



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## JUDGEMENT

on Behalf of the Republic of Latvia

on 3 December 2021 in Riga

in Case No. 2021-12-03

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

having regard to an application by the Administrative District Court,

on the basis of Article 85 of the *Satversme* of the Republic of Latvia and Para 3 of Section 16, Para 9 of Section 17(1), Section 19<sup>1</sup> and Section 28<sup>1</sup> of the Constitutional Court Law,

at the sitting of 3 November 2021 examined in written procedure the case

**“On the Compliance of Paragraph 11 (in the wording which was in force until 31 December 2020) of the Riga City Council Binding Regulation No. 111 of 18 December 2019 “Procedure for Granting Immovable Property Tax Relief in Riga” with Article 1 and the First Sentence of Article 105 of the *Satversme* of the Republic of Latvia”.**

### The Facts

1. Pursuant to Para 3 of Section 14(1) of the law “On Local Governments”, a local government, in carrying out its functions, has the right to introduce, in procedure set out in law, local fees and determine their amount, decide on tax rates and relief from

paying taxes. Whereas the first sentence of Section 3 (2) of the law “On Taxes and Fees” provides that a specific tax law may grant local governments the right to apply reliefs to such payments which are payable into the local government budget and to determine the object and rate of the immovable property tax.

Pursuant to Section 1 (1) of the law “On Immovable Property Tax”, the immovable property tax is imposed on tangible things which are located in the territory of the Republic of Latvia and which cannot be transferred from one place to another without being externally damaged – land, buildings, including the buildings registered in the Cadastre Information System but not yet commissioned, and engineering structures (hereafter – the immovable property), except the immovable property referred to in the second paragraph of this section. The first sentence of Section 3 (1) of this law provides that the local government determines the immovable property tax rate from 0.2. to 3 per cent from the cadastral value of the immovable property in its binding regulation, which must be published by 1 November of the pre-taxation year, but Section 5 regulates the procedure for establishing exemptions to payers of immovable property tax, *inter alia*, the right of a local government to issue binding regulations, establishing exemptions to certain categories of payers of the immovable property tax. Such binding regulations enter into force in the procedure set put in the law “On Local Governments”.

Pursuant to Para 2 of the second part and the third part of Section 3<sup>1</sup> of the law “On Immovable Property Tax”, in determining reliefs to immovable property tax, the local government must comply with the principle of objective classification, the efficiency principle and the principle of responsible budget planning, and the right to apply the principle of spatial development and improvement of territory, pursuant to which the local government uses the tax rate or relief for the promotion of development and arrangement of its territory, as well as the principle of support to entrepreneurship.

Pursuant to Para 3 of Section 14 (1) of the law “On Local Governments”, the third and the fourth part of Section 5 of the law “On Immovable Property Tax”, on 18 December 2012, the Riga City Council issued binding regulation No.198 “Procedure for Granting Immovable Property Tax Relief in Riga”, which entered into force on 24 January 2013 (hereafter – Binding Regulation No. 198). By the binding

regulation of 26 November 2013 No. 75 “Amendments to the Riga City Council Binding Regulation of 18 December 2012 No. 198 “Procedure for Granting Immovable Property Tax Relief in Riga”, which entered into force on 7 January 2014 (hereafter – Binding Regulation No. 75), *inter alia*, Para 4.18. was added to Binding Regulation No. 198. Pursuant to this norm, a person has the right to receive relief for building, located in the territory of urban monuments of national significance or in certain building protection territories or which are cultural monuments protected by the state outside these territories, if these buildings are accessible to the public from a public outdoor space and certain improvement or reconstruction works have been performed thereon, on which the percentage of relief depends (5 %–90 % of the calculated immovable property tax). Additionally to these amendments, it was provided in Para 23<sup>2</sup> of the Binding Regulation No. 198 that the relief would be applied to persons, referred to in Sub-para 4.18.2.–4.18.4. of this Binding Regulation, for the successive five years, beginning from the next taxation year after making an entry in the Unified Information System of the Riga City Council, envisaged in Sub-para 28.10. of this Binding Regulation.

Hence, with the coming into force of the Binding Regulation of the Riga City Council of 18 December 2019 No. 111 “Procedure for Granting Immovable Property Tax Relief in Riga” (hereafter – Binding Regulation No. 111) on 30 January 2020, Binding Regulation No. 198 became void. In Para 3.18. of Binding Regulation No. 111, almost all previous tax reliefs for buildings, in which certain improvement, reconstruction or illumination work had been done, were retained. Whereas Para 11 of this Regulation (hereafter – the contested norm) provided: “The amount of relief granted to one legal person, except for state and local government capital companies and public benefit organisations, may not exceed 10 000 euro in one taxation year.”

By Para 1.8. of the Riga City Council Binding Regulation of 12 November 2020 No. 4 “Amendments to the Riga City Council Binding Regulation of 18 December 2019 No. 111 “Procedure for Granting Immovable Property Tax Relief in Riga”” (hereafter – Binding Regulation No. 4), which entered into force on 1 January 2021, the contested norm was deleted from the Binding Regulation No. 111.

**2. The applicant – the Administrative District Court** (hereafter – the Applicant) – holds that the contested norm is incompatible with Article 1 and the first sentence of Article 105 of the *Satversme* of the Republic of Latvia (hereafter – the *Satversme*).

The Applicant is examining administrative case No. A420191520, which has been initiated on the basis of an application by a legal person requesting repealing of an administrative act, by which additional immovable property tax has been calculated for the person.

The applicant in this administrative case has renovated and illuminated the façade of immovable property in its ownership and, thus, in accordance with Sub-para4.18.2. of Binding Regulation No. 198 has acquired the right to receive immovable property tax relief, starting with 2018. Pursuant to Para 23<sup>2</sup> of Binding Regulation No. 198, this relief had to be granted for five years, from the subsequent taxation year after an entry had been made into the Unified Information System of the Riga City Council. In view of the above, in the calculations of the immovable property tax for 2018 and 2019 a tax relief in the amount of 50 per cent of the sum of the immovable property tax calculated for the taxation year had been granted to the Applicant. Also the payment notice from the Municipal Revenue Office of the Riga City Council of 18 January 2020 indicates that the respective relief had been applied in calculating the immovable property tax for the applicant. However, after the contested norm entered into force, the Municipal Revenue Office of the Riga City Council, by its decision of 26 February 2020, revoked the payment notice of 18 January 2020 regarding February-December 2020, calculating additional immovable property tax in the amount of 2244.94 euro.

The Applicant notes that the claimant in the administrative case under review had developed legitimate expectations that following the works done to renovate and illuminate the façade it would receive tax reliefs in the defined amount for the successive five taxation years. Until 30 January 2020 the regulation had not been amended, thus, substantially, had been sufficiently established and constant, allowing the applicant and other legal persons to trust it and plan their activities on the basis of it.

The preparatory materials for drafting the contested norm should provide the possibility to verify whether the local government has assessed the impact of the contested norms on legal relations that had already been initiated, looking for reasonable balance between a person's legitimate expectations and public interests, for which the respective legal regulation had been amended. However, in the case under review, the explanatory documents do not substantiate the need for the contested norm. Hence, the claimant in the case that the Applicant is reviewing and other legal persons to whom the contested norm applies had been denied the possibility to ascertain its purpose and justification. Allegedly, discussions on general issues cannot be considered as being appropriate assessment, compatible with the principle of good legislation.

Moreover, it should be taken into account that the contested norm entered into force after the local government had sent the payment notices regarding taxes in 2020. The taxpayers had reckoned with the amount of tax to be paid in this period. The local government could have regulated, accordingly, the transitional period with respect to the current taxation year. A transitional period like this could have been one of the more lenient solutions with respect to those legal relations that had been initiated before this legal regulation entered into force.

The general taxation principle that applies also to the immovable property tax envisages that the taxation period is a calendar year. This principle is said to guarantee foreseeability of tax payments and legal stability. Derogations from this principle should be properly substantiated by essential public interests. In the case under review, such substantiation cannot be found.

In addition, the local government's inconsistent actions also should be taken into account, i.e., returning by the Binding Regulation No. 4, which entered into force on 1 January 2021, to the previous regulation, i.e., deleting the contested norm. Moreover, the substantiation for these changes had been identical to the initial substantiation for introducing the relief.

Hence, the Riga City Council had not assessed comprehensively and fully the impact of the contested norm on those legal persons who had improved and reconstructed the buildings and had relied on receiving a certain amount of tax relief for five years after commissioning the works. It is alleged that this situation is incompatible

with the principle of legitimate expectations, included in Article 1 of the *Satversme*, and the right to property, included in the first sentence of Article 105 of the *Satversme*.

**3. The institution, which issued the contested act, – the Riga City Council** – holds that the contested norm complies with Article 1 and the first sentence of Article 105 of the *Satversme*

A local government council has the right to collect taxes and fees, including the immovable property tax, to ensure its budget that later can be used to protect public welfare. Likewise, a local government, allegedly, has the right to adopt, at any time, binding regulation on applying relief to the immovable property tax. The content of this binding regulation depends on the vision on taxation policy and understanding of how the local government budget should be used expediently and reasonably held by the particular convocation of the local government council. Such binding regulation enters into force on the day following its publication in the official journal “*Latvijas Vēstnesis*” and it can be adopted at any time because the obligation, defined in Section 3 (1) of the law “On Immovable Property Tax”, to publish regulations related to taxation rates by 1 November of the pre-taxation year is not applicable to the regulation on immovable property tax reliefs.

Although local governments enjoy broad discretion in the area of taxation, the legislator has indicated in Section 3<sup>1</sup> of the law “On Immovable Property Tax” the principles that the local government must comply with in setting the rates and reliefs of the immovable property tax. Allegedly, it follows from the aforementioned regulation that application of the principles of foreseeability and stability is mandatory only in determining the rate of the immovable property tax but not in defining the immovable property tax reliefs. This decision is based on the fact that tax reliefs are exemption from the general regime for paying taxes. Whereas the principle of social responsibility is said to be the only principle that must be applied in determining the immovable property tax reliefs but not to the rates of the immovable property tax. This principle should be assessed in conjunction with the principle of social justice which provides for levelling out of social differences. Finally, the legislator’s informed decision to not determine mandatory compliance with the principle of foreseeability and stability in the process

of defining the immovable property tax reliefs should be examined in conjunction with the principle of legitimate expectations. I.e., the legislator has set a higher standard of legitimate expectations regarding the foreseeability and constancy of the immovable property tax rates, at the same time, persons' legitimate expectations that the regulation on the immovable property tax reliefs would not change is, comparatively, less protected.

Moreover, the Riga City Council draws attention to the process for adopting binding regulations. After becoming acquainted with the text of the draft binding regulation, the explanatory writ and a table summarising proposals, all deputies have the possibility to submit, prior to the Council's sitting, additional proposals on amendments to the text of the draft binding regulation. Regulatory enactments do not set a particular form, in which these proposals should be prepared; likewise, the degree of detail in the reasoning and explanations for such proposals has not been defined. Following the voting at the Council's sitting on the proposals, the explanatory writ in the binding regulation, in a part thereof, may be incompatible with the final wording of the binding regulation that is adopted; as it is with the draft laws examined by the *Saeima*. To ensure the legality of binding regulations adopted by local governments, the legislator has established an additional control mechanism, providing that a local government may publish its binding regulation only if the Ministry of Environmental Protection and Regional Development has not expressed objections regarding the legality of the adopted binding regulation.

Minutes No. 71 of the sitting of the Riga City Council on 18 December 2019 show that the proposal to add the contested norm to Binding Regulation No. 111 had been submitted by four deputies of the Riga City Council prior to the sitting. I.e., the contested regulation had not been included in the initial wording of draft Binding Regulation No. 111, therefore an explanation on it could not have been provided in the explanatory writ. Justification for the proposals made can be seen in the transcript of the said sitting, which allows concluding that the inclusion of the contested norm in the Binding Regulation No. 111 had provided the opportunity, *inter alia*, to implement another proposal, i.e., support persons with I and II degree of disability by increasing

the amount of immovable property tax reliefs to these persons and, thus, support more vulnerable societal groups.

By repairing or fully renovating a building's façade, the owner of the building is said to fulfil their duty to maintain their property, moreover, due to these works, the value of the immovable property increases. Thus, although one of the aims for setting the aforementioned immovable property tax reliefs is to improve the visual image of the city, these, nevertheless, should not be considered as being compensation for the investments made of co-financing the renovation works on the building. The term of five years defined for the receipt of support should be seen not as a promise to apply reliefs for a certain period of time but rather as a restriction that prohibits from receiving immovable property tax reliefs for an undetermined period of time.

In assessing, whether persons could have developed legitimate expectations regarding receipt of the tax relief, it should be taken into account that Binding Regulation No. 198, in the period of its validity, had been amended ten times. I.e., there are no grounds to assert that the legal regulation, established therein, would be characterised by unchangeability and stability. Moreover, application of tax reliefs, actually, is said to mean that those taxpayers who receive the immovable property tax reliefs are placed in a more favourable situation compared to the other taxpayers. The development of legitimate expectations regarding such more favourable treatment and protection are said to be relative.

Payment of taxes is said to be the legitimate interest of the entire society. Moreover, the types of immovable property tax reliefs and the periods, for which they are granted, which were envisaged in Binding Regulation No. 198, are said to be general and had been retained also in Binding Regulation No. 111. Hence, targeted re-allocation of the local government's financial resources had been done by Binding Regulation No. 111. Society's interest in having the amounts of taxes, defined in legal norms, paid and, thus, also the right of socially more vulnerable groups of persons to receive, if needed, larger reliefs to the immovable property tax is said to prevail over a legal person's individual interest in paying a lower tax. Hence, it is alleged that the principle of legitimate expectations had not been violated.

In view of the fact that the contested norm only sets the limits to the amount of immovable property tax relief for legal persons but does not revoke the possibility to receive the reliefs in general, it can be concluded that this norm is not confiscatory and, thus, complies with the first sentence of Article 105 of the *Satversme*

Para 11 of Binding Regulation No. 111 had been deleted as the result of a political process. I.e., the decision to delete the contested norm from Binding Regulation No. 111 had been adopted by another convocation of the Riga City Council, which had had a different vision on the taxation policy compared to the opinions of the previous Council and had been able to find other sources of financing to continue implementing the principle of social responsibility through reliefs to the immovable property tax.

**4. The summoned person – the Ministry of Finance** – notes that, pursuant to the law “On Immovable Property Tax”, the local government binding regulations on immovable property tax reliefs, which have been issued in accordance with the third and the fourth part of Article 5 of this law, may enter into force during the taxation year and be applied to the remaining taxation period.

In general, pursuant to Section 23 (2) of the law “On Taxes and Fees”, a local government has the right to review the calculated amount of the immovable property tax it has established that the provisions of laws, Cabinet regulations or binding regulations of local governments had been violated in determining the tax liabilities.

However, it is important to comply with the principle of legitimate expectations in the area of taxation. Therefore, it would be more appropriate to apply any changes to the procedure for calculating a tax (e.g., changes to the taxation rate or reliefs) beginning with the year following the adoption of the respective regulation in a local government’s binding regulation, except for urgent cases that, for various reasons, demand immediate action.

**5. The summoned person – association “Latvian Tax Consultants Association”** – notes that, in the particular case, there are valid doubts regarding compliance with the principle of legitimate expectations.

The disputed relief had not been amended for six years. This period had been sufficiently long for the claimant in the administrative case that the Applicant is reviewing and other persons to rely on this regulation. The claimant had developed legitimate expectations regarding the receipt of tax relief in a certain amount after carrying out the renovation and illumination works on the façade.

It should be taken into account that the pre-conditions for receiving the particular relief was a certain investment, i.e., carrying out the renovation and illumination works on the building's façade. Such reliefs serve as an incitive to make investments into the general urban environment of Riga, by renovating and maintaining buildings. Therefore, it can be assumed that a person would not have made so large investments into carrying out these works if it had known that the amount of relief would not exceed 10 000 euro annually. In view of the above, it should be recognised that, in the particular situation, the claimant's legitimate expectations had been seriously infringed upon.

A transitional period, which would allow the taxpayer to receive relief in the remaining period for which it had been granted by the legal norm, had not been set. However, following the introduction on limits to reliefs, the financial commitments of legal persons, in some cases, had increased disproportionately. Such a major change in the system of applying taxes without a transitional period is said to be unreasonable. No urgency and need related to public welfare that would be more important than the protection of the claimant's legitimate expectations and for which a reasonable transitional period for introducing changes should not be set can be discerned.

### **The Findings**

6. The Applicant requests assessing the compliance of the contested norm with the principle of legitimate expectations, included in Article 1 of the *Satversme*, and the right to property, included in Article 105 of the *Satversme*.

If the compliance of a legal norm with several provisions of the *Satversme* is contested then the Constitutional Court, in view of the merits of the case, must determine the most effective approach to this compatibility review (*compare, see, for*

*example, Judgement by the Constitutional Court of 4 November 2021 in Case No 2021-05-01, Para 10).*

**6.1.** The Constitutional Court has concluded that regulation, which provides for a person's obligation to pay a tax, falls within the scope of fundamental rights, included in Article 105 of the *Satversme* (*see, for example, Judgement by the Constitutional Court of 6 December 2010 in Case No. 2010-25-01, Para 5*). Namely, an obligation to pay a tax always means a restriction on the right to property because, as the result of applying the tax, the amount of a person's financial resources decreases (*compare, see, for example, Judgement by the Constitutional Court of 25 March 2015 in Case No. 2014-11-0103, Para 15*).

The contested norm does not establish a new obligation for a person to pay a tax. The obligation to pay the tax, affected by this norm, i.e., the immovable property tax, follows from, *inter alia*, the law "On Immovable Property Tax" and the Binding Regulation of the Riga City Council of 9 June 2015 No. 148 "On immovable Property Tax in Riga". The contested norm, in turn, defines the maximum amount of the immovable property tax relief that one legal person may receive within the taxation year.

Tax reliefs are such derogations from the general taxation regime, established in legal norms, that envisage alleviation of the tax burden, a more advantageous procedure for paying a tax or any other type of a more favourable taxation regime set for a taxpayer or a group of payers who comply with a certain feature (*see, for example: Klemm A. Causes, Benefits, and Risks of Business Tax Incentives. IMF Working Paper, January 2009, pp. 3–4, as well as Finanšu ministrijas 2020. gada decembra informatīvā ziņojuma „Par spēkā esošo nodokļu atvieglojumu izvērtēšanu” 5. lpp., available: [www.fm.gov.lv](http://www.fm.gov.lv), with a reference to OECD, Seminar „Tax Incentives – Promises and Pitfalls”). Para 4.18. of Binding Regulation No. 198 and Para 3.18. of Binding Regulation No. 111 provided for a person's right to receive immovable property tax reliefs for repaired and illuminated buildings in certain territories of Riga. I.e., if persons had renovated and illuminated in a certain way properties in their ownership then the immovable property tax that decreased proportionally to the work carried out was calculated for them. The contested norm, in turn, restricted the amount of such relief for*

one legal person, except for state and local government capital companies and public benefit organisations, to 10 000 euro per one taxation year.

However, in the present case, it is important that the immovable property tax reliefs, affected by the contested norm, are linked to certain activities or pre-conditions and if these were met than the relief was granted in a certain percentage of immovable property tax proportionally to the measures taken to improve the immovable property and for a defined period – five years (*see Binding Regulation No. 198, Para 4.18. and Para 23<sup>2</sup>, as well as Binding Regulation No. 111, Para 3.18.*). In those cases where, before the contested norm entered into force, a person already had taken the actions required for receiving the reliefs and specific reliefs had been granted for specific immovable property in its ownership, the restriction on the maximum amount of reliefs, imposed by the contested norm, actually, caused increase in its financial commitments. Such increase in the financial commitments was manifested directly in the decisions by the Municipal Revenue Office of the Riga City Council, made on the basis of the contested norm, by which the immovable property tax, calculated previously for the buildings in a person's ownership for February-December 2020, was re-calculated (*see, for example, Case Materials, Vol. 1, pp. 18-22*). I.e., after the contested norm entered into force, additional tax liabilities for 2020 were established for persons. Likewise, because of the contested norms, persons had to reckon with a higher immovable property tax calculated for the next year, which, accordingly, decreased the amount of financial resources freely available to persons. Thus, the contested norm, on its merits, causes such impact as would have been caused by a norm that establishes an obligation to pay a new tax or otherwise increases a person's financial commitments.

Hence, the contested norm falls within the scope of fundamental rights, included in the first sentence of Article 105 of the *Satversme*.

**6.2.** The State enjoys broad discretion in determining and implementing its taxation policy (*see, for example, Judgement by the Constitutional Court of 20 May 2011 in Case No. 2010-70-01, Para 9*). It includes the right to choose the tax rates and the categories of persons to whom these are applicable, as well as the right to set out in detail the specific regulation. However, the actions of the issuer of legal norms relating to taxation policy should comply with the general legal principles and other

provisions of the *Satversme* (compare, see *Judgement by the Constitutional Court of 18 October 2018 in Case No. 2017-35-03, Para 9*).

This discretion is even broader with respect to norms regulating tax reliefs. I.e., usually, such norms decrease the amount of tax for a comparatively narrow group of taxpayers or postpones the term for meeting tax liabilities and, generally, are assessed as derogations from or exceptions to the “standard” tax rate in the state or to the system or basic taxation principles (compare, see: *Von Haldenwang C., Redonda A., Aliu F. Shedding Light On Worldwide Tax Expenditures. GTED Flagship Report 2021. Bonn: German Development Institute / Deutsches Institut für Entwicklungspolitik (DIE), 2021, p. 12; Seer R. Allgemeines Steuerschuldrecht. In: Tipke K., Lang J. (Hrsg.) Steuerrecht. 22. Auflage. Köln: Schmidt, 2015, S. 236, Rn. 50; as well as Valsts kontroles likumības un lietderības revīzijas „Vai nodokļu atlaides un atvieglojumi sasniedz tiem noteiktos mērķus?” 2019. gada 31. maija ziņojuma „Nodokļu atlaides – neredzami budžeta izdevumi” 14. lpp., available: [www.lrvk.gov.lv](http://www.lrvk.gov.lv)). Usually, tax reliefs are applied to facilitate economic development and attract investments, implement aims of public welfare and provide incentives for certain models of conduct, i.e., they are based on the protection of interests related to public benefit (see: *Von Haldenwang C., Redonda A., Aliu F. Shedding Light On Worldwide Tax Expenditures. GTED Flagship Report 2021. Bonn: German Development Institute / Deutsches Institut für Entwicklungspolitik (DIE), 2021, p. 12; Seer R. Allgemeines Steuerschuldrecht. In: Tipke K., Lang J. (Hrsg.) Steuerrecht. 22. Auflage. Köln: Schmidt, 2015, S. 236, Rn. 50–51*). Application of tax reliefs leads to decrease in the revenue that the State gains from the particular taxpayer (see, for example: *Redonda A. Tax Expenditures and Sustainability. An Overview. Council on Economic Policies: Discussion Note 2016/3. November 2016, p. 2; Tax expenditures in OECD Countries. Paris: OECD, 2010, p. 12*). Thus, norms that introduce tax reliefs are a manifestation of benevolence or aid with respect to particular individuals due to their situation or particular actions.*

However, also in adopting legal norms that introduce tax reliefs, the issuer of these norms must comply with the general legal principles and other provisions of the *Satversme*. Even more so, this obligation applies to unfavourable changes to the amount of tax relief or rules on application or to revoking of such reliefs.

**6.3.** The Constitutional Court has recognised that the principle of legitimate expectations, derived from the basic norm of a democratic state governed by the rule of law, falls within the scope of Article 1 of the *Satversme*. The principle of legitimate expectations is linked to principle of legal certainty and ensures the stability it requires by prohibiting inconsistent actions by the State. This principle means that an individual may expect that the State would act lawfully and consistently, the State, in turn, must protect the trust granted to it. The existence of the principle of legitimate expectations is linked not only to trusting the state power but also the possibility for the addressees of legal norms to exercise their discretion (*see Judgement by the Constitutional Court of 11 December 2020 in Case No. 2020-26-0106, Para 10.2.*).

The principle of legitimate expectations does not include that the rights, once acquired by an individual, could be amended in a legal way. I.e., this principle does not give the grounds to believe that the legal situation, established once, would never change but allows and, in certain conditions, even demands changing the existing legal situation. Otherwise, the State would be unable to respond properly to changing conditions in life (*see Judgement by the Constitutional Court of 11 December 2020 in Case No. 2020-26-0106, Para 22.2.1.*). The issuer of legal norms is obliged to follow the current situation in a certain area and, if needed, assessing the interests and needs of the State and society, amend the legal norms, adopted previously. Likewise, also persons themselves must reckon with possible changes to the legal situation, for example, if the economic situation or needs of the State change, the tax rates and reliefs may change (*compare, see Judgement by the Constitutional Court of 13 April 2011 in Case No. 2010-59-01, Para 9.8.*).

In amending legal regulation, the issuer of legal norms must take into consideration those rights, with respect to retaining of which a person may have developed legitimate expectations (*see Judgement by the Constitutional Court of 11 December 2020 in Case No. 2020-26-0106, Para 22.2.1.*). In a democratic state governed by the rule of law, in introducing amendments to regulatory enactments, the issuer of these is obliged to consider it comprehensively and fully and define a lenient transition to the new legal regulation. Thus, reasonable balance between persons' legitimate expectations and the benefit gained by society would be ensured (*compare,*

*see, Judgement by the Constitutional Court of 5 March 2021 in Case No. 2020-30-01, Para 12).*

**6.4.** If the compliance of a legal norm both with the principle of legitimate expectations and Article 105 of the *Satversme* is contested then the compliance of the contested norm with Article 1 of the *Satversme* is predominantly reviewed in conjunction with Article 105 of the *Satversme* (*see, for example, Judgement by the Constitutional Court in Case No. 2016-07-01, Para 16.3.*). In such cases, the legitimate expectations are usually reviewed as one of the elements in the proportionality of a restriction on fundamental rights (*see, for example, Judgement by the Constitutional Court of 27 May in Case No. 2020-49-01, Para 29.2.–29.4.*). However, in the present case, the Applicant does not contest the restrictions on the amount of the immovable property tax reliefs *per se* but considers that this regulation and application thereof on legal relations that already have been initiated violate legitimate expectations regarding the receipt of the immovable property tax reliefs for the period of five years in the amount that had been determined proportionally to the renovation and illumination works carried out on the building. Namely, the basic matter of the present case is not the compliance of the maximum amount of the particular immovable property tax relief with the right to property but whether the principle of legitimate expectations had been complied with in defining the maximum amount of this relief and applying it to persons who had commenced receiving this relief before the contested norm entered into force. Hence in the present case, the Constitutional Court must verify whether the principle of legitimate expectations had not been infringed upon.

The principle of legitimate expectations protects only such rights, with respect to exercising of which a person could have developed lawful, valid and reasonable expectations, which is the core of the aforementioned legal principle (*see Judgement by the Constitutional Court of 5 March 2021 in Case No. 2020-30-01, Para 11.2.*). In the particular case, a person's right to property, defined in the first sentence of Article 105 of the *Satversme* and which is manifested as the immovable property tax relief, defined in Sub-para 4.18.2.–4.18.4. of Binding Regulation No. 198 and applied to the person, is the right, with respect to retaining of which a person has developed legitimate expectations. Hence, the existence of a violation of the principle of legitimate

expectations should be reviewed in conjunction with the rights included in the first sentence of Article 105 of the *Satversme*.

Therefore, in the particular case, the Constitutional Court must assess whether the contested norm infringes upon the legitimate expectations regarding retaining of the right to property, set out in Article 105 of the *Satversme*, of a person who has already met the criteria for receiving immovable property tax relief in a certain amount, included in Sub-para 4.18.2.–4.18.4. of Binding Regulation No. 198.

**Hence, in the present case, the Constitutional Court will examine the compliance of the contested norm with the principle of legitimate expectations, included in Article 1 of the *Satversme*, in conjunction with the first sentence of Article 105 of the *Satversme*.**

7. Basically, the principle of legitimate expectations means protection against setting such term for the validity of norms that, by retroactive or immediate force, has a negative impact on the rights that the addressees of legal norms had in the past or on any other legal relations (*compare, see: Onževs M. Tiesību normu laika aspekti tiesiskā un demokrātiskā valstī. Rīga: Latvijas Vēstnesis, 2016, 98. lpp., with reference to: Maurer H. Kontinuitätsgewahr und Vertrauensschutz. In: Isensee J., Kirchhof P. (Hrsg.) Handbuch des Staatsrechts. Band IV. Heidelberg: Müller, 2006, S. 413–417*). Depending on the period of validity of the legal norm affecting rights, different criteria may be used for reviewing the legality of the legal norm affecting legitimate expectations. If, in determining the period of validity of the legal norm, it can be concluded that a retroactive force had been set for the legal norm, then, from the perspective of time, the legal relations subject to the particular legal norm had been affected unlawfully and special reasons are required to justify it (*compare, see: Onževs M. Tiesību normu laika aspekti tiesiskā un demokrātiskā valstī. Rīga: Latvijas Vēstnesis, 2016, 110. un 126. lpp.*). Whereas legal norms with immediate effect are, basically, considered to be lawful; however, due to concrete conditions, the possibility that legitimate expectations of persons had been unlawfully violated cannot be excluded, *inter alia*, in cases when it can be recognised that the reliance on the existing legal regulation is more important than the legislator's aim, for the reaching of which

amendments are adopted (*compare, see: Onževs M. Tiesību normu laika aspekti tiesiskā un demokrātiskā valstī. Rīga: Latvijas Vēstnesis, 2016, 189.–190. un 196. lpp.*).

**7.1.** When the legal effects of the adopted legal regulation are applied to legal relations, which had been established in the past but continue after the adoption of the new regulation, the legal norms are adopted with immediate legal force (*see: Onževs M. Tiesību normu laika aspekti tiesiskā un demokrātiskā valstī. Rīga: Latvijas Vēstnesis, 2016, 189. lpp.*).

It follows from materials in the case reviewed by the Applicant that the claimant had received the immovable property tax reliefs in the defined amount already since 2018, i.e., the legal relations were established before the contested norm entered into force. Following the entering into force of the contested norm on 30 January 2020, the claimant continued exercising this right because at the moment, when the entry was made into the Unified Information System of the Riga City Council, the valid regulation provided that the relief was granted for five years, beginning with the next taxation year after the entry had been made.

The immovable property tax was recalculated on the basis of the contested norm in way that was unfavourable for the claimant, i.e., causing additional financial commitments to it; but as of the next month after the contested norm had entered into force, i.e., as of February 2020, without affecting the payments of immovable property tax for the previous years or the immovable property tax that had to be paid for January 2020, i.e., a month before the contested norm entered into force. The contested norm was applied also to other persons in the same way. Pursuant to Section 6 (3) of the law “On Immovable Property Tax”, the immovable property tax must be paid once per quarter – no later than on 31 March, 15 May, 15 August and 15 November – in the amount of one fourth of the annual amount or once annually as an advance payment. The contested norm did not revoke entirely the established immovable property tax reliefs, did not create retroactive effect with respect to the applicability of relief and the existence of relations and did not impact the tax payments of the previous years or the legal relations that already had been concluded. It altered the content of the future legal relations. Hence, the contested norm, with its entering into force, was applied to already initiated legal relations that had been established in the past, i.e., at the moment when

an entry was made into the Unified Information System of the Riga City Council, but which had not been concluded yet. Hence, the contested norm had immediate effect on the legal relations that followed from renovation and illumination work carried out on a building and the related provisions of Binding Regulation No. 198 and No. 111, limiting the amount of immovable property tax relief granted to one legal person annually to 10 000 euro and, accordingly, changing the immovable property tax calculated for concrete persons for the period from February 2020 till December of the same year.

**7.2.** The issuer of legal norms has the right to define immediate effect of legal norms; however, it must verify the impact of legal norms on the existing legal relations and ensure that this impact is not disproportional *vis-à-vis* the aim to be achieved. Namely, to assess the compliance of the contested norm with the principle of legitimate expectations in conjunction with the first sentence of Article 105 of the *Satversme*, it must be established in the present case:

1) whether a person had developed legitimate expectations to receiving immovable property tax relief in a certain amount for the duration of five years;

2) whether, in issuing the contested norm, reasonable balance between a person's legitimate expectations and the public interests, in which the respective regulation was amended, has been ensured (*compare, see Judgement by the Constitutional Court of 5 March 2021 in Case No. 2020-30-01, Para 12*).

**8.** To establish whether a person had developed legitimate expectations to receiving immovable property tax relief in the amount that had been set proportionally to the renovation and illumination works carried out, the Constitutional Court must examine, whether a person's reliance on a legal norm had been lawful, valid and reasonable and whether the legal regulation, substantially, is sufficiently fixed and constant to rely upon it (*see Judgement by the Constitutional Court of 5 March 2021 in Case No. 2020-30-01, Para 13*).

**8.1.** To establish that a person has developed legitimate expectations regarding retaining or exercising particular rights, it should be taken into account that the main task of this principle is to protect a person's rights in those cases where, as the result of

amendments to the normative regulation, the legal situation of persons deteriorates or could deteriorate (*see Judgement by the Constitutional Court of 8 November 2006 in Case No. 2006-04-01, Para 21*).

The norm that established a person's right to receive immovable property tax reliefs for buildings located in certain territories of Riga or were cultural monuments in the State's protection outside these, if they were accessible from public outdoor space and on which certain maintenance or reconstruction work had been carried out, i.e., Para 4.18 of Binding Regulation No. 198 entered into force on 7 January 2014. Para 23<sup>2</sup> of Binding Regulation No. 198 entered into force simultaneously with this norm, providing that the reliefs, established in Sub-para 4.18.2.–4.18.4., were applied for five years after an entry had been made into the Unified Information System of the Riga City Council. None of these norms had been amended during the period of their validity. Binding Regulation No. 198 did not include any other norms that restricted or impacted otherwise the amount or applicability of the respective reliefs. Both the type of the particular relief and the norm that set the term of five years for applying the relief were included also in Binding Regulation No. 111, which entered into force on 30 January 2020.

Namely, the legal regulation that provided for a person's right, after meeting certain criteria, to receive for five years immovable property tax relief in the amount of certain percentage, had been constant and in force for more than six years. Thus, the legal regulation should be recognised as being sufficiently fixed and constant.

As the Constitutional Court concluded before, the claimant in the administrative case had been receiving the immovable property tax relief already since 2018, this relief, in its full amount, being applied to the calculation of the immovable property tax for each year. The claimant relied on the right to receive the particular relief for five years after an entry had been made in the Unified Information System of the Riga City Council. Likewise, it follows from materials in the case and information available from the Court Information System that also claimants in other cases had acquired the right to immovable property tax reliefs, proportional to the renovation and illumination works carried out on the buildings and their façades before the contested norm had entered

into force and also had received it for several years in the set amount (*see, for example, Case Materials, Vol. 1, pp. 135–137, and materials in Case . A420187220*).

Hence, the legal regulation, which included the particular immovable property tax relief, defined for a person in certain percentage, proportionally to the renovation works carried out without any other restrictions to its amount, was sufficiently fixed and constant for its addressees to rely upon it.

**8.2.** However, in assessing the validity of developing legitimate expectations, it is important to take into account also the specificity of the branch of law where these expectations, possibly, have developed. Namely, the fact that the contested norm belongs to the area of tax law requires attention.

Tax revenue constitutes an important part of the general state budget revenue, ensuring to the State the possibility to perform its functions, *inter alia*, discharge its duties in the area of ensuring fundamental rights (*compare, see, Judgement by the Constitutional Court of 6 December 2010 in Case No. 2010-25-01, Para 9*). Within the framework of taxation system, persons, depending upon their income, particularities of consumption, the value of property in their ownership or other socio-economic criteria, pay taxes to ensure solidarity in society. Paying taxes is the way, in which persons assume shared responsibility for providing for society's needs and maintaining the State of Latvia. Whereas the issuer of legal norms in the area of taxation policy has the duty to create such mechanism for levelling socio-economic differences, solidarity-based and just, that is aimed at sustainable national development, moreover, not only formally but also ensuring effective functioning of this mechanism, as well as well-considered and timely introduction of the necessary changes to the taxation policy. Thus, public welfare is ensured (*compare, see Judgement by the Constitutional Court of 19 October 2017 in Case No. 2016-14-01, Para 26*).

The establishment and maintenance of such system requires constant control over it, following the development of the legal and actual situation and of the specific moment. I.e., the issuer of legal norms has the obligation to consider regularly whether the particular legal regulation is still sufficiently effective, appropriate and necessary and whether it does not require any improvements (*see, for example, Judgement by the Constitutional Court of 12 February 2020 in Case No. 2019-05-01, Para 24.1*).

In view of nature of tax reliefs as an institute that decreases the national revenue and has respective impact on the public welfare, the obligation of regular review applies, in particular, to norms that establish them. Namely, the issuer of legal norms, taking into account the changing circumstances and the long-term impact by the reliefs and their interaction with other policy tools, must verify regularly, whether the tax reliefs continue to be appropriate, economic and effective (*compare, see Valsts kontroles likumības un lietderības revīzijas „Vai nodokļu atlaides un atvieglojumi sasniedz tiem noteiktos mērķus?” 2019. gada 31. maija ziņojuma „Nodokļu atlaides – neredzamiie budžeta izdevumi” 14. lpp., available: [www.lrvk.gov.lv](http://www.lrvk.gov.lv)*). Thus, it must be verified whether, *inter alia*, the established reliefs reach the defined aim, whether they are related to the national policy planning documents and are, indeed necessary, as the most effective and financially advantageous way of reaching the aim, whether they are just, and whether they do not cause exceeding the limits of the budget granted and do not distort competition, do not cause substantial additional expenses and disproportional administrative burden (*compare, see, for example: Redonda A. Tax Expenditures and Sustainability. An Overview. Council on Economic Policies: Discussion Note 2016/3. November 2016, pp. 10–11; Tax expenditures in OECD Countries. Paris: OECD, 2010, pp. 25–26, 30, 34, as well as Finanšu ministrijas 2020. gada decembra informatīvā ziņojuma „Par spēkā esošo nodokļu atvieglojumu izvērtēšanu” 6. lpp., available: [www.fm.gov.lv](http://www.fm.gov.lv), un Valsts kontroles likumības un lietderības revīzijas „Vai nodokļu atlaides un atvieglojumi sasniedz tiem noteiktos mērķus?” 2019. gada 31. maija ziņojuma „Nodokļu atlaides – neredzamiie budžeta izdevumi” 14.–15. lpp., available: [www.lrvk.gov.lv](http://www.lrvk.gov.lv)*). Review of tax relief provides the possibility to verify whether the application of reliefs is transparent, effective and whether it is not abused, *inter alia*, by persons for whom this relief was not initially intended (*see Valsts kontroles likumības un lietderības revīzijas „Vai nodokļu atlaides un atvieglojumi sasniedz tiem noteiktos mērķus?” 2019. gada 31. maija ziņojuma „Nodokļu atlaides – neredzamiie budžeta izdevumi” 18. lpp., available [www.lrvk.gov.lv](http://www.lrvk.gov.lv)*). It is essential that, as the consequence of applying tax reliefs, budget revenue decreases, whereas to gain the planned amount of budget revenue the tax burden for other taxpayers has to be increased (*compare, see.: Tax expenditures in OECD Countries. Paris: OECD, 2010, pp. 30, 34,*

kā arī Finanšu ministrijas 2020. gada decembra informatīvā ziņojuma „Par spēkā esošo nodokļu atvieglojumu izvērtēšanu” 6. lpp., available: [www.fm.gov.lv](http://www.fm.gov.lv)). Hence, the issuer of legal norms not only enjoys discretion in establishing tax reliefs but also an obligation to review tax reliefs regularly, which follows from the principles of national sustainability and effective use of financial resources, as well as the duty to respect and ensure the rights of other persons.

Hence, it can be concluded that a person’s legitimate expectations that the tax relief would not be revoked is not protected to the same extent as in other cases when restrictions have been imposed on the right to property (*compare, see Judgement by the Constitutional Court of 6 December 2010 in Case No. 2010-25-01, Para 10.1.*).

However, although the issuer of legal norms enjoys relatively broad discretion with respect to norms that amend or revoke immovable property tax reliefs, in some exceptional cases, a person may develop legitimate expectations regarding the applicability of such reliefs within a concrete, limited period of time. However, a situation where a sector or a person is ensured more favourable treatment only on the basis of political initiative, for an indefinite period of time, should be differentiated from the case where a person has taken certain actions and met certain criteria, *inter alia*, such that are related to financial investments, to receive certain tax reliefs, limited in time, or other kind of support. Namely, expectations that certain reliefs would be applied for unlimited period of time should be distinguished from granting of a benefit on the basis of certain criteria and for a limited period of time. Moreover, protection of legitimate expectations should be assessed not as the right to maintain the previous condition for an unlimited period of time but as a guarantee that the changes will be introduced as leniently as possible.

The immovable property tax relief that was restricted by the contested norm was, firstly, granted on the basis of meeting certain criteria – carrying out renovation and illumination work on buildings and their façades and, secondly, was limited in time already from the very beginning, as it was granted for the period of five years.

It cannot be excluded that persons, to whom this relief was applied, began the works to repair and reconstruct their immovable properties, taking into account the expected tax reliefs, which, as to their nature, constituted certain financial support for

carrying out the respective works. The explanatory writ to Binding Regulation No. 75, which introduced the respective immovable property tax relief, points to the rationality of such actions. It is indicated therein that this type of relief is needed to restore buildings of culture-historical significance, as well as to improve the general visual image of the city, i.e., reliefs are granted for such actions by the owners of buildings that are in the interests of the Riga City Council and all inhabitants of the city (*see Para 1 in Section 2 of the explanatory writ to . Binding Regulation No. 75, Case Materials, Vol. 2, pp. 149–150*). The same statement is made in the substantiation for introducing the particular tax relief: “to ensure that the amount of immovable property tax relief would be proportional to the investments made by the owner in the renovation of the building, it is planned to apply the said relief for five years”, and, accordingly, this provision was included in Para 23<sup>2</sup> of Binding Regulation No. 198 (*see Case Materials, Vol. 2, p. 150*). I.e., the particular immovable property tax relief had been established with the aim of providing financial support for the renovation of buildings of culture-historical significance; moreover, also the duration of applying the relief was defined by taking into account the costs of renovation works.

Thus, the particular immovable property tax relief, as to its nature, regulates or encourages certain actions by persons. The Riga City Council had indicated with sufficient clarity that persons could take into account this relief in their economic activities and that it should be considered, *inter alia*, as being financial incentive for carrying out renovation and illumination works on buildings and their façades. Hence, persons’ expectations that, after certain works had been carried out, they would receive the particular tax relief for five years, had been valid.

Likewise, the fact that persons had not expected to receive the relief for undetermined period of time is important in the present case; their legitimate expectations were restricted in time, i.e., persons expected to receive the promised relief in the amount defined for exactly and only five years, beginning from the next taxation year after an entry had been made in the Unified Information System of the Riga City Council. The Riga City Council has noted that the term of five years for receiving the particular relief had been set to avoid making the impression that the owners of buildings had been granted the right to immovable property tax relief for an unlimited

period of time. However, this argument would not decrease the persons' rights to rely upon receiving the relief for exactly five years; quite to the contrary, they have been clearly informed that the particular tax relief has been granted for a definite period of time. I.e., from the very beginning, the persons reckoned that after a certain period they would no longer be granted the particular tax relief and, accordingly, reckoned even more with its constancy during the said period.

**8.3.** Expectations regarding the applicability of the immovable property tax for the period of five years must be differentiated from the constancy of the amount of this relief. However, these expectations regarding the applicability of the relief includes also expectations regarding the approximate amount of the relief, insofar it is essential for the aim and meaning of the relief. I.e., taking into account that the particular relief was established to facilitate certain amounts of investments, persons had the grounds to expect that the relief would be applied throughout the period of five years without significant changes to its amount.

**Hence, persons had developed lawful, valid and reasonable legitimate expectations, based on the regulation of Binding Regulation No. 198 regarding the receipt of immovable property tax relief for five years, proportional to the renovation and illumination work carried out on the buildings and their façades.**

**9.** Upon concluding that the contested norm leaves an impact on a person's rights, with respect to which they had developed legitimate expectations, with immediate effect, the Constitutional Court must verify whether the local government, in assessing this impact, ensured reasonable balance between a person's legitimate expectations and public interests, in which the respective regulation was amended. I.e., the Constitutional Court, first and foremost, must establish the interests, in which the local government decided to establish by the contested norm the maximum amount of the immovable property tax relief, and must verify whether the contested norm ensures balance between the interests of involved parties (*compare, see, Judgement by the Constitutional Court of 5 March 2021 in Case No. 2020-30-01, Para 14*).

**9.1.** At its sitting of 3 July 2019, the Finance and Administrative Issues Committee of the Riga City Council (hereafter – the Committee) decided to examine

the need for introducing amendments to Binding Regulation No. 198 and, to this end, established a working group (*see, Case Materials, Vol. 2, pp. 51–53*). The informative report of the working group of 14 October 2019, examined at the Committee’s sitting of 18 October 2019, the immovable tax reliefs, granted for renovation and illumination of buildings and their façades, are categorised as reliefs aimed at promoting clean-up of urban areas, development, involvement of inhabitants in the management and maintenance of immovable properties (*see Informatīvā ziņojuma (starpziņojuma) par Rīgas pašvaldības piemēroto nekustamā īpašuma nodokļa atvieglojumu efektivitātes izvērtējumu un nepieciešamajām izmaiņām 3. lp., Case Materials, Vol. 2, p. 59*). *Inter alia*, these were the reliefs that were assessed positively, i.e., as such that should be retained, the only proposals made were regarding specifying the amount of relief, moreover, with the aim of facilitating full restoration of buildings and their façades (*see Informatīvā ziņojuma (starpziņojuma) par Rīgas pašvaldības piemēroto nekustamā īpašuma nodokļa atvieglojumu efektivitātes izvērtējumu un nepieciešamajām izmaiņām galveno secinājumu 3.5. punktu ziņojuma 6. lpp. un priekšlikumu 6. punktu ziņojuma 11. lpp.*). It follows from information provided in Annex 1 to the informative report (interim report) by the working group that, at the time, relief provided for in Sub-para 4.18.2. of Binding Regulation No. 198 had been granted to 95 persons, the relief referred to in Sub-para 4.18.3. – to 92 persons, whereas the relief referred to in Sub-para 4.18.4. – to seven persons (*see Case Materials, Vol. 2, pp. 77–78*).

At the Committee’s sitting on 18 October 2019, when the informative report was reviewed, deputy Vjačeslavs Stepaņenko’s opinion was heard regarding the need to continue application of the immovable property tax reliefs to garages, basements, utility spaces and warehouses. During the debates on this proposal, the deputy noted, *inter alia*, “in financial terms, the amount of relief, in general, does not exceed the resources not gained from legal persons due to the tax reliefs” and, hence, it was important “to introduce a threshold of relief applicable to legal persons” (*see Excerpt from the minutes of the Finance and Administrative Issues Committee of the Riga City Council on 18 October 2019, Para 36, Case Materials, Vol. 2, p. 85*).

The draft regulation “Procedure for Granting Immovable Property Tax Reliefs in Riga” (No. RD-10-3129-lp) was examined at the sitting of the Riga City Council on

18 December 2019. At this sitting, Vjačeslavs Stepaņenko, together with three other deputies, submitted a proposal to add to the draft, *inter alia*, the contested norm to the draft. In connection with this proposal, the Head of the Municipal Revenue Office of the Riga City Council noted that, in 2019, reliefs in the amount exceeding 10 000 euro had been granted to 71 legal persons, of which three were public benefit organisations (see *Transcript of the Riga City Council's sitting on 18 December 2019*). The proposal did not lead to more extensive discussions. The proposal was supported by 35 votes “for” and 14 “against”. In general, 35 deputies voted “for” the draft binding regulation and 13 deputies voted “against”.

**9.2.** The Riga City Council has noted that the justification, provided by deputy Vjačeslavs Stepaņenko for the proposal provided by him jointly with other deputies to add the contested norm to the draft, is found in the transcript No. 71 of its sitting on 18 December 2019. This justification allows concluding that the inclusion of the contested norm in Binding Regulation No. 111 allowed, *inter alia*, to implement another proposal, submitted by the same deputies, i.e., support persons with I and II degree of disability, by increasing the amount of immovable property tax relief to be granted to these persons. By aligning in this way the revenue and expenditure of the local government in order to provide support to more vulnerable societal groups, the principles for determining immovable property tax reliefs, included in Section 3<sup>1</sup> of the law “On Immovable Property Tax”, had been embodied in practice.

However, it does not follow from the preparatory materials for the contested norm, *inter alia*, the transcript referred to, that the particular restriction on the amount of immovable property tax relief had been adopted for the directly formulated aim to ensure relief to persons with I and II degree of disability. Although the deputies submitted several proposals, *inter alia*, recommending increasing the immovable property tax reliefs to persons with I and II degree disability, it was indicated neither in the justification for the proposal nor during the debate that the implementation of these various proposals was financially interlinked. Moreover, the proposal included also wordings of other norms, the financial implementation of which was not linked to the contested norm, *inter alia*, with respect to retaining the immovable property tax reliefs

for groups of premises linked to residence, as well as other norms restricting reliefs, which, likewise, were not linked to the aforementioned aim.

Hence, it is impossible to conclude that the restriction on the amount of immovable property tax relief for restored immovable properties in the ownership of legal persons had been established with the aim of protection the rights of other persons – persons with I and II degree of disability.

Likewise, the materials linked to the adoption of the contested norm do not provide substantiation regarding the benefit ensured by the contested norm, i.e., the amount of resources it would allow saving, promoting, accordingly, public welfare. I.e., the contested norm was not adopted in specific public interests. Neither can any extraordinary circumstances be established objectively, pointing to the need to decrease suddenly the amount of granted reliefs.

Although the issuer of a legal norm has the obligation to review regularly the tax reliefs granted, such analysis should be systemic and include such aspects, based on facts and political choices, as the effectiveness of reaching the aim of the tax relief, the need to reach this aim also in the future, and concrete assessment of the amount of the tax relief.

It is inadmissible to violate a person's legitimate expectations on the grounds of abstract financial or other kind of benefit to society because such an approach does not allow balancing the interests of both parties and prevent a situation in which disproportional damages are caused to a person.

**9.3.** Likewise, the Constitutional Court concludes that the Riga City Council did not assesses the impact of the contested norm on those legal persons who already had carried out the repair and reconstruction works on the building. I.e., neither general nor individual impact assessment of this norm was conducted.

To recognise such legal norms, which, with immediate effect, infringe upon persons' legitimate expectations that the previous situation would be retained, not only the general interest in amended legal norms, i.e., the legitimate aim, is required, but also the justification provided by the issuer of legal norms as to why these legal norms should apply also to persons, with whom legal relations had been established in the past

(compare, see: Hey J. *Formale Rechtsstaatlichkeit der Besteuerung*. In: Tipke K., Lang J. (Hrsg.) *Steuerrecht*. 22. Auflage, Köln: Schmidt, 2015, S. 135, Rn. 271).

Substantiation for applying this norm to those legal persons who, on the basis of renovation and illumination works carried out on buildings, has already been granted immovable property tax relief in a certain amount, does not follow from the preparatory materials of this norm.

Quite to the contrary – although at the time when the contested norm was adopted it was noted that, in 2019, 71 legal persons would come within its scope, the issuer of the legal norm did not ascertain what the practical impact of the contested norm on these persons could be, i.e., the amount of tax relief applied to them before the contested norm entered into force and, accordingly, how large an impact would the restriction leave on each of these persons. *Inter alia*, the issuer of the legal norm did not ascertain either whether such restriction on the relief for any of these persons would not decrease the relief applicable to it several times, so that the relief would no longer achieve its initial compensatory aim. I.e., in determining the restriction on the amount of immovable property tax relief to 1000 euro, included in the contested norm, the Riga City Council did not ascertain whether such deviation for the initial tax relief in percentage would not, in some cases, impact persons' legitimate expectations to receive the relief in such an amount that would be proportional to the purpose of this relief and the works carried out by the particular person.

Moreover, the data of 2019 do not reflect how many persons fell within the scope of the contested norm in 2020 or at the moment when this norm entered into force. Thus, the impact of the contested norm upon these legal persons was neither assessed nor comprehended. These data included also those persons for whom the year of 2109 was the last year, in which they received the relief. Hence, the contested norm was adopted not only without a particular aim and assessment on its impact on persons' legitimate expectations but also without assessing its financial impact on affected persons or even without identifying them.

Likewise, in the present case, the fact that persons already at the beginning had developed legitimate expectations to receive a certain amount of relief for only the period of five years is important. Moreover, persons did not develop legitimate

expectations passively but as the result of meeting certain criteria. I.e., the State's obligation to comply generally with the principle of legitimate expectations but, in particular, in the particular case, does not require ensuring "a fossilised state of privileges" (*compare, see: Muckel S. Kriterien des verfassungsrechtlichen Vertrauensschutzes bei Gesetzesänderungen. Berlin: Duncker & Humblot, 1989, S. 22*). However, it includes the State's obligation to meet the commitments it has assumed *vis-à-vis* persons, otherwise person's trust in the State and law would be lost (*compare, see Judgement by the Constitutional Court of 15 March 2010 in Case No. 2009-44-01, Para 15*). This aspect, the specific circumstances, in which the legitimate expectations developed in the particular case, which included also the reliance by the owners of immovable property on counter-commitments by the Riga City Council to the renovation and illumination works on buildings and their façades carried out by them, was not taken into account when the contested norm was adopted.

In balancing the legitimate expectations to retaining certain rights and certain public benefit, for the ensuring of which the previous regulation is amended, it is important to understand who the affected persons are and the extent to which their rights are impacted, *inter alia*, whether these persons have developed legitimate expectations to retaining certain rights and the ways in which these legitimate expectations can be infringed upon. In the absence of this understanding, balance of interests cannot be achieved. The fact that information about the impact of the contested norm is lacking proves that the issuer of legal norms has not considered what measures would infringe on a person's legitimate expectations and the right to property to a lesser extent.

**9.4.** In view of the above, it can be concluded that the Riga City Council has not ascertained comprehensively and fully the impact of the contested norm on the already existing legal relations. A situation where the amount of a person's financial commitments, which follows from the obligation to pay the immovable property tax for the particular property and with respect to maintain of which for certain period of time a person has developed legitimate expectations, is increased without special justification or assessment, is incompatible with the principle of legitimate expectations, included in Article 1 of the *Satversme*, in conjunction with the right to property, included in the first sentence of Article 105 of the *Satversme*. Hence, the contested norm is incompatible

with the principle of legitimate expectations and does not ensure protection to a person's right to property.

**Thus, the contested norm is incompatible with the principle of legitimate expectations, falling within the scope of Article 1 of the *Satversme*, in conjunction with the first sentence of Article 105 of the *Satversme*.**

**10.** 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, should be considered as being void as of the day when the Constitutional Court's judgement is published, unless the Constitutional Court has provided otherwise. The Constitutional Court has already recognised that, in deciding on the date as of which the contested norm (act) becomes void, it should be taken into account that its task is to prevent, insofar possible, infringement on the applicants' fundamental rights (*see Judgement by the Constitutional Court of 16 December 2005 in Case No. 2005-12-0103 , Para 25*).

In view of the fact that the contested norm already has become void, in this judgement, the Constitutional Court does not have to decide on the moment when it becomes void (*see, for example, Judgement by the Constitutional Court of 14 January 2004 in Case No. 2003-19-0103, Para 11*). However, in reviewing a case, initiated on the basis of a court's application, the Constitutional Court must always examine the impact of its judgement on the respective case (*see Judgement by the Constitutional Court of 5 December 2019 in Case No. 2019-01-01, Para 25*). At the same time, the Constitutional Court must ensure that the situation that could evolve as of the moment when the contested norm becomes void would not inflict serious damage upon the interests of the State or society (*compare, see Judgement by the Constitutional Court of 2 November 2020 in Case No. 2020-14-01, Para 14*). Public welfare, related to the stability of a local government's budget, could be recognised as being one of these interests.

The Applicant has requested to recognise the contested norm with respect to the claimant in the administrative case under its review as being void as of the moment of its adoption. Allegedly, it is necessary for adjudicating the respective case. Likewise,

the Constitutional Court has received information about several cases, in which the administrative court has decided to suspend the legal proceedings because the contested norm should be applied in the legal proceedings (*see Case Materials, Vol. 1, pp. 132–141, and Vol. 3, pp. 25–31*). Recognising the contested norm as being void retroactively is the only possibility to protect the fundamental rights of the respective persons.

However, the possibility cannot be excluded that the application of the contested norm has not caused to all legal persons, in their opinion, a substantial infringement on their rights. In those cases where the person itself has not regarded protection of its rights as being so necessary to use general legal remedies, the local government's interest to preserve the stability of its budget would prevail.

Hence, the contested norm is to be recognised as being void as of the date in entered into force with respect to those person who have commenced protecting their rights by general legal remedies.

### **The Substantive Part**

On the basis of Section 30–32 of the Constitutional Court Law, the Constitutional Court

**held :**

**to recognise Para 11 Binding Regulation of the Riga City Council of 18 December 1 2019 No. 111 “Procedure for Granting Immovable Property Tax Relief in Riga” (in the wording that was in force until 31 December 2020) as being incompatible with Article 1 and the first sentence of Article 105 of the *Satversme* of the Republic of Latvia and, with respect to those persons who have commenced defending their rights by general legal remedies, void as of the date it came into force.**

The judgement is final and not subject to appeal.

The judgement enters into force on the day it is published.

Chairperson of the court hearing

Sanita Osipova