CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT

on behalf of the Republic of Latvia

Riga, 27 November 2023

Case No. 2022-16-05

The Constitutional Court, composed of Chairperson of the Hearing Aldis Laviņš, Justices Irēna Kucina, Gunārs Kusiņš, Jānis Neimanis, Artūrs Kučs, Anita Rodiņa and Jautrīte Briede,

with the participation of the authorised representatives of the applicant - Jūrmala State City Council - Mr Kristaps Zaķis, Ms Jekaterina Milberga and Ms Edīte Silova,

and the authorised representatives of the official who issued the contested act, the Minister for Environmental Protection and Regional Development, Mr Viesturs Razumovskis and Ms Ilze Aigare,

with the Court Recorders Laura Stutāne and Alise Ziemele,

on the basis of Article 85 of the Constitution of the Republic of Latvia and Section 16(5), Section 17(3), and Section 28 of the Constitutional Court Law,

with the participation of participants to the case, on 17 and 27 October 2023, adjudicated in a public hearing the case

"On the compatibility of the Order No. 1-2/168 of 16 December 2021 "On Suspension of Operation of the Jūrmala State City Council Binding Regulation No. 38 of 30 September 2021 "Amendments to the Jūrmala City Council Binding Regulation No. 1 of 12 January 2017 "On the Entry of Vehicles into the Special Regime Zone in the Administrative Territory of the Jūrmala City"""", issued by the Minister for Environmental Protection and Regional Development, with

Article 115 of the Satversme of the Republic of Latvia and with Sections 10(3) and 12(1)(6) of the Law on Taxes and Fees".

Establishing Part

1. On 27 December 1996, the Jūrmala City Council adopted Decision No. 1176 "On the Entry Fee for Motor Vehicles into the Special Regime Zone of Jūrmala City", setting the daily entry fee rate in the amount of one lat per vehicle. The fee was applied throughout the year, simultaneously providing for a one-off charge of 60 lats for the entire summer season, from 1 May to 15 October.

Application of the municipal fee for entry into the special regime zone in Jūrmala for the entire year was abolished by the Jūrmala City Council Binding Regulation No. 28 of 25 July 2013 "On the Entry of Vehicles into the Special Regime Zone in the Administrative Territory of the Jūrmala City", which stipulated the period of application of the fee from 1 April to 30 September.

On 12 January 2017, the Jūrmala State City Council (hereinafter referred to as - the Applicant) adopted Binding Regulation No. 1 "On the Entry of Vehicles into the Special Regime Zone in the Administrative Territory of the Jūrmala City" (hereinafter referred to as - the Initial Binding Regulation), which stipulated the procedures for persons to enter with motor vehicles, tricycles, quadricycles and motorcycles (hereinafter referred to as - vehicles) into the special regime zone in the administrative territory of Jūrmala State City (hereinafter referred to as - the special regime zone in Jūrmala). The Initial Binding Regulation stipulated that a fee of two euro was payable for a single entry into the special regime zone in Jūrmala during the period from 1 April to 30 September.

On 30 September 2021, the Applicant adopted Binding Regulation No. 38 "Amendments to the Jūrmala City Council Binding Regulation No. 1 of 12 January 2017 "On the Entry of Vehicles into the Special Regime Zone in the Administrative Territory of the Jūrmala City"" (hereinafter referred to as - the Amendments). The amendments,

inter alia, provided for an increase in the amount of the fee for entering the special regime zone in Jūrmala to *€3* instead of the current *€2*, as well as application of the fee for the entire year.

2. On 13 October 2021, the Ministry of Environmental Protection and Regional Development (hereinafter referred to as - the Ministry), on the basis of Section 45(2) of then effective Law on Local Governments, issued opinion No. 1-18/9091 (hereinafter referred to as - the Opinion), which stated that the Amendments were issued in violation of the authority given to the local government. According to Paragraph 4 of the Cabinet of Ministers Regulation No. 480 of 28 June 2005 "Regulations on the Procedures by Which Local Governments May Impose Municipal Fees" (hereinafter referred to as - the Municipal Fees Regulation), municipal fees shall be paid only for the provision provided thereby. Namely, the local government is entitled to impose a fee for the entry of vehicles into the special regime zone in Jūrmala with the aim to ensure special conditions for the visitors in a particular part of the city territory in the areas of road traffic safety, public health, public order and safety, as well as protection of nature, specially protected cultural and historical territories and cultural monuments, and not with the aim to impose a charge for the use of roads or streets. According to the Ministry, the Applicant did not have sufficient understanding of the object of the fee. The amount of the municipal fee and the period of payment are also disproportionate to the provision it provides, and the fee was not determined according to the granted authority. By imposing the fee with the aim to restrict transit traffic through the city, the local government has in fact imposed a charge for the use of municipal streets and roads and thus violated the requirements of Section 6 of the law "On Motor Roads".

Nor is it possible to confirm that the Amendments were adopted according to the appropriate procedures. Namely, when adopting the Amendments, necessity of the increase in the amount of the fee and the extension of the period of its application, and impact thereof on the business environment and the municipal territories were not properly assessed. The necessary consultations with individuals were not carried out during the Amendment drafting process.

In order to ensure that the Amendments comply with the Opinion, the Ministry requested the Applicant to review the necessity for the Amendments in conjunction with the Initial Binding Regulation, to reassess the object and purpose of the fee, to evaluate alternatives to the fee, to conduct additional consultations with individuals, as well as to conduct research on changes in the intensity of the tourism industry, transit traffic, as well as air and noise pollution during the spring, summer, autumn and winter seasons.

3. On 25 November 2021, taking into account the Opinion of the Ministry, the Applicant adopted Decision No. 535 "On Clarification of the Jūrmala City Council Binding Regulation No. 38 of 30 September 2021 "Amendments to the Jūrmala City Council Binding Regulation No. 1 of 12 January 2017 "On Entry of Vehicles into the Special Regime Zone in the Administrative Territory of the Jūrmala City"" (hereinafter referred to as - Decision No. 535), whereby the Amendments and the explanatory memorandum attached thereto were clarified. On 16 December 2021, the Minister for Environmental Protection and Regional Development (hereinafter referred to as - the Minister) issued Order No. 1-2/168 “On Suspension of Operation of the Jūrmala State City Council Binding Regulation No. 38 of 30 September 2021 “Amendments to the Jūrmala City Council Binding Regulation No. 1 of 12 January 2017 “On the Entry of Vehicles into the Special Regime Zone in the Administrative Territory of the Jūrmala City”””” (hereinafter referred to as - the Contested Order), thereby suspending the operation of the entire Amendments.

According to the Minister, the clarified Amendments and their explanatory memorandum did not eliminate the shortcomings identified in the Opinion with regard to the validity of necessity of the regulation. Consequently, arguments of the Opinion reflected in Paragraph 2 of the Contested Order are still applicable with regard to the unlawfulness of the Amendments. In addition, the Minister included other arguments in the Contested Order.

First of all, the Contested Order emphasises that the Applicant exceeded its authority arising from the laws and regulations. Amendment to the purpose of the Binding Regulation does not imply an understanding of the object of the fee. The information provided in the explanatory memorandum to the Amendments suggests that

the fee is essentially related to the performance of the autonomous functions of the local government, which is not in line with the purposes referred to in Paragraph 11 of the Municipal Fees Regulation. Raising funds for the performance of the autonomous functions of the local government by increasing the amount of the fee and extending the period of its application is not permissible.

The Applicant has also failed to substantiate the necessity of the Amendments. It is not possible to conclude from the explanatory memorandum to the clarified Amendments that transit traffic in the city has increased significantly. The necessity for the fee is also not substantiated by the assessed data on the number of vehicles entering the city. Content of the Action Plan to Reduce Air Pollution 2020-2030 should be taken into account, namely, that the greatest negative impact on urban air quality is caused just by heating installations. Thus, the local government has no right to impose a fee for vehicles entering a special regime zone on the basis of the level of air pollution. Moreover, the Applicant has not provided information based on factual information on air pollution in the city.

The local government has not installed any charging stations for electric vehicles, which indicates that the local government's action to promote more environmentally friendly modes of transport is not sufficient to justify increase in the amount of the fee and an extension of its period of application.

The amendments cannot be based on the precautionary principle as the explanatory memorandum does not contain an adequate assessment of the impact of the fee increase on the environment and the rights of individuals, and information on how it will ensure a fair balance between various competing interests. The “polluter-pays” principle is also already being implemented in accordance with the provisions of the Law on the Vehicle Operation Tax and Company Car Tax (hereinafter referred to as - the Law on the Vehicle Operation Tax). Finally, the actual purpose of the Amendments is to reduce transit traffic in Jūrmala State City, but this goal is being implemented by diverting part of the traffic to the bypass road. This would not reduce air pollution and greenhouse gas emissions. Therefore, such an objective cannot be the basis for the issue of the Amendments.

Taking into account the clarified information provided in the explanatory memorandum to the Amendments, it can be concluded that increase in the amount of the fee payable for the entry of vehicles into the special regime zone in Jūrmala and the extension of the period of application of the fee will directly affect both legal entities and natural persons to whom the fee will be applied. Furthermore, if the fee will be applied throughout the calendar year, a significant drop in the number of visitors to Jūrmala outside the summer season is expected and, consequently, a drop in business revenue. Furthermore, an assessment of the explanatory memorandum to the Amendments shows that no consultation with individuals was carried out.

4. The **Applicant - Jūrmala State City Council** - requests to declare the Contested Order incompatible with Article 115 of the Satversme of the Republic of Latvia (hereinafter referred to as - the Satversme) and with Sections 10(3) and 12(1)(6) of the Law on Taxes and Fees.

The Applicant holds that the Minister had no right to suspend the operation of the Amendments. The Contested Order infringes the subjective right of the residents of the administrative territory of the municipality to live in a favourable environment. Fixing the amount of the fee and the extension of the period of its application are to be regarded as an outward manifestation of the State's positive obligation focused on reduction of traffic intensity in the special regime zone in Jūrmala, contributing to the reduction in harmful emissions from vehicles and ensuring the society's right to a favourable environment. The Amendments have been drafted referring to the precautionary principle, which allows for measures that may have an impact on the environment or on the health of persons, even if this impact has not yet been sufficiently assessed or scientifically proven.

The Applicant considers the argument contained in the Contested Order that there are no legal grounds for the Applicant's action of increasing the amount of the fee and extending the period of its application unfounded. The legislator has established a direct and unambiguous authority for the municipal councils to impose fees for the entry of vehicles into special regime zones within their administrative territory in Section 10(3)

and Section 12(1)(6) of the Law on Taxes and Fees. The procedures for exercising the authority is detailed in Paragraph 11 of the Municipal Fees Regulation.

The Applicant does not agree with the statement in the Contested Order that the fee has been determined for the use of the central streets of the administrative territory of Jūrmala State City. Purpose of the amendments is to restrict transit traffic through the city and to encourage the use of more environmentally friendly vehicles.

The Applicant admits that, by increasing the rate of the fee, the right of persons to property is restricted, but points out that such a restriction has been imposed for a legitimate purpose. Namely, the necessity to amend the Initial Binding Regulation is inextricably linked to the environmental protection and the right to health. Increase in the amount of the fee is an appropriate means of achieving the legitimate purpose, as it provides an economic incentive for persons to choose alternative means of transport and encourages each person to assess whether he or she really needs to enter the special regime zone in Jūrmala.

The restriction is in line with the environmental and climate policy planning documents and guidelines. The Ministry's information report "Latvia's Strategy to Achieve Climate Neutrality by 2050" mentions the implementation of the "polluter pays" principle in the tax system as one of the objectives to be achieved. The report points out that tax measures can contribute to reduction in greenhouse gas emissions from vehicles and thus improve air quality. Furthermore, there are no other means less restrictive of the rights of individuals which could achieve the legitimate purpose in the same quality. The Applicant has already implemented measures to improve air quality approved by the Cabinet of Ministers Order No. 710 of 21 October 2021 "On Transport Development Guidelines 2021-2027", as well as the measures indicated by the Ministry of Transport. Namely, decisions related to improving transport mobility, reduction of transport intensity, promotion of use of public transport and the use of environmentally friendly vehicles have been adopted in the past, but have not been effective enough to significantly reduce air pollution in Jūrmala State City.

The Amendments should be considered proportionate for a number of reasons. Firstly, they will reduce traffic intensity and contribute to improvement of air quality. Secondly, the risk of diseases caused by various environmental hazards will be reduced

after the implementation of the Amendments. Thirdly, the Amendment will result in reduction of costs associated with the elimination of environmentally harmful effects and will contribute to the long-term well-being of persons residing in the administrative territory of the Jūrmala State City municipal administrative territory in general.

Increase of the fee rate by one *euro* should be considered proportionate, since, according to statistical data, the purchasing power and income of the residents has increased by 78.35 per cent during the period between 2013 and 2021. The Amendments also provide for preferences and groups of persons who will not be subject to the fee. Furthermore, amount of the fee is significantly lower than the parking fee charged in other Latvian seaside administrative territories.

According to the laws and regulations, all the collected municipal fees are to be considered revenue of the municipal budget, which is to be used only for the implementation of autonomous functions and voluntary initiatives of the local government. Furthermore, the fee has been collected and the funds have been used for the achievement of the objectives referred to in Paragraphs 4 and 11 of the Municipal Fees Regulation related to the autonomous functions of the local government.

At the hearing, representatives of the Applicant pointed out that determination of the amount of the fee and the procedures of its application depended on considerations of expediency, which were a part of the discretion of the local government council and which the Minister was not entitled to examine within the framework of his/her competence.

5. In the reply to the Constitutional Court, **the official who issued the Contested Order** - the **Minister** - points out that the Contested Order complies with Article 115 of the Satversme, as well as with Section 10(3) and Section 12(1)(6) of the Law on Taxes and Fees.

5.1 The Minister has set out a number of considerations as to why the proceedings in the case should be terminated.

The Applicant has not complied with the precondition for submitting an application to the Constitutional Court established in Section 45(4) of Law On Local Governments in conjunction with Section 49(4) thereof. Namely, within two months

from the date of receipt of the Opinion, the local government council had not adopted a decision with adequate reasoning as to why it did not agree with the objections raised by the Ministry. Instead, the Applicant has agreed with the objections expressed in the Opinion, however, the identified deficiencies have not been eliminated on the merits, as only technical clarifications and formal additions have been made to the explanatory memorandum to the Amendments.

The proceedings should also be terminated because the Constitutional Court Law does not provide for the possibility to supplement the initial application submitted to the Constitutional Court with explanations on the actual circumstances or legal grounds.

In addition, the proceedings should be terminated in the part concerning compliance of the Contested Order with Article 115 of the Satversme, since the Applicant is not a subject of the relevant fundamental rights and is not entitled to submit an application for the benefit of the part of society residing in its administrative territory.

5.2 In his reply, the Minister reiterated and expanded on the arguments contained in the Contested Order.

The Minister points out that the Amendments have been adopted in violation of the authority conferred on the local government in the Law on Taxes and Fees. Section 10(3) and Section 12(1)(6) of this Law provide for general rights of the local government to impose a fee for the entry of vehicles into a special regime zone. However, the binding regulation on the imposition of municipal fees should provide for the procedures of payment of such fees, the objects subject to the fees, rates of the charges, exemptions and preferences, taking into account the requirements laid down in other - special - laws and regulations. It is also necessary to comply with Sections 43-46 and 49 of the Law On Local Governments, which stipulates the procedure for issuing binding regulations, and the requirements set out in the Municipal Fees Regulation issued on the basis of the Law on Taxes and Fees.

According to Paragraph 4 of the Municipal Fees Regulation, a local government is not entitled to impose a fee as a preventive measure, since a local government may impose a fee only as compensation for its provision. Whereas, the Applicant, when adopting the Amendments, has not assessed the provision of the local government and its proportionality with the rate of the fee. The Applicant has also failed to substantiate

the relation of the Amendments to the increase in the provision of the local government. The changes in consumer prices and the increase in the prices of services referred to in the explanatory memorandum cannot be regarded as sufficiently objective and economically substantiated reasons for increase in the amount of the fee by 50%.

The Amendments do not comply with Section 41(2) and Section 43^{1}(1) of the Law On Local Governments, as the explanatory memorandum does not include information substantiating the need to simultaneously increase the entry charge and extend the period of application of the fee for the entire calendar year. Required consultations with all the potentially affected groups of individuals have not been held. Listening to the opinion of one representative of the society - the Business Advisory Council - is insufficient. Furthermore, without the necessary consultation with individuals, identification of the interests to be balanced is impossible. The Applicant's assessment of the business environment in the territory of the municipality is to be recognised as contradictory, since the Jūrmala City Development Strategy 2010-2030 indicates seasonality as a substantiation for abolishment of the year-round application of the fee, thus promoting the influx of tourists during the autumn and winter periods. The effects of the Covid-19 pandemic, which caused a significant drop in number of tourists, have also not been taken into account. When assessing the impact on the business environment, consideration also should have been given to the impact of the fee increase on the tourism sector in general. The information provided in the explanatory memorandum to the clarified Amendments is also insufficient to conclude that the increase in the entry charge and the extension of the period of application of the fee will lead to an increase in infrastructure investment.

No information is available on the total number of vehicle entries in the months when the charge is not applied. Moreover, there is no data on how many of the vehicles entering Jūrmala during this period do not belong to residents of Jūrmala or companies registered in that city. It is therefore not possible to conclude that the increase in transit traffic during those months was related to an increase in the number of visitors and tourists.

Increase in the amount of the fee is not substantiated either by the argument that the amount of the fee has not been reviewed for a long time, or by the comparison of

the amount of the fee with the charge for the use of parking spaces in other seaside administrative territories indicated by the Applicant with the fees charged. Neither there has been an adequate study to establish that the precautionary principle has been taken into account in the increase in the fee, since the environmental impact related to the increase in the fee has not been assessed.

The objectives pursued by the Applicant can be achieved by alternative means, less restrictive of the rights of persons. The Applicant should have indicated why its objectives could not be achieved by extending the period of application of the fee, for example, to seven months, to include March and October, or by varying the amount of the fee according to the amount of carbon dioxide in grams per kilometre emitted by each particular vehicle, or according to the weight of the vehicle. Consequently, by imposing a unified amount of the fee on all types of vehicles irrespective of their different impacts on air pollution and urban infrastructure, the Applicant has not ascertained the necessity and justifiability of such a fee.

6. The **invited person - Mr Artūrs Toms Plešs, who held the position of the Minister at the time of the issue of the Contested Order,** indicated at the hearing that the objectives defined by the Applicant could be achieved by less restrictive means. Furthermore, the possible alternatives have not been assessed in depth, either in the original nor in the subsequently clarified Amendments.

There is insufficient data to clearly understand how the Jūrmala State City local government wants to achieve its defined goal of climate neutrality. The existence of such an assessment would be demonstrated, for example, by the introduction of a differentiated fee depending on the emissions caused by the vehicles and engine volume. Also, less restrictive is the proposal of Mr Uldis Kronbergs, Member of the Jūrmala State City Council, to exempt from the fee those persons who do not stay in the city for more than two hours, because, in these cases, they are not in transit, but staying in the city for a short time and using the services provided there. However, Jūrmala State City Council has pointed out that such a solution is not economically substantiated and that it is not possible to identify exact number of the vehicles transit through the city.

Whereas, this shows that the real purpose of the fee is not clear, but in any case it is not to restrict transit flow.

The amount of the provision is also unclear, namely, what the Applicant seeks to obtain from the fee. In particular, it is unclear where and for what purpose it intends to use the funds raised by the fee. On the one hand, fee is a preventive measure, on the other hand - a provision. It is therefore unclear why such a fee is set for the entire year.

The Minister has issued the Contested Order without waiting for additional requested explanations from the Applicant, because the Amendments have not been clarified according to the substantive deficiencies indicated in the Opinion. The corrections made were formal. The volume of the clarified documents is irrelevant in itself.

Given that the Amendments are not based on data regarding vehicle movement in the city, it is possible to conclude that the fee is in fact collected for the use of municipal roads.

7. The **invited person** - the **Saeima** - points out that the Applicant has the right to impose a fee for the entry of vehicles into the special regime zone in Jūrmala, however, the local government has to exercise its freedom of action in this matter in accordance with the laws and regulations of higher legal force.

The fee and its amount may not be directly related to the covering of costs of the activity carried out by the municipal authority or structural unit. Respectively, the purpose of the fee cannot be to provide funding for the performance of the autonomous functions of the local government. The legal basis for the fee and the prerequisite for its application is the municipality's spatial plan. This is important because one of the requirements for the development of the spatial plan is to ensure public participation in the decision-making process. It is essential to respect the principle of proportionality in determining the amount of the fee. When determining the amount of the fee and the period of its application, other requirements contained in the Municipal Fees Regulation should also be taken into account, for example, it should be assessed whether certain groups of persons should be exempt from the obligation to pay the fee, whether other preferences are to be provided for, etc.

According to the Saeima, the Amendments have a regulatory and preventive character, namely, they affect the conduct of an individual and at the same time protect the interests of the local community. Incompatibility of the Amendments with the principle of proportionality could be established in case if it was concluded that the burden put by them on the addressee of the fee is inherently disproportionate.

8. The **invited person** - the **Ministry of Justice** - agrees that the local government has no right to impose charge for the use of roads and streets. However, the Applicant has complied with the authority arising from the laws and regulations to determine fee for the entry into the special regime zone in Jūrmala. The fact that entry into the territory in question actually takes place via roads and streets cannot be interpreted as the imposition of charge for the use of roads and streets. Furthermore, the argument of exceeding the authority referred to in the Contested Order was not made in relation to the Initial Binding Regulation, which provides for a fee of EUR 2. The amendments were issued on the basis of the same legal provisions and it is therefore not clear how increase in the amount of the fee and extending its period of application could be incompatible with the delegation.

The Applicant has complied with the requirement included in Paragraph 4 of the Municipal Fees Regulation to assess the provision provided by the local government and its proportionality to the amount of the fee. When assessing increase in the rate of the fee provided for in the Amendments in conjunction with the provision made by the local government, it can be concluded that the amount of the fee may change, as it is affected by both the increase in expenditure and the development projects implemented by the local government, which expand the range of services provided to tourists and visitors to the city. The Ministry of Justice disagrees with the statement in the Contested Order that there is no substantiation for obtaining financial resources for the implementation of autonomous functions by increasing the amount of the fee and extending the period of its application. Provision made by the Applicant should be considered a service provided thereby, and it is closely related to the implementation of the autonomous functions of the local government. The Applicant has complied with the principles of the environmental law, including the precautionary principle, since the

Amendments were adopted with the aim of implementation of the positive obligation of the State to establish and ensure an effective environmental protection system arising from Article 115 of the Satversme.

The Ministry of Justice also draws attention to the fact that the Amendments introduce a new type of passes, setting the entry charge for 365 days at *EUR* 180. Thus, persons who need to enter the special regime zone in Jūrmala on a regular basis have the opportunity to pay less on average.

9. The **invited party** - the **Ministry of Transport** - points out that Section 12(1)(6) of the Law on Taxes and Fees provides for an exception to the principle contained in Section 6(1) of the law "On Motor Roads" that state roads and municipal roads and streets may be used free of charge, unless otherwise provided by law.

10. The **invited party - Ministry of Finance** - points out that the investments made by local governments in the performance of their autonomous functions should be considered the provision of the local government, which justifies imposition of the fee.

Local governments are authorised to impose local fees, including a fee for entering a special regime zone. The objectives for which such a payment has been introduced may be consistent with the tasks falling within the autonomous functions of local governments.

As the revenue from the fee end up in the local government's basic budget, use of the funds is to be applied to the entire administrative territory of the municipality. Thus, the revenue generated by the fee for entering the special regime zone in Jūrmala cannot be used exclusively for the special regime zone.

As regards the period of application of the fee, it should be noted that no normative law provides for a fixed period of application for the objects of the fee referred to in Section 12(1) of the Law on Taxes and Fees. Consequently, the previous amendments, which abolished the year-round application of the fee in Jūrmala State City, should have been considered an exemption from the obligation to pay the fee.

During the hearing, a representative of the Ministry of Finance pointed out that state and municipal fees were to be considered a policy instrument, through which the

behaviour of individuals is influenced. If the fee does not have a regulatory function as a compulsory payment, this type of payment should not be considered a fee but a paid service. Service charges are essentially set for a specific activity and include the administrative costs associated with the provision thereof, whereas the objectives of the fee are broader in nature.

11. The **invited party** - the **State Limited Liability Company "Latvijas Vides, ģeoloģijas un meteoroloģijas centrs"** (hereinafter referred to as - the Meteorological Centre) - points out that, in order to assess the impact of the introduction of the entry fee on air pollutant emissions, additional research and air quality modelling would be necessary. There are no air monitoring stations in Jūrmala, so up-to-date operational information is not available. However, placement of two new stations in Jūrmala is planned within the framework of the budget of the European Union funds for the period 2021-2027.

The Meteorological Centre points out that the main sources of air pollution should be assessed separately before less restrictive measures to protect the environment in the special regime zone in Jūrmala are assessed. Experience of other EU Member States shows that introducing additional entry and peak-hour charges or creating low emission zones can help reduce overall vehicle numbers and air pollution. The report "Air Quality Assessment in Latvia 2014-2018" shows that the main source of nitrogen dioxide (NO_2) emissions in Jūrmala is vehicles. Whereas, emissions of suspended particulate matters (PM_{10}) in the air come from both vehicles and businesses. The Report on the Assessment of the National Atmospheric Air Quality Monitoring Network in 2021, which summarises information on amount of emissions in Jūrmala in 2017-2019, shows that these emissions have remained constant on average over the reporting periods.

In its additional written opinion submitted to the Constitutional Court, the Meteorological Centre indicates that, according to the most recent data modelling results, the concentration level of air pollutant emissions in the territory of Jūrmala State City in the years 2021-2023 was relatively low. Similarly, comparing the emission

trends in Jūrmala State City in 2017-2019 and 2020-2022, no significant changes can be detected.

12. Invited person - Assistant Professor of the Faculty of Law, Riga Stradiņš University, *Dr. iur.* Kitija Bite - points out that the Contested Order is lawful.

The Applicant had the right, on the basis of delegation, to introduce a fee for entry into the special regime zone in Jūrmala for environmental protection purposes.

According to the provisions of Article 115 of the Satversme in conjunction with the provisions of the Aarhus Convention of 25 June 1998 on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter referred to as - the Aarhus Convention), the Applicant is obliged to provide every resident of a municipality with information on the state of the environment and to take care of the preservation and improvement of the environment. The only citizens' survey published on the official website of Jūrmala State City was carried out in 2018, furthermore, the website does not reflect results of the aforementioned survey.

It can be agreed that the Applicant has not assessed opinions of residents and traders on the increase in the amount of the fee and the extension of the period of application of the fee. The long-term environmental and economic development impacts of the Amendments have also been disregarded. Although the arguments of the Applicant regarding the necessity to comply with the precautionary principle within the context of the right to a favourable environment are admissible, the process of determining the amount of the fee requires to carry out an assessment of the activities affecting the environment and their social necessity. No assessment has been made as to how the reduction of transit traffic through the special regime zone in Jūrmala would affect the use of other roads, sustainability of the areas in their vicinity and the rights of their residents to a favourable environment. Consequently, it cannot be agreed that the Amendments are focused on preservation and improvement of the environment.

13. Invited person - Assistant Professor of the Faculty of Law, University of Latvia, *Dr. iur.* Edvīns Danovskis - points out that the limits of the assessment of the conformity of the Contested Order to legal norms of higher legal force are determined

by the Order itself. Since the Contested Order does not contain arguments on the incompatibility of the Amendments with Article 115 of the Satversme, it is necessary to assess how effective it would be within the context of the case under review to verify whether the Contested Order complies with the said Article of the Satversme.

In response to questions raised at the hearing, *Dr. iur.* Edvīns Danovskis pointed out that tax and fee payments are to be considered typical sources of revenue for the municipal budget. At the same time, the legal definition in Section 1(3) of the Law on Taxes and Fees should be understood to mean that the fee should not be directly linked to the covering of municipal costs. The fee has a regulatory function as it is a policy instrument that enables achievement of various objectives. Therefore, the Amendments could have several objectives - not only protection of the environmental rights, but also the change of habits of persons not residing in Jūrmala State City, which is achieved by making them use other means of transport. Through the fee, the local government is able to influence the traffic flow in the city, and this is the aspect expressing the regulatory nature of the fee. Furthermore, the local government is entitled to use the income generated by the fee for various purposes, not only those related to environmental protection.

Competence of the Minister to assess the legality of binding regulations extends as far as legal assessment concerns, not covering any political or expediency considerations. Taking into account the exemptions and preferences provided for in the Amendments, the possibility to travel to Jūrmala State City by other means of transport, the possibility to move freely within the State territory without passing through the special regime zone in Jūrmala, and the fact that the amount of the fee for entering the special regime zone in Jūrmala has not been changed for nine years, it cannot be reasonably admitted that increase of the fee by one *euro* would be obviously disproportionate.

Section 43^{1}(1) of the Law On Local Governments stipulates what information should be included in the explanatory memorandum to be attached to the draft binding regulation. These criteria, or the elements that make up the content of the explanatory memorandum, do not oblige the local government council to fill them with specific content in each and every case. Unlike the currently effective Local Government Law,

which requires consultations with individuals parties during the drafting of binding regulations, the Law on Local Governments did not provide for such a mandatory procedural obligation; it was a preferability, not an obligation. The legal provisions set out specific cases in which public consultation is to be held, and therefore there is no reason to believe that public participation in the drafting of every binding regulation is a universal requirement. If a local government deems it necessary to implement such a form of public participation, it may do so, but the absence of public participation does not in itself declare the binding regulation unlawful.

The arguments stated in the Contested Order are to be considered arguments of political expediency and not of law.

14. Invited person - Visiting Professor of the Faculty of Bioeconomics, Vytautas Magnus University, *Dr. eoc.* Kārlis Ketners - stated at the hearing that, when assessing the concept "provision", definition of the municipal fees stated in the Law on Taxes and Fees should be followed, which provide for that the amount of the fee should not be directly related to costs. Therefore, direct correlation between the amount of the fee and the counter-service is not required.

Proportionality must be assessed when setting the rate of the fee. It is therefore difficult to answer the question of a suitable amount of fee for entering the special regime zone in Jūrmala, however, the local government should substantiate the specific fee rate chosen. According to the principles of economic theory, the rate of the fee should be so high as to discourage persons from visiting the areas or places in question. However, the amount of the fee should not also be excessive, as this could provoke persons to evade the obligation to pay the fee and thus lead to additional administration costs, thus making the fee ineffective.

The fee for entering the special regime zone in Jūrmala was established with the aim to discourage persons from entering the zone in question with a vehicle powered by an internal combustion engine. If the local government increases rate of the fee, extends the period of application of the fee and at the same time provides alternative ways for persons to enter the special regime zone, then the fee achieves its objective, but does not exclude the promotion and development of tourism. An average rational person,

knowing the price of fuel and knowing that they will have to pay a certain amount to enter a certain area, would probably choose public transport services.

15. Invited party - society "Latvian Association of Large Cities" - is of the opinion that the Contested Order is unlawful.

Adoption of the Amendments was the competence of the local government council. Consequently, the Minister is not entitled to give any orders to the local government as to what binding regulations it should adopt. There is no dispute in the case that the special regime zone in Jūrmala has been established legally in the spatial plan of the municipality. The local government is entitled to impose a fee on persons whose vehicle enters a special regime zone if it is necessary for road safety, public health, public order and safety, as well as for the protection of nature, specially protected cultural and historical territories and cultural monuments.

The Minister, when assessing the amount of the fee, as well as criticising the Applicant's understanding of the object of the fee, has expressed a subjective opinion. Furthermore, assessment of performance of the autonomous functions of the local government was based on considerations of expediency, which the Minister was not entitled to make. Also, the Minister did not ascertain the opinion of the competent ministries - the Ministry of Finance and the Ministry of Transport - before issuing the Contested Order, but this would have been very useful.

In its explanatory memorandum, the Applicant has substantiated the necessity of the Amendments, including an assessment of the considerations of expediency. The planned amount of the fee, the period of its application and its proportionality have also been assessed. Furthermore, these are the matters of political decision, and the local government is entitled to deal with them within the framework of performance of its autonomous functions. By the Contested Order, the Minister has infringed the principle of local government.

16. The **invited person - society "Latvian Association of Local and Regional Governments"** - agrees with the opinion of the society "Latvian Association of Large Cities" and considers that the Contested Order is unlawful.

17. The **invited person - Jūrmala Protection Society** - agrees that the Applicant has not carried out the necessary consultations with the residents of Jūrmala State City, as well as has not assessed the necessity of implementation of the Amendments.

A consultation which only receives one opinion representing a narrow range of traders cannot be considered adequate. The opinion of the Jūrmala Protection Society was not requested during the adoption process of the Amendments. Furthermore, taking into account the fact that the Council has taken a decision having an impact on the environment, the Aarhus Convention is applicable, which gives higher priority to the obligation to involve the public and to listen to its opinion.

The Society agrees with the reply that the adoption process of the Amendments has violated the principle of good law-making, as insufficient data were collected to substantiate the necessity to increase the amount of the fee and extend its period of application for the entire year. Furthermore, the right to a favourable environment can be secured by means less restrictive of the rights of individuals.

Concluding Part

18. The Minister has stated in the reply his considerations which could serve as grounds for termination of the proceedings in the case. Namely:

1) The Applicant has not complied with the procedures established in Section 49 of the Law On Local Governments (here and hereafter - law effective during the period from 1 July 2021 to 31 December 2021) for submission of an application to the Constitutional Court, and therefore it had no right to submit an application on compliance of the Contested Order with the law;

2) the decision on initiation of the proceedings does not comply with the requirements of Section 20(5)(3) of the Constitutional Court Law, as the Applicant has supplemented the initial application;

3) The Applicant, as a legal person governed by public law, does not possess the fundamental rights included in Article 115 of the Satversme.

If arguments have been raised within the proceedings which could serve as grounds for termination of proceedings, they should be assessed in the first place *(see, for example, Paragraph 12 of the Judgement of the Constitutional Court of 27 June 2016 in Case No. 2015-22-01*).

18.1 The application of the local government council to the Constitutional Court on the compliance of an order by which the Minister authorised by the Cabinet of Ministers has suspended the binding regulation of the local government should have been submitted in accordance with the procedures stipulated in Section 49 of the Law On Local Governments, with the law. According to the fourth paragraph of this Section, the council was not entitled to submit an application to the Constitutional Court for cancellation of the Minister's Order if it had not complied with the duty stipulated in Section 45(4) of this Law within two months - to adopt a decision providing substantiation for the reasons why the council disagrees with the opinion of the Ministry.

18.1.1 According to the Minister, the Applicant had lost the right to submit an application to the Constitutional Court, since the decision providing substantiation for the reasons why it disagrees with the opinion of the Opinion was adopted later than within two months after its receipt. Although the Applicant had decided to clarify the Amendments after receiving the Opinion, the Minister considers that the Applicant has not in fact agreed with the Opinion, but has only made formal additions to the Amendments instead of adopting a decision in accordance with Section 49(4) of the Law On Local Governments.

Whereas, the Applicant states that it has complied with the preconditions for submitting an application to the Constitutional Court, since it has exercised the right provided for in Section 45(4) of the Law On Local Governments to seek resolution of the dispute in an out-of-court procedure in the first place.

In accordance with Section 45(4) of the Law On Local Governments, having received the opinion of the Ministry substantiating the unlawfulness of the binding regulation or a part thereof, the local government council has the right to:

1) agree and clarify the binding regulation according to the arguments stated in the opinion;

2) disagree with the opinion in whole or in part thereof and adopt a decision, stating appropriate reasons.

The Council is obliged to publish the binding regulation regardless of the decision adopted.

First sentence of Section 45(4) of the Law On Local Governments and the legal framework of Section 47 of the currently effective Local Government Law are focused on resolution of the dispute between the Ministry and the local government over the lawfulness of binding regulations *(cf. Paragraph 14.1 of the Judgement of the Constitutional Court of 15 November 2018 in Case No. 2018-07-05*). The purpose of this mutual dialogue is to eliminate the serious deficiencies identified in the Opinion, for which the Ministry considers the regulation unlawful. Whereas, the second sentence of Section 45(4) of the Law On Local Governments, confers on the local government the right to express objections to the Opinion of the Ministry.

Section 49(4) of the Law On Local Governments was applicable to cases when the council disagrees with the arguments contained in the Ministry's opinion on the unlawfulness of binding regulation. Namely, in such a situation, a precondition for submitting an application to the Constitutional Court was a decision adopted within two months, with reasons as to why the council disagrees with the Ministry's opinion. In the present case, the Applicant considered that it had chosen the second option included in Section 45 of the Law On Local Governments, namely, the option to agree with the arguments of the Ministry and to clarify the binding regulation. Such an interpretation of Section 49(4) of the Law On Local Governments, which, in a situation where a local government has attempted to resolve a dispute by clarifying binding regulation, would deny it access to the Constitutional Court, would be inconsistent with the purpose of the law, since the prerequisites contained in Section 49(4) of this Law are focused on the involvement of the local government in resolution of the dispute.

18.1.2 In order to ascertain whether the Applicant acted in accordance with the procedures stipulated in the first sentence of Section 45(4) of Law On Local Governments, the Constitutional Court will assess the content of the clarified Amendments and the explanatory memorandum thereof.

In the initial explanatory memorandum to the Amendments, the Applicant had included information that the legal framework in question was necessary to reduce noise and air pollution caused by transit traffic through the resort city. The explanatory memorandum contains information on the types of passes and the preferences for different groups of people. It also includes information on the impact of the Amendments on the business environment in the territory of the municipality and acknowledges that for those individuals whose registered address is outside the territory of Jūrmala State City, the total costs will increase, however, they are given the opportunity to choose the most appropriate type of pass depending on the frequency of entry. Finally, the explanatory memorandum stated that the Applicant had not carried out consultations with individuals, as the Amendments would not affect the residents of Jūrmala State City.

The clarified Amendments state that their purpose is to reduce the vehicle traffic intensity and at the same time promote the use of more environmentally friendly modes of transport in order to preserve the quality of the environment and to protect the health and safety of the residents. In addition, the Applicant has elaborated in the explanatory memorandum the substantiation of the necessity of the Amendments. It refers to the nature of the fee as an instrument to achieve policy objectives and includes references to studies the local government has based on when increasing the fee and extending the period of its application. The explanatory memorandum contains, among other things, explanation on the emissions and environmental pollution caused by vehicles, as well as the impact on the health of persons, and indicates more environmentally friendly ways for persons to enter the special regime area. The clarified explanatory memorandum to the Amendments also includes references to climate neutrality objectives, summarises statistics on vehicle flows during the period from 2019 to 2021, includes information on business and tourism in Jūrmala, as well as addresses the experience of other countries in introduction of different entry fees. The explanatory memorandum analyses changes in consumer prices and the impact of inflation in relation to the necessity to increase the fee rate.

Having regard to the clarified Amendments and the content of the clarified explanatory memorandum, the Constitutional Court concludes that the local

government agreed with the Opinion and took actions to remedy the deficiencies indicated therein.

Thus, the Applicant had complied with the procedures established in Section 49(4) of the Law On Local Governments set for submission of an application to the Constitutional Court.

18.2 The Minister has requested the Constitutional Court to terminate the proceedings, as the decision to initiate the proceedings does not comply with Section 20(5)(3) of the Constitutional Court Law. The Minister points out that the Constitutional Court Law does not allow the Applicant to supplement the initially submitted application with new factual circumstances or legal substantiation.

In accordance with Section 20(3) of the Constitutional Court Law, matters related to the organisation of the collegium's work are stipulated by the Rules of Procedure of the Constitutional Court. Paragraph 58(1) of the Rules of Procedure provides for the right of the collegium or the Judge, when preparing an application for hearing, where necessary, to invite the applicant to provide further explanations or submit documents to decide the matter on the institution of proceedings. When examining the received application of the Applicant, the Constitutional Court collegium exercised this right and requested to provide additional information, which the Applicant also provided. Thus, the Applicant's additional explanations and documents have been submitted in accordance with the procedures stipulates by the Constitutional Court Law.

Consequently, the application and the decision on initiation of the proceedings comply with the requirements of the Constitutional Court Law.

18.3 On the basis of Section 29(1)(6) of the Constitutional Court Law, the Minister has requested to terminate the proceedings in the part concerning compliance of the Contested Order with Article 115 of the Satversme, since the Applicant, as a legal person governed by public law, did not possess the fundamental rights included in the said Article of the Satversme at all. In order to decide on this request, the Constitutional Court must ascertain what is the subject matter of the case.

When examining whether the Minister's decision on suspension of operation of the binding regulation is lawful, the Constitutional Court assesses its compliance with the requirements of Section 49(1) of the Law On Local Governments *(cf. Judgement of*

the Constitutional Court of 9 March 2004 in Case No. 2003-16-05, Conclusive Part, and Judgement of 15 November 2018 in Case No. 2018-07-05, Conclusive Part, etc.). Section 49(1) of the Law On Local Governments provides for the Minister's right to suspend, by a motivated order, operation of binding regulation issued by the council or individual paragraphs thereof, if they are illegal. Accordingly, lawfulness of the Minister's Order depends on whether the reasoning on the illegality of the binding regulation indicated in this order is substantiated *(see Paragraph 15 of Judgement of the Constitutional Court of 23 February 2022 in Case No. 2022-13-05*).

The Applicant points out that the constitutional obligation stipulated in Article 115 of the Satversme to protect the right of everyone to live in a favourable environment by taking care of its preservation and improvement also applies to local governments, and the local government has fulfilled this obligation by adopting the Amendments according to the authority included in Section 10(3) and Section 12(1)(6) of the Law On Taxes and Fees.

According to the Constitutional Court, the arguments on Article 115 of the Satversme and provisions of the Law On Taxes and Fees provided in the application essentially indicate why the local government considers that the considerations on lack of authority included in the Contested Order are unfounded. Namely, arguments of the local government are essentially aimed at declaring the Amendments compatible with Article 115 of the Satversme and provisions of the Law On Taxes and Fees, while the Contested Order - incompatible with Section 49(1) of the Law On Local Governments.

Taking into account the requirements of Section 49(1) of the Law On Local Governments, which determine the limits of adjudication of this case, the Constitutional Court will further assess whether the arguments on the illegality of the Amendments indicated in the Contested Order are well-founded.

Accordingly, proceedings in the case are not to be terminated.

19. The Contested Order states, and the Minister's reply further expands the explanation that the Amendments were adopted by the local government in breach of the authority conferred thereon.

19.1 As the grounds for the issue of the Amendments, the following legal provisions have been stated: Section 43(1)(13) of the Law On Local Governments, Section 12(1)(6) and Section 10(3) of the Law On Taxes and Fees, as well as Section 11 of the Municipal Fees Regulation.

Pursuant to Section 43(1)(13) of the Law On Local Governments, a local government council is entitled to issue binding regulation on other matters provided for in laws and the Cabinet of Ministers Regulation. Section 12(1)(6) of the Law On Taxes and Fees stipulates the right of the council to impose a municipal fee for entry of vehicles into special regime zones within its administrative territory in accordance with the procedures stipulated by the Cabinet of Ministers Regulation. Whereas, Section 10(3) of this Law stipulates that the binding regulation of local governments on the imposition of municipal fees shall determine the procedures for payment of these fees, objects subject to the fees, rates of the fees, exemptions and preferences from these fees, as well as other requirements provided by other laws and the Cabinet of Ministers Regulations.

The Municipal Fees Regulation issued on the basis of the aforementioned provisions of the Law on Taxes and Fees regulate in detail the determination of the fee to be assessed in the present case. Paragraph 11 of this Regulation provides for the right of local governments to impose fees for the entry of vehicles into special regime zones, which are established in the municipality's spatial plan to improve road traffic safety, ensure public health, public order and safety, as well as to protect nature, specially protected cultural and historical territories and cultural monuments.

It follows from the aforementioned that Paragraph 11 of the Municipal Fees Regulation essentially provides local governments with legal means by which they may implement the obligation to protect the right of persons to a favourable environment stipulated in Article 115 of the Satversme. Namely, the local government was entitled, first, to establish a special regime zone with the purpose to protect favourable environment and, second, to impose a fee for the entry of vehicles into such a zone. The purpose of the fee is to protect the special regime zone from the adverse effects of vehicles.

19.2 Sub-paragraphs 2.2 and 4.2 of the Contested Order contain arguments that the Applicant has infringed its authority granted thereto in the legal provisions. Namely, according to the Minister, the local government has lacked understanding of the object of the fee for entry of vehicles into the special regime zone, as the Amendments were adopted for a different purpose. The local government has also failed to comply with Paragraph 4 of the Municipal Fees Regulation, which provides that a fee is payable for the provision made by the local government and that, before setting the rate of such a fee, the local government council must assess whether the rate is proportionate to the provision made by the local government. The Minister considers that the purpose of determination of the fee for the entry of vehicles into the special regime zone should be related to the protection of the nature of the special regime zone, while the provision of the local government actually includes the use of infrastructure facilities and services provided by the local government. Thus, it can be concluded that the Amendments stipulate payment for the performance of the autonomous functions of the local government. In his reply, the Minister has developed the argumentation that the amount of the fee is not proportionate to the provision. By adopting the regulation in violation of the procedures stipulated in the Law On Taxes and Fees, the Applicant has in fact stipulated charge for the use of municipal streets, although the Law On Motor Roads does not confer such right on the local government.

Finally, Sub-paragraph 4.7 of the Contested Order stipulates that the local government was not allowed to impose a pollution prevention-oriented fee, since the Law on the Vehicle Operation Tax provides for a payment with a similar purpose, namely the obligation of any person who owns, holds or possesses a vehicle to pay an annual tax. Local government has no right to provide for a substantively identical fee.

In order to assess whether the Applicant has complied with the authority stipulated by the legal provisions, the Constitutional Court will verify whether the Amendments comply with the object of the fee and whether the local government has assessed the provision made by it and justified its proportionality with the amount of the fee.

19.2.1 According to Section 12(1)(6) of the Law On Taxes and Fees and Paragraph 11 of the Municipal Fees Regulation, the object of a certain fee is the entry of vehicles into a special regime zone.

The special regime zone in Jūrmala State City was first established by the Cabinet of Ministers Regulation No. 161 of 30 April 1996 "Regulations on the Special Regime Zone in the Administrative Territory of Jūrmala City". Paragraph 1 of this Regulation provided for that the special regime zone in the administrative territory of Jūrmala City was stipulated for the environmental protection. Currently, the legal basis for the existence of this special regime zone is Paragraph 11 of the Jūrmala State City Council Binding Regulation No. 42 of 11 October 2012 "On Approval of the Graphical Part of the Jūrmala City Spatial Plan, Territorial Use and Building Regulations". There is no dispute in the case that the special regime zone for the environmental protection in Jūrmala has been legally stipulated.

The Amendments do not change the nature of the fee provided for in the original binding provisions. This fee is only payable by the persons whose vehicles enter the special regime zone. The Amendments therefore comply with both elements of the object of the fee as laid down in the legal provisions and with the requirements of Paragraph 11 of the Municipal Fees Regulation.

19.2.2 The provision made by the local government to a person who pays a fee for entering a special regime zone in Jūrmala is the possibility to enter the special regime zone just with a vehicle that causes damage to the environment. Furthermore, the special regime zone is a part of the territory of Jūrmala State City, which, due to its high environmental quality and recreational opportunities, has also been conferred the status of a resort.

The fact that the Applicant has indicated in its clarified explanatory memorandum also other services which are provided to persons who have entered the special regime zone in Jūrmala by vehicle does not mean that these other services should also be considered as a guarantee, since they are available to all persons. It follows that the fee regulated by the Amendments is not paid for the performance of the local government's autonomous functions, but serves to protect a favourable environment in the special regime zone.

19.2.3 When assessing the proportionality of the rate of the fee to the provision made by the local government, the legal nature of the fee must be taken into account. Namely, the fee does not require a counter-performance to correspond to the fee revenue, and this is this feature that distinguishes the fee from a paid service. In light of the above, it is only possible to assess the proportionality of the rate of the fee. The rate of the fee shall be determined according to the considerations of expediency made by the local government, and it may not be obviously disproportionate.

The municipal fee for entering a special regime zone has an economic regulatory nature - it influences people's choices and thus contributes to the protection of the special regime zone. In order for the fee to retain its regulatory nature without becoming a de facto entry ban, its rate must be balanced against the ability of the public to pay the fee, otherwise entry to the special regime zone would be limited to a narrow, wealthy segment of society. The Contested Order does not contain any arguments as to the fact that a fee of *EUR* 3 would be obviously disproportionate to the provision made by the local government. Furthermore, the Amendments stipulate various types of passes, such as seven-day, 30-day, 90-day and 365-day passes. This shows that the local government has in particular assessed the proportionality of the rate of the fee to the provision made with relation to the persons who need to enter the special regime zone frequently.

Thus, the Amendments have been adopted in accordance with the Law On Taxes and Fees and the Municipal Fees Regulation, but the Minister's arguments that the actions of the local government have entered the area regulated by the Law On Motor Roads are unfounded.

19.2.4 In Sub-paragraph 4.7 of the Contested Order, the Minister has pointed out that the purpose of the Amendments could not be the implementation of the “polluter pays” principle in practice, as it was already implemented by the Law on the Vehicle Operation Tax. This argument has to be assessed by comparing the purposes of the payments set out in both laws and regulations. The payment provided for in the Law on the Vehicle Operation Tax is aimed at enticing residents to consider the matter of buying a more environmentally friendly vehicle. Whereas, the fee regulated by the Amendments is aimed at protecting the environment in a specific area designated as the special regime zone. The Minister's argument is therefore unfounded.

Thus, the argument stated in the Contested Order that the Amendments were adopted in breach of the authority conferred on the local government is unfounded.

20. The Minister has indicated in the Contested Order that the Applicant has not substantiated the necessity of issue of the Amendments, neither has it assessed the impact of the Amendments on the business environment in the territory of the municipality, furthermore, it has not carried out the necessary consultations with individuals.

20.1 According to Section 43^1(1) of the Law On Local Governments, when drafting a binding regulation, it shall be accompanied by an explanatory memorandum, which provides a brief outline of the project content, substantiation of the project necessity, information on the planned impact of the project on the municipality budget, business environment in the municipal territory, administrative procedures and consultations with individuals. When drafting the binding regulation on municipal fees, the explanatory memorandum should not include information on the planned impact of the project on the municipal budget.

The explanatory memorandum, which accompanies the binding regulation of the local government council, is one of the sources of information on the need for a law, its application and its impact on various areas. The explanatory memorandum does not specify the extent of the substantiation of the necessity for the provisions, but it should be sufficient. By determining the information to be included in the explanatory memorandum to binding regulation, the legislator has imposed on the issuer the obligation to consider and take into account issues that may be relevant for the drafting of binding regulation. If the council finds that the subject matter of the binding regulation does not concern a section of the information to be included in the explanatory memorandum, it must be reflected properly in the relevant column of the explanatory memorandum.

Taking into account the requirements of Section 43^1(1) of the Law On Local Governments, the Constitutional Court will consecutively assess each of the Minister's arguments on the deficiencies of the explanatory memorandum.

20.2 Paragraphs 2.3, 2.4.1, 4.2-4.5 and 4.7 of the Contested Order state that the Applicant has failed to substantiate the need for the Amendments. Namely, the Applicant has not substantiated its statement that the pollution in the city is caused by the increased traffic intensity, especially during the non-tourist season. Detailed data on changes in air pollution and transit flows are not available, while the available data indicate insignificant trends which do not justify the need for the Amendments. This shows that the Applicant has failed to substantiate the necessity of the Amendments and to include adequate substantiation in the explanatory memorandum. Likewise, the Jūrmala State City local government has not installed any electric vehicle charging stations, consequently - the Applicant does not sufficiently promote the use of more environmentally friendly vehicles. Finally, diverting part of the traffic along a longer route does not achieve the objective referred to in the explanatory memorandum - reduction in air pollution and greenhouse gas emissions, but it may even increase the total air pollution and the volume of greenhouse gas emissions.

Paragraph 2 of the explanatory memorandum to the initial Amendments indicates on an underlying necessity to encourage using more environmentally friendly modes of transport for entry into the special regime zone in Jūrmala through financial incentives. This necessity arises also from the status of Jūrmala as a resort city and in accordance with the priority of the Jūrmala City Development Strategy 2010-2030 "resort", measures to be implemented to preserve natural resources and the resort environment. Arguing that the two main factors affecting the quality of the environment are air and noise pollution caused by the increase in the vehicle traffic intensity, it was pointed out that the purpose of the increase in fee was to reduce traffic intensity and to ensure application of the “polluter pays” principle in case of damage caused.

In Paragraph 2 of the explanatory memorandum to the clarified Amendments, the Applicant has analysed the flow of vehicles entering Jūrmala State City in 2021 and concluded that the period of application of the fee has a direct impact on the traffic intensity. The statistical data collected by Jūrmala State City on the entry of vehicles into the special regime zone, i.e., 463,012 entries in March 2021, 417,500 - in April, 379,078 - in September and 447,794 - in October, shows that the fee has a preventive function and deters persons from entering the special regime zone in Jūrmala, namely,

the number of vehicles entering this zone during the months when no fee was applied was higher than in other months.

Since the purpose of the fee is to reduce the number of vehicles entering the special regime zone in Jūrmala, increase in the rate of the fee and the extension of the period of application are aimed at achievement of this goal. Furthermore, provisions of the Law on Taxes and Fees and the Municipal Fees Regulation essentially provide for the right of a local government to impose such a fee for the period throughout the year.

In light of the above, it should be concluded that the explanatory memorandum to the clarified Amendments provides sufficient substantiation for the need to increase the rate of the fee and to extend the period of application of the fee.

The arguments contained in the Contested Order that the Applicant has not substantiated justify the necessity of the Amendments in the explanatory memorandum to the Amendments are unfounded.

20.3 Paragraphs 2.4.2 and 4.8 of the Contested Order state that the Applicant has not assessed the impact of the Amendments on the business environment, since traders whose registered office is located outside the administrative territory of the Jūrmala State City, but which carry out commercial activities in Jūrmala, are not exempt from the obligation to pay the fee. Furthermore, if the fee is applied throughout the year, a significant drop in the number of tourists and visitors is expected in autumn and winter, which will have a negative impact on local businesses. Thus, the Applicant has failed to fulfil its obligation to promote the development of entrepreneurship stipulated in Section 15(10) of the Law On Local Governments. The requirement to assess the impact on the business environment and to include information on it in the explanatory memorandum to the Amendments is fulfilled in a formal manner, without indicating the actual impact of the fee increase and the extension of the fee application period on the business environment.

Section 43^1(1) of the Law On Local Governments stipulates the obligation of a local government to include in the explanatory memorandum to the draft binding regulations information on the planned impact of the project on the business environment in the territory of the municipality.

This information is contained in Paragraph 4 of the explanatory memorandum to the clarified Amendments. The Applicant has assessed data on the number of tourism and accommodation companies operating in the city and the dynamics of their annual changes. It also assesses the changes in the number of tourists in the city and concludes that, despite the seasonal nature of tourist flow, Jūrmala is the second most popular tourist destination after Riga all year round. The aforementioned Paragraph also points out that imposition of the fee all year-round will not affect visitors wishing to visit the city for business or leisure purposes for several days, as there is no charge for parking in the city's car parks and there is no limit on the length of stay of persons entering the special regime zone.

In addition, Paragraph 6 of the explanatory memorandum to the clarified Amendments states that the Applicant has consulted the Business Advisory Council and it has expressed its support for increasing the fee and extending the period of its application.

Thus, the arguments included in the Contested Order that the Applicant has not sufficiently assessed the impact of the Amendments on the business environment are unfounded.

22.4 Sub-paragraphs 2.4.3 and 4.8 of the contested order state that the Applicant has not carried out consultations with individuals and included the relevant information in the explanatory memorandum to the binding regulation. The Applicant has indicated in the explanatory memorandum to the clarified Amendments that the Business Advisory Council was consulted, but the Minister has considered that all groups of individuals affected by the Amendments should have been consulted, since the Amendments would apply to each natural person or legal entity entering the administrative territory. Thus, according to the Minister, the Applicant has not respected the rights and legitimate interests of individuals.

It is clear from the annotation attached to the Law of 17 June 2010 "Amendments to the Law on Local Governments", which supplemented the Law on Local Governments with Section 43^1, that the requirement to provide information on consultations with individuals in the explanatory memorandum was established with the purpose to promote transparency on who has lobbied for the draft binding regulation.

Information on consultations with lobbyists should be included in the explanatory memorandum if consultations have actually taken place, not in every case *(see Paragraphs 2 and 3 of the annotation to the draft law "Amendments to the Law On Local Governments"*). This means that the local government's obligation to consult individuals has not arisen from this legal provision.

Furthermore, the Amendments apply to all residents of the State who are not exempt from paying the fee according to Paragraph 21 of the Initial Binding Provision but wish to enter the special regime zone in Jūrmala. Thus, in the present case, it is not possible to identify specific persons whose opinion the local government should have heard, but it would be disproportionate to survey the entire population of Latvia. Whereas, the requirement in Article 8 of the Aarhus Convention to promote public participation in the drafting of laws and regulations does not apply to every provision that has any relation to the environment, but only to the provisions that are likely to have a significant impact on the environment. In accordance with the first paragraph of Article 6 of the Aarhus Convention, such impact is presumed in relation to the activities referred to in Annex I or other activities equivalent thereto. However, the Amendments are not related to the above activities and, in addition, are aimed at ensuring a favourable environment in the special regime zone.

Therefore, the arguments contained in the Contested Order that the Applicant has not carried out consultations with individuals and has not indicated the relevant information in the explanatory memorandum to the Amendments are unfounded.

21. Since the arguments set out in the Contested Order concerning unlawfulness of the Amendments are unfounded, the Minister has suspended operation of the Amendments unreasonably.

Consequently, the Contested Order does not comply with Section 49(1) of the Law On Local Governments.

22. The Applicant has requested to declare the Contested Order null and void from the date of its issue.

In accordance with Article 32(3) of the Constitutional Court Law, a legislative act which the Constitutional Court has declared incompatible with a law shall be deemed invalid from the day of publication or delivery of the Judgement of the Constitutional Court, unless otherwise determined by the Constitutional Court. In accordance with Section 31(11) of the Constitutional Court Law, the Constitutional Court may indicate in its judgement the moment when the contested legislative act ceases to be in force. However, in order to declare the contested act null and void not from the moment of delivery of the Judgement, but from another moment, the Constitutional Court must justify its opinion *(cf. Paragraph 22 of the Judgement of the Constitutional Court of 16 April 2015 in Case No. 2014-13-01*).

In the present case, the Constitutional Court has not established such essential circumstances which would justify the necessity to declare the Contested Order null and void from the moment of its issue, and not from the moment of delivery of the Judgement.

Ruling Part

On the basis of Sections 30-32 of the Constitutional Court Law, the Constitution Court

decided:

To declare the Order No. 1-2/168 of 16 December 2021 "On Suspension of Operation of the Jūrmala State City Council Binding Regulation No. 38 of 30 September 2021 "Amendments to the Jūrmala City Council Binding Regulation No. 1 of 12 January 2017 "On the Entry of Vehicles into the Special Regime Zone in the Administrative Territory of the Jūrmala City"""", issued by the Minister for Environmental Protection and Regional Development, incompatible with Section 49(1) of the Law On Local Governments.

The Judgement is final and not subject to appeal.

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

Chairperson of the Hearing

Aldis Laviņš