



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## JUDGEMENT

on Behalf of the Republic of Latvia

in Riga on 25 March 2022

in Case No. 2021-25-03

The Constitutional Court of the Republic of Latvia, comprised of: chairperson of the court hearing Aldis Laviņš, Justices Gunārs Kusiņš, Daiga Rezevska, Jānis Neimanis, Artūrs Kučs, Anita Rodiņa, and Irēna Kucina,

having regard to the constitutional complaint submitted by the limited liability company “TAVEX”,

on the basis of Article 85 of the *Satversme* of the Republic of Latvia, Para 3 of Section 16, Para 11 of Section 17 (11), as well as Section 19<sup>2</sup> and Section 28<sup>1</sup> of the Constitutional Court Law,

at the court hearing of 23 February 2002, examined in written procedure the case

**“On Compliance of Paragraphs 3, 4 and 5 of the Cabinet of Ministers Regulation No 859 of 8 November 2011 “Regulation on the Maximum Amount of Expenditure on Legal Aid Reimbursable to a Private Individual” (in the wording, which was in Force from 8 May 2015 until 9 April 2020) with the First Sentence of Article 92 of the *Satversme* of the Republic of Latvia”.**

### The Facts

1. On 8 November 2011, the Cabinet adopted Regulation No. 859 “Regulation on the Maximum Amount of Expenditure on Legal Aid Reimbursable to a Private Individual” (hereafter – Regulation No. 859), which entered into force

on 11 November 2011. Para 3 of this Regulation defined the amount, in which the State reimbursed the costs related to legal aid, whereas Para 4 provided that the State reimbursed for the legal consultations provided in the amount referred to in Sub-para 3.1. of this Regulation for no more than five hours within the framework of a particular case but Para 5 set out that the State reimbursed for the costs of drawing up no more than five documents referred to in Sub-para 3.2., 3.3., 3.4., 3.5. and 3.6., within the framework of one case.

On 5 May 2015, the Cabinet adopted Regulation No. 210 “Amendments to the Cabinet Regulation of 8 November 2011 No. 859 “Regulation on the Maximum Amount of Expenditure on Legal Aid Reimbursable to a Private Individual”” (hereafter – Regulation No. 210), which entered into force on 8 May 2015. By Regulation No. 859, Para 3 was expressed in the following wording: “The State shall reimburse expenses to one person in the following amount:

- 3.1. for legal consultation provided – EUR 19.21 per hour;
- 3.2. for drawing up an application, an ancillary complaint, or an administrative contract (amicable settlement) – EUR 32.01;
- 3.3. for drawing up an appellate complaint and a counter-complaint – EUR 38.42;
- 3.4. for drawing up a cassation complaint – EUR 45.53;
- 3.5. for drawing up a document necessary for settling a case (applications, petitions, or explanations (except for documents for requesting information and the documents referred to in sub-paragraphs 3.2, 3.3 and 3.4 of this Regulation)) – EUR 25.61;
- 3.6. for drawing up addenda to the documents referred to in sub-paragraphs 3.2, 3.3 and 3.4 of this Regulation – EUR 25.61;
- 3.7. for representation at a court hearing – EUR 28.46 per hour;
- 3.8. for examining one volume of case materials in court in one court instance – EUR 19.21.”

Para 3, 4 and 5 of Regulation No. 859 (hereafter – the contested norms) were in force until 9 April 2020 when the Cabinet Regulation of 7 April 2020 “Regulation No. 195 “Amendments to the Cabinet Regulation of 8 November

No 859 “Regulation on the Maximum Amount of Expenditure on Legal Aid Reimbursable to a Private Individual” (hereafter – Regulation No. 195) entered into force. This Regulation expressed the contested norms in new wording.

**2. The applicant – limited liability company “TAVEX”** (hereafter – The Applicant) – holds that the contested norms are incompatible with the first sentence of Article 92 of the *Satversme* of the Republic of Latvia (hereafter – the *Satversme*).

The Applicant is a capital company, engaged in commercial activities of trading in currencies, gold and silver, as well as purchasing gold and silver jewellery. An administrative violation case had been initiated against the Applicant, and a fine had been applied. The Applicant defended its infringed rights in the proceedings of administrative violation and in the administrative proceedings, as the result of which the decision by an institution was recognised as being unlawful. At the same time, within the framework of these proceedings, the Applicant also turned to the Constitutional Court. Throughout the entire course of proceedings, the Applicant was receiving legal aid, provided by a sworn advocate.

Following the final ruling in the administrative violation case, the Applicant had turned to the institution and the administrative court, requesting reimbursement of its costs related to legal aid. The Applicant’s costs of legal aid had been reimbursed for within the amount defined in the contested norms; however, this amount is said to be disproportionately small; i.e., the contested norms do not envisage reimbursement of the costs of legal aid, provided by an advocate, which had been necessary to conduct the case effectively in the administrative violation proceedings.

The State’s obligation to adopt such procedural legal provisions that effectively ensure accessibility of the court and pursuant to which a court could adjudicate a case fairly is said to follow from the right to a fair trial, included in the first sentence of Article 92 of the *Satversme*. It is alleged that the State is obliged to regulate fairly reimbursement of costs related to legal aid that have arisen due to legal proceedings, assessing the need and proportionality of such costs.

The contested provisions, allegedly, include a restriction on the right to a fair trial and the right to receive qualified legal aid. This restriction on fundamental rights had been established by a law, adopted in due procedure; however, it lacks a legitimate aim. Although the contested norms are related to the state budget expenditures, only the effective use of state budget resources and foreseeability of expenditure cannot be recognised as being a valid legitimate aim.

The use of qualified legal aid is said to facilitate, to a maximum extent, the course of legal proceedings and achieving of fair outcome. This is proven also by the Applicant's situation. However, in view of the amount, set in the contested norms, in which the costs related to legal aid is reimbursed, persons might decide that it is not worth turning to court at all since they would not be reimbursed for the costs that they would reasonably need to conduct the case effectively.

Assuming that the contested norms are aimed at effective use of the state budget resources and foreseeability of the costs of legal aid provided, they are to be considered as being an irrational and unsuitable measure. Only effective use of the state budget resources and foreseeability of expenditure cannot be used as justification for not reimbursing the costs of legal aid that a person had incurred and that were necessary for conducting the case effectively. In the case of outcome that is favourable for a private person, the State cannot save anything or, in some situations, even gain financial benefit. Only the value added tax calculated for the Applicant's legal aid had exceeded the amount of compensation that the Applicant received from the State. Moreover, the contested norms do not include all types of costs related to legal aid, they do not envisage the right of the party applying law to assess the complexity of the particular case and the course of the legal proceedings or examination of the case. Also, the amounts of reimbursement, envisaged in the valid wording of Regulation No. 859, are said to be below those envisaged in the case of State- provided legal aid.

Upon having familiarised itself with materials in the case, the Applicant notes that, by Regulation No. 859, the State has not fulfilled its obligation to ensure legal regulation on the reimbursement of the costs of legal aid that would be compatible with the social reality and economic situation. Thus, for example, the

Cabinet Regulation of 22 December 2009 No. 1493 “Regulations Regarding the Amount of State-ensured Legal Aid, the Amount of Payment, Reimbursable Expenses and the Procedures for Payment Therefor” (hereafter – Regulation No. 1493) have been reviewed and specified regularly. Regulation No. 859 does not provide for derogations from the amounts defined in the contested provisions, for example, by taking into account the untypicality and complexity of the case, which is envisaged in Regulation No. 1493.

**3. The institution, which issued the contested act, – the Cabinet –** holds that the contested norms comply with the first sentence of Article 92 of the *Satversme*.

Basically, Regulation No. 859 had been drafted by using the analogy with Regulation No. 1493, which defines the types, scope, amount of payment and reimbursable costs related to the provision of legal aid, the amount and the procedure of payment thereof with respect to the State-provided legal aid.

The contested norms should be examined in the scope of the right to access to a court. It is alleged that the State’s obligation to cover in full all costs that a person has incurred in relation to legal aid does not follow from Article 92 of the *Satversme*. In reimbursing a person’s costs that are related to legal aid, the State’s objective possibilities to cover such costs and to ensure that the system of legal proceedings functions effectively should be taken into consideration, taking into account also the rights of other persons and available resources, as well as equal treatment of all persons.

The restrictions set out in Regulation No. 859 with respect to the amount, in which the costs related to legal aid are reimbursable, have been established to allow forecasting the amount of such reimbursable costs and to ensure that they are reimbursed in a timely manner. This reimbursement should reflect the amount of necessary and reasonable costs of legal aid in the proceedings of administrative violation. The maximum amount of reimbursable costs of legal aid should be determined reasonably and effectively, using the state budget resources and, at the

same time, respecting persons' right to a fair trial, as well as preventing the possibility of abusing this right.

The Applicant's case of administrative violation should be considered as being atypical and is linked to a legal persons' professional activities. Whereas the contested norms are said to be functioning effectively in a routine case of administrative violation. In atypical cases, as in the one on which the present case is based, the party applying legal provisions has the right to derogate from implementing the legal consequences and assesses whether a person's fundamental rights are not infringed upon without grounds.

It is contended that the State's responsibility in the area of public law is not absolute and may be restricted because balance must be struck between the right of an injured person to compensation and effective fulfilment of the State's functions, without causing additional burden for the taxpayers. Normative legal regulation should envisage concrete amounts of compensation or the maximum amounts of compensation, thus, ensuring legal stability in the state and effective use of the State's financial resources.

Allegedly, the contested norms had been adopted on the basis of authorisation, included in law, and in compliance with the procedure set out in normative legal acts. The restriction on fundamental rights, included in the contested norms, is said to have a legitimate aim, i.e., protection of public welfare and other persons' rights. The Cabinet holds that there are no more lenient measures that would allow reaching the legitimate aim of the restriction on fundamental rights at least in the same quality. Namely, a measure that would require additional financial resources from the State could not be regarded as being a more lenient measure for reaching the legitimate aim. Likewise, regulation that would not at all provide for reimbursement of the costs related to legal aid could not be considered as being a more lenient measure. A person's wish to receive larger reimbursement of the costs that are related to legal aid and to be compensated for it in full should be opposed to the State's objective possibilities to ensure it. Thus, also in Regulation No. 859, by defining concrete amounts that are reimbursed to a private person for

costs that are related to legal aid, both the proportionality principle and the need to ensure legal stability had been respected.

The Cabinet upholds the Applicant's opinion that the amount of reimbursement of the costs related to legal aid should be reviewed in the course of time, taking into account the economic situation in the state. However, the regulation on the amount of this reimbursement should be sufficiently clear to allow the party applying the legal norm to determine the reimbursable amounts. Moreover, the Cabinet, upon establishing social and economic need for it, had reviewed the amount of the costs of legal aid, defined in the contested norms, by adopting Regulation No. 195. The amount of reimbursement of the costs that are related to legal aid had been, to the extent possible, equalled to the amount defined in Regulation No. 1493.

**4. The summoned person – the *Saeima*** – holds that the contested norms should be recognised as being compatible with the authorisation granted by the legislator and could be recognised as being compatible with the first sentence of Article 92, insofar they, in accordance with the changing legal and actual circumstances, ensure balance between effective use of the state budget resources and the right to access to a court and to qualified legal aid also in complex cases.

Regulation No. 859 had been issued on the basis of the authorisation, included in Section 7 (3) of the law “On Compensating for Damages Causes by Institutions of Public Administration” (hereafter – the Law on Compensation), to define the maximum amount of costs related to legal aid. In the particular case, the legislator had granted authorisation to develop regulation insofar as to specify the requirement set in the law that the costs related to legal aid should be reimbursed within a limited amount, thus, ensuring both persons' right to receive reimbursement of the costs that are related to legal aid and effective use of the State's financial resources.

For private person who requests reimbursement of costs related to legal aid the mechanism set out in Section 7 (3) of the Law on Compensation, actually, is said to be the only possibility to receive the State's support for resolving issues related to legal aid. However, the State is not obliged to cover the full amount of

costs related to legal aid because these costs cannot be always held as being adequate, necessary and actually corresponding to the labour invested. Whereas the restrictions on the reimbursement of these costs depend on the Cabinet's assessment and the requirements included in the Regulation created by it. The Cabinet is said to have the right to determine the amount, in which the costs related to legal aid should be reimbursed, in accordance with the changing legal and actual circumstances, in the framework of the Law on Compensation, striking balance between the State's financial possibilities and persons' rights, guaranteed in Article 92 of the *Satversme*, to access to a court and to qualified legal aid.

**5. The summoned person – the Ministry of Justice** – subscribes to the considerations expressed in the Cabinet's written reply and is of the opinion that the contested norms are compatible with the first sentence of Article 92 of the *Satversme*.

**6. The summoned person – the Ombudsman** – holds that, in the contested norms, the legislator has not defined the criteria and the amount, in which the State reimburses for the costs that are related to legal aid, which would correspond to the actual economic situation.

The Ombudsman holds that the restriction on fundamental rights, included in the contested norms, has a legitimate aim – the rights of other persons to receive reimbursement of costs related to legal aid. In issuing Regulation No. 859, it had been assumed that, in practice, the amount of reimbursable costs that are related to legal aid is determined by analogy with Regulation No. 1493. The legislator's wish had been to determine equal amount of reimbursable costs of legal aid both in situations where the State had provided legal aid to a person and in situations where the State reimburses to a person the costs of legal aid. However, since entering into force on 1 January 2010, Regulation No. 1493 had been amended almost annually, whereas Regulation No. 859 had been substantially amended only in 2020. Moreover, these amendments did not attain uniformity with Regulation No. 1493, the maximum amount of reimbursable costs of legal aid, defined in it, significantly

differs regarding several positions. The Cabinet's intention to retain the initial purpose is said to also follow from its written reply, i.e., to define the amount of reimbursement in Regulation No. 859 by analogy with Regulation No. 1493.

Pursuant to the principle of good legislation, the party who is issuing legal norms has the duty to develop sustainable legal regulation. One of the ways to ensure it is to review periodically and amend, accordingly, the regulation. Since the norms that are contested in the particular situation are related to covering the costs of certain services and these costs change together with the economic situation in the state, it is said to be of particular importance.

The Applicant's situation also proves that such cases are possible in practice that do not fall within the limits, defined by the contested norms. The legislator is not obliged to cover all costs related to legal aid; however, introduction of such clear criteria for reimbursing the costs that are related to legal aid that would link it to the actual economic situation should be considered; moreover, such criteria should be reviewed regularly. Until now, this has not been done.

The Applicant has not been substantially denied the right to access to a court because persons have great discretion in choosing the providers of legal aid, *inter alia*, the possibility to choose a solution most appropriate for their financial possibilities. However, the legislator should ensure regular review of the legal regulation, included in Regulation No. 859, to ensure that the costs of legal aid are compatible with the social and economic reality, but this had not been respected also in the valid wording of Regulation No. 859. Therefore, the amount of reimbursable costs of legal aid should be increased.

**7. The summoned person – the Legal Aid Administration**, in fulfilling its functions, concludes contracts with providers of legal aid. Payment for the State-provided legal aid is determined in accordance with Regulation No. 1493, which defines the types, amount and payment of legal aid and reimbursable costs. The preparatory materials for Regulation No. 859 prove that this Regulation had been drafted by analogy with Regulation No. 1493.

Accessibility of legal aid is said to be an important part of the right to a fair trial. It means that the right to legal aid should be such as to ensure, on the one hand, effective access to a court, allowing a person to ensure qualitative defence of their rights and lawful interests; however, on the other hand, it cannot be absolute, i.e., the State's support should be targeted and it may be restricted.

In drafting Regulation No. 1493, the Cabinet Regulation of 22 December 2008 No. 1068 "Regulations Regarding the Amount of State-Ensured Legal Aid, the Amount of Payment, Reimbursable Expenses and the Procedure of Payment Thereof" (hereafter – Regulation No. 1068) had been taken into consideration. A working group had been established for drafting it, on the basis of the research conducted, it defined the types of legal aid, the amount and the reimbursable expenses. While drafting the Regulation, it had been taken into account that cases may differ and, in order not to deny a person the right to access to a court, a provision had been included in the Regulation that provides for the right to increase the amount of legal aid. At the same time, the working group had prepared economic substantiation for the particular amount of the costs of the State-provided legal aid. Likewise, gradual increase in the reimbursable expenses had been envisaged, taking into account the available state budget resources.

Since entering into force, Regulation No. 1493 has been amended ten times. With the aim of promoting the quality of legal aid and ensuring the right to access to a court, new types of legal aid had been defined, its scope and amount of reimbursement had been increased.

**8. The summoned person – the Latvian Council of Sworn Advocates** – holds that the contested norm is incompatible with the first sentence of Article 92 of the *Satversme*.

The legal issue, on which the present case is based, regarding reimbursement of costs of legal aid should be examined within the scope of the first sentence of Article 92 of the *Satversme* because, in the administrative proceedings and proceeding of administrative violation, the State's obligation to reimburse the costs that are related to legal aid are said to fall within the scope of the right to access to

a court. However, fair and commensurate reimbursement of the costs related to legal aid is not ensured by the contested norms. In the Applicant's situation, the amount, in which the costs related to legal aid had been reimbursed, is so small that one could consider – these costs had not been reimbursed at all.

Most often, administrative violation cases are simple; however, in the Applicant's case, both the length of the proceedings and the subject of claim prove that, in such cases, a person might have valid interest in receiving aid provided by a qualified specialist. Moreover, the outcome, favourable for the person, justifies this interest. However, the contested norms do not envisage, in determining the reimbursement, taking into account other essential factors, which influence and justify the incurred costs of legal aid. This is said to prove that the procedure, in which the costs for the provision of legal aid in administrative proceedings and the proceedings of administrative violation are reimbursed, should be individualised, to the extent possible, so that all nuances of the proceedings and the particular expenses would be assessed.

The amount, defined by the contested norms, in which the costs that are related to legal aid are reimbursed, as well as the chosen mechanism of reimbursement are said to be disproportionate. The costs that are reimbursed by the State should reach such a level as not to deny a person entirely the right to free access to a court. The State should take into account the specificity and nuances of each proceedings to understand, whether the actions by the provider of legal aid had been objectively necessary.

Preparatory materials of Regulation No. 859 prove that this Regulation had been drafted by analogy with Regulation No. 1493. However, Regulation No. 1493 on the costs of State-provided legal aid had been amended several times since 2011. The Latvian Council of Sworn Advocates is of the opinion that such differentiation is ungrounded. Currently, the average remuneration for an advocate's working hour in Latvia is EUR 60. Although the contested norms have become void, also the increased reimbursable costs of legal aid, included in the valid wording of Regulation No. 859, do not eliminate the problematic issues foregrounded in the present case.

## The Findings

9. The compliance of Para 3, 4 and 5 of Regulation No. 859 (in the wording that was in force from 8 May 2015 until 9 April 2020) with the *Satversme* has been contested in the application. The Applicant holds that the contested norms are closely interconnected and, in conjunction, constitute united legal institution – legal regulation on the amount of reimbursed costs of legal aid (see *Case Materials, Vol. 1*). The Cabinet and persons summoned in the case also provide their opinions on the compliance of the contested norms as united legal institution with the right to a fair trial, included in the *Satversme* (see, for example, the Cabinet's written reply in *Vol. 1, pp. 88–103*, and the opinion by the Latvian Council of Sworn Advocates in *Case Materials, Vol. 2, pp. 1–3*).

Regulation No. 859 defines the maximum amount of costs related to legal aid that is reimbursed to a private person if they have incurred financial loss or personal injury due to actions by an institution of public administration. Para 3 of this Regulation specifies the type and scope of costs related to legal aid that the State reimburses to a private person. Whereas Para 4 and Para 5 of this Regulation define the maximum amount that is reimbursed to a person for the positions referred to in Para 3 of this Regulation within the framework of one case. It follows from the above that the contested norms as a united legal regulation determine the reimbursement of costs that are related to legal aid to a private person within the framework of one case. Therefore, there are grounds to examine the compliance of the contested norms as united legal regulation with the *Satversme*.

The contested norms define the types, scope and the maximum amount of the costs related to legal aid. In view of the arguments provided by the Applicant and the facts of the present case, the Constitutional Court concludes that, in the present case, the compliance of the amount of costs of legal aid to be reimbursed, defined in the contested norm, with the *Satversme* must be examined.

Hence, the Constitutional Court will examine whether the contested norms as united legal regulation, insofar it defines the amount of costs of legal aid to be

reimbursed to a private person in the framework of one case where the person had incurred financial loss or personal injury due to actions by an institution of public administration, comply with the first sentence of Article 92 of the *Satversme*.

**10.** The first sentence of Article 92 of the *Satversme* provides: “Everyone has the right to defend his or her rights and lawful interests in a fair court.”

The concept of “a fair court”, referred to in Article 92 of the *Satversme*, comprises two aspects, i.e., “a fair court” as an independent institution of the judicial power that adjudicates the case and “a fair trial” as due proceedings, compatible with a state governed by the rule of law, in which the case is heard. A fair trial as due legal proceedings, compatible with the state governed by the rule of law, means the State’s obligation to envisage legal safeguards for respecting the principles of the rule of law and legality in adjudication of cases and comprises several elements – interconnected rights (*see, for example, Judgement by the Constitutional Court of 23 May 2017 in Case No. 2016-13-01, Para 12*). The fairness of the process of adjudication would be meaningless if the accessibility of this process would not be ensured. Ensuring the accessibility of a court is a way for a person to exercise their right to the protection of their rights and lawful interests and to attain justice – the ultimate aim of the legal system of a democratic state governed by the rule of law (*compare, see Judgement by the Constitutional Court of 20 April 2012 in Case No. 2011-16-01, Para 8.1.*).

The right to a fair trial comprises not only the negative but also the positive obligations of the State. The Constitutional Court already has recognised that the State has the obligation to establish independent and impartial judicial institutions, as well as the duty to ensure several procedural safeguards. This means that the State must adopt legal regulation and, if necessary, envisage financial and organisational resources to ensure to a person access to a court (*compare, see Judgement by the Constitutional Court of 7 February 2014 in Case No. 2013-04-01, Para 18*).

The right to a fair trial, included in Article 92 of the *Satversme*, is a general legal principle. Sentences of this Article include part of the elements that specify

this general legal principles, which, in the present case, are closely interconnected. Although the present case has been initiated with respect to the compliance of the contested norms with the first sentence of Article 92 of the *Satversme*, the Constitutional Court must take into account also the rights that are guaranteed in other sentences of this Article, *inter alia*, the right of every person to legal counsel, included in the fourth sentence of Article 92 of the *Satversme* (*sk. Judgement by the Constitutional Court of 26 March 2020 in Case No. 2019-15-01, Para 13*). In clarifying the content of the first and the fourth sentence of Article 92 of the *Satversme* in conjunction, the Constitutional Court has concluded that everyone's right to counsel should be understood as a person's subjective right to receive qualified legal aid. The right to receive qualified legal aid is a person's fundamental right that ensures that other rights are exercised (*sk. Judgement by the Constitutional Court of 27 June 2003 in Case No. 2003-04-01, Para 5 of the Findings, and Judgement of 7 February 2014 in Case No. 2013-04-01, Para 19.4.*). Therefore, in ensuring to a person the right to access to a court, it is essential to ensure, at the same time, a person's right, included in the fourth sentence of Article 92 of the *Satversme*, to choose an appropriate representative in the case (*compare, see Judgement by the Constitutional Court of 6 November 2003 in Case No. 2003-10-01, Para 6 of the Findings*).

**10.1.** The Constitutional Court has repeatedly noted that the first sentence of Article 92 of the *Satversme* should be specified in conjunction with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) and the case law of the European Court of Human Rights in applying it (*see, for example, Judgement by the Constitutional Court of 22 December 2017 in Case No. 2017-08-01, Para 12*). In specifying the content of the *Satversme*'s provisions, a solution that ensures harmony between the provisions of the *Satversme* and the Convention must be sought (*see, for example, Judgement by the Constitutional Court of 12 March 2020 in Case No. 2019-13-01, Para 14*).

The European Court of Human Rights has repeatedly recognised that the State's positive obligation to determine such legal regulation that would ensure a

person's right to access to a court followed from the right to a fair trial, enshrined in Article 6 of the Convention (*see, for example, Judgement by the European Court of Human Rights of 9 October 1979 in Case "Airey v. Ireland", Application No 6289/73, Para 25 and 27*). If the costs incurred during legal proceedings are excessive, they might deny a person the possibility to exercise the right to access to a court (*see Judgement by the European Court of Human Rights of 16 November 2010 in Case "Perdigão v. Portugal", Application No. 24768/06, Para 74*). A person's right to reimbursement of such costs of legal aid that had been required due to unlawful actions by a state authority also follows from the right to a fair trial, enshrined in Article 6 of the Convention (*see, for example, Judgement by the European Court of Human Rights of 18 June 2020 in Case "Černius and Rinkevičius v. Lithuania", Applications No. 73579/17 and No. 14620/18, and Judgement of 6 April 2006 in Case "Stankiewicz v. Poland", Application No. 46917/99, Para 6*).

**10.2.** Latvia, being aware of the supremacy of the European Union law, included in the second part of Article 68 of the *Satversme*, in adopting and applying the national legal provisions, must take into consideration the legal acts of the European Union that strengthen democracy and the interpretation thereof, consolidated in the judicature of the Court of Justice of the European Union (*compare, see Judgement by the Constitutional Court of 6 March 2019 in Case No. 2018-11-01, Para 16.2.*).

Pursuant to Para 1 of Article 6 of the Treaty on European Union, the European Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union (hereafter – the Charter), and the Charter has the same legal value as the Treaty on European Union and the Treaty on the Functioning of the European Union. The Constitutional Court has recognised that the Charter, essentially, comprises also the general legal principles of the European Union (*see, for example, Judgement by the Constitutional Court of 13 November 2021 in Case No. 2018-18-01, Para 15.2.1.*).

The first and the second part of Article 47 of the Charter set out that everyone whose rights and freedoms guaranteed by the law of the Union are violated has the

right to an effective remedy, in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal, established by law. Everyone must have the possibility of being advised, defended and represented.

Effective legal remedies at a court is a general legal principle of the European Union, founded on the shared constitutional traditions of the Member States, as well as Article 6 and Article 13 of the Convention. The said principle applies to the Member States also in implementing legal acts of the European Union (*see: Explanations on Article 47 – Right to an effective remedy and to a fair trial. Explanations Relating to the Charter of Fundamental Rights by the Convention which Drafted the Charter of Fundamental Rights of the European Union of 14 December 2007 (2007/C303/02)*). This means that the right to the access to a court is applicable in all situations, involving the rights and freedoms, guaranteed in the European Union. The said principle also means that the Member States of the European Union must ensure such system of legal remedies and procedure that ensure that these rights are respected in accordance with the European Union law (*see Judgement by the Court of Justice of the European Union of 13 March 2007 in Case C-432/05 “Unibet”, Para 37–42*) and national legal acts may not decrease effective legal protection of rights (*see Judgement by the Court of Justice by the European Union of 22 December 2010 in Case C-279/09 “DEB”, Para 59*).

**10.3.** In assessing the content of the State’s obligation and the scope of the State’s discretion with respect to reimbursing the costs of legal aid, it can be concluded that the State’s obligation to adopt such legal norms that regulate fairly matters relating to the reimbursement of costs of legal aid follows from the first sentence of Article 92 of the *Satversme* (*see. Judgement by the Constitutional Court of 7 February 2014 in Case No. 2013-04-01, Para 19.3.*). This comprises also the State’s obligation to define the amount of reimbursable costs related to legal aid that would, at the same time, ensure also a person’s right to receive qualified legal aid (*compare, see Judgement by the Constitutional Court of 29 April 2015 in Case No. 2014-31-01, Para 9.1.*).

**Thus, the State's obligation to regulate the reimbursement of the costs of legal aid follows from the first sentence of Article 92 of the *Satversme*, which includes also the duty to define the amount of reimbursable costs related to legal aid so as to ensure a person's right to receive qualified legal aid.**

11. The contested norms pertain to the State's positive obligation to determine such regulation on the amount of reimbursable costs of legal aid that would ensure accessibility of a court and, at the same time, also a person's right to receive qualified legal aid.

The Constitutional Court has recognised that the State is not obliged to reimburse all costs incurred in relation to legal aid that have arisen by contesting and appealing against an administrative act or the actual actions by an institution (see *Decision by the Constitutional Court of 11 June 2010 on Terminating Legal Proceedings in Case No. 2010-11-01, Para 8*). Essentially, accessibility of a court is ensured if a person has sufficiently extensive possibilities to choose the provider of legal aid from among advocates and if the State has developed such legal regulation that envisages reimbursement of costs related to this aid in a reasonable amount if the ruling in the case is in favour of the person (compare, see *Judgement by the Constitutional Court of 7 February 2014 in Case No. 2013-04-01, Para 28*).

In adjudicating cases related to the right to the access to a court, *inter alia*, matters of accessibility of legal aid, the European Court of Human Rights recognises the Recommendation of the Council of Europe Committee of Ministers No. R(81)7 "On Measures Facilitating Access to Justice" (see, for example, *Judgement by the European Court of Human Rights of 22 March 2007 in Case "Siałkowska v. Poland", Application No. 8932/05, Para 53*) as an important and noteworthy source for clarifying the content of the Convention. In this Recommendation, the Council of Europe Committee of Ministers has noted that, except in special circumstances, the winning party should in principle obtain from the losing party recovery of their costs, including lawyers' fees, reasonably incurred in the proceedings (see *The Council of Europe Committee of Ministers Recommendation of 14 May 1981 No. R(81)7 "On Measures Facilitating Access to*

*Justice*”, Para 14 of Appendix “Principles”). Also in cases where the losing party is the State, the European Court of Human Rights has noted that the State may not leave a person, who had decided to initiate legal proceedings to defend their infringed rights, in a more disadvantageous situation than before turning to a court. The State itself should bear the risk of any mistake made by the State authority, and errors must not be remedied at the expense of the individuals concerned (see *Judgement by the European Court of Human Rights of 18 June 2020 in Case “Černius and Rinkevičius v. Lithuania”, Applications No. 73579/17 and No. 14620/18, Para 71*). Therefore, those expenses, related to legal aid, which had been necessary for conducting the case effectively and had arisen in a reasonable amount, should be reimbursed (see *Judgement by the Grand Chamber of the European Court of Human Rights of 10 May 2001 in Case “Z and others v. The United Kingdom”, Application No. 29392/95, Para 134, and Judgement of 21 September 2016 in Case “Khan v. Germany”, Application No. 38030/12, Para 47*).

The Court of Justice of the European Union also has noted that, in deciding on the reimbursable costs relating to legal aid, the extent to which such costs have been reasonably necessary and whether the entire costs incurred by a party to a case have not been excessive should be taken into consideration (see *Judgement by the Court of Justice of the European Union of 13 February 2014 in Case C-530/11 “The Commission/ The United Kingdom of Great Britain and Northern Ireland”, Para 47–49*).

To ensure accessibility of a court and the right to qualified legal aid, the legislator must establish such legal regulation, which, in the case of unlawful actions by the State, would ensure to a person winning the case the possibility to receive reimbursement of necessary costs related to legal aid in a reasonable amount.

**Hence, the first sentence of Article 92 of the *Satversme* comprises the legislator’s obligation to adopt such legal norms that would ensure reimbursement of the necessary costs related to legal aid in a reasonable amount.**

**12.** The Constitutional Court has recognised that the legislator enjoys broad discretion in regulating costs related to legal aid, *inter alia*, the amount thereof. If the State's obligation to introduce measures for implementing the rights included in this Article follows from Article 92 of the *Satversme*, the Constitutional Court examines, whether the State has fulfilled this obligation. Moreover, if his obligation envisages drafting and adopting regulation with particular content, the Constitutional Court examines the content of this obligation and whether the legislator has discharged its duty duly, *inter alia*, abiding by the general legal principles (see *Judgement by the Constitutional Court of 23 February 2022 in Case No. 2021-22-01, Para 11, and Judgement of 7 February 2014 in Case No. 2013-04-01, Para 19.4.*).

The basic issue in the present case is whether the Cabinet, by the contested norms, to the extent they define the amount of reimbursable costs related to legal aid, has fulfilled the obligation, included in the first sentence of Article 92 of the *Satversme*, to establish such legal regulation that, in the case of unlawful actions by the State, ensures to the person who has won the case the possibility to receive a reasonable amount of reimbursement of the necessary costs related to legal aid and, at the same time, also ensures a person's right to qualified legal aid.

In view of the basic issue in the present case and the content of the first sentence of Article 92 of the *Satversme*, the Constitutional Court must establish, whether:

- 1) measures have been introduced, i.e., legal regulation that envisages reimbursement of costs related to legal aid, if such costs had arisen due to unlawful actions by the State, has been established;
- 2) these measures have been duly introduced – in compliance with the general legal principles and other provisions of the *Satversme*.

**13.** To assess, whether the legislator has respected its discretion and ensured accessibility to a court and the right to qualified legal aid, the Constitutional Court must establish whether the State has introduced measures; i.e., determined legal

regulation that envisages reimbursements of the costs related to legal aid if these costs have been incurred as the result of unlawful actions by the State.

**13.1.** The grounds for compensation for losses, conditions for determining its amount, as well as the procedure, in which an institution assesses the cases of compensating for losses and makes the decision on compensation for losses, as well as ensures that the decision on compensation for losses is implemented are included in the Law on Compensation. The purpose of this Law is to ensure to a private person the right to commensurate compensation for financial losses or non-pecuniary damages, caused by unlawful administrative act or unlawful actual actions by an institution of public administration, defined in the *Satversme* and the Administrative Procedure Law. Until 28 February 2018 when the law of 15 February 2018 “Amendments to the Law “On Compensating for Damages Causes by Institutions of Public Administration”” entered into force, the provisions of this law regarding compensation for those losses that a private person had incurred due to unlawful administrative act or unlawful actual actions by an institution were applicable also to compensation for such losses that a person had incurred because of an institution’s unlawful decision in an administrative violation case.

In the meaning of the Law on Compensation, financial losses include also costs related to legal aid. Section 7 (3) of this Law applies to all private persons and, basically, provides for the reimbursement of costs related to legal aid after the unlawfulness of an administrative act or an institution’s actual actions has been established in legal proceedings (*see Decision by the Constitutional Court of 11 June 2010 on Terminating Legal Proceedings in Case No. 2010-11-01, Para 9*). Pursuant to this legal provision, the Cabinet has been authorised to determine the maximum amount of reimbursable costs related to legal aid.

**13.2.** In accordance with the authorisation granted by the legislator, the amount of reimbursement for taking certain actions within the framework of legal aid depends directly upon the assessment conducted by the Cabinet and the requirements included in the regulations adopted by it (*see the Saeima’s opinion in Case Materials, Vol. 2, p. 14*).

On 8 November 2011, the Cabinet adopted Regulation No. 859, which entered into force on 11 November 2011. It defined the maximum amount of costs of legal aid to be reimbursed to a private person if the private person had incurred financial loss or non-pecuniary damage due to actions by an institution of public administration. In issuing this Regulation, the Cabinet took into account that, in practice, the parties applying legal norms determined the amount of reimbursement of costs related to legal aid by analogy with Regulation No. 1493, comprising legal regulation on the scope of State-provided legal aid, the amount of payment, reimbursable expenses and the procedure for disbursing these. Therefore, also Regulation No. 859 was drafted by analogy with Regulation No. 1493 (*see The Initial Impact Assessment (Annotation) of Draft Cabinet Regulation No. TA-2432 "Regulation on the Maximum Amount of Expenditure on Legal Aid Reimbursable to a Private Individual"*) In adopting Regulation No. 1493, the legal regulation, already included in Regulation No. 1068, was taken into account. Whereas, in drafting Regulation No. 1068, providers of legal aid were surveyed and research was conducted on the market prices of legal aid, taking into account the particularities of all legal proceedings. The types, amount and reimbursable costs of legal aid were defined on the basis of the research outcomes (*see The Opinion by the Legal Aid Administration in Case Materials, Vol. 2, p. 2*).

After 8 November 2011 when Regulation No. 859 was adopted, it has been amended in 2015 when Regulation No. 210 was adopted. However, this Regulation did not substantially change the maximum amount of reimbursable costs of legal aid but only adjusted it to the introduction of euro, substituting lats by euros (*see the Initial Impact Assessment for Draft Cabinet Regulation No. TA-693 "Amendments to Regulation No. 859"*). Until the moment when the contested norms were applied to the Applicant, they had not been amended anymore and, thus, substantially, the legal regulation that was adopted initially has been retained,

On 7 April 2020, the Cabinet adopted Regulation No. 195, by which, *inter alia*, the amount of the reimbursable costs related to legal aid, defined in the contested norms, was increased. In substantiating this increase, the Cabinet underscored that the amount of respective costs had not been amended and

increased since 2011, therefore fair and proportionate reimbursable costs related to legal aid should be defined for a private person, equalling it, to the extent possible, with Regulation No. 1493 (*see The Initial Impact Assessment (Annotation) for the Draft Cabinet Regulation No. TA-373 “Amendments to Regulation No. 859”*).

The Administrative Court had drawn the Cabinet’s attention to deficiencies of the legal regulation, included in Regulation No. 859. In applying Regulation No. 859 (in the wording that was in force until 9 April 2020), it recognised that deficiencies could be found in Regulation No. 859 with respect to instances where the provider of legal aid is a payer of the value added tax. Therefore, to remedy such deficiency, the legal regulation of Regulation No. 1493 should be applied by analogy. Thus, to prevent a situation where a private person is not reimbursed in full the amount paid for the legal aid received because the value added tax is not included in it, it should be provided in Regulation No. 859 that the amount of value added tax should be added to the payment for the provided legal aid (*see Judgement and Ancillary Decision by the Senate’s Department of Administrative Cases of 18 October 2019 in Case No. SKA-227/2019*). The Cabinet has taken these findings in account upon adopting Regulation No. 195 and has envisaged that, in addition to the costs referred to in Para 3 of Regulation No. 859, the State must reimburse also the amount of value added tax if the provider of legal aid has been registered as the payer of value added tax and has included this tax in its invoice for the legal aid provided.

**Thus, the Cabinet has established legal regulation that envisages reimbursement of costs related to legal aid if these costs had been incurred as the result of unlawful actions by the State.**

14. To assess whether these measures had been implemented duly, i.e., in compliance with the general legal principles and other provisions of the *Satversme*, the Constitutional Court must establish whether the legal regulation, established by the Cabinet, pursuant to which the State reimburses the necessary costs related to legal aid, ensures the accessibility of a court and the right to qualified legal aid, as

well as envisages reimbursement of these costs in a reasonable amount if these costs had been incurred due to the unlawful actions by the State.

It follows from the materials in the case that after unlawful actions by the State Revenue Service were established in the case, i.e., seizing gold owned by the Applicant (coins and bars), the Applicant turned to the institution and a court in order to receive reimbursement of the costs related to legal aid (*see Case Materials, Vol. 1, pp. 4–5*).

Reimbursement of the costs related to legal aid was calculated for the Applicant in accordance with the contested norms. It follows from the materials in the case that the Applicant has received reimbursement of costs related to legal aid in the amount of EUR 421.86 (*see Decision by the State Revenue Service of 17 January 2017 in Case Materials, Vol. 2., p. 109, Judgement by the Administrative District Court of 30 January 2017 in Case No. A420169717 in Case Materials, Vol. 2, p. 45, and Judgement by the Administrative Regional Court of 9 October 2018 in Case No. A420169717*). The Applicant notes that the sworn advocate had provided to it legal aid in the amount of 334.4 hours and that the legal proceedings had lasted for more than eight years. To defend its infringed rights and achieve an outcome favourable for it - establishing unlawful actions by a state authority – the Applicant, within the framework of the same case, had turned both to the administrative court and the court of general jurisdiction, as well as to the Constitutional Court. Therefore the actual costs incurred in relation to legal aid are significantly higher, i.e., more than EUR 22 thousand, including the value added tax (*see Case Materials, Vol.1., p. 4, and Vol. 2, p. 101*

**14.1.** The Applicant and persons summoned in the case underscore that the contested norms do not envisage reimbursement of the costs related to legal aid in a reasonable amount. Appropriate amount of reimbursable costs related to legal aid had not been defined in the contested norms because they prohibit from receiving larger reimbursement in atypical and complex cases, and the Applicant's legal situation should be recognised as being such. The amount, in which these costs are reimbursed, is said to be incompatible with the social reality and economic situation in the state (*see, for example, the Applicant's additional opinion in the Case*

*Materials, Vol. 2, pp. 162–163, and the Opinion of the Latvian Council of Sworn Advocates in Case Materials, Vol. 2, p. 19.*)

The Cabinet notes that the reimbursable costs, included in Regulation No. 859, are to be recognised as being adequate and had been determined on the basis of rational considerations, aimed at effective use of the State’s financial resources, as well as at striking balance between the interests of society and those of an individual. However, the Cabinet agrees that the Applicant’s case, in which a favourable ruling by a court was attained through very lengthy legal proceedings, should be considered as being atypical. However, in determining the reimbursable costs related to legal aid the interests of the state budget and the possibility to forecast expenditure should be taken into account, likewise, equal treatment of all persons should be ensured (*see Case Materials, Vol. 1, p. 100*).

**14.2.** The Constitutional Court has recognised that neither a situation, in which the State would not establish any procedure for reimbursing the costs of litigation, nor a situation, in which the State would envisage reimbursement in the full amount of all costs related to legal aid, without any assessment whatsoever, would comply with the rule of law (*see Judgement by the Constitutional Court of 7 February 2014 in Case No. 2013-04-01, Para 19.3.*). However, it does not follow from Article 92 of the *Satversme* that every legal norm should be worded as an absolutely precise instruction. No matter how precisely and clearly legal norms were worded, the content thereof always must be clarified through interpretation of the norms (*see, for example, Judgement by the Constitutional Court of 21 February 2019 in Case No. 2018-10-0103, Para 18.1.*).

**14.2.1.** the European Court of Human Rights has noted that, in assessing the reasonable amount of reimbursable costs of legal aid in each particular case, the complexity of the case and the legal matters dealt with in it, as well as the course of the legal proceedings should be taken into account (*see Judgement by the Grand Chamber of the European Court of Human Rights of 19 October 2005 in Case “Roche v. The United Kingdom”, Application No. 32555/96, Para 182–185, and Judgement of 10 May 2001 in Case “Z and others v. The United Kingdom”, Application No. 29392/95, Para 134*). The Court of Justice of the European Union

also has pointed out that the amount of costs of legal aid should be objectively analysed in each case, i.e., it should be assessed how objective these costs are and whether they are determined by the circumstances of the particular case, *inter alia*, the complexity of the applicable legal regulation and procedures should be examined (*see Judgement by the Court of Justice of the European Union of 11 April 2013 in Case C-260/11 “Edwards and Pallikaropoulos”, Para 40–42*).

Assessing the complexity of a case is the court’s prerogative. The court which has the jurisdiction to examine the case on its merits sees the best what kind of effort is required for correct examination of the case and is able to assess how useful the provision of legal aid to the applicant could be in the legal proceedings (*see Judgement by the Senate’s Department of Administrative Cases of 6 May 2011 in Case No. SKA-155/2011, Para 13.2.*). It should be taken into account that the remuneration for legal aid that the persons have agreed upon *per se* is not always adequate to the necessary and the actually invested work. Hence, in deciding on the amount of reimbursement to be granted to a person, on the one hand, the right of each individual to qualified legal aid must be ensured and, on the other hand, the state budget resources should be used rationally and effectively (*see Decision by the Assignments Sitting of the Senate’s Department of Administrative Cases in Case No. SKA-398/2020, Case Materials, Vol. 1, p. 59–60*).

The costs of legal aid are expenditure of procedural nature that a person incurs because the person has chosen to defend their rights in a court, so that it would examine the merits of the infringement (*see: Priekulis J. Efektīvs tiesību aizsardzības līdzeklis pret likumu. Rīga: Latvijas Vēstnesis, 2021, 365.–366. lpp.*). These costs can differ greatly and depend on several factors, both separately and in conjunction, e.g., the concrete actual circumstances of the case, the type and course of proceedings, the place of practice and reputation of the provider of legal aid, as, as well as the length of practice (*compare, see Annex 3 to Conceptual Report on Introducing the Advocates Procedure in Some Categories of Civil Cases and the Ombudsman’s opinion in Case Materials, Vol. 2, p. 10*).

In Regulation No. 859, the Cabinet has defined the maximum amount of reimbursable costs related to legal aid. Specification of the principle of a state

governed by the rule of law envisages that, if a case has been adjudicated favourably for a person, the losing party is obliged to reimburse to the person the necessary costs of legal aid in a reasonable amount. Since the costs that are related to legal aid are not always objectively substantiated, the party applying legal provisions has the competence to examine the costs that are objectively necessary. Law grants to parties applying legal provisions extensive rights to assess the reimbursable costs and decide on reimbursing not the entire the amount of costs but such that is appropriate for the circumstances of the case; i.e., to examine the particular circumstances of the case in conjunction with the necessary costs of legal aid and to determine a reasonable amount of reimbursement.

Administrative courts have the jurisdiction to decide on the amount, procedure and form, in which a private person is entitled to reimbursement of the costs of legal aid that they have incurred due to an unlawful administrative act or unlawful actual actions by an institution (*compare, see Decision by the Constitutional Court of 11 June 2010 on Terminating Legal Proceedings in Case No. 2010-11-01, Para 8*). However, in examining the issue of compensation for the damages caused to the applicant, which are manifested as costs for the received legal aid, the court should take into account that the maximum amount of costs, related to legal aid, is defined in Regulation No. 859 (*see, for example, Judgement by the Administrative Regional Court of 10 March 2021 in Case No. A420225219, and Judgement by the Administrative District Court of 6 September 2021 in Case No. A42-01856-21/20*). It follows both from the text of the contested norms and from the practice of applying these norms that the party applying legal norms determines the reimbursable costs of legal aid, by taking into account that the legislator has clearly envisaged reimbursement of these costs in the amount that does not exceed the rate defined in the contested norms.

**14.2.2.** The conclusion was made already in Para 13 of this judgement that Regulation No. 859 had been drafted by analogy with the regulation on the State-provided legal aid. The Cabinet has admitted that comparison of the amounts of reimbursement defined in Regulation No. 1493 and Regulation No. 859 is valid. If the State is able to ensure adequate legal aid for respective remuneration then there

are no grounds for considering that the reimbursable amounts should differ significantly (*see Case Materials, Vol. 1, p. 93*).

However, Para 18 of Regulation N. 1493 covers also such cases when exceptions to the maximum reimbursable amount within the framework of one case, set out in this Regulation, are permissible. In view of the fact that each case is different and a person may not be denied the right to access to a court, this norm envisages the right of the party applying legal provisions to increase, in certain cases, the amount of reimbursable costs of legal aid (*see the opinion provided by the Legal Aid Administration in Case Materials, Vol. 2, p. 2*). Thus, parties applying legal provisions have been granted the competence to decide on larger reimbursement of the necessary costs related to legal aid and such that would be appropriate for the particular case. It does not follow from the preparatory materials of the contested norms that the Cabinet had examined the need to include similar legal regulation also in Regulation No. 859. Neither did the Cabinet consider this need in adopting Regulation No. 195, by which it increased the reimbursable amount of costs, related to legal aid, although it noted that they should, to the extent possible, be aligned with the legal regulation, included in Regulation No. 1493 (*see The Initial Impact Assessment (Annotation) of Draft Cabinet Regulation No. TA-373 "Amendments to Regulation No. 859"*).

The Cabinet enjoys discretion to determine the amount, in which the costs that are related to legal aid are reimbursed; however, legal regulation should be such that would allow the party applying legal norms to assess each case of reimbursing the costs related to legal aid and, by taking into account the objective grounds for the necessary costs, to determine a reasonable amount of reimbursement. This would ensure balance between the effective use of the state budget resources and a person's right to access to a court and the right to qualified legal aid.

It does not follow from the circumstances of the present case and the preparatory materials of the contested norm that the Cabinet had examined a person's right to receive a reasonable amount of reimbursement of the necessary costs related to legal aid, which, in view of the individual circumstances of the case,

would ensure a person's right to receive reimbursement of the necessary costs related to legal aid also in a larger scope or amount.

**14.3.** Considering the Cabinet's discretion to determine the reimbursement of costs related to legal aid, the principle of the state governed by the rule of law must be respected and, at the same time, possibilities of the state budget must be balanced with a person's right to access to a court and the right to receive qualified legal aid, which are included in Article 92 of the *Satversme*.

The principle of a state governed by the rule of law requires hearing of a case in a procedure that would ensure fair and impartial adjudication of it (*see Judgement by the Constitutional Court of 9 January 2014 in Case No. 2013-08-01, Para 6*). This principle comprises both justice and legal stability (*see Judgement by the Constitutional Court of 5 March 2002 in Case No. 2001-10-01 Para 8 of the Findings*). The Convention also guarantees rights that are not only theoretical but are practical and effective (*see Judgement by the European Court of Human Rights of 18 June 2020 in Case "Černius and Rinkevičius v. Lithuania", Applications No. 73579/17 and No. 14620/18, Para 68*).

The use of qualified legal aid facilitates reaching of fair outcome and economy of legal proceedings. Moreover, the person who is recognised as being the losing party is protected against the obligation to cover unfounded or disproportionate costs. This promotes faster course of legal proceedings and reinforces the role of the judicial power in society, at the same time ensuring unhindered functioning of the democratic state order (*see Judgement by the Constitutional Court of 9 January 2014 in Case No. 2013-04-01, Para 28*). The Council of Europe Committee of Ministers also has stated that no litigant could be prohibited from using legal aid (*see The Council of Europe Committee of Ministers Recommendation of 14 May 1981 No. R(81)7 "On Measures Facilitating Access to Justice", Para 4 of Appendix "Principles"*).

The right to receive reimbursement of the necessary costs of legal aid in a reasonable amount if these costs have been incurred due to unlawful actions by the State is an important element of the right to access to a court, which, in democratic states governed by the rule of law, ensures to persons the right to a fair trial. In the

present case, the contested norms are related to covering such specific costs, which, in the free market, with changing economic situation in the state, are subject to change (*see the Ombudsman's opinion in Case Materials, Vol. 2, p. 8*). The Cabinet is obliged to consider periodically whether the defined amount of reimbursable costs related to legal aid continues to be proportional and complies with the social reality and a person's right to access to a court and the right to qualified legal aid, as well as whether the valid legal regulation in this area should not be improved (*see, for example, Judgement by the Constitutional Court of 9 January 2014 in Case No. 2013-08-01, Para 18.2., and Judgement of 18 October 2018 in Case No. 2017-35-03, Para 18*).

Since entering into force on 1 January 2010, Regulation No. 1493 has been amended almost every year. With the situation changing, to promote the quality of legal aid and ensure the right to access to a court, new types of legal aid are defined, its scope and amount of payment are increased (*see the opinion by the Legal Aid Administration in Case Materials, Vol. 2, pp. 2–3*). Thus, the Cabinet has reviewed regularly the amount of reimbursement for legal aid, included in Regulation No. 1493, in compliance with the accessible state budget resources to ensure a person's right to access to a court and the right to qualified legal aid. However, as concluded in Para 13.2. of this judgement, until the moment when the contested norms were applied to the Applicant, i.e., 17 January 2017, the Cabinet had not amended the contested norms. Thus, essentially, the initial legal regulation, adopted in 2011, had been retained.

Pursuant to the principle of a state governed by the rule of law, to ensure a person's right to access to a court and the right to receive qualified legal aid, legal regulation should be such that does not deter a person from turning to a court in general or does not create a situation, where following legal proceedings a person ends up in a more disadvantageous financial situation than before it if the person has incurred objectively justified and necessary expenditure. Such legal regulation would reach the aim – reimbursement of the necessary costs related to legal aid in a reasonable amount.

Thus, the Cabinet has not established duly, i.e., in compliance with the general legal principles and other provisions of the *Satversme*, legal regulation that envisages reimbursement of the necessary costs related to legal aid in a reasonable amount.

**Hence, the contested norms, insofar they do not envisage reimbursement of the necessary costs related to legal aid in a reasonable amount, are incompatible with the first sentence of Article 92 of the *Satversme*.**

15. The Applicant has requested in its application to recognise Para 3, 4 and 5 of Regulation No. 859 (in the wording that was in force from 8 May 2015 until 9 April 2020) as being incompatible with the first sentence of Article 92 of the *Satversme*. Moreover, the Applicant, as well as several persons summoned in the case have drawn attention to the fact that also Para 3, 4 and 5 of Regulation No. 859 (in the wording that is in force since 10 April 2020), insofar they define the amount of costs related to legal aid, should be recognised as being incompatible with the first sentence of Article 92 of the *Satversme* (*see the Ombudsman's opinion in Case Materials, Vol. 2, p. 9, and the opinion of the Latvian Council of Sworn Advocates in Case Materials, Vol. 2, p. 19*). Namely, Para 3 of Regulation No. 859 provides that the State reimburses the costs to one person in the following amount:

- 3.1. for legal consultation provided – EUR 30 per hour;
- 3.2. for drawing up an application, an ancillary complaint, or an administrative contract (amicable settlement) – EUR 50;
- 3.3. for drawing up an appellate complaint and a counter-complaint – EUR 65;
- 3.4. for drawing up a cassation complaint – EUR 80;
- 3.5. for drawing up a document necessary for settling a case (applications, petitions, or explanations (except for documents for requesting information and the documents referred to in sub-paragraphs 3.2, 3.3 and 3.4 of this Regulation)) – EUR 26;
- 3.6. for drawing up addenda to the documents referred to in sub-paragraphs 3.2, 3.3 and 3.4 of this Regulation – EUR 26;

3.7. for representation at a court hearing – EUR 40 per hour;

3.8. for examining one volume of case materials in court in one court instance – EUR 20.

Para 4 of Regulation No. 859 provides that the State reimburses the costs for legal consultation provided, in the amount referred to in Sub-para 3.1. of this Regulation, for no more than five hours within the framework of one case. Whereas Para 5 of this Regulation provides that the State reimburses the costs of drawing up no more than five documents, referred to in Sub-para 3.2. – 3.6., within the framework of one case.

Thus, by these provisions, the Cabinet has increased the amount, in which the costs related to legal aid are reimbursed, trying to align the legal regulation, to the extent possible, with Regulation No. 1493 (*see The Initial Impact Assessment (Annotation) of Draft Cabinet Regulation No. TA-373 “Amendments to Regulation No. 859”*). Although a case regarding the compliance of Para 3, 4 and 5 of Regulation No. 859 (in the wording that is in force since 10 April 2020), insofar they define the amount of costs related to legal aid, with a norm (act) of higher legal force has not been initiated, it should be recognised that these paragraphs comprise legal regulation that is similar to the contested norms.

The Constitutional Court concludes that Para 3, 4 and 5 of Regulation No. 859 (in the wording that is in force since 10 April 2020), insofar they define the amount of costs related to legal aid, are closely interconnected with the contested norms and, substantially, replace them. The aforementioned paragraphs of the Regulation do not envisage either a reasonable amount of reimbursement of the necessary costs related to legal aid. Namely, Para 3, 4 and 5 of Regulation No. 859 (in the wording that is in force since 10 April 2020) comprise such legal regulation that the Constitutional Court has recognised as being incompatible with the first sentence of Article 92 of the *Satversme*.

It follows from the principle of procedural economy that it would not be expedient to rule repeatedly on issues that can be adjudicated within the framework of this case.

The Constitutional Court has concluded that the limits of the claim can be broadened in the judgement and it is even necessary to ensure effective protection of a person's rights and enforcement of the judgement. In the legal proceedings before the Constitutional Court, such cases are possible where exceeding the limits of the claim, including in the review also such norms that had not been contested, is not only permissible but is also necessary (*compare, see Judgement by the Constitutional Court of 14 October 2021 in Case No. 2021-03-03, Para 25*).

The Constitutional Court may broaden the limits of the claim *ex officio*, by complying with certain criteria, first and foremost – “the concept of close association”. To conclude whether, in the particular case, the limits of the claim may and should be broadened with respect to other norms, it must be established : 1) whether those norms, with respect to which the claim is broadened, are so closely linked to the contested norm that they can be examined within the framework of the same substantiation or examination thereof is necessary for adjudicating the particular case; 2) whether broadening the limits of the claim is necessary for complying with the principles of legal proceedings before the Constitutional Court (*see Judgement by the Constitutional Court of 25 November 2010 in Case No. 2010-06-01, Para 17.1.*).

The contested norms and also Para 3, 4 and 5 of Regulation No. 859 (in the wording that is in force since 10 April 2020) have been adopted on the basis of authorisation, envisaged by the legislator, to determine the maximum amount of reimbursable costs related to legal aid for a private person, thus, all these norms are closely linked. Moreover, examination of the compliance of a Para 3, 4 and 5 of Regulation No. 859 (in the wording that is in force since 10 April 2020) with the first sentence of Article 92 of the *Satversme* is required also to comply with the principles of legal proceedings before the Constitutional Court. It is possible to recognise all these norms, insofar they determine the amount of costs related to legal aid, as being incompatible with the first sentence of Article 92 of the *Satversme* within the framework of the same substantiation.

In Para 14 of this judgement, the Constitutional Court already has referred to the principles that the Cabinet must comply with, in exercising its discretion to

determine the amount of reimbursable costs, related to legal aid, to ensure compliance of legal norms with the general legal principles and other provisions of the *Satversme*, as well as provisions of international and the European Union law. Hence, the Constitutional Court has already ruled, on its merits, on the compliance of Para 3, 4 and 5 of Regulation No. 859 (in the wording that is in force since 10 April 2020), insofar they do not provide for a reasonable amount of reimbursable costs related to legal aid, with the *Satversme*.

**Hence, also Para 3, 4 and 5 of Regulation No. 859 (in the wording that is in force since 10 April 2020), insofar they do not provide for a reasonable amount of reimbursable costs related to legal aid, are incompatible with the first sentence of Article 92 of the *Satversme*.**

**16.** Since the Constitutional Court recognised the contested norms and Para 3, 4 and 5 of Regulation No. 859 (in the wording that is in force since 10 April 2020), insofar they do not provide for a reasonable amount of reimbursable costs related to legal aid, as being incompatible with the first sentence of Article 92 of the *Satversme*, it has to decide on the date, as of which the aforementioned norms become void.

Pursuant to Section 32 (3) of the Constitutional Court Law, a legal norm that has been recognised by the Constitutional Court as being incompatible with a legal norm of higher legal force is to be considered as being void as of the date when the Constitutional Court's judgement is published, unless the Constitutional Court has provided otherwise. Para 11 of Section 31 of this law, in turn, provides for the Constitutional Court's right to indicate in its judgement the date as of which such legal norm becomes void.

**16.1.** The Applicant requests recognising the contested norms as being void since the moment of their adoption, i.e., 5 May 2015. It follows from the materials in the case that the contested norms, in the wording that was in force from 8 May 2015 until 9 April 2020, had been applied to the Applicant.

Exercising the right, granted to it in Para 11 of Section 31 of the Constitutional Court Law, the Constitutional Court, in cases that have been initiated

on the basis of a constitutional complaint, must eliminate, to the extent possible, the infringement upon a person's fundamental rights (*see Judgement by the Constitutional Court of 16 December 2005 in Case No. 2005-12-0103, Para 25*). Moreover, the Court must also ensure that the situation that could develop after the contested norm has become void would not cause new infringements on fundamental rights, defined in the *Satversme*, and would not significantly harm public interests (*compare, see Judgement by the Constitutional Court of 19 October 2011 in Case No. 2010-71-01, Para 26, and Judgement of 16 April 2015 in Case No. 2014-13-01, Para 22*).

Recognising the aforementioned legal norms as being void as of the moment when the infringement on the Applicant's fundamental rights occurred is the only possibility to protect the fundamental rights of this person. Therefore, with respect to the Applicant, they are to be recognised as being void from 17 January 2017 when the State Revenue Service adopted the decision on the Applicant's reimbursable costs of legal aid (*see Case Materials, Vol. 2, pp. 105-109*).

Thus, the contested norms, insofar they do not envisage reimbursement of the necessary costs related to legal aid in a reasonable amount, should be recognised as being void with respect to the Applicant as of the date when its fundamental rights were infringed upon.

**16.2.** In determining the date, as of which the contested norm becomes void, the Constitutional Court also examines the existence of considerations for recognising the contested norm as being void retroactively not solely with respect to the Applicant (*see Judgement by the Constitutional Court of 21 December 2009 in Case No. 2009-43-01, Para 34*).

The possibility cannot be excluded that the contested norms and Para 3, 4 and 5 of Regulation No. 859 (in the wording that is in force since 10 April 2020), insofar they do not provide for a reasonable amount of reimbursable costs related to legal aid, had been applied to another person and caused an infringement of their rights to a fair trial, included in the first sentence of Article 92 of the *Satversme*. An appropriate solution for the legal situation would be recognising that, with respect to those persons who have started and continue defending their rights by general

legal remedies, the aforementioned norms become void as of the moment when their fundamental rights were infringed upon.

Until the date when regulation, by which the Cabinet has fulfilled its obligation defined in the first sentence of Article 92 of the *Satversme*, enters into force, the parties that apply law must ensure the right to a fair trial to those persons, who have incurred expenses related to legal aid, caused by unlawful actions by the State, by applying directly the first sentence of Article 92 of the *Satversme* and the findings of this judgement and by determining a reasonable amount of reimbursable costs related to legal aid.

### **The Substantive Part**

On the basis of Article 30-32 of the Constitutional Court Law, the Constitutional Court

**held :**

**1. To recognise paragraphs 3, 4 and 5 of the Cabinet of Ministers Regulation No 859 of 8 November 2011 “Regulation on the maximum amount of expenditure on legal aid reimbursable to a private individual” (in the wording, which was in force from 8 May 2015 until 9 April 2020), insofar they do not provide for a reasonable amount of reimbursable cost, related to legal aid, as being incompatible with the first sentence of Article 92 of the *Satversme* of the Republic of Latvia.**

**2. With respect to the limited liability company “TAVEX” and persons, who have started and continue defending their fundamental rights by general legal remedies, to recognise paragraphs 3, 4 and 5 of the Cabinet of Ministers Regulation No 859 of 8 November 2011 “Regulation on the maximum amount of expenditure on legal aid reimbursable to a private individual” (in the wording, which was in force from 8 May 2015 until 9 April 2020), insofar they**

**do not provide for a reasonable amount of reimbursable costs related to legal aid, as being incompatible with the first sentence of Article 92 of the *Satversme* of the Republic of Latvia and void as of the moment when the infringement on the respective person's fundamental rights occurred.**

**3. To recognise paragraphs 3, 4 and 5 of the Cabinet of Ministers Regulation No 859 of 8 November 2011 "Regulation on the maximum amount of expenditure on legal aid reimbursable to a private individual" (in the wording, which is in force from 10 April 2020), insofar they do not provide for a reasonable amount of reimbursable costs related to legal aid, as being incompatible with the first sentence of Article 92 of the *Satversme* of the Republic of Latvia**

**4. With respect to persons, who have started and continue defending their fundamental rights by general legal remedies, to recognise paragraphs 3, 4 and 5 of the Cabinet of Ministers Regulation No 859 of 8 November 2011 "Regulation on the maximum amount of expenditure on legal aid reimbursable to a private individual" (in the wording, which is in force from 10 April 2020), insofar they do not provide for a reasonable amount of reimbursable costs related to legal aid, as being incompatible with the first sentence of Article 92 of the *Satversme* of the Republic of Latvia and void as of the moment when the infringement on the respective person's fundamental rights occurred.**

The judgement is final and not subject to appeal.

The judgement enters into force on the date of its publication.

Chairperson of the court hearing

Aldis Laviņš