



CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT

on behalf of the Republic of Latvia

Rīga, 11 July 2024

Case No. 2023-10-03

The Constitutional Court composed of the chairperson of the court hearing Aldis Laviņš, judges Irēna Kucina, Gunārs Kusiņš, Jānis Neimanis, Artūrs Kučs, Anita Rodiņa, and Jautrīte Briede,

on the basis of the application of the Senate,

with the participation of the representatives of the authority having issued the contested act, i.e. Jūrmala City Council, sworn advocate Artis Stucka, Mārtiņš Pilmanis, and Edīte Silova,

with the secretary of the court hearing Alise Ziemele,

on the basis of Article 85 of the Constitution of the Republic of Latvia and Section 16, Clause 3, Section 17, Paragraph one, Clause 9, Section 19.¹, and Section 28 of the Constitutional Court Law,

with the participation of participants to the case, examined, on 4 June and 12 June of 2024, at an open court hearing the following case:

“On conformity of Paragraph 3 of Binding Regulation of Jūrmala City Council No. 37 of 11 October 2012, Regarding the Procedures for Granting Immovable Property Tax Reliefs, with Article 91 of the Constitution of the Republic of Latvia”.

Establishing Part

1. On 11 October 2012, Jūrmala City Council issued Binding Regulation No. 37, Regarding the Procedures for Granting Immovable Property Tax Reliefs, (hereinafter – the Binding Regulation) which entered into force on 1 January 2013.

The initial wording of Paragraph 3 of the Binding Regulation stipulated that for the purposes of this Regulation a natural person is a citizen or non-citizen of Latvia.

By Binding Regulation of Jūrmala City Council No. 39 of 12 November 2015, Amendments to Binding Regulation of Jūrmala City Council No. 37 of 11 October 2012, Regarding the Procedures for Granting Immovable Property Tax Reliefs, Paragraph 3 of the Binding Regulation was amended and stipulates that a natural person within the meaning of this Regulation is a citizen of a European Union Member State, a country of the European Economic Area, the Swiss Confederation or a non-citizen of Latvia (hereinafter – the contested norm).

2. The applicant, i.e. the Senate, (hereinafter – the applicant) considers that the contested norm fails to conform to Article 91 of the Constitution of the Republic of Latvia (hereinafter – the Constitution).

The applicant examines administrative case No. A420243117 initiated according to the application of a natural person in relation to the revocation of the administrative act by which the immovable property tax was calculated without applying the immovable property tax relief. The contested norm has been applied to the applicant in the administrative case. The country of citizenship of the applicant is not included among the countries of citizenship specified in the contested norm. Thus, the right to tax relief of the applicant depends on the validity of the contested norm.

The applicant points out that a local government is generally entitled to determine certain groups of domestic taxpayers (residents) who should be granted immovable property tax relief in certain cases. The contested norm clearly and precisely establishes a specifically identifiable category of immovable property tax payers according to an objectively ascertainable criterion, i.e. the presence or absence of the citizenship of a certain country. However, the authorisation contained in the law On Immovable Property Tax allows local governments to provide for different treatment on the grounds of citizenship in binding regulations, provided that it is justified on objective grounds not related to the citizenship of the relevant persons.

Citizenship is regarded as one of the criteria which serve as the prohibited grounds for discrimination. However, the establishment of a distinction on the

basis of the criterion of citizenship is not absolutely prohibited and in certain cases the use of this criterion may be justified.

All immovable property tax payers are in similar and according to definite criteria comparable circumstances. The main common feature thereof is the obligation to pay the immovable property tax.

The contested norm grants the right to receive an immovable property tax relief only to the citizens of the European Union Member States, including Latvia, the countries of the European Economic Area, the Swiss Confederation and non-citizens of Latvia. Consequently, the contested norm is said to envisage differential treatment of persons who are in the same and comparable circumstances..

The criterion of the country of citizenship cannot be used to establish differential treatment between taxpayers. This applies not only to the citizens of the European Union Member States, including Latvia, the countries of the European Economic Area, the Swiss Confederation and non-citizens of Latvia, but also to the citizens of other countries. Differential treatment on grounds of citizenship can only be justified on objective grounds which are unrelated to the country of citizenship of taxpayers. In the present case, no legitimate objective has been established which could justify the differential treatment provided for in the contested norm. Jūrmala City Council has also failed to provide any justification for the differential treatment. Moreover, the contested norm also fails to comply with the principle of proportionality.

3. The authority which issued the contested act, i.e. Jūrmala City Council, believes that the contested norm conforms to Article 91 of the Constitution.

The citizens of the European Union Member States, including Latvia, the countries of the European Economic Area, the Swiss Confederation and non-citizens of Latvia are not in similar and according to definite criteria comparable circumstances with the citizens of other countries. There is a strict obligation to ensure equal treatment for this group of persons without any derogation. However, it is permissible to apply different tax rates to the citizens of other countries, provided that there are objective grounds for such a difference.

Hence, the legitimate objective of the contested norm is the protection of public welfare. The contested norm is aimed at granting additional financial benefit to certain groups of the population, preventing inequality between the citizens of the European Union Member States, including Latvia, the countries of the

European Economic Area, the Swiss Confederation and non-citizens of Latvia, as well as fulfilling the international obligations of the State of Latvia. The additional financial benefit was granted to a significant number of the citizens of the European Union Member States, including Latvia, the countries of the European Economic Area, the Swiss Confederation and non-citizens of Latvia, declared in the administrative territory of Jūrmala State city. This allows this part of society to use the saved financial resources to meet other needs and achieve the legitimate objective of the contested norm, i.e. the provision of public welfare. Moreover, the contested norm also has a regulatory function, as it encourages taxpayers to obtain Latvian citizenship or citizenship of another country sharing the same legal space with Latvia. In particular, the taxpayer may adapt his or her behaviour in such a way that he or she becomes eligible for the immovable property tax relief. The contested norm promotes the availability of housing for local residents by stimulating the acquisition of housing in the territory of the local government and providing additional income to the budget of the local government, while reducing speculation on immovable property prices in the territory of the local government.

Granting the immovable property tax relief to other persons would significantly increase the number of natural persons eligible for the immovable property tax relief. Thus, the income of Jūrmala City Council would be reduced, which could be used for the provision of the autonomous functions of the local government. The local government would have to reduce the amount of the currently granted relief to all beneficiaries, and the subjects of the contested norm would have to pay proportionally much higher immovable property tax than before. This would infringe the right of Latvian nationals and nationals of countries sharing the same legal space as Latvia to receive tax relief.

3.1. In addition to the findings included in the response, Jūrmala City Council pointed out that by the contested norm it hoped to promote an increase in the population of Jūrmala local government and, consequently, an increase in the personal income tax revenue in the local government budget. This objective is being achieved because the number of residents declared in the city of Jūrmala has increased in recent years, which can be explained by the well-maintained infrastructure and the favourable social policy provided by the local government, i.e. substantial immovable property tax reliefs for the residents of the local government.

The *Saeima* has already included in the law On Immovable Property Tax several categories of taxpayers who are entitled to tax reliefs by law. In addition,

the City Council is also granted considerable discretion in terms of deciding on the categories of immovable property tax payers eligible for the immovable property tax relief.

The policy of Jūrmala local government is aimed at the implementation of such measures that would help achieve that as many citizens of the European Union Member States, the countries of the European Economic Area, and the Swiss Confederation as possible declare their primary place of residence in the administrative territory of Jūrmala. These persons are focused on the living space of Western countries and the values of their people. They have significant incomes and feel, or will feel in the future, a real sense of belonging to the local community of Jūrmala. Moreover, the nationals of the European Union are guaranteed the right to participate in the administration of the local government. Non-citizens of Latvia are granted a special status by law. In contrast, third-country nationals are not engaged in the work of Jūrmala local government and do not make a special effort to integrate into the social framework of the local community of Jūrmala. Moreover, a majority of Russian citizens support the war that Russia is waging in Ukraine. Jūrmala City Council does not want to see an increase in the number of Russian citizens living in its territory, which would inevitably lead to conflicts with Ukrainian citizens. Therefore, Jūrmala City Council would like to welcome only citizens of the aforementioned countries as residents in the local government and is trying to achieve this also through immovable property tax reliefs.

Latvia has long had a system whereby third-country nationals who purchased immovable property in the country were granted a temporary residence permit. This system has artificially maintained high prices in the immovable property market and encouraged various speculative transactions. This was clearly disadvantageous for the residents of Jūrmala, as the immovable property tax increased as a result of these transactions. Many local people have been unable to purchase immovable property because of the price increase.

3.2. At the court hearing, the representatives of Jūrmala City Council pointed out that seasonality and high immovable property prices were the weaknesses of Jūrmala. In addition, Jūrmala is threatened with a decrease in population and, consequently, in the local government budget. Nevertheless, Jūrmala has the opportunity to involve the public and plan the city responsibly. In response to the above, Jūrmala has sought to increase the number of Latvian citizens in the local government, as well as the number of residents of the local government who have high incomes, namely, who are the citizens of the European Union Member States,

the countries of the European Economic Area, the Swiss Confederation and non-citizens of Latvia . In this way, the increase of personal income tax revenue and the decrease of speculative transactions involving immovable properties, as well as the change of focus from East to West of the local community values of Jūrmala were achieved . This also corresponds to the strategy of Jūrmala aimed at boosting its international competitiveness by attracting tourists from Western Europe.

According to Jūrmala City Council, the contested norm does not restrict the rights of long-term residents of the local government, as it does not change either the rates of immovable property tax or the basic principles of tax payment. In addition, the residents of Jūrmala have access to the widest range of social assistance measures.

What regards the membership of Latvia in the Organisation for Economic Co-operation and Development, the representative of the Jūrmala City Council pointed out that the determination of residency cannot be based on the principle of territoriality alone. The assessment must be based on the intention of a person to settle in the relevant country and on the period of time which reflects the wish of that person to reside in the relevant country on a long-term and continuous basis. Jūrmala has chosen citizenship as the criterion for establishing the ties of a person with the local community.

Jūrmala needs to look after the interests of the residents of its administrative territory. A ‘resident of the local government’ is a concept with a high degree of abstraction, and its content is within the competence of the city council. The local government has the right to classify local residents according to citizenship.

4. The representative of **the Saeima, i.e. the invited party**, pointed out at the court hearing that the principle of objective classification included in the law On Immovable Property Tax requires that local governments, when determining the categories of immovable property tax payers eligible for tax reliefs, classify persons according to certain characteristics previously known, objectively ascertainable, common to a certain group of taxpayers and unifying them. The purpose of such principle is to prevent the arbitrary granting of tax reliefs, either on the basis of subjective characteristics or by means of individually determined persons.

According to the *Saeima*, citizenship of a person is an objectively ascertainable characteristic common to a certain group of taxpayers and unifying them. The legislator has neither provided for a specific authorisation nor

a prohibition to classify persons according to the criterion of citizenship. Consequently, the principle of objective classification allows taxpayers to be classified according to their citizenship.

The tax reliefs provided for in the Binding Regulation can serve as social assistance and are therefore considered to be part of the social security system. According to the *Saeima*, the principles and criteria arising from the laws and regulations in the field of social security are applicable in the present case.

The requirement of the permanent residence of a person in the country, the fulfilment whereof could be evidenced by a declared place of residence in the relevant local government, could be a condition for applying the immovable property tax relief and thus also facilitate the performance of local government functions and tasks. The social security system in Latvia provides for the provision of social assistance to a person regardless of his or her citizenship, and the criterion of citizenship is not mentioned in the law On Social Security. However, in order to qualify for social assistance from the State or a local government, a person must establish ties with Latvia and have a permanent residence in Latvia. In particular, the provisions of the law On Social Security apply to all persons whose place of residence is in Latvia. However, according to the Law on Social Services and Social Assistance, the citizens of other countries can receive social services and social assistance after they have obtained a permanent residence permit which certifies long-term residence in Latvia and close, lasting ties with Latvia.

Classification on the basis of residency could also fall within the authorisation granted by the legislator. In addition, a resident has the obligation to declare his or her place of residence in a local government in Latvia if his or her primary place of residence is in Latvia, or to prove that he or she has resided in the Republic of Latvia for 183 days or more in any 12-month period. Hence, residents are also expected to demonstrate their ties with Latvia and that they are here permanently.

A local government also has the right to assess the beneficiaries of the immovable property tax relief, taking into account the non-discrimination principle, the principle of legal equality, and international obligations undertaken by Latvia. This is not a matter of choice for the State alone.

5. Sworn advocate *Mg. iur.* Jānis Taukačs, i.e. the invited party, considers that differentiation of beneficiaries of the immovable property tax relief according to their country of citizenship is contrary to the non-discrimination

principle enshrined in Latvian tax conventions and Article 63 of the Treaty on the Functioning of the European Union.

The presence or absence of the citizenship of a particular country is an ascertainable objective criterion. The law On Immovable Property Tax allows a local government to classify taxpayers according to this criterion and to determine which taxpayer is entitled to the immovable property tax relief.

The membership of Latvia in the Organisation for Economic Co-operation and Development as such does not impose the obligation to prevent discrimination against citizens of countries with which Latvia lacks a valid tax convention. However, Latvia has accepted the Recommendation of the Council of the Organisation for Economic Co-operation and Development of 23 October 1997 concerning the Model Tax Convention on Income and on Capital C(97)195/FINAL (hereinafter – the Recommendation) in accordance with the terms of the Agreement on the Terms of Accession of the Republic of Latvia to the Convention on the Organisation for Economic Co-operation and Development. By adopting the Recommendation, Latvia has undertaken to conclude bilateral conventions on the prevention of double taxation and tax evasion in respect of income and capital taxes (hereinafter – the Tax Convention), including provisions on non-discrimination with regard to taxation of tax residents of the other Contracting State. Furthermore, Latvia has undertaken, when concluding such conventions, to use the wording of the articles of the Model Tax Convention on Income and on Capital (hereinafter – the Model Tax Convention) and to interpret the provisions of these conventions in accordance with the commentaries of the Model Tax Convention.

Tax Conventions which contain the prohibition of discrimination on grounds of citizenship prevent the State of Latvia and its local governments from excluding citizens of the Contracting States from the list of persons entitled to the immovable property tax relief. It follows from Article 24(1) of the Model Tax Convention that discrimination on grounds of citizenship is prohibited if, first, citizens of the other Contracting State are in comparable circumstances to citizens of Latvia with regard to taxation and, second, citizens of the other Contracting State are subject to a different tax regime. The phrase ‘in the same circumstances’ refers to taxpayers who, from the point of view of the application of the general tax legislation, are in fact in legally and factually comparable circumstances. The phrase ‘in particular with respect to residence’ is a clear indication that tax

residence is one of the factors relevant for determining whether taxpayers are in similar circumstances.

All tax residents of Latvia, regardless of their citizenship, participate equally in financing the activities of the local government which is their respective residence. Consequently, Latvian and foreign citizens who own, legally possess, or use immovable property in Latvia are in a comparable situation for the purposes of applying the immovable property tax.

Article 24(1) of the Model Tax Convention and tax treaties do not provide for the possibility of invoking a legitimate objective to justify the imposition of a higher tax burden or a more burdensome tax regime on citizens of other Contracting States. If Contracting States wish to derogate from the standard set by the Model Tax Convention, they may make reservations on the wording of the articles of the Model Tax Convention and observations on the commentaries of the Model Tax Convention, and agree with the other Contracting State on a different wording of the provisions. Moreover, the Contracting States apply tax treaties in accordance with the principle of reciprocity. If the other Contracting State refuses to apply the provisions of the Tax Convention to tax residents of Latvia, Latvia has the right to suspend or terminate the application of the provisions of the treaty to residents of that Contracting State. Only in such a situation would derogations from the prohibition of discrimination on grounds of citizenship in Latvian tax treaties be permissible.

The contested norm differentiates the application of the immovable property tax relief not only on the basis of the criterion of citizenship, but also indirectly on the basis of the criterion of residence. The condition that the immovable property tax relief is applicable to persons whose primary place of residence has been declared in the respective property for at least two continuous years is intended to promote the sustainable development of the territory of the local government and the declaration of the place of residence in the territory of the local government, as well as to reduce the increase in immovable property prices that may be caused by short-term investments in immovable property. Tax Conventions are based on the principle that residents and non-residents are not in a comparable situation and therefore allow for differentiation of the applicable tax depending on the tax residence of the person. The national tax legislation of Latvia also differentiates the taxation of income depending on the residence status. Consequently, differentiation of the immovable property tax rate or of the tax relief depending on the tax residence is permissible.

The contested norm fails to conform to Article 63 of the Treaty on the Functioning of the European Union which prohibits restrictions on the movement of capital between the European Union Member States, as well as between the European Union Member States and third countries. The freedom of movement of capital also applies to the cross-border movement of capital between a European Union Member State and a third-country resident. The contested norm imposes a higher immovable property tax burden on the citizens of other countries than on the citizens of Latvia, other European Union Member States, the countries of the European Economic Area, and the Swiss Confederation, thus discouraging non-residents from making investments in Latvia. In the examined case, no legitimate objective has been established which could justify the differential treatment provided for in the contested norm. Objectives of a purely economic nature cannot be regarded as an overriding reason of general interest justifying the restriction of the fundamental freedoms of the European Union. Consequently, considerations relating to the budget revenue of the local government as such cannot justify the differential application of the immovable property tax reliefs to the citizens of countries other than European Union Member States, the countries of the European Economic Area, or the Swiss Confederation.

At the court hearing, J. Taukačs pointed out that the Tax Convention applies if a person is simultaneously a tax resident of two countries under the national laws of both countries. If the person is only a Latvian tax resident, there is no cross-border situation to which the Tax Convention applies. Moreover, the application of the Tax Conventions is to be assessed in each particular situation and is not a matter to be resolved before the Constitutional Court. The application of the immovable property tax reliefs is a matter to be resolved at national level. However, the law On Immovable Property Tax allows local governments to grant the immovable property tax reliefs to the citizens of certain countries. The criterion of citizenship is discriminatory and citizenship cannot be used as a criterion for the application of the immovable property tax reliefs.

6. The Ministry of Finance, i.e. the invited party, points out that differential treatment cannot be established on the basis of the criterion of citizenship alone if the residence status of the relevant persons in respect of Latvia is the same.

When drafting the tax legislation, Latvia has consistently complied with the provisions on the prohibition of discrimination laid down in the Model Tax

Convention and also the provisions of the Treaty on the Functioning of the European Union prohibiting restrictions on the free movement of capital between Member States, as well as between Member States and third countries.. Latvia, being a European Union Member State and a member of the Organisation for Economic Co-operation and Development, has no right to envisage differential treatment on the basis of citizenship in the application of the immovable property tax reliefs to the citizens of the member countries of the Organisation for Economic Co-operation and Development who are not citizens of the European Union Member States, the countries of the European Economic Area, or the Swiss Confederation, if their residence status is the same as the residence status of the group of comparable citizens in respect of Latvia.

When issuing binding regulations, local governments, in accordance with the principle of objective classification prescribed by the law On Immovable Property Tax, must also comply with the aforementioned prohibition of discrimination. According to paragraph six of the Article “Non-discrimination” of the Tax Conventions, the provisions of that Article apply to all types and titles of taxes imposed by a Contracting State or a political subdivision or local government thereof. Consequently, local governments must also comply with the prohibition of discrimination on grounds of citizenship if the relevant persons have the same residence status.

At the court hearing, the representative of the Ministry of Finance pointed out that Latvia, when applying the immovable property tax reliefs, had no right to envisage differential treatment in respect of the citizens of the member countries of the Organisation for Economic Co-operation and Development who were not citizens of the European Union Member States, the countries of the European Economic Area, or the Swiss Confederation. This is precluded by the existing Tax Conventions with all member countries of the OECD, except for New Zealand, Australia, and Chile. The three aforementioned countries are subject to the prohibition on restrictions on the movement of capital laid down in Article 63 of the Treaty on the Functioning of the European Union which applies between the European Union Member States, as well as between the European Union Member States and third countries.

Tax Conventions are applicable if the relevant person is a citizen of a Contracting State. A citizen of the country with which a Tax Convention has been concluded should not be subject to different taxation arrangements if the circumstances of residence are the same.

The determination of the beneficiaries of the immovable property tax reliefs cannot be based solely on the citizenship of those persons. When applying the principle of objective classification laid down in the law On Immovable Property Tax, it is necessary, first of all, to observe the scope of national legislation, the delegation stipulated therein, as well as the Treaty on the Functioning of the European Union and the Tax Conventions. The Tax Conventions are the clearest in terms of the prohibition of discrimination on grounds of citizenship, and they do not allow flexibility. However, the law On Taxes and Fees, which is hierarchically higher than other tax regulations and tax laws, does not provide for the classification of taxpayers on the basis of citizenship. This Law provides for the division of taxpayers into domestic taxpayers and foreign taxpayers, which according to international terminology are residents and non-residents. The provisions of this Law apply to all taxes, including the immovable property tax. The legislator has never attempted to establish a different tax regime on the basis of citizenship, as the standard of the Tax Conventions has been known since 1992 and the standard of the European Union since 2004. Citizenship is an objectively determinable criterion; however, the delegation given to local governments does not allow the use of the citizenship criterion, although the grammatical formulation thereof lacks sufficient precision or the abstract of the amendments to the law does not specify that.

By promoting the acquisition of Latvian citizenship, the local government is not encouraging the resettlement of the relevant persons to Latvia and the establishment of closer ties with Latvia, as well as higher contributions of personal income tax in the local government budget.

7. The Ministry of Smart Administration and Regional Development, i.e. the invited party, acknowledges the discretion of a local government in establishing tax policy in its administrative territory, but points to the obligation of the local government to take into account the principles of determining immovable property tax rates and reliefs established by law, as well as the priority of applying the procedures for the calculation and payment of taxes laid down in international treaties approved by the *Saeima*.

The Ministry has assessed the Binding Regulation and Binding Regulation of Jūrmala City Council No 39 of 12 November 2015, Amendments to Binding Regulation of Jūrmala City Council No. 37 of 11 October 2012, Regarding the

Procedures for Granting Immovable Property Tax Reliefs, and has issued thereupon unqualified opinions.

In 2018, the Ministry received a letter from Jūrmala City Council requesting an opinion on the compliance of the Binding Regulation with the Agreement between the Government of the Republic of Latvia and the Government of the Russian Federation for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital (hereinafter – the Tax Convention with Russia). Upon receipt of the opinion of the Ministry of Finance, the leading State administration institution in the development of a tax policy at national level, the Ministry of Smart Administration and Regional Development requested Jūrmala City Council to make the necessary amendments to the Binding Regulation to ensure their compliance with the provisions of the Tax Convention with Russia.

Upon receipt of the response from Jūrmala City Council, the Ministry of Smart Administration and Regional Development requested the opinions of the Ministry of Finance, the Ministry of Foreign Affairs, and the Ministry of Justice. The Ministry of Finance replied that the Tax Convention with Russia does not allow to reject the application for tax relief submitted by a Russian citizen who is in the same circumstances as Latvian citizens with respect to residence (he or she is a resident of Latvia and has declared his or her main place of residence in the administrative territory of Jūrmala). The Ministry of Foreign Affairs replied that the provisions included in the Binding Provision could give rise to litigation risks both before the Constitutional Court and, depending on the ruling of the Constitutional Court, before the European Court of Human Rights. The Ministry of Foreign Affairs has referred to the opinion of the Ministry of Finance and pointed out the obligation of the State to comply with and apply the provisions of the international treaty. In turn, the Ministry of Justice shared the views of the Ministry of Finance and the Ministry of Foreign Affairs, while pointing out that the Tax Convention with Russia excludes the criterion of citizenship (nationality) as a basis for objective classification in respect of the persons specified in that Convention.

Taking into account the opinions received, the Ministry of Smart Administration and Regional Development has requested Jūrmala City Council to ensure that the tax relief provided for in the Binding Regulation is granted to the respective person and to consider the possibility of amending the Binding Regulation. The City Council replied to this letter that at the moment the dispute

between the respective person and the local government was within the competence of the administrative court, and indicated that a working group had been established to make proposals on possible amendments to the Binding Regulation.

The Ministry of Smart Administration and Regional Development has noted that it does not keep or maintain registers of draft binding regulations of local governments or other databases in each specific field. However, the Ministry, having examined the binding regulations of 43 local governments in the field of immovable property tax relief, came to the conclusion that such binding regulation, which provides for different immovable property tax reliefs depending on the citizenship of the taxpayer, has been adopted and is valid only in Jūrmala City Council.

As regards the situation in other local governments, the Ministry pointed out that the criterion of citizenship had been used in two other local governments to determine reduced immovable property tax rates. The binding regulations of the local government of South Kurzeme Region include a norm stipulating that a reduced rate is applied to natural persons if on 1 January of the tax year at least one person who is a citizen or non-citizen of Latvia, a citizen of another European Union Member State, the country of the European Economic Area, or the Swiss Confederation or a person who has received a permanent residence permit in the Republic of Latvia has declared his or her place of residence in the property. Almost identical provisions for the application of the reduced rate is also stipulated in the binding regulations of the local government of Smiltene municipality.

At the court hearing, the representative of the Ministry of Smart Administration and Regional Development pointed out that the Ministry, when giving its opinion on the legality of the contested norm, had assessed its compliance only with the authorisation provided for in the law On Immoveable Property Tax, but not with international obligations undertaken by Latvia or the Constitution. Hence, the Ministry has come to the conclusion that the contested norm is lawful and has therefore not raised any objections.

Concluding Part

8. Article 91 of the Constitution stipulates the following: “All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind.” Article 91 of the Constitution

contains two closely interrelated principles, i.e. the principle of legal equality in the first sentence of the Article and the principle of non-discrimination in the second sentence (*see Paragraph 9.3 of the judgment of the Constitutional Court of 14 September 2005 in Case No. 2005-02-0106*).

The Constitutional Court has recognised that the principle of legal equality is aimed at the existence of a uniform legal order. The objective of the principle is to ensure that the rule of law requires that the law has a comprehensive effect on all persons and that it is applied without privilege. The principle of non-discrimination supplements, clarifies, and helps apply the principle of legal equality in specific situations. The purpose is to prevent unequal treatment based on an inadmissible criterion and to prevent the possibility that, in a democratic state governed by the rule of law, the fundamental rights of a person would be restricted on the basis of an inadmissible criterion (*see Paragraph 17 of the judgment of the Constitutional Court of 4 June 2021 in Case No. 2020-39-02*).

The second sentence of Article 91 of the Constitution contains a general prohibition of discrimination, but does not list the prohibited criteria (*see Paragraph 21 of the judgment of the Constitutional Court of 23 April 2019 in Case No. 2018-12-01*). The Constitutional Court has also previously recognised that citizenship should be considered as one of the criteria on the basis of which discrimination is prohibited. Establishing differences on the basis of citizenship of a person cannot be regarded as absolutely prohibited, i.e. in certain cases the use of the criterion of citizenship may be justified (*see Paragraph 10.1 of the judgment of the Constitutional Court of 29 June 2018 in Case No. 2017-28-0306*). When assessing compliance of the contested norm with the principle of non-discrimination provided for in Article 91 of the Constitution, the Constitutional Court must establish:

1) whether and which persons (groups of persons) are in the same and comparable circumstances according to certain criteria;

2) whether the contested norm provides for equal or different treatment of those persons (group of persons);

3) whether such treatment is established by laws and regulations adopted in a duly manner;

4) whether such treatment is justified, i.e. whether there are objective and reasonable grounds (*see Paragraph 17 of the judgment of the Constitutional Court of 4 June 2021 in Case No. 2020-39-02 and Paragraph 10 of the judgment of 10 July 2020 in Case No. 2019-36-01*).

9. In order to establish whether any and which groups of persons are in similar and, according to certain criteria, comparable circumstances, it is necessary to identify the main unifying feature of such group (*see Paragraph 11 of the judgment of the Constitutional Court of 10 July 2020 in Case No. 2019-36-01*). There are never two identical situations, so the situation to be compared should be one that shares one or more elements with the situation subject to examination. The common element must unite both situations under one general concept. Moreover, the Constitutional Court must also assess whether there are any significant considerations indicating that such groups of persons are not in mutually comparable circumstances (*see Paragraph 32 of the judgment of the Constitutional Court of 23 May 2022 in Case No. 2021-18-01*).

The Constitutional Court has previously recognised that the obligation to pay the specific tax is the main unifying feature of the comparable groups of persons (*see, for instance, Paragraph 10.3 of the judgment of the Constitutional Court of 18 October 2018 in Case No. 2017-35-03 and Paragraph 12 of the judgment of 29 June 2018 in Case No. 2017-28-0306*).

In accordance with Section 8, Clause 3 of the law On Taxes and Fees, the immovable property tax is one of the types of State taxes. According to Section 9, Paragraph one of this Law, State taxes are paid into the State budget or into the State budget and local government budgets in accordance with the provisions of the specific tax law. However, according to Section 8, Paragraph one of the law On Immovable Property Tax, the immovable property tax shall be paid into the budget of the local government in whose administrative territory the immovable property or part thereof is located.

According to Section 2, Paragraph one of the law On Immovable Property Tax, the immovable property tax shall be paid by Latvian or foreign natural persons who have an immovable property in their ownership, legal possession or – in the cases laid down in this Law – in their use.

Section 3, Paragraph two of the law On Taxes and Fees stipulates that the law on the specific tax may grant local governments the right to apply reliefs to such payments which are payable into the local government budgets. Pursuant to Section 16, Paragraph one, Clause 1 of this Law, taxpayers have the right to benefit from tax and fee reliefs provided for by law. Section 5 of the law On Immovable Property Tax define separate categories of taxpayers who are entitled to tax reliefs by law. In addition, Paragraph three of this Section authorises local governments

to issue binding regulations whereby local governments may provide for other reliefs for separate categories of immovable property tax payers.

Jūrmala City Council, exercising the authorisation granted by the legislator, has issued the Binding Regulation which prescribes the procedures for granting the immovable property tax reliefs for certain categories of taxpayers for the immovable property located in the administrative territory of Jūrmala State city. The contested norm establishes that a natural person within the meaning of this Regulation is a citizen of the European Union Member State, the country of the European Economic Area, the Swiss Confederation or a non-citizen of Latvia. The aforementioned status of a natural person is the condition for the application of Paragraph 6 and Paragraph 7.1 of the Binding Regulation. According to Paragraph 6 of the Binding Regulation, the immovable property tax relief is applied to the taxpayer who is a natural person and who in the pre-taxation year has declared his or her primary place of residence in the administrative territory of Jūrmala State city in respect of land properties or parts thereof. According to Sub-paragraph 7.1 of the Binding Regulation, the immovable property tax relief is applied to the taxpayer who is a natural person in respect of the land or a part thereof and/or residential houses, parts thereof, groups of premises in non-residential buildings, the type of use of which is residential, which has been the principal declared place of residence of the person for not less than two continuous years prior to the date of submission of the application.

It follows from the aforementioned norms that the Binding Regulation applies to such immovable property tax payers who, in accordance with the law, pay the immovable property tax for the immovable property located in the administrative territory of Jūrmala State city. In order to receive the immovable property tax relief in accordance with the Binding Regulation, a natural person must declare his or her primary place of residence in the administrative territory of Jūrmala State city. The aforementioned persons, regardless of their citizenship, are in the same and comparable circumstances.

Jūrmala City Council has pointed out that third-country nationals are not in the same and, according to certain criteria, comparable circumstances with the citizens of the European Union Member States, the countries of the European Economic Area, the Swiss Confederation and non-citizens of Latvia, as the local government does not have the legal obligation to ensure the same treatment of third-country nationals as citizens of the European Union Member States, the countries of the European Economic Area, the Swiss Confederation countries and

non-citizens of Latvia. According to the Constitutional Court, this argument relates to the grounds for the differential treatment, and not whether the groups of the immovable property tax payers, according to the criterion of the country of their citizenship, are or are not at all in the same and comparable circumstances according to certain criteria.

Consequently, the immovable property tax payers who pay such tax for the immovable property located in the administrative territory of Jūrmala State city and have declared their principal place of residence in the administrative territory of Jūrmala State city are in the same and comparable circumstances.

10. The contested norm distinguishes the citizens of the European Union Member States, the countries of the European Economic Area, the Swiss Confederation and non-citizens of Latvia from the citizens of other countries by determining the range of persons who are entitled to receive relief from the immovable property tax payable for the immovable property located in the administrative territory of Jūrmala State city. Pursuant to the contested norm, the immovable property tax payer is entitled to the tax reliefs provided for in the Binding Regulation depending on whether the country of citizenship of the taxpayer who is a natural person corresponds to the provisions laid down in the contested norm, or in the case of a non-citizen of Latvia – has the legal status of a non-citizen of Latvia. If the country of citizenship of a natural person is not one of the countries mentioned in the contested norm or the person does not have the status of a non-citizen of Latvia, then the person is not entitled to receive the immovable property tax relief for the immovable property located in the administrative territory of Jūrmala State city.

Jūrmala City Council also acknowledges that by the contested norm it has established the country of citizenship or the status of a non-citizen of Latvia of a taxpayer who is a natural person as the criterion for the classification of the immovable property tax payers.

Hence, the contested norm provides for differential treatment of natural persons who are in the same and comparable circumstances on the grounds of the citizenship or the status of a non-citizen of Latvia of the person.

11. Differential treatment can be only established by law (*see Paragraph 14 of the judgment of the Constitutional Court of 29 June 2018 in Case No. 2017-28-*

0306). The word 'law' covers not only laws adopted by the *Saeima*, but also other external legal acts provided that they:

1) have been issued on the basis of the law and in accordance with the procedures laid down in laws and regulations;

2) have been published and made publicly available in accordance with the requirements of laws and regulations;

3) have been formulated sufficiently clearly to allow a person to understand the content of the rights and obligations arising therefrom and to predict the consequences of the application thereof, as well as ensure protection against the arbitrary application thereof (*see Paragraph 24 of the judgment of the Constitutional Court of 9 July 2020 in Case No. 2019-27-03*).

The legislator may transfer the competence to decide on certain matters to local governments. Thus, within the limits of the authorisation granted thereto, the local government council has the right to issue generally binding (external) normative legal acts. However, it does not have the discretion of a legislator and is only entitled to issue external normative legal acts in the cases and to the extent laid down by law. The extent of the authorisation determines the extent to which the local government council can act in drafting and issuing legislation. It follows from the principles of the rule of law and separation of powers that a local government has the right to issue binding regulations only in cases established by law, within the scope of the law, and they must not be in conflict with the norms of the Constitution, as well as other legal norms of a higher legal force (*see Paragraphs 14.1, 14.3, and 15.3 of the judgment of the Constitutional Court of 12 February 2016 in Case No. 2015-13-03*).

When determining whether the Binding Regulation has been issued on the basis of law, the Constitutional Court must ascertain the following:

1) the extent of the authorisation granted by the legislator to grant the immovable property tax relief to certain categories of the immovable property tax payers;

2) whether the actions of the local government, in exercising the authorisation established by the legislator, is objectively justified and based on rational considerations (*see Paragraph 12 of the judgment of the Constitutional Court of 4 April 2024 in Case No. 2023-27-03*).

Neither the applicant nor Jūrmala City Council have dispute that the differential treatment provided for by the contested norm, on the grounds of the

citizenship or the status of a non-citizen of Latvia of the taxpayer, is established in accordance with the law.

However, the Constitutional Court must examine whether the contested norm, by its content, complies with the authorisation established by the legislator and does not exceed the limits thereof.

When determining the scope of the authorisation granted by the legislator, the Constitutional Court must establish the content and purpose of the authorising norms (*cf. Paragraph 25.3.2 of the judgment of the Constitutional Court of 20 March 2020 in Case No. 2019-10-0103*). The purpose of the authorisation is understood as what the legislator sought to achieve by giving the Cabinet the authorisation to regulate a particular matter. The authorisation given by the legislator to the executive power should be understood not only as one specific laconic legal norm, but as the essence and purpose of the law itself within the scope of the legal system (*cf. Paragraph 13.3.2 of the judgment of the Constitutional Court of 8 June 2022 in Case No. 2021-40-0103*). Moreover, when establishing the immovable property tax reliefs within the scope of the authorisation granted by the legislator, the local government, *inter alia*, must comply with both the general principles of law and the sectoral principles which are specified in Section 3.¹ of the law On Immovable Property Tax (*cf. Paragraph 15.2 of the judgment of the Constitutional Court of 29 June 2018 in Case No. 2017-28-0306*).

12. The contested norm has been issued on the basis of Section 5, Paragraph three of the law On Immovable Property Tax. Section 5, Paragraph three of the law On Immovable Property Tax provides that local governments may issue binding regulations which provide reliefs for separate categories of immovable property tax payers. This norm is also aligned with Section 3, Paragraph two of the law On Taxes and Fees, from which it follows that the legislator may, in a specific tax law, grant local governments the right to apply reliefs to such payments which are payable into the local government budgets.

12.1. Section 5 of the law On Immovable Property Tax regulates the establishment of the immovable property tax reliefs. Paragraphs of this Section constitute a certain system of tax reliefs: Paragraph one determines the amount of tax subject to relief; Paragraphs 1.¹ to two determine the persons who are eligible for relief in accordance with the law; Paragraph three defines the authorisation of a local government to determine the categories of beneficiaries of the relief; Paragraphs 3.¹ and 3.² regulate how the relevant taxpayers are identified, what data

is used and how it is obtained; Paragraph four determines the permissible amount of reliefs; Paragraph five determines which reliefs are taken into account when calculating the contributions of local governments to the fund for the equalisation of local government finances; subsequent Paragraphs determine that the relief does not apply to the tax calculated for the immovable property for which a prohibition endorsement has been made in the Land Register in accordance with the Law on International Sanctions and National Sanctions of the Republic of Latvia and the procedures for applying such norm.

It follows from the aforementioned norms that the legislator has first of all selected the categories of the immovable property tax payers to whom, on the basis of the law, the reliefs are applicable and has chosen the financial, family, or social status of persons as the basis for the classification of these taxpayers.

For instance, the legislator has established that, according to Section 5, Paragraph 1.¹ of the law On Immovable Property Tax, a local government shall grant tax relief to taxpayers to which it has granted the status of the most deprived or low-income persons or families (households) – for the most deprived persons in the amount of 90 per cent of the calculated tax amount and for low-income persons or families (households) – up to 90 per cent of the calculated tax amount. Thus, the legislator has authorised local governments to determine the amount of tax relief for low-income persons or families (households). Likewise, the legislator has defined the objects of immovable property that are taxed by applying reliefs.

In accordance with Section 5, Paragraph 1.² of the law On Immovable Property Tax, the legislator has already decided that a local government should grant a tax relief of a certain amount for certain tax objects to the person who himself or herself, or together with the spouse, or his or her spouse has three or more children under 18 years of age (also children under guardianship or children placed in a foster family) or children under 24 years of age acquiring secondary, professional, or higher education as on 1 January of the taxation year and if the person or his or her spouse has the declared place of residence in the object together with at least three of the abovementioned children.

According to Section 5, Paragraph two of the law On Immovable Property Tax, the legislator has established that the immovable property tax shall be granted to politically repressed persons regarding land, as well as the immovable property tax objects referred to in Section 3, Paragraph one, Clause 2 and Paragraph 1.² of this Law, which have been in the ownership or possession of such persons if the immovable property is not used for economic activity.

12.2. However, the legislator has also granted authorisation to local governments to issue binding regulations whereby local governments may provide for additional reliefs for separate categories of immovable property tax payers.

According to Section 3.¹, Paragraph three of the law On Immovable Property Tax, when determining these groups and the immovable property tax reliefs applicable thereto, the local government must comply with the principles laid down in Section 3.¹, Paragraph one, Clauses 1, 2, and 3 of the law On Immovable Property Tax and the local government may optionally apply the principles laid down in Section 3.¹, Paragraph two of the law On Immovable Property Tax.

The principles laid down in Section 3.¹, Paragraph one, Clauses 1, 2, and 3 of the law On Immovable Property Tax which are mandatory for a local government when establishing the immovable property tax reliefs in its binding regulations, are as follows:

- 1) the principle of objective classification under which taxpayers or tax objects are grouped according to objective criteria;
- 2) the efficiency principle under which local governments weigh tax administration expenditures against tax revenues;
- 3) the principle of responsible budget planning under which local governments balance the obligations thereof with the funds necessary for their implementation;

The principles that a local government can apply at its discretion are the principle of support for entrepreneurship and the principle of development and improvement of the territory.

Finally, a local government has the obligation to comply with the principle of social responsibility when determining the immovable property tax reliefs, according to which it takes into account in particular the impact of the tax on socially vulnerable and poor groups (*see Section 3.¹, Paragraph four of the law On Immovable Property Tax*).

It follows from the aforementioned norms specifying the authorisation that a local government has the right to establish reliefs for the immovable property tax payers if they are classified according to objective criteria. Moreover, such classification must be efficient and responsible, based on social criteria or serve the purpose of support for entrepreneurship or development and improvement of the territory.

13. The term ‘objective criteria’ referred to in Section 3.¹, Paragraph one, Clause 1 of the law On Immovable Property Tax means any criterion which is not subject to the subjective perception of an individual person, i.e. one which can be established neutrally and independently, existing in itself. The nationality and legal status of a person in this grammatical sense corresponds to the ‘objective criteria’ of the legal norm.

At the same time, the system, history, and purpose of legal norms are also relevant in clarifying the content of the concepts contained in legal norms.

13.1. The abstract of the draft law Amendments to the Law On Immovable Property Tax indicates that throughout the country the classification of the immovable property tax payers is uniformly based on four principles, including the principle of objective classification, according to which taxpayers or tax objects are classified according to objective criteria, for instance, taxpayers, i.e. natural persons and legal persons; tax objects, i.e. residential houses, industrial objects, commercial objects (*see the abstract of draft law No. 386/Lp11 of 15 November 2012, Amendments to the Law On Immovable Property Tax. Available at: titania.saeima.lv*). The historical materials of the draft law do not provide a conclusive answer as to whether a more detailed classification of natural persons according to nationality or the status of a non-citizen of Latvia corresponds to the feature ‘objective criterion’ referred to in Section 3.¹, Paragraph one, Clause 1 of the law On Immovable Property Tax.

13.2. In order to prevent double taxation, tax evasion, and discrimination in taxation, as well as to precisely allocate taxing rights with other countries, Latvia started to conclude Tax Conventions in 1992. According to the information published by the Ministry of Finance, Latvia has concluded such conventions with a number of countries and one of their main objectives is to prevent discrimination in taxation. For example, Latvia has concluded Tax Conventions with the United States of America, Israel, India, Canada, Saudi Arabia, Turkey, Vietnam (*see information published by the Ministry of Finance on its website. Available at: fm.gov.lv*).

On 1 June 2016, Latvia acceded to the Convention on the Organisation for Economic Co-operation and Development by approving the Agreement on the Terms of Accession of the Republic of Latvia to the Convention on the Organisation for Economic Co-operation and Development. According to the Statement by the Government of the Republic of Latvia annexed to the aforementioned Agreement, by accepting the obligations of the Republic of Latvia

as the member of the Organisation for Economic Co-operation and Development, Latvia has also accepted the Recommendation and, in accordance with Article 1(1) thereof, has undertaken to conclude Tax Conventions in compliance with the Model Tax Convention and its commentaries, as well as to interpret Tax Conventions in accordance with the commentaries of the Model Tax Convention (*see Recommendation of the Council of the Organisation for Economic Co-operation and Development of 23 October 1997 concerning the Model Tax Convention on Income and on Capital C(97)195/FINAL. Available at: one.oecd.org*).

Article 1 of the Model Tax Convention provides that the Tax Convention shall apply to persons who are residents of one or both of the Contracting States. Article 4 defines the concept of a resident. By contrast, Article 24(1) of the Model Tax Convention provides that nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall also apply to persons who are not residents of one or both of the Contracting States. Paragraph six of this Article provides that the provisions of this Article shall apply to taxes of every kind and description, regardless of whether the respective tax is regulated by the particular bilateral agreement.

The commentaries of the Model Tax Convention recognise that Article 24 of the Tax Convention prohibits a Contracting State from imposing other or more burdensome taxes or requirements relating to the field of taxation on the citizens of the other Contracting State than those imposed thereby on its own citizens in analogous circumstances, in particular with respect to residence (*see commentaries of Article 24(1) of the Model Tax Convention. Available at: read.oecd-ilibrary.org; see also Reimer E., Rust A. (Eds.) Klaus Vogel on Double Taxation Conventions. Fourth Edition. Volume II, Kluwer Law International, Art. 24, § 3, p. 1683*).

According to the statements of the representative of the Ministry of Finance at the court hearing, Latvia has already been using the Model Tax Convention and its commentaries when concluding Tax Conventions prior to its accession to the Organisation for Economic Co-operation and Development. The invited party J. Taukačs pointed out at the court hearing that the Model Tax Convention and its commentaries are also applicable to the Tax Conventions concluded by Latvia

prior to its accession to the Organisation for Economic Co-operation and Development.

Thus, also when establishing reliefs for certain categories of the immovable property tax payers, the Tax Conventions binding on Latvia and the principle of non-discrimination contained therein must be complied with. The aforementioned also applies to the classification of the immovable property tax payers.

13.3. Article 63(1) of the Treaty on the Functioning of the European Union prohibits all restrictions on the movement of capital between Member States, as well as between Member States and third countries. The Court of Justice of the European Union has recognised that the prohibition on restrictions on the movement of capital contained in the Treaty on the Functioning of the European Union applies to the free movement of capital between Member States, as well as between Member States and third countries (*see Paragraph 18 of the judgment of the Court of Justice of the European Union of 14 October 1999 in Case C-439/97; Paragraph 37 of the judgment of 23 February 2006 in Case C-513/03, and Paragraph 20 of the judgment of 18 December 2007 in Case C-101/05*). In addition, capital movement includes transactions whereby non-residents make investments in immovable property in the territory of a Member State (*see Paragraph 54 of the judgment of the Court of Justice of the European Union of 21 May 2019 in Case C-235/17*).

The restriction of this freedom takes the form of treating non-residents less favourably in the field of taxation that could discourage them from making investments in immovable property (*see Paragraph 39 of the judgment of the Court of Justice of the European Union of 8 September 2005 in Case C-512/03*). Providing that the immovable property tax reliefs are applicable only to the citizens of the European Union Member States, the countries of the European Economic Area, the Swiss Confederation and non-citizens of Latvia restricts the right to free movement of capital of foreign taxpayers who do not have the relevant citizenship. These persons are subject to a higher immovable property tax burden than citizens of the countries specified in the contested norm and non-citizens of Latvia, thus discouraging non-residents from making investments in Latvia. For such a restriction on the movement of capital to be proportionate, differential treatment must relate to situations which are not objectively comparable or be justified by overriding reasons of general interest (*see Paragraph 44 of the judgment of the Court of Justice of the European Union of 17 October 2013 in Case C-181/12*).

The secondary legislation of the European Union also requires Member States to ensure equal treatment of third-country nationals. For instance, according to Articles 4, 5, 7, and 11 of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, third-country nationals who have resided legally and continuously in the territory of a European Union Member State for five years, who have a stable and regular income and sickness insurance, and who have been granted the status of a long-term resident are entitled to the same treatment as the citizens of the European Union in the areas covered by this Directive. According to the second recital in the preamble to this Directive, the legal status of third-country nationals should be brought closer to that of the citizens of Member States and a person who has resided legally in a Member State for a period to be determined and who holds a permanent residence permit should be granted a set of uniform rights which, as far as possible, resemble those of the citizens of the European Union. Moreover, it follows from Article 11(1)(e) of the Directive that long-term residents shall enjoy equal treatment with the citizens of the European Union, including with regard to tax benefits.

Consequently, when determining the categories of the immovable property tax payers who are subject to the application of the immovable property tax reliefs, it is also necessary to comply with the norms of the European Union law, according to which equal treatment of third-country nationals must be ensured.

13.4. Taking into account the fundamental nature of this legal issue, the legislator has determined the classification of taxpayers by generally dividing them into domestic taxpayers (residents) and foreign taxpayers (non-residents) in Section 14 of the law On Taxes and Fees. Such division of taxpayers is also the basis of the Latvian taxation system. This is reflected in the law On Immovable Property Tax, where the legislator has used the concept of a taxpayer used in the law on Taxes and Fees.

If the feature ‘objective criterion’ referred to in Section 3.¹, Paragraph one, Clause 1 of the law On Immovable Property Tax were interpreted in such a way that it would allow the local government to additionally classify the immovable property tax payers also according to their nationality or the status of a non-citizen of Latvia, this would limit the range of persons already eligible for the categories of persons established by the Law, narrowing it even further.

It is the sole competence of a country to determine its own foreign tax policy towards other countries. This policy also includes the elimination of tax

discrimination or differences in taxation between tax residents and non-residents. The competence of local governments to classify taxpayers further according to their nationality would be contrary to the competence of a country to determine its foreign tax policy towards other countries. This would result in a fragmented approach to applying tax reliefs for third-country nationals, depending on the discretion and understanding of the local government.

Therefore, the feature ‘objective criterion’ must be interpreted in accordance with the tax law framework, the international obligations of Latvia, and the European Union law which do not allow a local government to classify the immovable property tax payers according to their nationality or the status of a non-citizen. Such classification is only permissible by a decision of the legislator and in compliance with the international obligations of a country and the limits set by the European Union law.

In view of the above, it can be concluded that the contested norm has been issued in violation of the authorisation provided for in Section 5, Paragraph three of the law On Immovable Property Tax, as it establishes a separate category of the immovable property tax payers which does not meet the criterion of objective classification referred to in Section 3.¹, Paragraph one, Clause 1 of this Law.

Hence, the contested norm has not been issued according to appropriate procedures and therefore fails to conform to Article 91 of the Constitution.

14. In accordance with Section 32, Paragraph three of the Constitutional Court Law, a legal norm that the Constitutional Court has declared as not conforming to the norm of a higher legal force shall be regarded as not in effect from the day of publication of the judgment of the Constitutional Court, unless the Constitutional Court has determined otherwise.

When deciding on the moment when the contested norm would lose validity, the Constitutional Court proceedings must balance the public interest and the fundamental rights of particular individuals. Moreover, the court must ensure that the situation that might arise from the moment when the contested norm loses validity does not lead to new infringements of the fundamental rights established in the Constitution and also does not cause significant damage to national and public interest (*see Paragraph 16 of the judgment of the Constitutional Court of 3 May 2023 in Case No 2022-22-01*). Declaring the contested norm invalid from the moment of the issuance thereof would create the right to claim tax relief for

more than ten years, while it would require immediate and significant expenditure of the local government budget which would endanger the performance of the autonomous functions of the local government and cause harm to the inhabitants of the local government. Therefore, the contested norm should not be declared invalid from the moment of the issuance thereof.

However, when examining a case initiated on the basis of a court application, the Constitutional Court must always assess what impact its judgment will have on the case. When deciding on the moment when the contested norm (act) loses validity, it should be taken into account that the task of the Constitutional Court is to prevent, as far as possible, the infringement of fundamental rights of individuals (*see Paragraph 16.1 of the judgment of the Constitutional Court of 3 May 2023 in Case No. 2022-22-01*). The applicant requests that the contested norm be declared invalid from the moment when it was applied to the applicant in the administrative case subject to examination in order to ensure effective protection of the rights of the applicant. In accordance with Section 250, Paragraph two of the Administrative Procedure Law, the legal norms on which the administrative act is based shall be of significant importance in the examination of the application for the revocation of an administrative act. It is also important for the purpose of examining the application for the revocation of the administrative act of Jūrmala City Council, based, *inter alia*, on the contested norm, by which the immovable property tax for 2017 was calculated. Thus, in order for this judgment to affect the legal situation of the person who submitted the application in administrative case No. A420243117 for the protection of his or her rights, the contested norm must be declared invalid from the moment when the infringement of the fundamental rights of the applicant in the administrative case occurred, i.e. from the moment when the applicant was subject to the application of this norm by Jūrmala City Council.

The Constitutional Court has also received information on other administrative cases in which the administrative court has taken the decision to suspend proceedings because the institution has applied the contested norm in the administrative case, and the court will have to apply this norm in adjudicating administrative cases. Thus, also in such cases, the recognition of the contested norm as invalid from the moment of the infringement of the subjective rights of the applicant is necessary in order for the administrative court to protect the fundamental rights of those individuals. It is also possible that applications describing similar circumstances and claims have been submitted to the

administrative court, but the court has not yet taken a decision on whether to accept the application and initiate proceedings. Moreover, the Constitutional Court must respect the importance of the protection of the fundamental rights of the individuals who have initiated the protection of their rights by means of general judicial remedies, but at the particular stage of the protection of their rights are still before the contesting institution.

In view of the above, in order to protect the fundamental rights of all individuals to whom the contested norm has been applied and who, on the date of entry into force of this judgment, have commenced and continue to defend their fundamental rights by means of general judicial remedies, the contested norm shall be declared invalid from the moment of the infringement of the fundamental rights of the respective individuals.

Substantive Part

Pursuant to Sections 30 to 32 of the Constitutional Court Law, the Constitutional Court

decided as follows:

1. It is hereby declared that Paragraph 3 of Binding Regulation of Jūrmala City Council No. 37 of 11 October 2012, Regarding the Procedures for Granting Immovable Property Tax Reliefs, fails to conform to Article 91 of the Constitution of the Republic of Latvia.

2. In respect of the individuals who have initiated the protection of their fundamental rights by means of general judicial remedies, Paragraph 3 of Binding Regulation of Jūrmala City Council No. 37 of 11 October 2012, Regarding the Procedures for Granting Immovable Property Tax Reliefs, is hereby declared as non-conforming to Article 91 of the Constitution of the Republic of Latvia and therefore shall become invalid from the moment of the infringement of the fundamental rights of the respective individuals.

The judgement is final and not subject to appeal.

The judgment was delivered in Rīga on 11 July 2024.

The judgement shall enter into force as of the date of its delivery.

Chairperson of the court hearing

Aldis Laviņš