tragical if the Constitutional Court were no More. An Interview with I. Ziemele.] Neatkarīgā Rīta Avīze Latvijai, 29.05.2017., Nr. 101, 6.–7. lpp.

Libeka M. Vēl tālu līdz tiesiskai kultūrai. Intervija ar I. Ziemeli. [It is Still a Far Way off to the Legal Culture. An Interview with I. Ziemele.] Latvijas Avīze, 26.05.2017., Nr. 100, 6.–7. lpp.

Strupka Z. ST priekšsēdētāja: Latvijas stiprā puse vienmēr bijusi tās cilvēki un personības. Intervija ar I. Ziemeli. [The President of the Constitutional Court: Latvia's People and Personalities have always been its Strong Point. An Interview with I. Ziemele.] LETA, 24.05.2017. Available: <http://www.leta.lv/>

Mače Z. *Satversmes* tiesas vadītāja Ineta Ziemele par tiesas kvalitāti un pieejamību. Intervija ar I. Ziemeli. [The Head of the Constitutional Court on the Quality and Accessibility of Court. An Interview with I. Ziemele.] Latvijas Radio 1 “Rīta intervija”, 18.05.2017. Available: <http://lr1.lsm.lv/>

Daugulis M., Garklāva K. Ziemele: Nepieciešami uzlabojumi, lai atvieglotu pieteikumu sagatavošanu *Satversmes* tiesā. Intervija ar I. Ziemeli. [Ziemele: Improvements are Necessary to Facilitate Drafting of Applications to the Constitutional Court. An Interview with I. Ziemele.] LNT rīta ziņu raidījums “900 sekundes”, 11.05.2017. Available: <https://skaties.lv/>

SANITA OSIPOVA

BOOKS:

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Employees of the Constitutional Court

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