



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## J U D G E M E N T

on Behalf of the Republic of Latvia

on 19 December 2017, in Riga,

in Case No. 2017-02-03

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

having regard the applications on initiating a case by the Administrative District Court and the Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman),

on the basis of Article 85 of the *Satversme* of Republic of Latvia and Para 3 of Section 16, Para 8 and Para 9 of Section 17 (1), as well as Section 19<sup>1</sup> and Section 28<sup>1</sup> of the Constitutional Court Law,

at the court hearing of 22 November 2017 examined in written procedure the case

**“On Compliance of Para 2 of Annex 2 to the Cabinet Regulation of 7 January 2014 No. 16 “Procedure for Assessing and Managing Noise” with Para 7 of Section 3 and Section 18<sup>1</sup> (3) of the Law “On Pollution” and Article 111 and Article 115 of the *Satversme* of the Republic of Latvia, as well as Sub-para 2.4. of this Regulation, insofar it Applies to Public Auto and Motor Sports Events which are Held in Open-air Auto and Motor Racing Tracks Located in a Populated Area (City or Village) and for which a Permit for**

**Organising a Public Event has been Issued in the Procedure set out in the Law on Safety of Public Entertainment and Festivity Events with Para 7 of Section 2 of the Law “On Pollution” and Article 111 and Article 115 of the *Satversme* of the Republic of Latvia”.**

### **The Facts**

1. On 7 January 2014, the Cabinet adopted the Regulation No. 16 “Procedure for Assessing and Managing Noise” (hereinafter – Regulation No. 16). The procedure for assessing and managing noise, as well as the threshold values of environment noise were defined by this Regulation. Sub-para 2.4. of Regulation No. 16 was expressed in the wording that is currently in force. Pursuant to this paragraph, Regulation No. 16 does not apply to public events, which have been approved by the local-government in accordance with the Law on Safety of Public Entertainment and Festivity Events (a permit has been received).

On 22 September 2015, the Cabinet adopted Regulation No. 539 “Amendments to the Cabinet Regulation of 7 January 2014 No. 16 “Procedure for Assessing and Managing Noise”” (hereinafter – Regulation No. 539). This Regulation added to Regulation No. 16 Chapter II<sup>1</sup> “The Threshold Values of Environmental Noise and the Assessment thereof in Open-air Auto and Motor Racing Tracks Located in a Populated Area (City or Village)”, Para 2 of Annex 2 was also added to this Regulation, determining the threshold values of environmental noise in open-air motor racing tracks. 65 dB(A) or 70 dB(A) are admissible on up to five training sessions per week on work days from 9.00 to 20.00, but on Saturdays from 9.00 to 18.00, 75 dB(A) or 80 dB(A) are admissible for up to 16 competition days annually from 8.00 to 20.00, whereas above 16 competition days annually on Saturdays and Sundays from 8.00 to 20.00 – the admissible value is 70 dB(A) or 75 dB(A).

2. Two cases were initiated at the Constitutional Court regarding compliance of the norms of Regulation No. 16 with the norms of higher legal force.

On 10 January 2017, the case No. 2017-02-03 “On Compliance of Para 2 of Annex 2 to the Cabinet Regulation of 7 January 2004 No. 16 “Procedure for Assessing and Managing Noise”, insofar it Applies to Motor racing Tracks Located within a Territory, where Individual Residential Houses and High-Rise Residential Houses are Built, with Article 111 and Article 115 of the *Satversme* of the Republic of Latvia”, on the basis of an application by the Administrative District Court was initiated.

Whereas on 9 May 2017 , the case No. 2017-14-03 “On Compliance of Para 2 of Annex 2 to the Cabinet Regulation of 7 January 2004 No. 16 “Procedure for Assessing and Managing Noise” with Para 7 of Section 3 and Section 18<sup>1</sup> (3) of the Law “On Pollution” and Article 111 and Article 115 of the *Satversme* of the Republic of Latvia, as well as Sub-para 2.4. of this Regulation, insofar it Applies to Public Auto and MotorSports Events which are Held in Open-air Auto and MotorRacing Tracks Located in a Populated Area (City or Village) and for which a Permit for Organising a Public Event has been Issued in the Procedure set out in the Law on Safety of Public Entertainment and Festivity Events with Para 7 of Section 2 of the Law “On Pollution” and Article 111 and Article 115 of the *Satversme* of the Republic of Latvia”, on the basis of an application by the Ombudsman was initiated.

On 21 September 2017, the decision was taken to combine the Case No. 2017-02-03 and the Case No. 2017-14-03 in one case.

**3. The applicants – the Administrative District Court and the Ombudsman** (hereinafter also – the Applicants) – hold that Para 2 of Annex 2 to Regulation No.16 is incompatible with Article 111 and Article 115 of the *Satversme* of the Republic of Latvia (hereinafter – the *Satversme*). The Ombudsman, additionally, notes that Para 2 of Annex 2 to Regulation No. 16 is incompatible also with Para 7 of Section 2 and Section 18<sup>1</sup> (3) of the law “On Pollution”. Whereas Sub-para 2.4. of this Regulation, insofar it applies to auto and motorsports events, held in in open-air auto and roto Racing tracks located in a populated area (city or village) and for which a permit for organising a public event has been issued in the

procedure set out in the Law on Safety of Public Entertainment and Festivity Events (hereinafter – Public Events Law), is said to be incompatible with Para 7 of Section 2 of the law “On Pollution” and Article 111 and Article 115 of the *Satversme*.

**3.1.** The Applicant in the administrative case holds that the threshold values of noise set in Regulation No. 16 violate the right to live in a benevolent environment. In view of the fact that Regulation No. 539 had been adopted, which, *inter alia*, increased the admissible threshold levels of noise, the operations of Kandava karting circuit had been renewed. The noise caused by activities held in the racing track is said to have an adverse impact on the living conditions of the inhabitants residing in its vicinity and significantly infringe upon persons’ right to live in a benevolent environment and also has a harmful effect on persons’ health.

Whereas the Ombudsman, in the framework of verification procedures, had repeatedly turned to the Cabinet and requested it to eliminate the deficiencies identified in the legal regulation on the management of environmental noise within six months. However, the Cabinet had not eliminated the deficiencies referred to above.

**3.2.** The Applicants note that the restriction and control of the noise level fall within the scope of Article 111 and Article 115 of the *Satversme*. Noise should be regarded as one type of pollution, which might have a harmful effect on human health. The State’s positive obligation to restrict sources of noise and to ensure that the noise level would not violate persons’ right to live a benevolent environment, i.e., would not exceed the threshold above which a harm could be inflicted on a person’s health, is said to follow from the *Satversme*. This is said to apply, in particular, to those cases, where the source of noise should be recognised as being specific and the zone, in which the noise spreads, is open-air living environment. The noise created by motor racing tracks should be assessed as being specific and, therefore, all the more burdensome. The fluctuations in the level of this noise and the frequencies typical of noise related to moto sports could cause to society and inhabitants even greater inconvenience than by the monotonous traffic noise on intensively used streets or the noise caused by the railroad traffic.

The World Health Organisation's Guidelines on Noise (hereinafter – the World Health Organisation's Guidelines) should be taken into account, *inter alia*, in assessing the noise caused at motor racing tracks. Although this organisation does not identify motor racing tracks as an object of noise and a separate environment, this does not mean that this noise would be non-existent and the threshold values of noise would not be applicable to it.

The said Guidelines should be used by equalling, to the extent possible, the specific environment defined in it to the environment of motor racing tracks and, in particular, by taking into account the specificity of the noise of the said motor racing tracks as regards its harmful consequences. The threshold values that are currently defined in Regulation No. 16 are said to exceed the admissible noise level to ensure the quality of a person's life in an environment, where this person stays for long periods. Moreover, the noise of motor racing tracks, as to its level, can be equalled to noise, which should be recognised not only as undesirable but even such, the impact of which is linked to an elevated risk, i.e., the possible occurrence of hearing disorders, cardiac and vascular diseases, as well as other health disorders. Although the noise level in the respective territory is restricted with certain time limits, the matter of the disproportional admissible threshold values of noise has not been substantially resolved because a person may be subjected to such noise, for example, for the duration of the whole week.

The moto sports season lasts from spring till autumn but, for example, Biķernieki Racing Track, which offers a very diverse range of services, operates for the whole year. The measures taken by the Cabinet, allegedly, cannot be considered as such that would be aimed at protecting a person's health.

**3.3.** If amendments to a legal regulation can affect persons' fundamental rights they require due consideration. However, the adoption of Regulation No. 539 is said to be based on socioeconomic interest to provide the possibility and allow the motor racing tracks installed in Latvia to operate. In these interests, the legal regulation on noise that would not be contrary to the requirements of international organisations that have to be met to organise international motor racing competitions on Latvia is adopted. However, following the adoption of Regulation

No. 539, the level of protecting persons' health has significantly decreased compared to the regulation that had been in force previously.

The assessment of a person's interests conducted by the Cabinet in the process of drafting Regulation No. 539 cannot be considered as being done in due procedure. I.e., this assessment had been formal and the increasing of the threshold values of noise had not been examined as to its content and substance in the context of the need to protect a person's fundamental rights to the extent possible. The Cabinet, essentially, neither had taken into consideration the proposals by the Ministry of Health and the Health Inspectorate regarding the possibility of another solution that would be more legal and proportionate. Moreover, the inhabitants or their representatives had not been involved in the process. Likewise, the use of concrete examples of setting the threshold values of noise in other countries for comparative analysis had not been substantiated since the fact that, for instance, in Austria and in Germany, in addition to the admissible noise threshold levels, requirements have been set also with respect to noise-limiting protective infrastructure, as well as other safety requirements with respect to operations of racing tracks in populated sites had not been taken into consideration. Hence, no assurance can be gained that the Cabinet had seriously analysed the experience of both international organisations and of other Member States of the European Union in regulating the operations of motor racing tracks at all. The Applicants hold that in setting the threshold values of noise for a racing track that is located far from the residential area the same standards as the ones set for a racing track that is located exactly in the vicinity of such territory, where persons live and reside in long-term, should not be applied. The Applicants hold that the following solution would be suitable in the particular situation, which would balance the interests of entrepreneurs with persons' fundamental rights: to establish that the respective entrepreneurs have the obligation to construct noise a noise suppressing object around the motor racing tracks. Although Para 14.1 of Regulation No. 16 provides that in the case, if it is impossible to ensure complying with the threshold levels of noise otherwise, the sources of noise must be equipped with sound suppressors or the territory is zoned off by sound suppressing objects; however, Regulation

No. 539 is said to decrease the possibility of complying with the requirements for building sound suppressing walls. It is noted, additionally, that no substantiation had been given as to why the assessment of the noise level inside premises had not been envisaged. This is said to exclude the possibilities for the residents to complain about the increased noise level inside premises caused by the motor racing track, therefore persons are unable to achieve effectively that harmful noise is decreased or eliminated.

**3.4.** Regulation No. 539, allegedly, not only does not ensure that the obligation imposed upon the State by Article 111 and Article 115 of the *Satversme* is met but is also said to exceed the authorisation granted by the legislator. I.e., it is said to be incompatible with the aim of the law “On Pollution”, defined in Para 7 of Section 2 of this law. The Cabinet has not complied with the substance and aim of the legislator’s authorisation – to prevent or decrease the impact of the environmental noise on people. The Ombudsman also underscores that in the case, where auto or motorsport races are held in auto or motorsports facilities located in populated areas, the noise level envisaged in Para 2 of Annex 2 to Regulation No. 16 is not binding upon the organisers of the races. In view of the number of races and intensity in 2017, for example, at Biķernieki Racing Track 11 racing days were scheduled in May, 6 in June and 10 in July; it can be concluded that at least for 47 days per year inhabitants are subjected to the impact of unlimited, specific noise that is harmful for human health and wellbeing. The local governments, in issuing permits for organising events, pursuant to Sub-para 2.2. of Regulation No. 16, are not obliged to decide on the need to abide by certain threshold values of noise. It is contended that the State, thus, does not control the noise of races held at motor racing tracks.

**3.5.** After familiarising himself with the case materials, the Ombudsman emphasizes that the State, in ensuring by legal norms environmental quality and persons’ right to health, should take into consideration scientific findings and research conducted by scientists. Actions to the contrary are said to be incompatible with Article 111 and Article 115 of the *Satversme*.

The obligation of a local government to control the environmental noise cannot justify the Cabinet's failure to act and lack of interest in due regulation of environmental noise. The Cabinet's obligation in the field of noise control is said to follow from Article 111 and Article 115 of the *Satversme* and Para 7 of Section 2 of the law "On Pollution", and finding a solution that is compatible with a person's fundamental rights is said to fall with the Cabinet's competence.

**4. The institution, which issued the contested act, – the Cabinet of Ministers** – does not uphold the Applicants' opinion and believes that the contested norms of Regulation No. 16 are compatible with the norms of higher legal force referred to in the case.

**4.1.** Sports facilities, including motor racing tracks, are said to be an important element of sports infrastructure, which directly or indirectly ensures the development of socially benevolent environment. The initial wording of Regulation No. 16 had envisaged united provisions on measuring and assessing noise for all sources of noise, including auto and motor racing tracks. The initial wording of Regulation No. 16 had been adopted to transpose into it the Directive of the European Parliament and the Council of 25 June 2002 relating to the assessment and management of environment noise (hereinafter – Directive 2002/49/EC). Its aim had been to develop united measures for decreasing the noise caused by the major sources of noise. Moreover, in adopting Para 2 of Annex 2 to Regulation No. 16, the discretion envisaged for the Member States of the European Union in assessing the noise pollution, *inter alia*, setting the threshold values of noise by taking into account the characteristics of the particular source of noise, had been complied with.

**4.2.** Para 2 of Annex 2 to Regulation No. 16, allegedly, provides legal regulation with respect to the threshold values of environment noise with respect to open-air motor racing tracks, significantly restricting the activities held on the tracks, for example, limiting the number of days of training sessions and races, as well as the duration thereof; likewise, it is also said to impose an obligation on the owners of the racing tracks to equip the racing tracks with noise monitoring

equipment for constant measurement of noise. Moreover, this legal regulation should be examined in interconnection with measures for decreasing the impact of noise already included in Regulation No. 16.

Representatives of various sectors had been involved in drafting Para 2 of Annex 2 to Regulation No. 16; moreover, none of them, except the Ministry of Health, had developed any doubts during the process of approving the regulation regarding the legality, legitimate aim or expedience of this regulation. The Cabinet had examined the most suitable solution for improving the legal regulation on its merits. In general, the adoption thereof had been aimed at regulating a specific type of noise, taking into consideration the sports races of national and international scale scheduled in the state. Therefore the legitimate aim of this restriction of fundamental rights is said to be the society's, as a whole, benefit from maintaining the sports infrastructure and from gaining economic benefits, in view of the fact that the use of auto and motor racing tracks is a mandatory pre-requisite for organising races of international scale.

The Cabinet holds that currently there is no valid evidence regarding the negative impact of outdoor motor racing tracks on persons' health. The Applicants' reference to the findings included in the Guidelines of the World Health Organisation is said to be unfounded because these are not applicable to the environmental noise occurring in auto and motor racing tracks. It is contended that the findings included in these Guidelines are based on methodology that cannot be applied to the noise occurring in auto and motor racing tracks. Moreover, in urban environment, persons should take in account also such side effects as noise, exhaust fumes, smells of vibration caused by transport. The fact that an object causes noise, smell or vibration, allegedly, does not mean that such an impact would restrict a person's fundamental rights defined in Article 111 and Article 115 of the *Satversme* without grounds.

**4.3.** The noise management issues are said to call for complex solutions from the perspective of both construction and transport, spatial planning and eliminating hazard to health; i.e. complex and interdisciplinary solutions are needed. This, in particular, is said to apply to the historical residential territories or poorly

considered and unsustainable spatial planning on the level of local governments, as the result of which construction of residential buildings is allowed in the direct vicinity of a source of noise. For example, the first stage of Biķernieki Racing Track had been opened in 1966, whereas the racing track of Kandava – in 1972.

In the field of noise management, the local government should take into consideration the principle of sustainable development, linked to the spatial planning and development. To take care of sustainable development – allegedly this means not only hearing persons and balancing their interests in the stage of drafting the spatial plan but also, following the approval thereof, to take actions aimed at protecting persons' interests. The local governments also, by allowing the location of auto or motor racing tracks in a city, attest their readiness to eliminate possible risks, which might occur if the operation of these tracks might have negative impact on persons' right to health, life, inviolability of private life or property. Whereas pursuant to the precautionary principle, local governments must conduct inspections, which might include also implementation of anti-noise measures. Likewise, the owners of motor and auto racing tracks are said to have the obligation, to the extent possible, to prevent the occurrence and spread of pollution or other hazardous impacts on environment or human health, as well as the adverse consequences caused by them. The legal regulation provides for administrative liability for conducting such actions, during which the defined threshold values of noise are exceeded. Whereas the obligation of the owners of motor and auto racing tracks, which follows from Para 14 of Regulation 16, to equip the sources of noise with noise suppressors or to fence the territory off with noise suppressing objects. Regulation No. 16 also includes the obligation of owners of motor and auto racing tracks to inform the local government about the scheduled races, thus increasing the possibilities of a local government to ensure public order and facilitating circulation of information.

In substantiating the need to measure noise outdoors, the Cabinet underscores: the fact that the immovable property is located in the vicinity of a source of noise does not mean that the persons living in the respective house were potentially subjected to the environmental impact. Irrespectively of the noise level

identified in various locations around the residence, an exceedingly high level of noise indoors should not be admissible.

**4.4.** The Cabinet notes: even if the event is held in accordance with Section 5 of the Public Events Law, the local government, nevertheless, must assess it duly, i.e., establish, whether it will not cause harmful impact on human life or health. The Cabinet upholds the Applicants' opinion that the wording of Sub-para 2.4. of Regulation 16 should be specified, yet notes that the negative impact on human health by noise, caused, *inter alia*, by moto and auto racing tracks, is decreased and restricted also by other regulatory legal acts. The exemption envisaged in Sub-para 2.4. of Regulation No. 16, allegedly, cannot cause *per se* and infringement on a person's fundamental rights and incompatibility with legal norms of higher legal force.

**5. The summoned person – the Ministry of Environmental Protection and Regional Development** – upholds the opinion presented in the Cabinet's written response and the arguments included therein.

The matters linked to noise should be dealt with in a complex way, both from the perspective of construction and transport, spatial planning and eliminating health hazards.

In the field of noise management, the local government should take into consideration the principle of sustainable development, linked to the spatial planning and development. On the basis of Para 9 of the Cabinet Regulation of 16 June 2015 No. 312 "Regulation on the Latvian Construction Standard LBN 016-15 "Building Acoustics" (hereinafter – Regulation No. 312), the local government, in accordance with its competence, may task the owners and possessors of auto and motor racing tracks with implementation of anti-noise measures and measures for improving the acoustic quality in the racing tracks. However, for example, the Kandava Regional Council still had not taken the necessary actions to ensure within its administrative territory legality of construction process, *inter alia*, legal use of a building, likewise, it had not imposed the task on the owners of Kandava karting circuit to implement the aforementioned measures.

The right to health protection should be examined not solely in the context of the contested provisions of Regulation No. 16 but also in compliance with the requirements of the Sports Law and Regulation No. 312. Allegedly, the legislator has done everything necessary to prevent holding of unapproved public auto, motor and water motorsports events within the territory of a local government. *Inter alia*, by introducing amendments to the Public Events Law, the aim had been protection of a person's right to health, decreasing the risk to human health and life related to sports competitions, therefore it had been provided that in order to organise sports events the permit from that local government, in whose administrative territory the particular event had been planned, had to be received. At the same time, during the process of applying for the permit, the organiser of the event has the obligation to submit to the local government a statement from the respective sports federation in the procedure set out in the Sports Law.

Irrespectively of Sub-para 2.4. of Regulation No. 16, Para 5 of Section 4<sup>1</sup> (1) of the Public Events Law includes a prohibition to act in a way that would jeopardise the security and health of the participants of the event or other persons. Although Regulation No. 16 is not applicable, the local government should duly assess, whether the particular public event will not harm human life and health, as well as other aspects referred to in Section 7 (3) of the Public Events Law.

**6. The summoned person – the Ministry of Health** – holds that in the framework of policy for noise assessment and management measures for restricting noise in the auto and motorsports facilities that are located in populated areas should be implemented. To this end, the interests of all stakeholders should be taken into consideration and providing prevailing protection to only one group of interests is said to be inadmissible, if at the same time the rights of another group of interests are restricted or even denied.

The Ministry of Health upholds the opinion expressed in the Cabinet's written responses that issues related to noise require complex solution and that the local governments have the obligation to ensure that acoustic requirements are met

in accordance with the provisions of Regulation No. 312. The regulatory legal acts that regulate noise management, including Regulation No. 16, should constitute a consistent set of measures, in the framework of which the interests of all parties would be balanced.

To have fewer situations, where the maximum admissible threshold noise levels, envisaged in Regulation No. 16, are reached, it would be useful to define the application to the source of noise the maximum possible and available measures for restricting the noise. Whereas, upon establishing the hazardous impact of noise on human health, the admissible level of noise envisaged in Para 2 of Annex 2 to Regulation No. 16 should be reduced, thus balancing the interest to ensure the operation of auto and motorsports racing tracks with the interests of persons living in the vicinity of these racing tracks.

**7. The summoned person – the Health Inspectorate** – notes that it had been involved in the process of drafting Regulation No. 539.

The primary aim of Regulation No. 16 had been to ensure transposition of the requirements of the Directive 2002/49/EC into the Latvian regulatory legal acts. The threshold values of environmental noise that are applicable also to the noise caused by motor racing tracks, allegedly, should be used to assess the particular situation, to identify the territories and the number of people who are subject to the impact, as well as to develop measures for noise elimination and to develop spatial plans of the local governments. The threshold values of indoor noise are said to have a different significance, these are envisaged exactly for assessing the impact of the noise on human health

A person's fundamental rights enshrined in Article 111 and Article 115 of the *Satversme* cannot be examined in isolation from the right to the inviolability of home included in Article 96 of the *Satversme*. Namely, the need to protect the inviolability of home is said to apply also to such disturbances as noise, emission, smell or any other forms of interference.

The local government should act in the interests of society, abiding by the principle of good governance and human rights, and in the process of drafting the

spatial plan it should harmonise the different and contradictory public interests in accordance with the principles of spatial planning and constitutional principles. The Health Inspectorate doubts whether the actions by the local government of Kandava region, in drafting the spatial plan, had complied with the principle of good governance. The actual situation had not been examined; i.e., low-rise residential buildings are situated next to Kandava karting circuit. Hence, the local government, in drafting the spatial plan, had not taken into consideration the persons' right to health and the right to live in a benevolent environment. Moreover, it should be taken into consideration that Para 8 of Regulation No. 16 allows a local government to set a lower noise level than the one envisaged by the Cabinet Regulation.

The local government, *inter alia*, should ensure control and assume responsibility in those cases, where a permit to organise and event has been issued in the procedure set out in Section 5 (2) of the Public Event Law. The local government should ensure assessment of the scheduled motor or auto sports event and the impact of the related noise, considering the interests of the local government's inhabitants.

**8. The summoned person – the Environment State Bureau** – notes that noise pollution and protection against it, which must be ensured by the State, fall within the scope of Article 111 and Article 115 of the *Satversme*.

Allegedly, Directive 2002/49/EC does not impose upon the Member States the obligation to ensure that particular threshold values of noise are met. Its aim is to ensure that the Member States develop united measures for decreasing the noise caused by the major noises of source. The Member States, allegedly, enjoy discretion in defining the threshold values of noise depending on the characteristics and specificity of the particular source of noise. This is exactly what the Cabinet had done.

In view of the threshold values of noise set in the Guidelines of the World Health Organisation, 55dB(A) should be considered as a recommended objective to strive for to ensure protection of environment and health. Moreover, almost a half of the citizens of the European Union states are living in the conditions of acoustic

discomfort caused solely by the traffic noise. The numerical values defined in the norms of Regulation No. 16, allegedly, cannot be mathematically applicable and compared with the recommended indicators of noise intensity as well as the threshold values of noise included in the Guidelines of the World Health Organisation. Allegedly, another period of calculation and reporting are used in these norms, which are inconstant, therefore direct mathematical comparison is said to be impossible.

The actual situation upon which the case under review is based is said to be the consequences that follow from unsustainable spatial planning on the local government level; i.e., the location of residential territory in direct vicinity of noise causing activities.

**9. The summoned person – the association “Latvijas Motosporta federācija”** [“The Latvian Federation of Motorsports”] – upholds the considerations expressed in the Cabinet’s written response regarding compliance of the provisions of Regulation No. 16 with Article 111 and Article 115 of the *Satversme*.

The threshold values of noise referred to in the Guidelines of the World Health Organisation, which are linked to long-term impact upon a person, substantially cannot be applied to the noise caused in motor racing tracks, therefore the Applicants’ references to these are said to be unsubstantiated. Most probably, this noise could be equalled to the indicators of noise in traffic zones defined in the Guidelines of the World Health Organisation. However, also in practice, in the majority of countries, the threshold values defined in these Guidelines are not applied to noise in motor racing tracks.

Regulation No. 16 is said to allow the operations of motor racing tracks within limited periods of time, as well as limiting the number of races per year, thus balancing the rights of persons living in the vicinity of racing tracks to live in a benevolent environment and the right to health with the public interest to ensure their activities in Latvia. Hence, the persons living next to tracing tracks, as the

result of the operations of motor racing tracks, are not subject to the increased noise level for a long period of time or constantly.

Moreover, it had been validly established that the noise indicators are not measured indoors. If the noise does not exceed the threshold values defined in Regulation No. 16 outdoors, it could even less exceed it in premises with closed windows and doors. Moreover, in the motor racing tracks the noise is caused neither in the evenings or at nights therefore the impact of this noise is neither long-term nor permanent.

**10. The summoned person – the association “Latvijas Autosporta federācija”** [“The Latvian Federation of Autosports”] – upholds the considerations expressed by the Cabinet regarding compliance of the provisions of Regulation No. 16 with Article 111 and Article 115 of the *Satversme*.

Allegedly, the findings regarding the adverse consequences of noise that are included in the Guidelines of the World Health Organisation cannot be directly applied to noise in auto and motor racing tracks because these findings have been made on the basis of a methodology that examines the impact of noise upon a person’s health within the period of 24 hours. The practice of other countries is also said to prove that the threshold levels defined in the Guidelines of the World Health Organisation that are linked to long-term impact on a person, substantially, are not applicable to the noise occurring in motor racing tracks.

In view of the specificity of the noise caused by motorsports, experts have recommended permanent monitoring as appropriate for surveillance or control over the noise level; i.e., controlling on daily basis the compliance with the established restrictions. Moreover, the data of the noise monitoring are said to prove that the rights of persons living in the vicinity of racing tracks are respected. It is alleged that these persons are not subjected for prolonged and constant elevated noise level.

The threshold levels in outdoor motor racing tracks, defined in Regulation No. 16, if these are complied with, in no case could lead to exceeding the threshold levels set for indoor premises. The managers of the racing tracks do not have the possibility to conduct constant monitoring of indoor noise. An obligation like this

would be neither effective nor practically feasible. Moreover, the surveys of inhabitants are said to prove that the admissible threshold levels of noise defined in Regulation No. 16 and the procedure for assessing thereof provides a proportional balance between the operations of motor racing tracks and the inhabitants' interests.

**11. The summoned person – the Latvian National Sports Council –** upholds the considerations expressed by the Cabinet regarding compliance of the provisions of Regulation No. 16 with Article 111 and Article 115 of the *Satversme*.

Regulation No. 539 had been adopted to improve the regulation on noise with respect to outdoor auto and motor racing tracks located in a populated area (city or a village). This legal regulation had been drafted to ensure for operations of auto and motor racing tracks such legal regulation that would be compatible with the specificity of its actions, *inter alia*, taking into consideration the fluctuations of the noise within a day and the whole year, as well as the fact that the tracks operate only within definite hours of the day and evening. This regulation is said to comprise new, significant restrictions on the operations of the racing tracks, *inter alia*, by limiting the number of training and racing days, the length in hours, imposing an obligation on the owners or possessors of the motor racing track to equip the track with noise monitoring equipment, as well as setting additional requirements with regard to its operation.

If a local government develops concerns regarding the impact of the noise caused in auto and motor racing tracks on human health it should act in accordance with the precautionary principle enshrined in Para 2 of Section 3 (1) of the Environmental Protection Law. It provides that inspection must be carried out and in the case of doubts immediate actions should be taken in a scope that would preclude adverse consequences.

**12. The summoned person – the Saeima –** holds that the Cabinet, in issuing Para 2 of Annex 2 to Regulation No. 16, has acted in compliance with the authorisation granted to it. I.e., the legislator by the authorising norm – Section 18<sup>1</sup> (3) of the law “On Pollution” had granted to the Cabinet the discretion

to use technical regulation to implement the purpose of the law – to prevent or decrease the impact of noise on people. This regulation is said to detail the procedure for implementing the law “On Pollution” and function as a tool for embodying the provisions of this law.

Allegedly, Section 18<sup>1</sup> (3) of the law “On Pollution” clearly and exhaustively defines the set of those technical requirements and measures that the Cabinet is obliged to regulate in order to assess and decrease noise. The Cabinet, in compliance with the authorising norm, had defined the noise indicators, the procedure for application thereof and the methods for noise assessment. Hence, the Cabinet had also established restrictions on spreading of environment noise.

The authorisation granted to the Cabinet to ensure assessment and management of noise is said to envisage also the right to review the respective regulation to balance the interests of various societal groups – both the interests of those persons, whose actions cause noise, and the interests of those persons, who might be affected by the adverse impact of noise. If the Cabinet, in reviewing the regulation on noise assessment and reduction, has not duly weighted the interests of all stakeholders or if the application of the respective regulation has caused adverse consequences for these persons then the compliance of the regulation with legal norms of higher legal force should be examined.

**13. The summoned person – the Kandava Regional Council** – upholds the Cabinet’s opinion regarding compliance of the contested norms of Regulation No. 16 with the legal norms of higher legal force. However, it does support the opinion regarding the compliance of the local government’s actions with the requirements of regulatory enactments in the context of measures taken by the local government, the aim of which is to ensure to the inhabitants residing within the administrative territory of the local government the fundamental rights guaranteed in the *Satversme*.

In accordance with the spatial planning of Kandava region, the racing track has always been located in the zone where public institutions are built, where one of the permitted types of use is sports and recreational objects; moreover, this spatial

plan had been maintained constantly. The events organised in the racing tracks are said to constitute a significant part of all public sports events held in the region.

The Kandava Regional Council had been regularly involved in dealing with issues related to abiding by the admissible threshold levels of noise; i.e., it had issued a number of administrative acts unfavourable to the owners of the racing tracks, as well as has achieved, by cooperating with the owner of the racing track, decrease in the intensity of using the racing . When the racing track is in use, noise suppressing materials are being used Likewise, the local government had decided that a wall of thujas should be planted to absorb the noise, which would comply with the provisions of Regulation No. 312.

The Kandava Regional Council informs that, on the basis of Regulation No.16, on 22 December 2015, the operations of the racing track had been renewed. The Kandava Regional Council could not have assessed objectively and established, whether the threshold values of noise referred to in Regulation No. 16, if these are applied to outdoor motor racing tracks, could be harmful to a person's health and life and whether these should be linked to a violation to a persons right to healthy living conditions enshrined in the *Satversme*.

**14. The summoned person – the agency of Riga Stradins University “Institute for Occupational Safety and Environmental Health”** (hereinafter – Institute for Occupational Safety and Environmental Health) – notes that noise may have a significant impact on public health and that the requirements regulating the noise level may be very important for a broad circle of inhabitants and their health.

Noise could cause both direct and indirect health disorders. Environmental noise could cause indirect health disorders, such as, for example, communication and sleep disorders, cognitive and emotional response, inconvenience, and disorders of the autonomous nervous system and of the endocrine system. The noise caused by motor racing tracks could also cause indirect health disorders, depending on its level, the time of exposition and individual personal traits.

People experience the inconvenience caused by noise, which causes discomfort, decreases the quality of life and manifests itself as health disorders. The

degree of noise inconvenience is said to be linked to the noise level and the nature of the noise's source. Half of people subjected to car traffic noise, experience it starting with the limit of 65 dB(A). If the noise is sudden by nature and it has a definite spectrum of frequencies, the inconvenience caused by it is greater; therefore it can be assumed that the inconvenience caused by a motor racing track exceeds the inconvenience caused by car traffic noise.

The noise caused by motorcycles is not singled out as a separate type of traffic noise. However, the noise in motor racing tracks, by its nature, is said to differ from the noise caused by cars or trains. The noise in motor racing tracks is changing – prolonged sound, the level of which changes during the observational period, but not as a level of impulse noise. Such fluctuations of the noise level and certain frequency can cause greater inconvenience to the public than the monotonous traffic noise in streets with great traffic intensity or the noise caused by railway. Moreover, the inconvenience caused by various sources of traffic noise differ. Even if the level of noise pressure is constantly the same, the noise caused by airplanes causes greater inconvenience compared to road traffic noise, and the noise caused by railway – less inconvenience compared to road traffic noise.

Para 2 of Annex 2 to Regulation No. 16 envisages concrete time of operation of the motor racing tracks and a definite number of events per week and within the framework of a year, which should be assessed as being favourable for inhabitants because they decrease the adverse impact of noise in terms of time. If the threshold values of noise had been determined without restricting the time of operations the situation would be worse. However, such legal regulation does not decrease the degree of inconvenience for persons while training sessions and races are held.

## **The Findings**

**15.** The Applicants request the Constitutional Court to examine the compliance of several norms of Regulation No. 16 with legal norms of higher legal force. I.e., the Administrative District Court requests examining the compliance of Para 2 of Annex 2 to Regulation No. 16, insofar it applies to outdoor motor racing

track located in the territory where individual residential buildings and multi-storey residential buildings are constructed, with Article 111 and Article 115 of the *Satversme*. Whereas the Ombudsman requests examining Para 2 of Annex 2 to Regulation No. 16 and Sub-para 2.4. of this Regulation, insofar it applies to public auto and motorsports events, which are held in a populated area at an open-air auto or motor racing tracks and for which a permit for organising a public event has been issued in the procedure set out in the Public Events Law, with Article 111 and Article 115 of the *Satversme*, as well as Para 7 of Section 2 and Section 18<sup>1</sup> (3) of the law “On Pollution”.

Regulation No. 16 defines the noise indicators, the procedure for application thereof and assessment methods. Sub-para 2.4. of this Regulation, in turn, provides that these are not applicable to public events that have been approved by the local government pursuant with the Public Events Law. This applies, *inter alia*, to such public events in auto and motorsports that are held at an open-air auto or motor racing tracks located in a populated area and with respect to which a permit to organise public events has been issued in accordance with the procedure established in the Public Events Law. In such cases, the admissible threshold levels of environment noise and the provisions for assessment thereof set in Regulation No. 16 are not applicable.

Para 2 of Annex 2 to Regulation No. 16 envisages concrete admissible threshold values of environment noise for open-air motor racing tracks as well as concrete operation time of the track and the number of training sessions and races held therein. Likewise, this paragraph provides that the noise that occurs at open-air auto and motor racing tracks located in a populated area is assessed by using only the threshold levels of environment noise without assessing noise indicators indoors.

In view of the fact that Sub-para 2.4. of and Para 2 of Annex 2 to Regulation No. 16 (hereinafter jointly – the contested norms) are closely linked to the admissible threshold levels of environment noise in populated areas or an exemption to the application of these threshold levels, it is expedient to examine these norms, to the extent possible, in their interconnection.

**Thus, the Constitutional Court shall examine the compliance of the contested norms as a united legal regulation with the legal norms of higher legal force.**

16. The Applicants request the Constitutional Court to examine the compliance of the contested norms with two norms of the *Satversme* – Article 111 and Article 115.

It is noted in the applications that the compliance of the contested norms with the two norms of the *Satversme* referred to above should be examined in interconnection since both Article 111 and Article 115 of the *Satversme* establishes the State's obligation to identify such activities that degrade the environment, which jeopardise human health, and restrict the performance of such activities.

Article 111 of the *Satversme* provides that the State protects human health and guarantees a basic level of medical assistance for everyone. The case does not pertain to the issue of the State's obligation to provide the basic level of medical assistance for everyone. Therefore, in the case under review, Article 111 of the *Satversme* must be examined in the part pertaining to the State's obligation to protect human health. Article 115 of the *Satversme*, in turn, provides that the State protects the right of everyone to live in a benevolent environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment.

The Constitutional Court, in specifying the scope of Article 111 of the *Satversme*, has recognised that the State's obligation to respect, protect and ensure a person's right to health followed from this article. First, the obligation to respect the right to health means that the State must refrain from interfering into a person's rights and freedoms. Likewise, it must refrain from such actions that limit each person's possibilities to take care of his or her health himself or herself. Secondly, the obligation to protect the right to health means that the State must protect a person against the interference by other private persons into the exercise of his or her fundamental rights. Thirdly, the obligation to ensure the right to health means that the State must implement certain measures for exercising the fundamental

rights (*see, for example, Judgement of 9 March 2010 by the Constitutional Court in Case No. 2009-69-03, Para 8.1.*).

Hence, the Constitutional Court has recognised the State's obligation to protect a person from the interference by other private persons into exercising this fundamental right as an important aspect in a person's right to health. Likewise, the State must implement certain measures so that a person would be able to exercise his right to health. This, *inter alia*, means the State's obligation to protect one group of persons from the hazardous impact on health caused by the activities conducted by another group of persons.

The Constitutional Court has noted that the content of fundamental rights included in Chapter VIII of the *Satversme*, *inter alia*, of Article 111 of the *Satversme*, must be established in close interconnection with Article 89 of the *Satversme* (*see, for example, Judgement of 29 December 2008 by the Constitutional Court in Case No. 2008-37-03, Para 11.2.*). Article 89 of the *Satversme* provides that the State recognises and protects fundamental human rights in accordance with the *Satversme*, laws and international agreements binding upon Latvia. The Constitutional Court has recognised that the State's obligation to take into consideration the State's international commitments in the field of human rights follows from this Article of the *Satversme*. The aim of the constitutional legislator has been to achieve harmony between the norms of human rights included in the *Satversme* and the international norms of human rights (*see, for example, Judgement of 30 August 2000 by the Constitutional Court in Case No. 2000-03-01, Para 5 of the Findings*).

The content of a person's right to health can be revealed more extensively by taking into consideration Article 12 of the International Covenant on Economic, Social and Cultural Rights of 16 December 1966 (hereinafter – the Covenant). The Committee on Economic, Social and Cultural Rights has noted that persons' right to reach the highest possible level of physical and mental health has been enshrined in Article 12 of the Covenant. The right to health comprises various socioeconomic factors that facilitate development of circumstances that are appropriate for a person's healthy life. The right to health includes not only timely and appropriate

healthcare but also the right to health promoting factors, including healthy environmental conditions [see: *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12): 11/08/2000. CESCR/E/C.12/2000/4*].

Thus, the right to health included in Article 111 of the *Satversme* includes, *inter alia*, also the right to healthy environmental conditions.

The Constitutional Court, in turn, in specifying the scope of Article 115 of the *Satversme*, has recognised that this norm, first and foremost, imposes upon the State the obligation to create and ensure an effective system for environment protection (see *Judgement of 14 February 2003 by the Constitutional Court in Case No. 2002-14-04, Para 1*). The fundamental rights established in this Article envisage the State's obligation to protect a person against activities that are actually taking place and which might cause threat to human health and environment and also against such actions which are envisaged in the future (see *Judgement of 17 January 2008 by the Constitutional Court in Case No. 2007-11-03, Para 13.1.*). Noise as an environment polluting activity is to be examined, *inter alia*, in the context of Article 115 of the *Satversme* (see *Judgement of 24 February 2011 by the Constitutional Court in Case No. 2010-48-03, Para 6.9.*).

Noise as environment pollution impacts the quality of the environment, in which a person stays. By spreading in the environment, it may cause damage to a person's health. Hence, the right to live in a benevolent environment includes also the right to healthy environmental conditions.

It follows from the above that Article 115 of the *Satversme*, similarly to Article 111, establishes the State's obligation to protect a person's health. I.e., Article 111 of the *Satversme* covers all fields that affect a person's health. Whereas in the context of Article 115 of the *Satversme*, this obligation must be basically examined from the perspective of environment protection. Although the State's obligation in the field of protecting a person's right is defined differently in these norms, both these fundamental rights are applicable to protection of a person's health from environment pollution – noise.

**Article 111 and Article 115 of the *Satversme* protect a person's right to health and the right to live in a benevolent environment. Thus, the**

**constitutionality of the contested norms must be reviewed by examining these norms of the *Satversme* in their interconnection.**

17. The Constitutional Court has recognised that the institutions of state power must establish an effective system for environment protection. This, *inter alia*, means the obligation of these institutions to take into consideration the interests of environment protection in developing and adopting policy aims or legal acts, as well as in applying legal acts and implementing the policy aims. In assessing the legality of measures taken by the institutions of state power in the field of environment, the legal principles of this field are important (*see Judgement of 21 December 2007 by the Constitutional Court in Case No. 2007-12-03, Para 13, and Judgement of 17 January 2008 in Case No. 2007-11-03, Para 20*). Whereas the State's obligation to take care of circumstances that affect persons' ability to reach as high level of health as possible confirms to the person's right to health (*see, for example, Judgement of 29 December 2008 by the Constitutional Court in Case No. 2008-37-03, Para 11.2.*).

With respect to fundamental rights, the State has the obligation to respect them, as well as to protect and to ensure them. For a State to act in compliance with fundamental rights, it must implement a number of measures – both passive, not interfering into a person's rights, and active, for example, ensuring that a person's individual needs are met. The State's obligation not only to refrain from interfering into a person's rights but to perform the actions necessary to ensure these rights follows from the *Satversme* (*see, for example, Judgement of 3 April 2008 by the Constitutional Court in Case No. 2007-23-01, Para 7, and Judgement of 6 June 2012 in Case No. 2011-21-01, Para 7*). In the field of protecting a person's health, the State also has the obligation to balance the interests of individuals and those of society as a whole (*see, for example, Judgement of 29 December 2008 by the Constitutional Court in Case No. 2008-37-03, Para 12.1.3.*).

It follows from the applications, the Cabinet's written response and the opinions of the summoned persons that the case under review basically pertains to the issue, whether the State has duly fulfilled its obligation that follows from

Article 111 and Article 115 of the *Satversme*. Hence, in the case under review, the State's obligations basically will be examined in the positive aspect thereof; i.e., it will be assessed, whether the state has duly performed the actions required to ensure the aforementioned fundamental rights.

The Constitutional Court notes that the State, in implementing measures aimed at protecting a person's right to health and the right to live in a benevolent environment, has broad discretion. The State enjoys this discretion insofar the general principles of law and other norms of the *Satversme* are not violated (*see, for example, Judgement of 19 October 2017 in Case No. 2016-14-01, Para 25.2.*). Moreover, the State must exercise its discretion to ensure that the diverse interests of the involved persons were considered as fairly and as appropriately for the particular situation as possible.

Hence, the Constitutional Court must verify, whether the State has fulfilled its positive obligation that follows from a person's right to health and the right to live in a benevolent environment. To verify this, the Constitutional Court will examine:

1) whether the State has fulfilled obligations aimed at ensuring and protecting these fundamental rights;

2) whether the measures have been performed in due procedure.

To assess, whether these measures have been performed in due procedure, it must be verified:

1) whether, in protecting a person's right to health, the principles of environmental law have been complied with;

2) whether a fair balance between the interests of the involved persons has been reached.

**18.** The Constitutional Court has found that presently noise has been recognised as an important factor impacting the quality of life and a person's health (*see, for example, Judgement of 19 November 2009 by the Constitutional Court in Case No. 2009-09-03, Para 16.2.*).

In Latvia, the assessment and management of environmental noise is performed in accordance with the law “On Pollution”, which transposed Directive 2002/49/EC. Its purpose is to develop united measures to disallow, prevent or decrease adverse consequences in priority fields as well as to decrease noise caused by the major sources of noise. The Cabinet underscores, in particular, that this Directive determines the obligation of the Member States to develop united measures for decreasing noise (*see Case Materials, Vol. 4, p. 39*). It determines, *inter alia*, the discretion of each state in setting the threshold values, taking into consideration the peculiarities of the particular source of noise (*see the opinion of the summoned person – the State Environmental Bureau, Case Materials, Vol. 3, p. 33*).

With the purpose of protecting persons from the adverse impact of noise, the Cabinet has adopted Regulation No. 16, envisaging, *inter alia*, in Para 2 of Annex 2 to Regulation No. 16 the specific threshold values of noise caused by open-air auto and motor racing tracks located in populated areas, as well as rules on assessing and measuring thereof compared to other sources of environmental noise.

The Ombudsman notes that the Cabinet, in adopting Para 2 of Annex 2 to Regulation 16, has breached the authorisation granted by the legislator since it does envisage the Cabinet’s competence to increase the admissible threshold values of environmental noise (*see Case Materials, Vol. 3, p. 78*).

Thus, the Constitutional Court must establish, first and foremost, whether Para 2 of Annex 2 to Regulation 16 has been adopted in compliance with the authorisation granted by the legislator.

**18.1.** The Constitutional Court has recognised that, in accordance with the principle of separation of powers, the executive power has the right to issue regulations only in cases provided for by law and these cannot be contrary to the *Satversme* and laws [*see, for example, Judgement of 10 June 1998 by the Constitutional Court in Case No. 04-03(98), the Findings*]. The Cabinet may issue an external regulatory enactment only if the legislator has defined the authorisation to issue such an act in a law and has defined the limits of this authorisation (*see*

*Judgement of 29 June 2017 by the Constitutional Court in Case No. 2016-23-03, Para 16).*

The Constitutional Court, in assessing the scope of authorisation granted to the Cabinet by the legislator, must establish the content and the purpose of the authorising norms, as well as whether the Cabinet has not exceeded the limits of authorisation granted by the legislator (*see Judgement of 29 June 2017 by the Constitutional Court in Case No. 2016-23-03, Para 16*).

**18.1.1.** Regulation No. 16 has been issued on the basis of Section 18<sup>1</sup> (3) of the law “On Pollution”. In this norm the legislator has defined the Cabinet’s competence in assessing and decreasing noise. The Cabinet has the competence to adopt the respective regulatory legal acts, in commencing to identify adverse or harmful environmental noise, to prevent its hazardous consequences (*see annotation to the draft law No. 1428/Lp9 “Amendments to the Law “On Pollution””, submitted to the Saeima on 8 September 2009*). The totality of requirements and measures that the Cabinet has to regulate to assess and decrease noise follows from Section 18<sup>1</sup> (3) of the law “On Pollution”(see the opinion of the summoned person – the Saeima, *Case Materials, Vol. 4, p. 87*). Pursuant to Para 1 of the third part of the same Section, the Cabinet defines noise indicators, the procedure for applying thereof and assessment methods.

The Constitutional Court has already noted that it understands by the purpose of authorisation that what the legislator has tried to achieve by granting to the Cabinet the right to regulate the respective issue (*see Judgement of 9 October 2007 by the Constitutional Court in Case No. 2007-04-03, Para 19*). The executive power should understand the authorisation granted by the legislator not only as one particular, laconic legal norm but as the very substance and aims of the law (*see Judgement of 11 January 2011 by the Constitutional Court in Case No. 2010-40-03, Para 10.4.*).

Section 18<sup>1</sup> (3) of the law “On Pollution” should be examined in interconnection with the purpose of the law defined in Para 7 of Section 2 of this Law, i.e., to prevent or reduce harm caused to human health, property or the environment due to pollution, to eliminate the consequences of harm caused, as well

as to prevent or reduce the effects of environmental noise upon human beings. The *Saeima* also notes that the legislator by the authorising norm – Section 18<sup>1</sup> (3) of the law “On Pollution” – has granted the Cabinet discretion with respect to reaching the purpose of the law – preventing or reducing the impact of noise on people – with the help of technical regulation (*see Case Materials, Vol. 4, p. 88*). The legislator has granted to the Cabinet the discretion to establish such measures and the admissible threshold values that would help to prevent or to reduce the impact of noise on people and, thus, decrease the harmful consequences caused by noise.

The Constitutional Court finds that the legislator has included in the authorising norm the Cabinet’s competence to regulate the threshold levels of noise in open-air auto and motor racing tracks located in populated areas as well as to define the methods for assessing noise indicators.

**18.1.2.** The scope of authorisation means the range of the issues that the Cabinet has the right to regulate (*see Judgement of 14 October 2015 by the Constitutional Court in Case No. 2015-05-03, Para 14*).

The Ombudsman notes that Para 2 of Annex 2 to Regulation No. 16 has been issued by exceeding the scope of authorisation granted by the legislator. Allegedly, the legislator had authorised the Cabinet to define the measures by which the purpose set in Para 7 of Section 2 of the law “On Pollution” should be implemented. However, the threshold values of environmental noise and the provisions for assessing therefor established in Para 2 of Annex 2 to Regulation No. 16 are said to not prevent or reduce the impact of noise but, compared to the previous regulation, to increase it and, thus, cause adverse consequences for the health of inhabitants residing in the vicinity (*see Case Materials, Vol. 3, p. 75*).

The Cabinet, in turn, underscores that the threshold values of noise, although compared to the previous wording that had been in force are elevated, should be assessed in interconnection with other measures for reducing and controlling noise envisaged in Regulation No. 16 (*see Case Materials, Vol. 4, pp. 41–42*).

The Constitutional Court has recognised that the Cabinet, within the framework of the granted authorisation, may choose the most appropriate solution for the particular situation (*see Judgement of 3 May 2012 by the Constitutional*

*Court in Case No. 2011-14-03, Para 19*). The issuing of the Cabinet's Regulation should be recognised as being a mechanism for implementing a law policy decision; i.e., the executive power chooses, which of the several possible legal solutions to a problem should be enshrined in regulation (*see Judgement of 23 September 2008 by the Constitutional Court in Case No. 2008-01-03, Para 13*).

Increasing of the admissible threshold values of environmental noise *per se* does not mean that Para 2 of Annex 2 to Regulation No. 16 had been issued by exceeding the scope of authorisation granted by the legislator. By Regulation No. 16, the Cabinet has defined, in general, the way to restrict the spread of environmental noise. Pursuant to the granted authorisation, the Cabinet has chosen a complex solution for the particular situation, *inter alia*, by defining in Para 2 of Annex 2 to this Regulation concrete threshold values of environmental noise, the procedure for applying thereof and assessment methods.

The *Saeima* also holds that the Cabinet has acted in compliance with Para 1 of the authorising norm. The Cabinet has established restrictions on the spreading of environmental noise by legally regulating the threshold values of environmental noise in open-air auto and motor racing tracks located in populated areas and the methods for assessing noise. Regulation No. 16 is said to provide a more detailed regulation of and specify the provisions of the law "On Pollution" (*see Case Materials, Vol. 4, p. 88*).

**Hence, the Cabinet, in issuing Para 2 of Annex 2 to Regulation 16, has acted within the scope of authorisation granted by the legislator and this norm complies with Section 18<sup>1</sup> (3) of the law "On Pollution".**

**18.2.** It follows from the case materials that the contested norms have been included in Regulation No. 16 and are publicly accessible in compliance with the requirements of regulatory enactments. It is not disputed in the case under review that the contested norms have been examined, adopted and promulgated in the procedure defined in the Cabinet's Rules of Procedure and have been clearly worded.

**Thus, the contested norms have been adopted and are publicly accessible in compliance with the requirements of regulatory legal enactments.**

**18.3.** In assessing, whether the State has fulfilled its obligations aimed at ensuring and protecting a person's right to health and the right to live in a benevolent environment, the Constitutional Court noted that the legislator had adopted a number of regulatory legal acts, *inter alia*, the law "On Pollution". In accordance with Para 7 of Section 1 of this Law, a direct or indirect introduction of noise, caused by human activity, was to be recognised as one of the types of pollution. Whereas pursuant to Para 16 of Section 1 of this Law, unwanted or harmful outdoor noise created by human activities, *inter alia*, noise emitted by various means of transport, is to be recognised as being environmental noise. Section 18<sup>1</sup> of this Law defines measures and actions for assessing and reducing this noise. The legislator has adopted also the Environmental Protection Law, the purpose of which is to ensure the preservation and recovery of the quality of the environment, as well as the sustainable utilisation of natural resources. This law defines the obligations of the State and local government institutions with respect to providing and distributing environmental information and involving society in decision taking. Section 13 of this Law envisages involvement of the public in the preparation and discussion of regulatory enactments regarding the environment, as well as amendments thereto, in as early stage as possible.

In adopting Regulation No. 16, the Cabinet has taken into consideration the characteristics typical of the sources of noise linked to auto and motorsports and the time period of the noise impact not only through the day but also throughout the year and established the procedure for assessing and managing this noise, *inter alia*, threshold values of noise for training sessions and days of races, as well as the number of the respective days. Additionally, it has been established that the noise is assessed outdoors and that the threshold values are applicable to the particular period of racing tracks' operation and a definite number of training sessions and races. Likewise, the Cabinet has envisaged in Regulation No. 16 the obligation of the owner or the possessor of the motor racing tracks to take definite anti-noise measures to limit exceeding the threshold values of noise. Additional anti-noise measures are indicated in Chapter 4.3. of Regulation No. 312 4.3.

Sub-para 2.4. of Regulation No. 16 provides for an exemption regarding application of this regulation to public events, for the organising of which the permit of the local government, in whose territory the particular event is scheduled to be held, has been received. Pursuant to Para 1 of Section 1 of the Public Events Law, a public event is festivity, commemorative, entertainment, sports or recreational event accessible for the community and planned and organised by a natural or legal person in a public place regardless of the ownership of the property. Section 5 (2) of this Law provides that a permit to organise a public event of the respective local government is required for organising public sports events in auto, motor and water sports, irrespectively of the place where these are held.

**Thus, the legislator and the Cabinet have taken measures aimed at ensuring and protecting a person's right to health and the right to live in a benevolent environment, moreover, by defining the local government's competence in the organisation of such events.**

19. The Constitutional Court, in assessing, whether the measures aimed at ensuring and protecting a person's right to health and the right to live in a benevolent environment have been taken in due procedure, will establish, whether, in protecting a person's right to health, the principles of environmental law have been complied with.

**19.1.** Human dignity and the value of each individual is the essence of human rights. Therefore, in a democratic state governed by the rule of law, both the legislator, in adopting legal norms, and the party applying the legal norms, in the application thereof, must respect the human dignity (*see, for example: Barak A. Human Dignity: The Constitutional Value and the Constitutional Right. Cambridge: Cambridge University, 2015, p. 108*). Democracy and human dignity are two interdependent and mutually reinforcing values (*see, for example: Vienna Declaration and Programme of Action. Adopted by the World Conference on Human Rights in Vienna on 25 June 1993. Available: <http://www.ohchr.org/>*).

In a democratic state governed by the rule of law, duly fulfilled positive obligations, which follow from a person's right to health and the right to live in a benevolent environment, are such, where the assessment performed by the party adopting the legal norm is aimed at the protection of a human being as the supreme value. It includes also the human dignity as value, which must be both protected and ensured at the same time.

Hence, the legislator must take "anthropocentric" perspective on environment, i.e., viewing it as the environment of a human being or such environment that is necessary for human survival and for providing for human needs (*see, for example, Judgement of 24 September 2008 by the Constitutional Court in Case No. 2008-03-03, Para 17.1.*). The right to live in a benevolent environment primarily protects the person, his or her interests, i.e., the possibility for a person to live in such an environment, where he or she can fully function and develop, and where human dignity is respected.

**19.2.** The Constitutional Court has recognised that the precautionary principle is one of the principles of environmental law. It is applicable also in cases of potential risk – even if the risk cannot be fully established, forecasted or its consequences cannot be predicted due to insufficient information or scientific data. Pursuant to the precautionary principle, environment protection is not limited to protection against imminent danger or elimination of the consequences that have already set it but its aim is to reduce also the possible adverse future consequences (*see Judgement of 17 January 2008 by the Constitutional Court in Case No. 2007-11-03, Para 20.1.*).

The European Court of Human Rights has noted that the precautionary principle is applicable also, *inter alia*, to ensure as high safety level for human health and environment as possible. The precautionary principle provides that the State may not avoid taking such effective and proportionate measures that are required to prevent the risk that severe and irreversible damage might be inflicted upon human health and environment only because the technical and scientific information available at the moment did not provide a definite answer as to the degree of such risk. If substantial and serious risks exist, to which the applicants'

health and welfare are subject to, then the State has a positive obligation to take reasonable and appropriate measures to protect human rights and to foster environmental health in general, already at the time when the adverse consequences have not set in. This means that in the procedure of decision taking appropriate research must be conducted that would allow to make a preliminary assessment of the impact that specific activities might leave on the environment and persons' rights, to prevent adverse impact as well as to ensure a fair balance between the various competing interests (*see Judgement of 27 January 2009 by the European Court of Human Rights in Case "Tatar v. Romania", Application No. 67021/01, Para 69, 88, 107 and 120*).

The Court of Justice of the European Union, in turn, views the precautionary principle as one of the foundations for the policy of the European Union aimed at enhanced environment protection (*see, for example, Judgements of 5 May 1998 by the Court of Justice of the European Union in Case No. C-180/96 and Case No. C-157/96*). The European Commission, in assessing the implementation of the Environmental Noise Directive, has noted that the noise pollution remains a significant problem of environmental health in Europe. The scientific research proves that prolonged noise impact may have a significant adverse impact upon human bodily functions. However, it is admitted that currently the understanding of long-term effects regarding the consequences for human health caused by excessive noise caused by traffic vehicles is lacking, and therefore noise reduction measures are not granted sufficiently high priority. However, actions should be taken to decrease the noise impact, approaching the levels recommended by the World Health Organisation [*see Report from the Commission to the European Parliament and the Council On the Implementation of the Environmental Noise Directive in accordance with Article 11 of Directive 2002/49/EC, 30 March 2017, COM(2017) 151 final, Para 4 and 6*].

Para 49 of the Decision No. 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action programme to 2020 "Living well, within the limits of our planet" provides that "available data on long-term average exposure show that 65 % of Europeans living

in major urban areas are exposed to high noise levels”. Whereas the term “high noise level” is defined as noise that exceeds 55 dB(A) during the day and 50 dB(A) at night.

The Guidelines of the World Health Organisation provide a detailed description of the consequences that excessive noise might cause for human health, as well as list the recommended threshold values of noise in various contexts. Although these Guidelines are not legally binding, the regulation included therein should be recognised as a source of advisory but also of sufficiently authoritative nature, recommending to the State to choose the optimal model of action for solving a particular problem (*see, for example, Judgment of 14 September 2005 by the Constitutional Court in Case No. 2005-02-0106, Para 16, and Judgement of 6 June 2006 in Case No. 2005-25-01, Para 22*).

In the World Health Organisation Guidelines, the noise related to auto and motorsport has not been isolated as a separate type of noise; however, as traffic noise it can be equalled to environmental noise. It is noted in the Guidelines, *inter alia*, that an increased noise level may have adverse effect on human health, i.e., cause hearing, articulation and sleeping disorders as well as decrease a persons capacity to work. Pursuant to these Guidelines, 55 dB(A) during the day and 50 dB(A) in the evening are considered as being the recommended threshold values of noise in outdoor environment. The noise of 65–70 dB(A) is considered as noise causing adverse consequences in outdoor environment.

**19.3.** The Applicants note that the Cabinet has recognised as noise of admissible level such noise that might jeopardise the human health. I.e., the threshold values of noise established by the Cabinet are said to exceed the level of noise that would be admissible to ensure the quality of life in an environment where a person stays for a prolonged period of time (*see Case Materials, Vol. 1, p. 5, and Vol. 3, p. 75*).

The Cabinet, in turn, notes that depending on the environment, where the noise spreads, differentiation of the admissible threshold values of environmental noise is admissible. It is said to be impossible to prevent in full the impact of environmental noise in urban environment, therefore persons should reckon with

negative impact of external circumstances there, as well as side-effects present in urban environment – noise, exhaust gases, smells, vibrations caused by traffic. Moreover, it is alleged that the negative impact of the noise occurring in open-air motor racing track on human health has not been proven (*see Case Materials, Vol. 2, p. 98, and Vol. 4, p. 44*).

It follows from the case materials that persons in a populated area are constantly subject to elevated environmental noise caused by various sources of noise, for example, road traffic or railway. However, the noise related to auto and motorsports should be differentiated from the noise caused by daily traffic. Usually auto and motorsports are characterised by significant fluctuations in the level of noise both throughout a day and a year (*see annotation to the initial impact assessment to the draft Cabinet Regulation No. TA-1780 “Amendments to the Cabinet Regulation of 7 January 2014 No. 16 “Procedure for Assessing and Managing Noise”*”). The noise caused by auto and motorsports is variable, the fluctuations in its level and certain frequencies might cause greater inconvenience to the society that monotonous road traffic noise on intensively used streets or the noise caused by railway (*see Case Materials, Vol. 4, p. 82*). The experts of the agency of Riga Stradins University “Institute for Occupational Safety and Environmental Health” emphasize that noise inconvenience may manifest itself, *inter alia*, as health disorders.

The environment noise, in difference to the noise of working environment, where the levels are higher, cause indirect health orders, for example, communication and sleep disorders, troubled cognitive and emotional response, disorders of the autonomous nervous system and of the endocrine system. The inconvenience of the noise created at motor racing tracks may exceed the inconvenience of the road traffic noise and may cause indirect health disorders depending on the noise level, time of exposure and a person’s individual traits. Moreover, a noise that is sudden in nature causes greater inconvenience (*see Case Materials, Vol. 4, p. 80-81*). However, the Cabinet has set higher admissible threshold values of noise for outdoor motor racing tracks than for other, less hazardous sources of environmental noise.

In the course of adopting Regulation No. 539, the Ministry of Health expressed objections against the threshold values of environmental noise currently defined on Para 2 of Annex 2 to Regulation No. 16, pointing exactly to possible adverse consequences for persons' health (*see, for example, statement on the objections provided in opinions regarding the draft Cabinet Regulation No. TA-1780 "Amendments to the Cabinet Regulation of 7 January 2014 No. 16 "Procedure for Assessing and Managing Noise" and its initial impact assessment, Case Materials, Vol. 2, pp. 25 –37*). The Ministry of Health, referring to the World Health Organisation Guidelines, underscored that the admissible threshold values of noise should be decreased at least by 5 dB(A) so that the maximum noise level would not exceed 70 dB(A), recommended by the World Health Organisation. Likewise, the Ministry of Health had recommended decreasing the length of training sessions on working days and the length of races on holidays, as well as imposing an obligation to the possessors of the racing tracks to ensure appropriate noise suppressors and to fence off the territory with increased noise level with noise suppressing objects to ensure a level of noise that would not be hazardous for health inside the premises of residential buildings located outside the racing tracks (*see the Minutes of the Cabinet's Sitting on 22 September No. 50, Para 18, Case Materials , Vol. 3, p. 147*).

The State Environmental Bureau notes that the threshold values of noise established in Para 2 of Annex 2 to Regulation No. 16 cannot be directly mathematically compared with the recommended indicators of noise intensity included in the World Health Organisation Guidelines as well as with the threshold values of environmental noise (*see Case Materials, Vol. 3, p. 35*). Likewise, the association "Latvijas Motosporta federācija" and association "Latvijas Autosporta federācija" underscore that the World Health Organisation Guidelines cannot be directly applied to the particular situation, since the hazardousness of the noise level indicated therein would be manifested only if such noise were constant and prolonged; however, the noise, the impact of which already has been limited by allowing to organise races only within certain periods during a day cannot be recognised as being such ( *see Case Materials, Vol. 3, pp. 40-41 and pp. 43-44*).

Prior to the adoption of Para 2 of Annex 2 to Regulation No. 16, the general rules were applicable to the noise caused by open-air auto and motor racing tracks facilities located in a populated area. I.e., the obligation to equip the racing tracks with noise restrictors or fence in the territory with noise suppressing objects was binding upon the owners and possessors of auto and motor racing tracks already when the environmental noise exceeded the maximum admissible threshold value 55 dB(A). The Constitutional Court finds that the Cabinet has not considered and provided substantial reasoning why this obligation of the owners and possessors of motor racing tracks – to ensure appropriate noise suppressors and to fence off the territories with elevated noise with noise suppressing objects – since the coming into force of Para 2 of Annex 2 to Regulation No. 16 is linked to elevated threshold values of noise.

The interval of admissible threshold values of noise set in Para 2 of Annex 2 to Regulation No. 16 is from 65 dB(A) to 80 dB(A), depending on the time of the training session or races. However, Pursuant to Sub-para 2.4. of Regulation No. 6, the threshold values of environmental noise are not applicable at all to a public moto or auto sports events, for the organisation of which a local government's permit has been granted in accordance with the Public Events Law.

This situation has evolved since 12 May 2016 when the law “Amendments to the Law on Safety of Public Entertainment and Festivity Events” entered into force. Sub-para 2.4. of Regulation No. 16, in interconnection with Section 5 (2) of the Public Events Law provides that the regulation established in Sub-para 2.2. and 2.3. of Annex 2 to Regulation 16, which restricts the number of racing days, the duration and define the threshold values of noise, is not longer applicable to races held at open-air motor racing tracks located in populated areas.

The noise that the contested norms allow is not only close to the noise that causes adverse consequences for the human health but in some cases even exceeds it and also exceeds the threshold values of noise set by the World Health Organisation (*see, for example, Case Materials, Vol. 2, p. 68*). Although specific rules are typical of both auto and mot sports and the activities thereof, in accordance with the contested norms, a person residing in the vicinity of racing tracks may be

subject for the whole week to the noise of such level that has an adverse effect upon his or her health because, for example, five training sessions are allowed on working days, during which the admissible level of noise is 65 dB(A), moreover, these training sessions may be prolonged – for 12 hours during the day. Whereas during races, which take place on holidays, the level of noise is not restricted at all.

In the framework of preparing Para 2 of Annex 2 o Regulation No. 16, the data on the methodology for assessing the noise caused by the activities of auto and motorsports, as well as regulatory enactments on noise management in various countries had been collected (*see, for example, letter of the Ministry of Environmental Protection and Regional Development of 22 December 2015 No.18-1e/10468, Case Materials, Vol. 3, p. 131*). The Cabinet has noted that prior to adoption of Para 2 of Annex 2 to Regulation No. 16 the experience of various countries had been examined. However, the Cabinet had taken into account the experience of Austria and Germany, in particular, although in these countries the location of motor racing tracks is totally different than in the territory, where the threshold values of noise defined in Para 2 of Annex 2 to Regulation 16 are applicable. Thus, these threshold values have not been assessed in interconnection with the place, where noise is spreading, the typical features of the respective noise and the consequences caused by it.

In assessing the adverse impact of noise in a populated area, it must be taken into consideration that the impact of the urban environmental noise is not always direct but may, however, cause indirect consequences and, at the same time, may exacerbate or facilitate some problems. In the process of adopting the contested norms, the Ministry of Health has argued that the noise caused at auto and motor racing tracks might infringe upon persons' right to health and the right to live in a benevolent environment and has noted also to threshold values that would be more considerate of people. Hence, the possible adverse consequences had been presented to the Cabinet, and it knew of them. It does not follow from the materials of drafting and adopting Para 2 of Annex 2 to Regulation No. 16 in interconnection with Sub-para of 2.4. of this Regulation, that the Cabinet, in determining the regulation on assessing and managing noise with respect to outdoor motor racing

tracks located in populated areas had considered the possible adverse consequences caused by the noise.

In a democratic state governed by the rule of law, the precautionary principle requires that there is no need to wait for a real and actual harm inflicted upon human health but it is sufficient to have valid doubts regarding the possibility of such harm for the State to take effective and proportional measures to not allow the occurrence of the harm. Appropriate assessment of the possibility of harm, *inter alia*, is inseparably linked to the State's duty to do everything possible to prevent this harm effectively or, to the extent possible, decrease already before it has set it.

**Thus, the Cabinet, in issuing the contested norms, has not acted in compliance with the precautionary principle, ensuring and protecting human dignity as the supreme value of a democratic state governed by the rule of law.**

20. The Constitutional Court, in assessing, whether the measures aimed at ensuring and protecting a person's right to health and the right to live in a benevolent environment, have been taken in due procedure, shall examine also, whether a fair balance has been reached between the interests of the involved persons.

The Constitutional Court has recognised that, on the one hand, the natural environment has an aesthetic and spiritual value that determines the quality of human life and the intangible aspects of a person's wellbeing. Therefore, a degraded natural environment has a negative impact upon the wellbeing of every person (society). However, on the other hand, the material wellbeing of society often depends upon the implementation of such projects, which restrict the possibilities of the society itself to use the public outdoor space or degrade the environment. In a situation like this, both the prohibition to engage in activities that degrade the environment and the permission to do so in many aspects affect and diminish the welfare of each person. Hence, in deciding on issues that are linked to the use of environment, the choice must always be made, which of the interests should be given preference in the particular circumstances – environmental protection or economic interests (*see, for example, Judgement of 6 July 2009 by the*

*Constitutional Court in Case No. 2008-38-03, Para 9*). Hence, in assessing the possible violations of Article 115 of the *Satversme*, the interest of society to live in a benevolent environment, on the one hand, must be balanced, to the extent possible, with the promotion of economic development, on the other hand (*see Judgement of 17 January 2008 by the Constitutional Court in Case No. 2007-11-03, Para 13.2.*).

The European Court of Human Rights, in examining the decisions adopted by a State in the environment field, assesses both the material and the procedural aspect of these decisions, moreover, in the procedural aspect taking into account whether sufficient consideration has been given to the individuals' interests in the decision taking procedure (*see Judgement of 8 July 2003 by the Grand Chamber of the European Court of Human Rights in Case "Hatton and Others v. the United Kingdom", Application No. 36022/97, Para 99 and Para 104*). Hence, it is examined, whether various interests of the society have been fairly balanced in the decision taking procedure. An appropriate and fair balance is achieved if these interests have been considered not only formally but also substantially.

The Ombudsman holds that the Cabinet, in determining some threshold values of noise and allowing elevation therefor, compared to the previous regulation, has not duly considered the possible impact of the noise on a person's health. I.e., in auto and motor racing tracks, the admissible threshold values of noise have been raised to such a level that causes an adverse impact. Moreover, these threshold values even are not applicable to the cases envisaged in Sub-para 2.4. of Regulation No. 16. The assessment of the impact of noise is said to depend upon the choice and evaluation of the local government (*see Case Materials, Vol. 3, pp. 78-80*).

The Cabinet, in turn, notes that the respective threshold values of noise had been defined to ensure the possibility to organise international races in Latvia. I.e., "appropriate legal regulation with respect to noise (for auto and motorsports facilities in populated areas) is required that would not be contradictory to the requirements of international organisations". Moreover, it had been necessary to adopt such legal regulation that would, actually, comply with the noise occurring in

the majority of auto and motorsports facilities (*see annotation to the initial impact assessment to the draft Cabinet Regulation No. TA-1780 “Amendments to the Cabinet Regulation of 7 January 201 No. 16 “Procedure for Assessing and Managing Noise”*).

It follows from the case materials that the Cabinet issued Para 2 of Annex 2 to Regulation No. 16 mainly to facilitate the organisation of international auto and motorsports races in Latvia and, thus, primarily supported the interests of athletes as well as of the respective merchants. Training session and races in auto and motor racing tracks ensure economic gains to society as well as preservation of infrastructure, moreover, provide the possibility to persons, including children, to engage sports (*see Case Materials, Vol. 3, p. 40, and Vol. 3, p. 43*). A significant argument in favour of increasing the threshold values of noise also had been the need to renew the activities of Kandava karting circuit (*see the audio recording of the sitting of the Latvian National Sports Council on 2 July 2015, Case Materials, Vol. 3*). The activities of these racing tracks have a positive impact on the local government’s economy in Kandava region (*see Case Materials, Vol. 4, p. 98*.)

The Cabinet underscores that the contested norms should be examined in interconnection with the whole regulation of Regulation No. 16. I.e., to ensure, to the extent possible, the persons’ right to live in a benevolent environment, the Cabinet has established additional measures, i.e., has differentiated the admissible threshold levels of noise on the days of training sessions and races, as well as limited the number of race days per year. Likewise, some obligations have been imposed on the owners of motor racing tracks, including the obligation to equip the racing tracks with noise monitoring equipment and to conduct constant noise measuring while the motor racing tracks are in operation. A special procedure has been envisaged also for assessing the noise i.e., only the threshold levels of environmental noise must be used but the assessment of noise indicators inside premises is not required (*see Case Materials, Vol. 2, pp. 101-102, and Vol. 4, pp. 48-49*). Allegedly, a regulated monitoring of noise makes contributes to well-ordered life and, at the same time, does not jeopardise the course of international races (*see annotation to the initial impact assessment to the draft Cabinet*

*Regulation No. TA-1780 “Amendments to the Cabinet Regulation of 7 January 2014 No. 16 “Procedure for Assessing and Managing Noise””). Whereas Para 14 of Regulation No. 16 provides that in the case if the threshold value of noise is exceeded, the sources of noise must be equipped with noise suppressors or the territory must be fenced off with noise suppressing objects.*

However, the Constitutional Court finds that the measures for noise suppression must be taken only if the admissible threshold values of noise are exceeded. This does not restrict or does not impose an additional obligation to eliminate the harmful impact caused for persons that has already set in within the framework of the admissible threshold levels of noise. Moreover, it follows from the case materials that the contested norms were issued, by adjusting them to the noise that actually occurs in the majority of auto and motorsports facilities, and, thus, the threshold levels of noise defined for racing tracks in Para 2 of Annex 2 to Regulation No. 16 are not exceeded in practice; however, they have been directly approximated to the maximal admissible limit of noise (*see, for example, Case Materials, Vol. 2, p. 67, and Vol. 4, p. 17*).

Likewise, the measures referred to in Regulation No. 16 and the threshold levels of noise established in Para 2 of Annex 2 to this Regulation are not applicable to public auto and motorsports events, for the organisation of which the permit by the respective local government has been granted. The local government, in issuing the permit for organising public events, has broad discretion in the field of noise management and assessing the harmful impact. The local government does not define the admissible threshold values of environmental noise (*see Case Materials, Vol. 4, p. 1, and Vol. 4, p. 17*).

However, the assessment, *inter alia*, whether the noise caused by the event would cause a negative impact on the residents of the local government, whether it will not jeopardise public order and security, human life and health is transferred into the local government’s competence. The Cabinet, in turn, has underscored that the local government’s competence includes prevention of risks, in the course of spatial planning, that might occur with respect to persons’ right to live in a

benevolent environment (*see Case Materials, Vol. 2, pp. 101–102 , and Vol. 4, pp. 48–49*).

The Constitutional Court has recognised that the aims and objectives that the environmental law sets for the contemporary society can be reached only through close cooperation between the State, the local governments and also private persons. Hence, the term “State” used in Article 115 of the *Satversme* should not be interpreted narrowly, it should be understood as including also the local governments, who share with the state institutions the obligation to protect everyone’s right to live a benevolent environment, taking care of its safeguarding and improvement (*see, Judgement of 8 February 2007 by the Constitutional Court in Case No. 2006-09-03, Para 11*).

The Constitutional Court has repeatedly noted that the development of a local government’s spatial plan is a procedure, the aim of which is to identify and balance various interests and to decide, which of these should be given priority. A fair balance between the interests of all involved parties and ensuring the interests of the involved community should be achieved in this process (*see, for example, Judgement of 9 March 2004 by the Constitutional Court in Case No. 2003-16-05, Para 5.1. of the Findings*). Therefore the spatial planning is of special relevance in a situation, when all issues require a complex solution, if infrastructure objects that are different as to their quality and quantity and have different functions exist side by side (*see, for example, Decision of 11 November 2008 by the Constitutional Court on Terminating Legal Proceedings in Case No.2008-24-03, Para 10*).

Also with respect to the legal issue that needs to be reviewed in the case, in the spatial planning procedure, the local government must find a fair balance between various interests – both those of the owners of auto and motor racing tracks, the spectators of sports events, and those of the local residents. If, for example, the local government has at its disposal information that a particular object of infrastructure causes elevated risk, which might cause a negative impact on the environment and human health, or that the public interest in a particular object of infrastructure is particularly high, then in the course of public discussions of the

local government's spatial plan, it needs to act proactively and plan special activities pertaining to such objects.

The Cabinet and a number of persons summoned in the case underscore, in particular, that the local government should act in public interests, abiding by the principle of good governance and human rights, in the course of developing the spatial plan balancing the different and contradictory interests of society in compliance with the principles of spatial planning and constitutional principles (*see, for example, the written response by the Cabinet, Case Materials, Vol. 2, pp. 101–102, and the written response by the summoned person – the Ministry of Environment Protection and Regional Development, Case Materials, Vol. 4, p. 90–96*). However, the Constitutional Court emphasizes that the competence of local government in no way diminishes the Cabinet's obligation to issue in due procedure regulations that regulate the environmental field.

An appropriate assessment that complies with the principle of justice and is aimed at the protection of human dignity means that the interests of the involved persons have been examined and balanced, viewing each person as the supreme value in a democratic state governed by the rule of law. In issuing legal norms that might have a significant impact upon a person's right to health and the right to live in a benevolent environment, the Cabinet has the obligation to examine, in the framework of a due procedure, not only the economic and other lawful interests but also the possible harmful impact on human health.

To conclude that the Cabinet has duly balanced persons' interests, the measures by which it had intended to prevent the possible negative impact on human health, must be effective. The assessment and management of noise is a totality of issues and measures that require a complex solution, however, it should be such that provides an appropriate balance between persons' interests and, to the extent possible, prevent the harmful consequences caused by noise to persons. It may not be aimed at the prevalence of the interests of only one group of persons.

Hence, the measures, taken in due procedure, for ensuring and protecting a person's right to health and the right to live in a benevolent environment are such that include not only a preventive assessment by the Cabinet, complying with

human dignity and the precautionary principle, aimed at forecasting harmful consequences and decreasing them, to the extent possible, but also at fair balancing of the involved persons' interests. In view of the above, it cannot be recognised that the Cabinet had taken, in due procedure, measures that were necessary to ensure and protect a person's right to health and the right to live in a benevolent environment.

**Hence, the contested norms are incompatible with Article 111 and Article 115 of the *Satversme*.**

**21.** Upon establishing that the contested norms are incompatible with even one legal norm of higher legal force, they must be recognised as being unlawful. Moreover, the consideration regarding incompatibility of the contested norms with Para 7 of Section 2 of the law "On Pollution" where examined, in assessing the compatibility thereof with Article 111 and Article 115 of the *Satversme*.

Therefore, it is not necessary to examine the compliance of the contested norms also with Para 7 of Section 2 of the law "On Pollution".

**22.** 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 norm of higher legal force must be regarded as being void as of the day when the Judgement of the Constitutional Court is published, unless the Constitutional Court has provided otherwise. This norm of the Constitutional Court Law grants to the to the Constitutional Court the discretion to decide on the date, as of which a norm, which has been recognised as being incompatible with a legal norm of higher legal force, becomes void.

The Constitutional Court law not only grants authorisation to the constitutional court bus also imposes responsibility so that its judgements would ensure legal stability and certainty in the social reality (*see, for example, Judgement of 21 December 2009 by the Constitutional Court in Case No. 2009-43-01, 35.1., and Judgement of 3 November 2011 in Case No. 2011-05-01, Para 24*). Moreover, the recognition of the contested norm as being void may not cause new infringements on fundamental rights defined in the *Satversme* (*see, for example,*

*Judgement of 29 April 2016 by the Constitutional Court in Case No. 2015-19-01, Para 17).*

The Administrative District Court notes in its application that it is examining Case No. A420346615, which had been initiated on the basis of an application by a person requesting to recognise as being unlawful the Decision of 29 October 2015 by the Kandava Regional Council No. 17, to revoke the Decision of 22 December 2015 No. 19 by the Kandava Regional Council and to compensate for personal damage. The Administrative District Court holds that Para 2 of Annex 2 to Regulation No. 16 should be recognised as being in force with respect to the participants of the administrative case: the applicant – Elza Freiberga –, the third person – KARTODROMS SIA – and the defendant– the local government of Kandava region (*see Case Materials, Vol. 1, pp. 7–8*).

The administrative court would have the grounds to recognise the aforementioned decisions by the Regional Council as being unlawful, *inter alia*, if Para 2 of Annex 2 to Regulation No. 16 had been recognised as being void and, thus, inapplicable already since 29 October 2015, i.e., as of the moment when the Kandava Regional Council adopted the provisional decision.

The applicant – Elza Freiberga – has turned to the Administrative District Court to defend her rights. Likewise, the Administrative District Court has submitted its application to the Constitutional Court to defend the fundamental rights of this person. Hence, Para 2 of Annex 2 to Regulation No. 16 is to be recognised as being void with respect to the applicant – Elza Freiberga – as of the moment when the infringement on her fundamental rights occurred.

However, the Constitutional Court does not see the grounds for recognising the contested norms as being invalid also with respect to the subject of public law – the Kandava Regional Council – and the private person – KARTODROMS SIA. Likewise, it does not follow from the case materials and the circumstances in general that, in the particular case, it would be necessary to recognise the contested norms as being void also with respect to the aforementioned subjects.

## **The Substantive Part**

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

**h e l d :**

**1. To recognise Para 2 of Annex 2 to the Cabinet Regulation of 7 January 2014 No. 16 “Procedure for Assessing and Managing Noise” as being compatible with Section 18<sup>1</sup> (3) of the Law “On Pollution”**

**2. To recognise Para 2 of Annex 2 to the Cabinet Regulation of 7 January 2014 No. 16 “Procedure for Assessing and Managing Noise” as well as Sub-para 2.4. of this Regulation, insofar it Applies to Public Auto and Motor Sports Events which are Held in Open-air Auto and Motor Racing Tracks Located in a Populated Area (City or Village) and for which a Permit for Organising a Public Event has been Issued in the Procedure set out in the Law on Safety of Public Entertainment and Festivity Events as being incompatible with Article 111 and Article 115 of the *Satversme* of the Republic of Latvia.**

**3. To recognise Para 2 of Annex 2 to the Cabinet Regulation of 7 January 2014 No. 16 “Procedure for Assessing and Managing Noise” with respect to the applicant in the administrative case No. A420346615 – Elza Freiberga – as being incompatible with Article 111 and Article 115 of the *Satversme* of the Republic of Latvia and void as of the moment when the infringement on her fundamental rights occurred.**

The Judgement is final and not subject to appeal.

The Judgement enters into force on the day of its publication.

The chairperson of the court hearing

I. Ziemele