THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT

on Behalf of the Republic of Latvia

in Case No. 2015-13-03

12 February 2016, Riga

The Constitutional Court of the Republic of Latvia comprised of: chairman of the court sitting Aldis Laviņš, Justices Kaspars Balodis, Gunārs Kusiņš, Uldis Ķinis, Sanita Osipova and Ineta Ziemele,

having regard to an application by the Administrative District Court on initiating a case,

on the basis of Article 85 of the Satversme of the Republic of Latvia and Para 3 of Section 16, Para 9 of Section 17(1), as well as Section 19^1 and Section 28^1 of the Constitutional Court Law,

at the court sitting of 13 January 2016 examined in written procedure the case

"On Compliance of the First Sentence in Para 24 of the Riga City Council Binding Regulation of 19 February 2013 No. 211 "On the Municipal Fee for the Maintenance and Development of the Municipality Infrastructure in Riga" with Article 105 of the Satversme of the Republic of Latvia."

The Facts

1. Pursuant to Para 15 of Section 21(1) of the law "On Local Governments", Para 11 of Section 12(1) of the law "On Taxes and Fees", and

Para14[1] of the Cabinet Regulation of 28 June 2005 No. 480 "Regulation on the Procedure by which Local Governments May Levy Local Government Fees (hereinafter – Regulation No. 480), the Rig City Council adopted on 19 February 2013 the binding regulation No. 211 "On the Municipal Fee for the Maintenance and Development of the Municipality Infrastructure in Riga" (hereinafter – the Binding Regulation No. 211). On 13 March 2013 the Bidning Regulation No. 211 was published in the official journal "Latvijas Vēstnesis" and entered into force on 1 June 2013. It establishes the procedure in which the municipal fee for the maintenance and development of the municipality infrastructure with the administrative territory of Riga City is levied (hereinafter – infrastructure fee).

Para 24 of the Binding Regulation No. 211, in its initial wording, provided that, if a building permit was revoked (annulled, etc.), the part of the fee already paid was not refunded.

By the Riga City Council Binding Regulation of 25 November 2014 No. 126, Para 24 of the Binding Regulation No. 211 was expressed in the wording that is currently in force: "If the building permit is revoked (annulled, etc.), the part of the fee that has been paid shall not be repaid, but, on the basis of an application by the initiator of the construction project, shall be counted as the part of the paid fee, when receiving another building permit for a new construction process in the same real estate object. If pursuant to the new construction project the total amount of the fee is smaller than the part of the fee to be paid, the difference shall not be repaid. If pursuant to the new construction project, the total amount of the fee is larger than the part of the fee to be paid, the difference shall be paid in accordance with the procedure for paying the fee established in this binding regulation."

2. The Applicant – the Administrative District Court (hereinafter – the Applicant) – notes that the first sentence of Para 24 of the Binding Regulation No. 211 (hereinafter also – the contested norm) is incompatible

with Article 105 of the Satversme of the Republic of Latvia (hereinafter – the Satversme).

The claimant, who had turned to the Administrative District Court to protect her rights, (hereinafter – the Claimant), had received a building permit on 14 March 2013, it granted her the right to implement a construction project in accordance with the construction plan approved by the Riga City Construction Board. Additionally, with note of payment of 26 March 2013 the Claimant had been imposed the obligation to pay the first part of infrastructure fee. On 28 October 2013, on the basis of the Claimant's application, this building permit was revoked. Since implementation of construction project was not started – this fact is proven also by the Claimant's own application requesting revoking of the building permit, – the Claimant had turned to the Riga City Council City Development Department requesting refund of the paid part of the infrastructure fee. However, on the basis of the contested norm, the Claimant was refused a refund. The Claimant appealed against this decision at the Riga City Council, but the Riga City Council left it unchanged, therefore the Claimant turned to the Administrative District Court to protect her rights.

The Applicant holds that the contested norm violates the Claimant's right to property. I.e., it prohibits refunding the part of the paid infrastructure fee, if the issued building permit is annulled, implementation of the construction project has not begun and the Claimant no longer wishes to implement it.

The contested norm is said to restrict the right to property of those persons, who have paid a part of the infrastructure fee, but actually have not begun to implement the construction project, i.e., construction works have not been started in the immoveable property. Moreover, the contested norm, allegedly, not only restricts a person's right to regain the part of infrastructure fee that has been paid, but also the right to act with the immoveable property according to one's wishes. Allegedly, the right of a local government to keep

the paid infrastructure fee in its possession, if the grounds for collecting have ceased to exist, does not follow from the law and the Cabinet Regulations.

The Riga City Council, by adopting the Binding Regulation No. 211, has established arbitrarily a procedure for keeping the paid infrastructure fee in the municipal budget and using it to implement another construction project.

The Applicant holds that the legitimate aim of the restriction upon fundamental rights cannot be inferred from the contested norm. However, it could be linked to the purpose of adopting the Binding Regulation No. 211. The contested norm is said to ensure that the infrastructure fee that has been paid, irrespectively of circumstances, is retained in the municipal budget, so that the financial resources would be used to satisfy other interests and needs of the local government and society. The infrastructure fee is collected to develop and improve the infrastructure of Riga City, which is under an increasing pressure. Any new construction project, after it is implemented, is said to increase pressure upon the municipal infrastructure. The payment of infrastructure fee is said to compensate partially for the consequences of the construction project. However, if the construction project is not implemented, such consequences do not arise at all.

The Riga City Council, in adopting the contested norm, has not assessed separately the situations, when: part of the infrastructure fee is paid and the construction project is implemented; the construction project is not implemented, because the building permit is annulled because violations have been detected; the construction project is not implemented because the person no longer wishes to implement it.

Allegedly, the legitimate aim of the restriction upon fundamental rights that the contested norm comprises could be reached by other measures, less restrictive upon a person’s rights. For example, it could be provided that only those persons, who actually implement their construction project, should pay the infrastructure fee. Collecting the infrastructure fee from persons, who do

not implement their construction project, cannot be justified by society's interest in improving the municipal infrastructure of Riga.

Collection of a construction fee and retaining it in the municipal budget could be justified, if the building permit is annulled after violations in the construction process have been detected. However, in the case under review the building permit was revoked on the basis of the Claimant's application and the implementation of the construction project did not begin. Thus, on the basis of the Claimant's statement that the construction project has not and will not be implemented in the immoveable property, there should be grounds for repaying to the Claimant the paid part of the infrastructure fee. Therefore the violation of the Claimant's fundamental rights that the contested norm comprises is said to disproportional and incompatible with Article 105 of the Satversme.

3. The Institution, which adopted the contested act, – the Riga City Council – holds that the contested norm complies with Article 105 of the Satversme.

The Riga City Council refers to Para 14^1 of the Regulation No. 480 and notes that the municipality has the right to impose infrastructure fee upon persons, who are implementing construction projects within the municipality's territory. The payers of the infrastructure fee are natural and legal persons, who pay the infrastructure fee for a concrete construction project, which is proven by the issued building permit. Moreover, there is only a one-time payment for each construction project, irrespectively of who owns the immoveable property.

In terms of time, the obligation to collect infrastructure fee is linked with the issuing of a building permit to the person implementing the construction project, who may choose, when to begin the constriction works or whether to begin the works at all. Moreover, the implementer of the construction project has the right to do construction works throughout the period of validity of the

building permit. Therefore the moment of issuing the notification on payment may not coincide with the actual moment of starting the construction.

The contested norm prohibits refunding the part of paid infrastructure fee in cases, when the building permit, for example, is revoked or annulled. Moreover, this prohibition is said to apply equally to cases, when the building permit is revoked on the basis of an application by the implementer of the construction project, and to cases, when the building permit is revoked on the basis of a decision by an institution or a court.

The Riga City Council notes that revenue from the payments of infrastructure fee constitutes the resources of the Riga City Council municipal budget programme "Infrastructure Fund of Riga City", which are transferred into the basic budget of the municipality. Therefore the municipality, in planning infrastructure development and its budget, takes into consideration each particular construction project.

If the implementer of the construction project would later decide to give up the implementation of the construction project or if the building permit would become invalid due to other reasons and the infrastructure fee should be repaid, budgeting and rational use of municipal financial resources would be jeopardized.

Allegedly, the aim of the contested norm is to avoid applying the infrastructure fee to the same immoveable property repeatedly in cases, when the building permit is revoked, the construction project is not implemented, but the infrastructure fee or part thereof has already been paid and when in respect to the concrete property a new building permit is issued.

It is contended that the contested norm has been adopted on the basis of authorisation defined in regulatory legal acts, by the municipality adopting an external regulatory legal act – binding regulations, and it is has a legitimate aim – promoting public welfare. The restriction upon persons' fundamental rights that the contested norm comprises is said to be compatible with the proportionality principle.

4. The summoned person – **the Ministry of Justice** – holds that the contested norm complies with Article 105 of the Satversme.

The restriction upon fundamental rights that the contested norm comprises is said to be established by law. Even though the law "On Taxes and Fees" and Regulation No. 480 do not define a general procedure for refunding municipal fees that have been paid, Regulation No. 480 envisages an exception with regard to receipt of a building permit. I.e., Para 15 of Regulation No. 480 provides that in those cases, when the terms of the building permit are not met or the building permit is not realised, the collected fee is not repaid. It allows concluding that the decision on the procedure for refunding or not refunding part of the infrastructure fee has been transferred into the competence of local governments.

The Ministry of Justice notes that the legitimate aim of the restriction upon fundamental rights is performing of the local government functions and promoting welfare of their residents. The contested norm is said to be appropriate for reaching the legitimate aim, since it ensures foreseeable revenue into the local government budget.

The Ministry of Justice notes, by referring to Para 14^1 of the Regulation No. 480, that the grounds for paying the infrastructure fee is the intention to perform construction, and this intention is confirmed by a person's purposeful action, i.e., an application requesting a building permit and the receipt of the building permit. Paying of the infrastructure fee is said not be directly linked with the actual construction, since the construction process does not always end with the commissioning of the building and may last for a couple of years. Moreover, the regulation established by the contested norm is said to motivate the implementers of a construction project to assess carefully their actual possibilities to realise the construction.

Therefore, the restriction, which prohibits regaining the infrastructure fee that has been paid, if the construction project is not implemented, is said to

ensure stability of the legal relations between the payers of the fee and the local government.

5. The summoned person – the Ministry of Environmental Protection and Regional Development (hereinafter – MEPRD) – notes that it has provided an opinion about the Binding Regulation No. 211 and had no objections against it.

The infrastructure fee is said to be collected with the aim of ensuring financing for maintaining and developing municipal public infrastructure. The infrastructure fee is applicable to persons, who, by implementing a construction project: build new structures, including constructions for temporary use, or reconstruct already existing structures, including constructions for temporary use. MEPRD refers to the Construction Law and notes that the implementation of a construction project in an immoveable property comprises performance of actual construction works included in the particular construction project.

MEPRD notes that similarly to the provisions of the contested norm, the fee for receiving a building permit is not to be repaid either, which, essentially, is also linked to the construction project. Even though Regulation No. 480 does not provide for it directly, the part of infrastructure fee that has been paid could be unrepayable. Therefore the Riga City Council, in establishing in legal regulation a prohibition to refund the already paid part of the infrastructure fee has acted in compliance with the authorisation defined by regulatory legal acts.

6. The summoned person – the Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) – holds that the contested norm is incompatible with Article 105 of the Satversme.

The Ombudsman holds that the obligation to pay the infrastructure fee is imposed upon persons, who might gain profit from the construction project, which has been implemented by using the services of public infrastructure that

has been developed and maintained, using the money of those, who pay the infrastructure fee.

The restriction upon fundamental rights that the contested norm envisages has been established by law and has a legitimate aim – ensuring public welfare, promoting sustainable and stable development of the local government in society's interests.

The contested norm does not differentiate between cases, where the infrastructure fee could be re-calculated. The calculation of infrastructure fee is subordinated to a particular construction project. If the project is implemented, then the local government must develop infrastructure in the scope of the calculated infrastructure fee. Moreover, in the case under review, the part of the infrastructure fee paid by the Claimant, is accrued until the second payment of the infrastructure fee is made, which must be paid after the building has been commissioned.

The contested norm restricts the rights of such addressees of a building permit, whose building permit is revoked or annulled due to some kind of unlawful activities they have committed. However, the contested norm restricts also the property right of those persons, who have requested revoking of the building permit themselves, because they have not exercised the right granted by the building permit. The cases, when the building permit is revoked and the municipal infrastructure is not used, and cases, when the building permit is implemented and the municipal infrastructure is used, differ. Therefore they should be assessed differently and the prohibition to repay the infrastructure fee in both cases referred to above is said to be disproportional.

The legitimate aim of the restriction upon fundamental rights could be reached by measures less restrictive upon persons' rights, i.e., envisaging an individualised procedure for refunding the infrastructure fee if the building permit has been revoked.

7. The summoned person – the Latvian Association of Local and Regional Governments – holds that the contested norm has been adopted in compliance with the authorisation that has been granted to a local government by regulatory legal acts.

Both the infrastructure fee and the fee for receiving a building permit are linked to the construction project, and the part of the fee for receipt of the building permit is not refunded. Thus, also the part of the infrastructure fee that the Claimant has paid should not be repaid. Moreover, a person's unwillingness to implement a construction project does not influence the process of public infrastructure development and maintenance that has already been implemented by the local government before the building permit is revoked.

In addition, the Latvian Association of Local and Regional Governments informs that thus far a regulation on a municipal fee for maintaining and developing its infrastructure has not been included in binding regulations by other municipalities of republican cities.

8. The summoned person – the Ministry of Economics – holds that the contested norm is incompatible with Article 105 of the Satversme.

The restriction established by the contested norm is said to have a legitimate aim – public welfare. The infrastructure fee has been introduced with the aim to ensure the necessary financing for maintaining and developing municipal public infrastructure, to ensure the performance of autonomous functions that comply with the interests of the whole society in connection with the probable negative impact by the planned construction upon the municipal public infrastructure.

The infrastructure fee as a measure for gaining compensatory financing for the probable negative influence of the construction project upon the municipal infrastructure is said to be appropriate for reaching the legitimate aim. It is impossible to reach the legitimate aim with other measures, less restrictive upon persons' rights.

Calculation of the infrastructure fee is based upon the impact of the planned construction object, i.e., of the construction project upon public infrastructure and accessibility thereof to other persons. However, if the initiator of the construction project himself gives up implementation of it, the planned construction is not conducted and negative impact upon the municipal public budget is not created. However, in this case collection of additional financial resources into the municipal budget cannot be substantiated by public interest. The contested norm imposes upon a person an obligation to compensate for consequences that have not set it, and disproportional restrictions are placed upon a person's right to property.

9. The summoned person – **the Minister of Finance** – notes that the obligation to pay the infrastructure fee could be perceived as a restriction upon a person's property rights in the meaning of Article 105 of the Satversme.

The infrastructure fee is a payment for concrete services provided by the local government – provisions and actions. The payment of infrastructure fee, which in the majority of cases is made before the services are received, ensures that the public service is received immediately.

The contested norm envisages a procedure of payment that complies with the specific features of the infrastructure fee, which, in the opinion of the Ministry of Finance, is not incompatible with system of fees established in the law "On Taxes and Fees". In addition, the Ministry of Finance notes that the aforementioned system should be examined in interconnection with the Construction Law, from which the regulation on implementation of a construction project follows.

10. The summoned person – ***Dr. oec.*** **Kārlis Ketners** – holds that in view of the unrestricted sovereign right of the state to establish taxes and other mandatory payments, it must be recognised that the infrastructure fee imposed

upon persons, who are implementing a construction project within the territory of the local government, complies with Article 105 of the Satversme.

The law "On Taxes and Fees" dos not specially differentiate between tax and fee payments, since the procedure for calculating and payment of taxes and fees, and control, as well as responsibility for calculating and paying these and also payment reliefs are established together. If the tax and state fee would be also differentiated as to their economic and legal nature, taking into consideration that a tax is a mandatory payment for ensuring budget revenue, but a state fee – a mandatory payment to ensure operation of an institution (service), then provision of a local government service would not be the only pre-requisite for collecting a local government fee. As to their economic nature and essence, many local government fees could be equalled to respective tax payments.

A local government fee may be levied only upon an object, which is provided for in the law "On Taxes and Fees". Whereas Regulation No. 480 sets out a general procedure for calculating a local government fee, at the same time granting certain autonomy to a local government.

The contested norm, by envisaging that a part of the paid infrastructure fee is transferred to the next construction project, prevents a situation, where the infrastructure fee would be applied to the same immoveable property twice. Thus, the contested norm envisages a commensurate restriction upon property rights in a situation, where another construction project and not the one that was initially planned is implemented in the immoveable property.

The Facts

11. The application contains a request to the Constitutional Court to examine compliance of the contested norm with Article 105 of the Satversme in its totality. The Applicant holds that the procedure, established by the contested norm, where the local government does not refund the already paid

part of the infrastructure fee restricts the Claimant's right to property. The Claimant is denied the possibility to regain the invested financial resources, for the presence of which in the local government budget the legal grounds have ceased to exist, since the construction project is not and will not be implemented in the immoveable property (*see Case Materials Vol. 1, p. 6*).

The finding has been consolidated in the case law of the Constitutional Court that in those cases, when compliance of a legal norm with the whole Article 105 of the Satversme is contested, it must be clarified, the compliance with which exactly of the sentences in this Article must be reviewed (*see, for example, Judgement of 13 October 2015 by the Constitutional Court in Case No. 2014-36-01, Para 15.1*).

Article 105 of the Satversme provides both for exercise of one's right to own property without interference, as well as the rights of the state to restrict the use of property in public interests. The fourth sentence of the same Article, in turn, provides for the rights of the State to deprive of the right to property *de iure* in specific cases. Expropriation of property is allowed only for public purposes and only in exceptional cases on the basis of a specific law, as well in return for fair compensation (*compare: Judgement of 20 May 2002 by the Constitutional Court in Case No. 2002-01-03, the Findings, and Judgement of 16 December 2005 in Case No. 2005-12-0103, Para 22*).

The claim of the case under review falls within the scope of the first three sentences of Article 105 of the Satversme, and the application does not include legal substantiation regarding expropriation for public purposes.

Therefore the Constitutional Court shall examine compliance of the contested norm with the first three sentences of Article 105 of the Satversme.

12. The first three sentences of Article 105 of the Satversme provide: "Everyone has the right to own property. Property shall not be used contrary to

the interests of the public. Property rights may be restricted only in accordance with law."

Article 105 provides for comprehensive guarantee regarding property rights. "The right to own property" should be understood as all rights of material nature, which a person may use in his own favour and may deal with them according to his own will (*see, for example, Judgement of 27 October 2010 by the Constitutional Court in Case No. 2010-12-03, Para 7, and Judgement of 3 November 2011 in Case No. 2011-05-01, Para 15.2*).

The Constitutional Court has noted that "property" may be either "existing property" or such resources, including claims, with regard to which a person is able to substantiate that it has legal grounds for obtaining the right to own property. The Constitutional Court has recognised already previously, when reviewing a person's right to receive from the State refund of overpaid tax, that this claim falls within the scope of Article 105 of the Satversme (*see Judgement of 19 June 2010 by the Constitutional Court in Case No. 2010-02-01, Para 5*).

Para 4 of Regulation No. 480 states that only remuneration for provisions ensured by the local government is paid in the form of local government fees. Likewise, the Ministry of Finance notes that the fee is a payment for services provided for by a local government – provisions and actions taken (*see Case Materials, Vol. 2, p. 48*). Pursuant to Para 2 of the Binding Regulation No. 211, the infrastructure fee is collected for construction of municipal public infrastructure for the particular construction object, as well as for financing its maintenance and development. This fee is said to compensate for the probable negative impact of the planned construction upon the municipal infrastructure (*see Opinion by the Ministry of Economics in Case Materials, Vol. 2, p. 61).*

Pursuant to Para 3 of the Binding Regulation No. 211, the infrastructure fee is collected from persons, who are implementing construction projects within the administrative territory of Riga: construction of a new building,

placement of a building or reconstruction of an existing building. The contested norm, in turn, provides for the right of the local government to keep in its budget the part of the infrastructure fee that the person has paid also in the case, if the planned construction project is not implemented.

The infrastructure fee should be collected in case if the construction project is implemented. Whereas if the person does not implement the construction project and the local government has not provided the service, i.e., the construction, maintenance and development of additional infrastructure has not been done, then the part of infrastructure fee that has been collected is not used in accordance with its purpose (*see Written Answer by the Riga City Council in Case Materials, Vol. 1, pp. 185 –187*).

The Constitutional Court notes that its findings with regard to the right to regain an overpaid tax should be applicable also to a person's right to claim a refund of the paid part of the local government fee, if the legal grounds for keeping it into the local government budget have ceased to exist.

Thus, a persons right to claim a refund of the paid part of the infrastructure fee, if the construction project is not implemented, falls within the scope of Article 105 of the Satversme.

13. To verify, whether in this particular case the first sentence of Article 105 of the Satversme has been abided by, the Constitutional Court must establish, whether the contested norm provides for a restriction upon the right to own property.

The right to own property, established in the first sentence of Article 105 of the Satversme, comprises also the owner's right to use the property that he owns in a way to gain maximum economic benefit from it (*see Judgement of 19 November 2009 by the Constitutional Court in Case No. 2009-09-03, Para 11.2*). In those cases, where the owner may not use his property freely, gaining and also consuming possible benefits from it, his right to own property is restricted (*compare: Judgement of 8 March 2006 by the Constitutional Court*

in Case No. 2005-16-01, Para 10, and Judgement of 4 February 2009 in Case No. 2008-12-01, Para 8).

The contested norm prohibits a person from exercising his right of claim for refund of the paid part of the infrastructure fee in case, where the legal grounds for keeping it in the local government budget have ceased to exist.

Therefore the contested norm restricts the fundamental rights defined in Article 105 of the Satversme.

14. The third sentence of Article 105 of the Satversme provides that property rights may be restricted only in accordance with law. In interpreting this provision of the Satversme, the Constitutional Court has found that the word "law" comprises not only laws adopted by the Saeima, but also other generally binding (external) regulatory legal acts, if these have been adopted on the basis of law, published in the procedure established in regulatory enactments and are worded with sufficient clarity, so that the addressee would be able to understand his rights and obligations, and also if these comply with the principles of a state governed by the rule of law (*see, for example, Judgement of 20 May 2002 by the Constitutional Court in Case No. 2002-01-03, the Findings, and Judgement of 12 December 2014 in Case No. 2013-21-03, Para 11*).

14.1. Pursuant to Article 64 of the Satversme the legislative right is vested in the people and the Saeima. To ensure more effective exercise of the state power, it is admissible for the legislator, in the process of legislating, to decide on the most important issues, but delegate to the Cabinet of Ministers or other institutions of public administration the drafting of more detailed regulations and technical norms necessary for implementing laws (*see Judgement of 21 November 2005 by the Constitutional Court in Case No. 2005-03-0306, Para 7*). The legislator may also transfer the taking of decisions on some issues in the competence of local governments. Thus, a local government council also has the right to adopt generally binding (external)

regulatory legal acts, within the limits of its authorisation. However, a local government council does not enjoy the discretion of a legislator and it has the right to adopt regulatory legal enactments only in cases and within the scope specified in laws (*see, for example, Judgement of 21 January 2002 by the Constitutional Court in Case No. 2001-09-01, the Findings*). The scope of authorisation determines the extent to which a local government council may act in drafting and adopting legal norms (*see Judgement of 11 January 2011 by the Constitutional Court in Case No. 2010-40-03, Para 10*).

14.2. Section 10(1) of the law "On Taxes and Fees" provides that local governments have the right to levy local government fees by their binding regulations. The third part of the Section defines the content of such binding regulations, i.e., they must establish the payment procedure, the objects to which such fees are applied, rates, exemptions and reliefs, as well as other requirements laid down in other laws and Cabinet regulations. Moreover, in Para 12 of Section 16 of this Law the legislator has granted to the payers of taxes and state fees the right to request refund of the paid sums, if the payment has been made, but the respective service has not been provided.

The Riga City Council has adopted the Binding Regulations No. 211, *inter alia*, the contested norm, on the basis of Para 15 of Section 21(1) of the law "On Local Governments", Para 11 of Section 12(1) of the law "On Taxes and Fees", as well as Para 14^1 of Regulation No. 480. The aforementioned norms comprise the authorisation to a local government council to adopt binding regulations on levying the infrastructure fee.

However, the Applicant holds that the legislator has not authorised a local government council to adopt such binding regulations that prohibit refund of the collected part of infrastructure fee, if the construction project is not implemented (*see Case Materials, Vol. 1, p. 5).*

14.3. The Constitutional Court in its case law has recognised as being incompatible with the Satversme such regulatory enactments, in the adoption of which the competence has been exceeded or the limits of the authorisation have

not been complied with, i.e., *ultra vires. Ultra vires* doctrine is applicable also to the compliance of regulatory legal acts adopted by institutions, which have been authorised by the legislator, with norms of higher legal force (*see Judgement of 9 October 2007 by the Constitutional Court in Case No. 2007-04-03*). In view of the fact, that also local governments have been granted the right to adopt external regulatory legal acts (binding regulations) by the legislator's authorisation, the findings expressed within the doctrine referred to above are applicable also to the case under review (*see, for example, Judgement of 12 December 2014 by the Constitutional Court in Case No. 2013-21-03, Para 11.2*).

It follows from the principles of legality and the separation of powers that a local government has the right to adopt binding regulations only in cases specified by law, only within the framework of law and these may not be incompatible with the norms of the Satversme and other norms of higher legal force (*see, for example, Judgement of 29 December 2014 by the Constitutional Court in Case No. 2014-06-03, Para 21*).

Therefore the Constitutional Court shall examine, whether the Riga City Council, in adopting the contested norm, has acted within the limits of authorisation granted by the legislator.

15. The objects of local government fees and a direct authorisation by the legislator to the local government council to levy the infrastructure fee follows from Para 11 of Section 12(1) of the law "On Taxes and Fees". I.e., this legal norm provides that a local government council has the right to levy a fee for the maintenance and development of municipal infrastructure in the procedure established by the Cabinet regulations. It follows from the case materials that the Riga City Council is the only local government, which has used the authorisation granted by the legislator and levied the infrastructure fee in its administrative territory (*see Opinion by the Latvian Association of Local and Regional Governments, Case Materials, Vol. 2, p. 56).*

To conclude, whether the restriction upon fundamental rights has been established by law, it must be established, whether the Riga City Council has adopted the contested norm in compliance with the Cabinet regulation, which prescribes the procedure for levying the infrastructure fee.

15.1. Regulation No. 480 sets out the procedure, in which local governments have the right to levy various local government fees, *inter alia*, it establishes the procedure for levying the infrastructure fee. A number of persons summoned in the case note that legal regulation, which establishes the procedure for levying fees linked to construction projects, should be examined in their interconnection (*see Opinion by MEPRD, Case Materials, Vol. 2, p. 26, and Opinion by the Latvian Association of Local and Regional Governments in Case Materials, Vol. 2, p. 55*).

Para 14^1 and Para 15 of Chapter II "Procedure for Levying Fees" of Regulation No. 480 set out the procedure for levying fees upon construction projects. I.e., Para 14^1 of Regulation No. 480 provides that a local government has the right to levy a fee for maintenance and development of municipal infrastructure upon persons, who are implementing a construction project within its territory. Para 15, in turn, establishes the procedure for levying and collection the fee for the receipt of a building permit. As regard the fee for the receipt of a building permit, the Cabinet of Ministers has set out directly: if the terms of the building permit are not complied with or if the building permit is not implemented, then the local government does not have to refund the paid fee. Moreover, the regulation on refunding the fee for the receipt of a building permit was included already in the initial wording of Para 15 of the Cabinet Regulation No. 480.

Thus, the Cabinet has defined in Regulation No. 480 those cases, when the local government is not refunding the paid part of the fee. However, the Cabinet has not provided in Para 14^1 of the Regulation No. 480 that in the case if the construction project is not implemented the paid part of the infrastructure fee should not be refunded.

15.2. The Latvian Association of Local and Regional Governments holds that the examination of Para 14^1 and Para 15 of Regulation No. 480 in interconnection should lead to the conclusion that, by analogy, also the paid part of the infrastructure fee should not be refunded (*see Case Materials, Vol. 2, p. 55*).

The Constitutional Court notes that applying a restriction upon fundamental rights by analogy is inadmissible. Namely, fundamental rights may be restricted only by law or on the basis of law, clearly defining the scope and limits of the restriction upon fundamental rights (*see Judgement of 10 May 2013 by the Constitutional Court in Case No. 2012-16-01, Para 25*). Establishing a restriction upon fundamental rights without clear authorisation by the legislator is inadmissible. Whereas in realising authorisation, restriction of a person's fundamental rights must be avoided, if the authorising norm does not point to the need for a restriction (*see Judgement of 21 November 2005 by the Constitutional Court in Case No. 2005-03-0306, Para 10*).

The Constitutional Court has recognised that the obligation to pay taxes always means a restriction upon the right to own property (*see, for example, Judgement of 11 April 2007 by the Constitutional Court in Case No. 2006-28-01, Para 19.1, and Judgement of 8 June 2007 in Case No. 2007-01-01, Para 19*). A person's duty to pay a local government fee, as to its economic nature, may be equalled to a person's duty to pay a tax (*see K. Ketners' Opinion, Case Materials Vol. 2, p. 52*). Therefore the obligation to pay any local government fee as a mandatory payment established by the local government must be recognised as being a restriction upon a person's right to own property.

Since the Cabinet has not granted in Para 14^1 of the Regulation No. 480 to a local government the right not to refund the paid part of the fee in case the construction project is not implemented, such restriction is inadmissible. I.e., the consequences that follow from Para 15 of the Regulation No. 480 – not refunding the part of fee paid for the receipt of a building permit – may not be

applied to the refunding of the collected part of infrastructure fee in case if the construction project is not implemented.

15.3. The Ministry of Justice notes that neither the law "On Taxes and Fees", nor the Regulation No. 480 envisages a general procedure for refunding paid local government fees and that this leads to the conclusion that the legislator has left the establishment of the procedure for refunding the paid part of infrastructure fee in the competence of the local government (*see Case Materials, Vol. 2, p. 23*). Similarly, also MEPRD notes that the part of infrastructure fee should not be repaid, if the local government has provided for it in the binding regulations (*see Case Materials, Vol. 2, p. 26*).

Assessment of Para 14^1 and Para 15 of the Regulation No. 480 in interconnection allows concluding that with regard to fees that are linked to a construction project the Cabinet has defined the cases, when the paid part of the fee is not to be refunded.

Whereas Para 16^1 of Regulation No. 480 defines the rights of a local government to establish additional reliefs, i.e., on releasing from the fee.

The local government council, in adopting binding regulations, must act in compliance with the authorisation. This, *inter alia,* comprises the obligation to adopt such legal regulation that complies with legal norms of higher legal force.

The Riga City Council, in adopting the contested norm, has not complied with the authorisation granted to it. I.e., the Riga City Council was not authorised to provide that it would keep in its budget the part of infrastructure fee paid by a person in the case, if the construction project is not implemented.

Thus, the Riga City Council has adopted the contested norm *ultra vires*.

16. If a contested norm has been adopted *ultra vires,* then the restriction upon fundamental rights that it comprises has not been established by law.

If a restriction upon fundamental rights has not been established by law, then it is incompatible with the Satversme. Thus, there is no need to asses in addition, whether the aim of the restriction upon fundamental rights provided for by the contested norm is legitimate, whether the restriction is appropriate for reaching this aim and whether it is proportional (*see Judgement of 12 December 2014 by the Constitutional Court in Case No. 2013-21-03, Para 12.6*).

Therefore the contested norm is incompatible with Article 105 of the Satversme.

17. Pursuant to Section 32(3) of the Constitutional Court Law, a legal norm that has ben recognised by the Constitutional Court as being incompatible with a legal norm of higher legal force is to be considered as being illegal from the day when the Judgement of the Constitutional Court is published, unless the Constitutional Court has provided otherwise.

It has been found in the case law of the Constitutional Court that the legal norms, which have been adopted *ultra vires*, are to be recognised as being unlawful and invalid as of the moment of their adoption [*see Judgement of 10 June 1998 by the Constitutional Court in Case No. 04-03(98), the Findings, and Judgement of 9 October 2007 in Case No. 2007-04-03, Para 25]*. As regard such cases, it can be presumed that this norm has never been in force, since it had not been adopted in due procedure and therefore it cannot cause legal consequences.

The Constitutional Court notes that in exceptional cases deviations from this presumption could be possible. However, in such cases the Constitutional Court should identify significant circumstances that would substantiate the establishment of an exemption.

The case materials, including the written reply by the Riga City Council, do not confirm that such significant circumstances had been present in the case.

18. The Constitutional Court has an exclusive jurisdiction to recognise legal norms as being incompatible with legal norms of higher legal force and invalid. However, it is not only the Constitutional Court that reviews compliance of legal norms with norms of higher legal force. The administrative court must also, in the framework of each case, verify the compatibility of the legal norm to be applied with legal norms of higher legal force (*see Judgement of 18 December 2013 by the Constitutional Court in Case No. 2013-06-01, Para 15.3*).

The Constitutional Court has recognised that a court has the right to turn to the Constitutional Court, if in the course of reviewing a case doubts arise as to the compatibility of the legal norm to be applied with a legal norm of higher legal force (*see, for example, Decision of 13 October 2010 by the Constitutional Court on Terminating Legal Proceedings in Case No. 2010-09-01, Para 10*). However, an administrative court, within the limits of its jurisdiction, has the right to eliminate these doubts, without submitting an application to the Constitutional Court.

The Constitutional Court deems it appropriate to refer to Section 104(3) of the Administrative Procedure Law, pursuant to which, if a court recognises that the binding regulations of local governments are incompatible with Cabinet regulations or a law, it shall not apply the respective legal norm.

The Substantive Part

Pursuant to Section 30 – 32 of the Constitutional Court Law, the Constitutional Court

held :

to recognise the first sentence in Para 24 of the Riga City Council Binding Regulation of 19 February 2013 No. 211 "On the Municipal Fee for the Maintenance and Development of the Municipality Infrastructure

in Riga" as being incompatible with Article 105 of the Satversme of the Republic of Latvia and invalid as of the date of its adoption.

The Judgement is final and not subject to appeal.

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

Chairman of the court sitting Aldis Laviņš