THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

JUDGEMENT
on Behalf of the Republic of Latvia
in Case No. 2015-03-01
on 21 December 2015 in 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 the constitutional complaints submitted by Madara Volksone, Dāvis Volksons, Lelde Švāģere, Ivo Švāģeris, Evija Novicāne, Kaspars Novicāns, Vija Ritenberga, Zigurds Krastiņš, Aldis Maldups, Elvijs Vēbers, Kristaps Andersons, Arta Snipe, Indra Kalniņa-Šlitke, Normunds Šlitke, Raivo Sjademe, Daina Puķīte, Alds Saulietis, Māris Intlers, Armands Strods, Olavs Cers, Jānis Jurkāns, Haralds Velmers, Armands Rasa and Jānis Ešenvalds (hereinafter also – the Applicants),

on the basis of Article 85 of the Satversme of the Republic of Latvia and Para 1 of Section 16, Para 11 of Section 17(1), Section 19^2 and Section 28^1 of the Constitutional Court Law,

at the sitting of 20 November 2015 examined in written procedure the case

"On Compliance of Section 2 of the law "Amendments to the Insolvency Law" of 25 September 2014 and the law "Amendments to the Law On Prevention of Conflict of Interest in the Activities of Public Officials" of 30 October 2014 with Article 1 and the first sentence of Article 106 of the Satversme of the Republic of Latvia."

The Facts

1. On 26 July 2010 the Saeima adopted the Insolvency Law, which entered into force on 1 November 2010.

Section 9(1) of the Insolvency Law provided:

"An administrator of insolvency proceedings is a natural person who has acquired a certificate of an administrator of insolvency proceedings and who has the rights and duties specified in this Law."

On 25 September 2014 the Saeima adopted the law "Amendments to the Insolvency Law", which entered into force on 1 January 2015, and in accordance with Section 2 of this Law the first part of Section 9 was supplemented with a sentence, worded as follows:

"The administrators of insolvency proceedings in performing their activities of office shall be equalled to public officials."

Pursuant to Para 34 in the Transitional Provisions of the Insolvency Law, the amendments to the Insolvency Law enter into force on 1 March 2015.

1.2. On 25 April 2002 the Saeima adopted the Law On Prevention of Conflict of Interest in Activities of Public Officials (hereinafter – Law on Prevention of Conflict of Interest), which entered into force on 10 May 2002.

By the law of 30 October 2014 "Amendments to the Law on Prevention of Conflict of Interest in Activities of Public Officials", which entered into force on 29 November 2014, the Saeima added to Section 4(1) of the Law on Prevention of Conflict of Interest in Activities of Public Officials Para 26, worded as follows: "26) administrator of insolvency proceedings." Pursuant to Para 22 of the Transitional Provisions of this Law, these amendments entered into force on 1 July 2015.

Whereas by the law "Amendments to the Law on Prevention of Conflict of Interest in Activities of Public Officials" of 21 May 2015, which entered into force on 17 June 2015, the Saeima substituted the words and numbers in Para 22 of the Transitional Provisions of the Law on Prevention of Conflict of Interest "on 1 July 2015" with the words and numbers "on 1 January 2016".

2. The Applicants are sworn advocates, who combine the activities of advocate with performing the duties of an administrator of insolvency proceedings

(hereinafter – an administrator). Applicant Armands Strods is an administrator and concurrently also an assistant to a sworn advocate.

Certificates issued by the Certification Centre of the Association of the Certified Administrators of Insolvency Proceedings in Latvia are annexed to the applications, pursuant to these at the moment of submitting applications the Applicants had the right to perform an administrator's obligations. Entries into the Latvian Insolvency Register confirm that also those administrators, for whom the term of validity of the certificate expired during the hearing of the case, have extended it.

The Applicants hold that Section 2 of the law "Amendments to the Insolvency Law" of 25 September 2014 and the law of 30 October 2014 "Amendments to the Law on Prevention of Conflict of Interest in Activities of Public Officials" of 30 October 2014 (hereinafter – the contested norms) are incompatible with Article 1 and the first sentence in Article 106 of the Satversme of the Republic of Latvia (hereinafter – the Satversme).

2.1. Allegedly, the provisions of the contested norms that administrators in performing their activities of office are to be equalled to public officials infringe upon the Applicant's fundamental rights enshrined in the first sentence of Article 106 of the Satversme.

The vocation of an administrator is said to be a vocation of the private sector, an administrator does not fulfil obligations in state institutions and does not perform functions of a public official. The status of a public official imposes upon an administrator new obligations and restrictions, which are defined in the Law on Prevention of Conflict of Interest. The Applicants, being unable to fulfil these obligations and abide by the established restrictions, will be unable to continue activities in the office of administrator. Thus, their right to freely choose their employment, guaranteed in Article 106 of the Satversme, is said to be restricted.

2.2. Since legal regulation on insolvency was adopted, sworn advocates have performed also the obligations of an administrator, alongside the activities of an advocate. The administrator's office has evolved as an additional occupation of sworn advocates.

Advocates are said to be persons belonging to the system of courts, practicing a liberal profession. In their professional activities advocates are said to be independent and subject only to law. The independence of an advocate is said to be the most essential fundamental principle for the activities of a sworn advocate. To abide by the fundamental principles in the activities of advocates, an advocate,

allegedly, cannot at the same time be also a public official, i.e., a person, who is in public service and performs public tasks.

The concept "employment", which is used in Article 106 of the Satversme, is said to comprise both the activities of an administrator and activities of the office of a sworn advocate. The Applicants hold that the contested norms would cause adverse consequences for them, because after the contested norms enter into force, they will no longer be able to combine activities of an administrator with the practice of a sworn advocate. Allegedly, the Applicants have invested significant time, effort and financial resources to become sworn advocates, an assistant to a sworn advocate and administrators. They have acquired the necessary education and experience in work, have participated in events of continuous education and training, and also they have passed exams.

Thus, it is contended that the contested norms infringe upon the Applicants' fundamental right to choose employment according to their abilities and qualifications, which is guaranteed in Article 106 of the Satversme.

2.3. It is alleged that the contested norms are in conflict with the essence and meaning of granting the status of a public official, since administrators are not performing duties of office in state institutions and are not fulfilling the functions of a public official. The contested norms do not make it clear, how the activities of an administration should change, what kind of new rights and obligations would arise for the Applicants after these norms have entered into force.

It is alleged that the contested norms had not been predictable and violate the principle of legal certainty. They do not offer a reasonable period of transition and a mechanism that would allow the Applicants to make a well-considered choice with regard to their further professional activities. The Applicants have developed protectable legal certainty that sworn advocates would be able to continue performing the obligations of an administrator in Latvia.

The regulation that the contested norms comprise is said to be adopted in haste and to be obviously insufficient for reforming the administrator's profession. Since the contested norms do not comply with the requirements regarding the quality of law, the restriction upon fundamental rights that they set out has not been established by law.

2.4. The legislator had wanted to improve control over administrators' activities by the contested norms. However, this aim is said to be incompatible with all aims indicated in Article 116 of the Satversme. Thus, the restriction upon

fundamental rights that the contested norms comprise is said to be devoid of legitimate aim.

It is alleged that neither control over administrators' activities, nor the protection of interests of creditors and the State in insolvency proceedings can be ensured by the contested norms. Such mechanism for controlling the activities of administrators as defining the status of a public official is said not to be used in other countries. Other measures, less restrictive upon a person's rights and lawful interests are said to be available, these could improve control over administrators' activities. Already now the court has been granted extensive authority as regards oversight of an administrator's activities. Also the Insolvency Administration is said to control an administrator's activities in legal protection proceedings and in insolvency proceedings. If the control by the Insolvency Administration exerted over an administrator's activities is not effective, this could be improved by amending legal acts and improving application thereof.

Moreover, the Insolvency Law provides for a creditor and a creditors' meeting extensive possibilities for controlling an administrator's activities. The State Revenue Service (hereinafter also – SRS), the police and the prosecutor's office, within the limits of their jurisdiction, also supervise administrators. Administrators submit a quarterly overview of their activities to creditors and the Insolvency Administration. Insolvent legal persons and the former board members and the holders of shares or stocks are also interested in having the administrator fulfil his obligations in accordance with law.

Strict requirements have been set for an administrator as regards suspending, terminating the validity of his certificate and annulment thereof. A system of administrators' disciplinary liability exists, which is implemented by the Association of the Certified Administrators of Insolvency Proceedings in Latvia.

The Applicants hold that the legislator could have set out that administrators are officials belonging to the system of courts that are engaged in liberal legal profession. Adopting special legal regulation with regard to sworn advocates, who perform obligations of an administrator, could have also been a more lenient measure. As the Latvian Council of Sworn Advocates is overseeing the activities of sworn advocated and assistants to sworn advocates, it could be entrusted with oversight of those activities by advocates that are linked to performance of an administrator's obligations.

2.5. Allegedly the application of the contested norms would lead to the outcome that a large part of qualified sworn advocates will resign from administrators' activities. This could leave a negative impact upon insolvency proceedings. Due to the restriction that the contested norms comprise the share of those administrators, who are not sworn advocates and the legality of whose actions has already been questioned, would increase. This outcome could be contrary to the interests of society, creditors and the State in insolvency proceedings. Consequently, the contested norms are said to be incompatible with the principle of proportionality.

3. The institution, which adopted the contested act, – **the Saeima** – notes in its written reply that the contested norms comply with Article 1 and the first sentence in Article 106 of the Satversme. The contested norms are said to be a part of a reform of the regulation on administrators' activities, which is quite sizeable. The contested norms apply only to additional financial control and the purpose of these norms is to prevent the impact of personal or material interests upon the activities of a public official, to facilitate transparency in the activities of a public official and society's trust in a public official.

3.1. The contested norms place administrators into that category of public officials, to which general rules on combining offices apply, i.e., Section 6(2) of the Law on Prevention of Conflict of Interest. Neither the Law on Prevention of Conflict of Interest, nor Para 11 of Section 15 of the Advocacy Law prohibits sworn advocates to perform also the duties of an administrator.

Thus, it is claimed that the Applicants' right to freely choose employment, established in Article 106 of the Satversme, is not restricted.

Essentially, the Applicants are contesting the choice that has been made within the limits of the legislator's discretion to include administrators in the list of public officials. Establishing the status of a public official for administrators is said to be within the legislator's competence. Moreover, Section 20 of the Insolvency Law already provides that activities of an administrator comprise such functions and tasks, in the performance of which a conflict of interest or personal or material interest are inadmissible.

3.2. In performing the duties of office, the administrator is exercising the power that has been granted to him by the State; however, the regulation that had been in force previously was insufficient to dispel doubts concerning impartiality of administrators in exercising this power.

The status of a public official and the obligations that follow from it, which have been defined in the Law on Prevention of Conflict of Interest, as well as criminal law liability of public officials ensure the necessary financial control over an administrator and reinforce oversight of his activities.

Draft law "Amendments to the Law on Prevention of Conflict of Interest in Activities of Public Officials" has been submitted to the Saeima, envisaging a provision on information that should be included in the part of declaration that is not publicly accessible. The Ministry of Justice is also elaborating amendments to the Cabinet Regulation of 22 October 2002 No. 478 "The Procedure for Completion, Submission, Registration and Keeping of Declarations of Public Officials and for Drawing up and Submission of Lists of Persons Holding the Office of a Public Official". Pursuant to these amendments, sworn advocates will not be required to indicate data that allow identifying their clients in the part of public official's declaration that is published.

3.3. It is contended that the contested norms do not introduce significant changes in the status of an administrator. Neither do they establish new obligations, the performance of which would require a lengthy transitional period.

The contested norms do not require the Applicants to resign from the practice of a sworn advocate or the administrator's office. Thus, the contested norms do not require making a choice. Moreover, the restrictions laid down for public officials predominantly are linked with an official abstaining from performing certain activities and not with new obligations or requirements, the fulfilment of which would require time-consuming preparatory work.

The time from 15 November 2014, when amendments to the Law on Prevention of Conflict of Interests were promulgated, until the date when the contested norms enter into force – 1 January 2016 – is said to be sufficient for the Applicants, who are also sworn advocates, to familiarize themselves with obligations defined for them and to prepare for performing thereof. Thus, the contested norms are said to comply with the principle of legal certainty included in Article 1 of the Satversme.

4. The summoned person – **the Ministry of Justice** – notes that the contested norm complies with Article 1 and the first sentence of Article 106 of the Satversme. The aim of the contested norms is to ensure neutrality and independence of an administrator's activities. Allegedly, they do not restrict the

professional independence of sworn advocates. Neither the Advocacy Law, nor the Law on Prevention of Conflict of Interest prohibits sworn advocates from concurrent performance of an administrator's obligations.

4.1. One of the most significant deficiencies in the regulation on administrators' activities is said to be the fact that administrators have been granted extensive authorisation by law, without ensuring a due mechanism of control that would ensure neutrality and independence in administrators' activities.

The contested norms do not alter the essence of the functions defined for an administrator in the Insolvency Law; neither do they envisage the administrator's place in public service. Oversight and control of administrators' activities will be reinforced by the contested norm, including the function of control by society, which society may realize, if the obligation to submit the declaration of a public official is complied with and if these declarations are made publicly accessible. The contested norms would provide incentives for legal activities by an administrator, prevent the influence of personal or material interest upon an administrator's activities, and would also foster public trust in an administrator.

The obligation to submit the declaration of a public official is said to ensure the possibility to controlling institutions to verify, whether information included in the declaration is not indicative of violations of the restrictions established in the Law on Prevention of Conflict of Interest. The regulation of the Law on Prevention of Conflict of Interest is said to be of preventive importance in averting situations of conflict of interest.

4.2. Administrators may be public officials, since significant public interest in the legality of insolvency proceedings, in fair protection of the interests of debtors, creditors and third persons can be identified. Quite frequently the State is the only creditor, therefore its interest in handling a debtor's resources in an economically substantiated and economical way is a priority, so that the liabilities *vis-à-vis* the State would be covered.

The restriction included in the contested norms has a legitimate aim, i.e., protection of other person's rights, democratic state order and public welfare. The contested norms are appropriate for reaching this legitimate aim, and this aim could not be reached by other measures, less restrictive upon the rights and lawful interests of other persons.

4.3. The contested norms are said to comply with the principle of legal certainty included in Article 1 of the Satversme. The contested norms do not introduce significant changes into the regulation on an administrator's activities,

nor do they introduce new obligations, the performance of which would require a lengthy transitional period. The envisaged transitional period is said to be sufficiently long to allow the Applicants to prepare for performing their obligations defined in regulatory legal acts.

5. The summoned person – **the Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) – notes that the contested norms comply with Article 1 and the first sentence of Article 106 of the Satversme. The Ombudsman holds that persons' right to freely choose their occupation in accordance with their abilities and qualification, which is protected by the first sentence of Article 106 of the Satversme, is not infringed upon; however, the Ombudsman proposes that additional legal regulation on the procedure for combining offices and submitting the declaration of a public official should be elaborated during the transitional period. The legislator has established a new term when the contested norms of the Law on Prevention of Conflict of Interest enter into force, thus ensuring a reasonable transitional period.

5.1. The Insolvency Law grants to an administrator extensive authority in taking decisions and concluding transactions linked to insolvency proceedings of a natural or a legal person. In the recent years incompatibility of administrators' actions with the model of activities and competence envisaged by the legislator has been observed in the field of insolvency administration. In view of the scope of an administrator's authorisation, dishonest performance of an administrator's obligations is said to be one of those risk factors due to which the aims of insolvency proceedings are not duly met. This is said to prove that oversight of administrators' activities is insufficient and ineffective.

5.2. Allegedly, the contested norms prohibit persons, who hold other offices, including those of sworn advocates, to hold the office of an administrator at the same time. I.e., an administrator, if he is also a sworn advocate, pursuant to Section 26 of the Law on Prevention of Conflict of Interest, must provide information about his clients. This is said to be contrary to the Code of Ethics of Latvian Sworn Advocates, which prohibits an advocate to disclose information that he has obtained while providing legal assistance. Hence, the contested norms, without additional legal regulation, restrict the right to freely choose one's employment.

5.3. Allegedly, the contested norms have been adopted in a haste and without appropriate discussions. Thus is said to be a bad practice; however, in this particular case it does not impact the force of law. Therefore, the restriction upon fundamental rights that the contested norms comprise has been established by law.

The establishment of the status of a public official and the obligations linked to it, as well as liability for failing to perform these obligations, is said to be the most effective measure for facilitating transparency and oversight of an administrator's activities. The alternative measures for reaching the legitimate aim, which have been indicated by the Applicants, would require significantly broader and time-consuming reforms, but would not guarantee the same quality in reaching the aim.

The contested norms had been adopted to protect society's interests and ensure effective control over administrators' activities. The circle of those persons, whose possibilities to hold a particular office are influenced by the contested norms, is said not be too extensive. The implemented reform will foster public trust in the institution of insolvency. Consequently it will also promote trust in the democratic state structure and economic stability of the state.

6. The summoned person – **the Insolvency Administration** – notes that the contested norms comply with Article 1 and the first sentence in Article 106 of the Satversme.

6.1. Administrators fulfil functions that are important for the State. Quality performance thereof should ensure economic certainty with regard to the State and trust in the State.

After insolvency proceedings of a legal person have been announced, an administrator performs the functions of an executive institution of a private law subject. The fact that administrators are not employed in a state institution does not prohibiting applying to them the status of a public official. Administrators will continue being self-employed persons also after the contested norms have entered into force.

The contested norms place neither directly, nor indirectly such obligations upon administrators that would substantially deny them free choice and possibility to continue acting simultaneously both in the previous professional activity of the capacity of sworn advocates and in performing an administrator's duties.

6.2. By equalling administrators with public officials and applying to them the regulation of the Law on Prevention of Conflict of Interest, the financial

control over administrators is reinforced with the aim of preventing personal or material interest in the activities of a public official.

The legitimate aim of the contested norms is to ensure that the requirements set in regulatory legal acts are met, envisaging commensurate liability for failure to meet them. Thus the interests of society are protected and the responsible persons and preventively deterred from committing violations. Such legal regulation is said to be proportional, since it does not restrict persons' right to freely choose employment and workplace in accordance with one's abilities and qualification.

6.3. The contested norms do not establish for administrators new requirements or additional criteria that they would have to meet in order to become eligible to work in this particular vocation. By equalling administrators to public officials, the general restrictions and prohibitions established in the Law on Prohibition of Conflict of Interest become applicable to them, or, to put it differently, the obligation to abstain from such activities, which might point to being, possibly, in a situation of conflict of interest.

The fact that the State reinforces oversight of professional activities of some persons does not give grounds for a conclusion that in such a case a longer transitional period should be envisaged, so that the persons who would be affected by the new regulation would be able to adapt to it.

7. The summoned person – **association "Association of the Certified Administrators of Insolvency Proceedings in Latvia"** – notes that the contested norms infringe upon administrators' fundamental rights and are incompatible with Article 1 and the first sentence of Article 106 of the Satversme.

7.1. Allegedly, the administrators are not fulfilling functions of the State, therefore equalling them to public officials is not correct. The authorisation, obligations and rights of administrators are said to comply with none of the circumstances indicated in Section 4 of the Law on Prevention of Conflict of Interest, which are the grounds for recognising that a person is a public official. Thus, there are no reasonable grounds for equalling administrators to public officials.

The legislator has created an administrator's profession in a way that it can be only an additional occupation. A person is unable to provide for himself through the occupation of an administrator as his sole occupation, since revenue is irregular and in the majority of cases – low. In adopting the contested norms the legislator has not dealt with the issue of administrators' social guarantees.

Moreover, the application of the status of a public official to administrators will prohibit them from registering at the State Revenue Service as performers of commercial activities.

7.2. Each quarter administrators prepare and forward electronically to creditors and the Insolvency Administration a report on their activities. In addition to the report on administrator's activities, administrators also submit to SRS income declarations that reveal administrators' income. Thus, currently state institutions already have at their disposal all information related to income earned by administrators.

It is alleged that equalling administrators to public officials is not appropriate for reaching any of the aims set by the legislator. The contested norms will not improve the oversight of administrators' activities. Moreover, they prohibit those administrators, who are also sworn advocates, to continue performing the duties of an administrator.

Even if the legislator were to add to the Law on Prevention of Conflict of Interest a norm on the compatibility of the status of a public official with the office of an advocate, such combining would, nevertheless be impossible, due to the principles of an advocate's activities.

An administrator's obligation to submit the declaration of a public official is said to be incompatible with the Code of Ethics of Certified Administrators of Insolvency Proceedings. For example, an administrator would have to declare in the declaration of a public official his income, indirectly publishing information about the resources recovered in insolvency proceedings and disbursed to creditors. Thus, the rights of other persons involved in insolvency proceedings would be infringed upon.

7.3. The contested norms are said to be unclear and vague, moreover, they do not comprise a comprehensive regulation on all obligations and restrictions imposed upon an administrator as a public official. I.e., it still remains unclear, whether it will be possible to combine the office of an administrator with that of a sworn advocate and what kind of information those administrators, who are concurrently also sworn advocates, will have to include in the declaration of a public official.

8. The summoned person – **the Council of Latvian Sworn Advocates** (hereinafter also – the Council) – holds that persons, who are in public service, cannot be sworn advocates. Thus, the contested norms infringe upon the right

established in the first sentence of Article 106 of the Satversme to freely choose one's profession and this right infringement is experienced by those sworn advocates, who concurrently perform also the obligations of an administrator. The contested norms are said to be established without a legitimate aim and to be incommensurate. Allegedly, they violate the principle of legal certainty included in Article 1 of the Satversme.

8.1. The legitimate aims of the restriction upon fundamental rights cannot be reached by the contested norms, *inter alia*, they are said to be unable to ensure oversight and financial control of administrators' activities. The contested norms are said to be unnecessary, since legal acts envisaged appropriate system of surveillance over administrators' activities prior to the adoption of these norms.

The legislator has not provided a sufficiently broad legal regulation in the contested norms. These had been adopted with a disclaimer that other norms would be drafted and adopted in addition, i.e., norms that would fill the contested norms with content. Therefore, the Council is waiting for the legislator's actions in order to understand clearly the content of the contested norms and to provide a definite answer to the question, whether a sworn advocate is prohibited from combining his practice with the activities of an administrator.

A serious reform of the administrator's profession needs requires broader legal regulation, amendment of only one legal norm is said to be insufficient. Hence, the restriction on fundamental rights that the contested norms comprise has not been established by law.

8.2. Public officials are said to be under the influence of the State. However, a sworn advocate should be absolutely independent and free from any influence whatsoever. Likewise, he may not become involved in another job or field of activity, if that could influence his independence. Therefore the activities of a sworn advocate and performance of obligations of a public official could enter into a conflict. Moreover, the principle of confidentiality prohibits an advocate to include in the declaration of a public official information about agreements on providing legal assistance that he has concluded.

8.3. The content of the concept "a person who in performing his activities shall be equalled to a public official" is said to be unclear. I.e., public officials are those persons, who perform functions of the State and act in the interests of the State. Whereas other persons are private persons. They cannot be equalled to public officials, because they do not perform functions of the State, but are acting in their own interests or those of other private persons.

An administrator is said to be acting in the field of private law, because he is not employed by institutions of a public person and is not performing tasks of the State. Therefore equalling administrators to public officials is said to contradict the essence and the meaning of granting the status of a public official.

At the time, when the contested norms were adopted, no circumstances had indicated the need to implement urgent reforms in the regulation on administrators' activities. The regulatory enactments of the time had comprised a comprehensive and sufficient system for overseeing administrators' activities. I.e., an administrator's activities in insolvency proceedings are supervised by the court and the Insolvency Administration. An administrator submits a report about all insolvency proceedings to the Insolvency Administration, all creditors, the debtor and the representative thereof. The totality of debtor's creditors, the representative of the debtor or the debtor closely follow administrator's activities. Upon receiving information about criminal activities by the administrator, the State Police, as well the Financial Police of SRS may initiate criminal proceedings.

By establishing the status of a public official for administrators the problems that follow from insufficiently professional activities by supervisory institutions are not eliminated. To prevent violations and criminal offences committed by some administrators instead of involving the Bureau for Corruption Combatting and Prevention (hereinafter – the Bureau) in supervising activities of administrators, the capacity of public institutions and qualification of employees should be increased.

8.4. Regulatory legal acts had allowed combining the practice of a sworn advocate with activities of an administrator for a long time, therefore sworn advocates have developed reasonable and substantiated legal certainty with regard to this regulation. The contested norms, allegedly, deprive these advocates of the career that they have built in a targeted way, as well as render useless the effort and financial resources invested in the administrator's profession.

The legislator has not envisaged a reasonable period of transition allowing the sworn advocates, who concurrently act also as administrators, to reorient themselves from activities in two professions and, accordingly, gaining income in both professions, to only one career and only one source of income.

9. The summoned person – ***Mg. iur.*** **Aigars Strupišs** – notes that by the contested norms administrators have been equalled to public officials in order to subject them to stricter control, predominantly with the help of declarations.

9.1. The role of an administrator should be examined in the context of the aim of regulating insolvency proceedings. The relationships, upon which insolvency proceedings are based, as to their nature, are private law relationships. In this relationship an administrator should be considered as being the manager of the debtor's property, acting in the interests of creditors. The basic task of an administrator is to implement the set of mechanisms established in law in the interests of the totality of creditors, on the basis of the principle of proportionality and other principles of insolvency proceedings.

Even though the administrator manages the debtor's property, he does not exercise the public legal power or the state power. An administrator's function is, to ensure, to the extent possible, that the claims of an insolvent debtor's creditors are satisfied from the debtor's property. Thus, the process, even though is regulated and supervised by the State, as to its nature and aims is a private law process.

An administrator acts on his own behalf, not on the behalf of the State; therefore his liability is of private law nature. He does not belong to any hierarchic system of the public power. An administrator is a self-employed person, who organises his work and sets his working hours himself. The administrator's remuneration is agreed upon by the administrator and the debtor.

The legislator's practice to include contested norms without clearly defining aims, without serious analysis and without an annotation in the draft law immediately before the third reading by the Saeima is said to be incompatible with the rule of law principle.

9.2. The status of a public official *per se* does not prohibit an administrator from performing the duties of a sworn advocate in the future. Thus, a restriction upon performing both offices concurrently cannot be discerned.

Problems might arise in connection with the obligation to include in the declaration of a public official information about the clients of a sworn advocate and the amount of income earned from them. However, this problem could be dealt with by not publishing client-identifying data and other information pointing to clients or having a negative impact upon competition.

The report on administrator's activities and a declaration of a public official are said to differ significantly. The report of an administrator's activities comprises

information linked to the particular insolvency proceedings, i.e., only information that pertains to the professional activities of an administrator. Whereas the declaration of a public official comprises information about the material status of the concrete person, including information about income earned outside professional activities. The legislator could have imposed upon an administrator the obligation to submit a declaration of income that would have been identic with the declaration of a public official as to its content. However, there had been no need to equal administrators to public officials for that.

10. The summoned person – **Jens-Christian Pastille, an advocate from another member state of the European Union (Germany), practicing in Latvia,** – notes that the contested norms are incompatible with Article 1 and the first sentence in Article 106 of the Satversme. The contested norms have been established by law, at the moment of adoption whereof significant procedural violations have been committed. The contested norms are said to infringe upon a number of fundamental rights of individuals, in particular, those of sworn advocates. Such infringement cannot be justified, because the legislator has not chosen the most effective and necessary measure for reaching the legitimate aim of the restriction upon fundamental rights established in the contested norms. The compliance and reasonability of the transitional period could be assessed only if the legislator had established it to allow a private person to adjust to changes that are compatible with the Satversme.

10.1. The legal norm that equals administrators to public officials was submitted to the Saeima for examination only during the third reading of the draft law. In view of the nature of this proposal, the inclusion of amendments as fundamental as these in the draft law prepared for the third reading is said to be inadmissible. Moreover, these amendments had been adopted in a haste, without aligning the contested norms with other legal norms. Thus Section 2 of the law of 25 September 2014 “Amendments to the Insolvency Law” was not adopted in due procedure.

10.2. Since the contested norms provide that administrators are equalled to public officials, sworn advocates, allegedly, will not be able to combine the practice of a sworn advocate with the office of an administrator. This is said to follow from the special legal regulation of the profession of sworn advocates and principles of their professional activities.

The legitimate aim of the restriction upon fundamental rights established in the contested norms is said to be protection of other persons' rights and public welfare. I.e., by improving control over administrators' activities, protection of a debtor's assets and the value thereof, as well as the protection of creditors and employees could be improved, which is the aim of insolvency proceedings.

The legislator has used the contested norms to underscore the individual liability of administrators. I.e., the administrator is subjected to the obligations and restrictions established in the Law on Prevention of Conflict of Interest. Failure to meet the confidentiality obligation of a sworn advocate and a restriction upon independence is said to follow therefrom. A legal regulation, pursuant to which information about professional activities of a sworn advocate would appear in the part of declaration that is not publicly accessible, would prevent a gross violation of the principles of a sworn advocate's activities.

Allegedly, increasing the financial control of an administrator does not directly facilitate effectiveness of insolvency proceedings. Equalling administrators to public officials is said not to be the only measure for reaching the legitimate aim. A number of more effective and systemically more correct measures for reaching the legitimate aim are said to exist, which would restrict a person's fundamental rights to a lesser extent.

First of all the possibility to reinforce the oversight by court and the Insolvency Administration of the issues within the administrator's competence should be considered. Allegedly, the Insolvency Law already comprises regulation on the way an administrator should act in a situation of conflict of interest.

The legislator could also introduce such amendments to the Civil Procedure Law that would make court rulings adopted within the framework of insolvency proceedings subject to appeal. To prevent possible concerted dishonest actions of an administrator and a creditor or a debtor, it should be provided in the Insolvency Law that insolvency proceedings are initiated by one judge, whereas another judge ensures further control over these proceedings, *inter alia*, over the administrator's activities. Moreover, it could be provided in the norms of the Insolvency Law that the insolvency proceedings are to be initiated in the place, where the debtor conducts most of its commercial activities, and to define the necessary criteria for proving this condition. This would allow preventing a situation, where the debtors, shortly before submitting an insolvency application, change their legal address to an address within a jurisdiction of a court that they prefer.

If the State wishes to reinforce control over administrator's activities, then such a reform of the profession, as a result of which administrators become officials belonging to the system of courts, would allow reaching this aim partially, however, that would require also other procedural improvements.

10.3. An administrator is said to be incompatible with the criteria of a public official, both as to the character of activities conducted and the nature of the office. An administrator's role in insolvency proceedings, as well as the typical features of an administrator's professional activities are said to prove that an administrator's legal status, essentially, is contrary to the status of a public official.

Allegedly, the benefit gained by society does not exceed the damage inflicted upon persons' rights and lawful interests. After the contested norms enter into force a situation is going to arise, where numerous sworn advocates will give up performing obligations of an administrator, or *vice versa*, since combining of both offices will become impossible.

11. The summoned person – **Anita Kovaļevska, lecturer at the Faculty of Law, University of Latvia,** – notes that the aim of contested norms is to ensure that in legal protection proceedings, insolvency proceedings of a legal person and insolvency proceedings of a natural person, the impact of personal or material interests of an administrator, as well as of his relatives and business partners upon the activities of an administrator would be prevented.

11.1. The concepts "public official" and "public service employee" are said to be different. Public service is a public law status. Such relationships are established by a decision, which is adopted in the field of public law. The concept "public official" is said to be broader compared to the concept "public service employee", since any person in public service is also a public official, whereas not solely persons in public service may be public officials.

Section 4 of the Law on Prevention of Conflict of Interest defines the requirements for equalling a person performing activities of a particular office to a public official. Public officials are said to be those persons, who exercises the state power, directly or indirectly, *inter alia*, handle the property of a public person. The office of an administrator is said to comply with these requirements, since an administrator acts in the field of public law and with the state power. Therefore recognising an insolvency administrator as being a public official is said to comply with the principles, regarding who should be recognised as being a public official, that are included in the Law on Prevention of Conflict of Interest.

11.2. Administrators may combine their office with any other office, abiding by the general principle that such combining may not cause a conflict of interest. Thus, the contested norms do not create new restrictions upon combining offices.

Public officials belonging to the system of courts are those, who are in any way linked to the exercise of judicial power. If it were established that administrators are persons belonging to the system of courts, this *per se* would not create any additional obligations or restrictions for them. A. Kovaļevska holds that establishing the status of a person belonging to the system of courts for the administrators would not allow reaching the legitimate aim of the restriction established by the contested norms in the same quality.

As regards sworn advocates, perhaps it should be assessed, whether they should include all information about their business partners in the declaration in the same way as it done by other public officials. Thus, a need for a special regulation might arise; however, there should be no grounds to resign from granting the status of a public officials to administrators.

12. The summoned person – **Linards Muciņš, lecturer at Riga Stradins' University,** – notes that administrators are not performing the functions of the sate power and cannot be public officials or persons equalled to them. The contested norms are said to be incompatible with Article 1 and the first sentence of Article 106 of the Satversme.

12.1. Administrators are said to be certified specialists linked to legal proceedings, who do not participate in the administration of justice. Their place and role in this process is said to be very fragmented. Historically administrators' profession has evolved and existed with professional merchants' organisations – with the stock exchange or chambers or boards of trade or commerce. A specialised commercial court used to administer insolvency proceedings.

The norms of the Insolvency Law and insolvency proceedings should be interpreted through the general norms of the institute of guardianship or trusteeship, i.e., and institute of private law. In insolvency proceedings the status and the main tasks of an administrator are said to cover the main tasks of the institute of guardianship and trusteeship – management of the trust, representation in material and procedural law, as well as caring for property. An administrator is said to have civil law and commercial law function. As to its nature, it cannot be that of administrative law, i.e., the function of a subject of the state power.

12.2. A person, who in his official activities is equalled to a public official, is said not to be the same as a public official. Public officials are not performing their official activities at their own personal economic risk. Whereas the persons, who in their official activities have been equalled to public officials, perform the functions of the state power at their personal economic risk.

Neither as to the circumstances in which this office developed, nor as to his functions an administrator complies with the requirements that would allow equalling him to a public official. An administrator does not perform functions at public institutions and has no relevance in the implementation of the state power. Moreover, an administrator, even as a person equalled to a public official, is not in public service. Therefore equalling administrators to public officials is said to be contradictory to the essence and meaning of granting the status of a public official.

The Findings

13. The Applicants hold that the contested norms infringe upon their right enshrined in Article 106 of the Satversme to freely choose their employment and are incompatible with the principle of legal certainty that follows from Article 1 of the Satversme.

The Constitutional Court has noted that in examining a case the limits of the claim are binding upon it, i.e., it has to review compliance of the contested norm with a norm of higher legal force, by taking into consideration the Applicant's reasoning and the grounds and considerations presented in the application. Hence, in examining a case that has been initiated on the basis of a constitutional complaint, the actual circumstances of the case, in which the contested norm has infringed upon the applicant's fundamental rights, must be given a particular significance (*see Judgement of 23 November 2015 by the Constitutional Court in Case No. 2015-10-01, Para 12*).

The case under review has been initiated on the basis of constitutional complaints, and the facts indicated therein are linked to the Applicant's employment. The legal substantiation included in the applications is based upon the fact that the contested norms, as the Applicants hold, infringe upon their right enshrined in the Satversme to freely choose their employment. Whereas the Applicants' considerations regarding possible violation of the principle of legal certainty are linked to the arguments they provide regarding infringement of a person's fundamental rights established in Article 106 of the Satversme.

Therefore the Constitutional Court, in view of the facts of the concrete case and the reasoning expressed, will first of all examine compliance of the contested norms with Article 106 of the Satversme.

14. Article 106 of the Satversme provides: "Everyone has the right to freely choose their employment and workplace according to their abilities and qualifications. Forced labour is prohibited. Participation in the relief of disasters and their effects, and work pursuant to a court order shall not be deemed forced labour."

The applications request reviewing compliance of the contested norms only with the first sentence of Article 106 of the Satversme.

14.1. The Constitutional Court has already recognised that the concept "employment", included in Article 106 of the Satversme, is to be understood as a type of work that requires appropriate qualification and is a source of human existence, as well as a profession, which is linked to the personality of each individual in general. The concept "employment" is applicable to occupation in both private and public sector, moreover, also to such professions, where legal labour relationships are not based upon a labour contract regulated by the Labour Law (*see Judgement of 18 December 2003 by the Constitutional Court in Case No. 2003-12-01, Para 7*).

Thus, the right established in the first sentence of Article 106 of the Satversme is applicable to both offices – that of an administrator and a sworn advocate (*see, for example, Judgement of 4 June 2002 by the Constitutional Court in Case No. 2001-16-01, Para 2 of the Findings, and Judgement of 22 November 2011 in Case No. 2011-04-01, Para 11*).

The right "to freely choose", included in Article 106 of the Satversme, requires that the possibility to choose is ensured to an individual, however, it does not require to ensure the possibility for everyone to work, moreover, to have exactly the job that he wants. And yet, the concept "choose" in this Article is to be interpreted as a person's conscious and targeted activities, not solely an internal decision (*see Judgement of 4 June 2002 by the Constitutional Court in Case No. 2001-16-01, Para 2 of the Findings).*

As the Constitutional Court has noted, in the meaning of the first sentence of Article 106 of the Satversme, the right to freely chose employment and workplace means, first, equal access to labour market to all persons and, second, that the State may not set other restricting criteria for persons than certain requirements regarding their abilities and qualifications, without which a person would be unable to perform the duties of office (*see Judgement of 20 May 2003 by the Constitutional Court in Case No. 2002-21-01, Para 1 of the Findings).*

The State has the obligation to abstain from creating such direct or indirect circumstances that would hinder the person in exercising his rights to "freely choose" his employment (*see: Saul B., Kinley D., Mowbray J. The International Covenant on Economic, Social and Cultural Rights. Commentary, Cases, and Materials. United Kingdom: Oxford University, 2014, p. 365*).

14.2. The Constitutional Court has already recognised that the right to "feely choose" one's workplace comprises also the right to keep the existing workplace (*see Judgement of 23 April 2003 by the Constitutional Court in Case No. 2002-20-0103, Para 3 of the Findings*). This applies also to the right of an individual to retain the existing employment. Thus, an important element in the right to freely choose one's employment is the right to retain the existing employment, which, in turn, comprises also the right to continue this employment in the future.

As the Constitutional Court has noted, a norm that is analogous to the first sentence of Article 106 of the Satversme has been included also in constitutions of other states, for example, in Article 12 of the Basic Law for the Federal Republic of Germany (*see Judgement of 23 April 2003 by the Constitutional Court in Case No. 2002-20-0103, Para 3 of the Findings*). Minutes of the committee that elaborated the draft of Part II of the Satversme – On Human Rights – reveal that in discussing draft Article 106 of the Satversme, *inter alia*, regulation included in Article 12 of the Basic Law for the Federal Republic of Germany was assessed (*see Minutes No. 10 of the sitting of the committee for elaborating the draft of Part II of the Satversme – On Human Rights – on 12 May 1997).*

The scope of the right to choose one's employment has been reviewed in the case law of constitutional courts. For example, the Federal Constitutional Court of Germany has repeatedly noted that the right to freely choose one's employment comprises also the right to keep one's workplace (*see: Entscheidungen des Bundesverfassungsgerichts. 97. Band. Tübingen: Mohr Siebeck, 1998, S. 175; Entscheidungen des Bundesverfassungsgerichts. 108. Band. Tübingen: Mohr Siebeck, 2004, S. 165*). Likewise, the scope of the right to freely choose one's

employment covers also the right to choose several employments and to be practice them simultaneously. If this right is restricted with the aim not to permit combining particular offices, it is admissible only on the basis of law for the protection of some particularly important public interests, and abiding by proportionality (*see: Entscheidungen des Bundesverfassungsgerichts. 87. Band. Tübingen: Mohr Siebeck, 1993, S. 316*).

The first sentence of Article 106 of the Satversme does not prohibit the State to lay down requirements that must be met in order to practice certain employment. The right to freely choose one's employment, including the right to keep the existing employment, may be restricted; however, the respective restriction must comply with any of the legitimate aims defined in Article 116 of the Satversme and must be proportional.

15. The contested norm of the law of 25 September 2014 "Amendments to the Insolvency Law" provides that administrators in their activities are to be equalled to public officials. Whereas pursuant to contested law of 30 October 2014 "Amendments to the Law on Prevention of Conflict of Interest in Activities of Public Officials", administrators are public officials in the meaning of the Law on Prevention of Conflict of Interest. Therefore the restrictions, prohibitions and obligations defined for public officials in the Law on Prevention of Conflict of Interest, as well as liability for violating these restrictions and prohibitions or failure to perform obligations apply also to administrators.

Therefore the contested norms are to be examined as a united regulation, which provides that administrators in their official activities are to be equalled to public officials and therefore the Law on Prevention of Conflict of Interest applies to them.

16. The first part of Section 4 of the Law on Prevention of Conflict of Interest lists those persons, who are public officials in the meaning of the Law on Prevention of Conflict of Interest.

However, in the meaning of the Law on Prevention of Conflict of Interest, not solely those persons, who hold the positions explicitly referred to in the first part of Section 4 of this Law, are public officials. For example, pursuant to the second part of Section 4 of the Law on Prevention of Conflict of Interest, also the persons, who in fulfilling officials duties in institutions of a public person have the

following rights in accordance with laws and regulations, are to be considered to be public officials: 1) to issue administrative acts; 2) to fulfil supervisory, control, inquiry or punishment functions in relations to persons, who are not directly or indirectly subordinated to them; 3) to take or prepare decisions to acquire the property of a public person, to transfer it in the ownership, use or possession of other persons, to alienate from other persons or to encumber with property of obligation rights, as well as divide financial resources.

Thus, the legislator has defined criteria, pursuant to which those persons, who hold offices in institutions of a public person, are to be recognised as being public officials in the meaning of the Law on Prevention of Conflict of Interest.

Likewise, in the meaning of the Law on Prevention of Conflict of Interest in particular cases persons, who are not holding offices in institutions of a public person, are to be considered as being public officials. I.e., pursuant to the third part of Section 4 of the Law on Prevention of Conflict of Interest, also those persons, who fulfil official duties externally of institutions of a public person are to be considered as being public officials, if in accordance with the laws and regulations the State or local government has permanently or temporarily delegated to them any of the functions referred to in the second part of this Section. Likewise, in the meaning of the Law on Prevention of Conflict of Interest, persons, who hold the position of the chairman of the board of a port, chief executive officer of a port and board members of a port are to be considered as being public officials. In cases referred to in the Law on Prevention of Conflict of Interest, persons employed in private ports, members of the board and council of a capital company are also to be considered public officials.

Thus, the legislator has defined, which persons are to be recognised as being public officials in the meaning of the Law on Prevention of Conflict of Interest.

The Satversme does not prohibit the legislator to define, which persons are to be recognised as being public officials in the meaning of the Law on Prevention of Conflict of Interest. However, the legislator, in establishing restrictions, prohibitions and obligations that are binding upon public officials, must examine, whether a person’s fundamental rights, including the rights established by Article 106 of the Satversme, are not disproportionally restricted.

17. Reviewing of a constitutional complaint and deciding upon it, in difference to the abstract control over legal norms, is not a measure aimed only at aligning the legal system. First and foremost it is a measure that serves to protect

the fundamental rights of the submitter of the particular constitutional complaint. Therefore the Constitutional Court must individually review the proportionality of the contested restrictions with regard to submitters of the constitutional complaint (*see Judgement of 15 June 2006 by the Constitutional Complaint in Case No. 2005-13-0106, Para 20.2*).

The Applicants are administrators and simultaneously act also as advocates. The case materials and entries into the Insolvency Register show that all Applicants have obtained the certificate of an administrator of insolvency proceedings pursuant to the procedure established by the Insolvency Law and Cabinet Regulation of 9 November 2010 No. 1038 "Procedure for Training Applicants for the Positions of Administrators of Insolvency Proceedings and for Certifying Administrators of Insolvency Proceedings" (hereinafter – regulation No. 1038). Thus, the contested norms affect the Applicants, if they wish to continue performing obligations of both an administrator and an advocate.

Therefore the Constitutional Court, in examining compliance of the contested norms with the first sentence of Article 106 of the Satversme, will take into consideration the particular situation of the Applicants. I.e., the status of a public official has been established for administrators, who at the same time are also advocates. The Applicants' right to keep both employments, which they have already taken up in accordance with their abilities and qualification, falls within the scope of the first sentence of Article 106 of the Satversme.

Therefore the Constitutional Court will examine compatibility of the contested norms with the first sentence of Article 106 of the Satversme; insofar these apply to administrators, who at the same time are also advocates.

18. Prior to the adoption of the contested norms, Section 9(1) of the Insolvency Law provided that an administrator of insolvency proceedings was a natural person, who had obtained the certificate of an administrator of insolvency proceedings and had the rights and obligations defined in this Law.

The contested norms equalled administrators in their official activities to public officials in the meaning of the Law on Prevention of Conflict of Interest. The contested norm of the law of 25 September 2014 "Amendments to the Insolvency Law" has entered into force on 1 March 2015. Pursuant to Para 22 of Transitional Provisions of the Law on Prevention of Conflict of Interest the

contested law of 30 October 2014 "Amendments to the Law on Prevention of Conflict of Interest in the Activities of Public Officials" will enter into force on 1 January 2016. Thus, as of this moment the restrictions, prohibitions an obligations set for the public officials in the Law on Prevention of Conflict of Interest, as well as liability for violating these restrictions or failure to perform the obligations will become applicable to administrators.

A finding has been expressed in the case law of the Constitutional Court that a violation of fundamental rights could be also anticipated in the future. This means that reasonable and credible possibility exists that application of the contested norm could cause adverse consequences to the submitter of the constitutional complaint (*see Judgement of 18 February 2010 by the Constitutional Court in Case No. 2009-74-01, Para 12.1*). The Constitutional Court finds that the contested norms will be applied to the Applicants in the future, if they retain both offices – an administrator's and an advocate's.

19. The Applicants underscore that in Latvia the office of an administrator has evolved as an additional occupation of sworn advocates. Whereas the Council of Sworn Advocates notes that initially an administrator's obligations were performed by sworn advocates and sworn auditors in addition to their basic work (*see Case Materials, Vol. 5, p. 43).*

On 12 September 1996 the Saeima adopted the law "On Insolvency of Enterprises and Companies". In the initial wording of this law Section 13 provided that sworn advocates could be administrators. Later, with the law of 13 June 2002 "Amendments to the Law "On Insolvency of Enterprises and Companies"" the legislator amended this legal norm, replacing it by an enumeration of all subjects included into it and qualification requirements set for an administrator, i.e., providing that only such natural person, who had higher legal education or higher education in the field of economy, management or finances and had at least three years of practical work experience in management or executive bodies of enterprises or companies, had successfully met the certification requirements to obtain speciality of an administrator and to whom the Insolvency Administration had issued a certificate in accordance with the provisions of this Law, could be an administrator. At the same time it was provided that those sworn advocates, who until 1 July 2002 had performed the obligations of an administrator had the right to receive by 1 July 2003 a certificate of an administrator of insolvency proceedings for three years, without taking qualifications test.

On 26 July 2010 the Insolvency Law entered into force. Pursuant to Section 13(1) of the Insolvency Law a legally capable natural person may be an administrator of insolvency proceedings, if the person 1) has reached the age of 25 years; 2) has received a State-recognised education document concerning the acquisition of a second level higher vocational education in jurisprudence and acquired the qualification of a lawyer or has received a State-recognised education document concerning the acquisition of a higher academic education in jurisprudence and acquired an academic degree; 3) is fluent in the official language at the highest level; 4) has at least three years work experience in the profession of a lawyer or profession comparable thereto. Moreover, the Insolvency Law provides for the training of candidates for the office of an administrator, as well as for the procedure of certifying and re-certifying administrators.

Whereas Section 14 of the Advocacy Law provides that persons may be admitted as sworn advocates, if they 1) are citizens of the Republic of Latvia; 2) have a faultless reputation; 3) have reached the age of twenty-five; 4) have received a State-recognised diploma of second-level higher education in law and have obtained the qualifications of a lawyer; 5) are fluent in the official language at the highest level; 6) have obtained work experience by working in any of the following positions: a) at least three years – in the position of judge, b) at least five years – in the position of prosecutor, sworn bailiff or sworn notary, or assistant to a sworn advocate, c) at least seven years – in the position of academic personnel specialising in law at an institution of higher education or in any other position with a juridical speciality; 7) have passed the advocate examination.

Thus, the legislator, in view of the nature of insolvency proceedings and the scope of authorisation granted to an administrator, has defined the requirments regarding qualification, knowledge and experience needed to hold the office of an administrator. The legislator has set even higher requiremens rgarding qualification, knowledge and experience for holding the office of an advocate.

Thus, advocates as to their qualification, knowledge and experience comply with the criteria that in the procedure established by the Insolvency Law allow a person to gain the right to perform an administrator's obligations.

20. The Applicants note that the contested norms prohibit them from retaining both employment; i.e., to act as both insolvency administrators and advocates. The Saeima, in turn, holds that neither the Law on Prevention of

Conflict of Interest, nor the Advocacy Law prohibits the Applicants to continue performing an administrator's obligations, at the same time retaining also the employment of an advocate. Thus, the basic issue of the case under review is the Applicants' right to keep the existing employments; i.e., to hold both the office of an administrator and of an advocate.

Chapter II of the Law on Prevention of Conflict of Interest defines general and special restrictions for public officials regarding combining of offices. Pursuant to Section 6(1) of this Law a public official is permitted to combine an office of the public official with another office, in the performance of a work-performance contract or authorisation, or commercial activity in the status of an individual merchant, or by registering with the State Revenue Service as the performer of economic activities in accordance with the law "On Personal Income Tax", if this Law or any other regulatory enactment does not provide for restrictions on combining the office of a public official.

Whereas the second part of the same Section provides: "Unless stricter restrictions are laid down in law, a public official shall be allowed, in conformity with the special restrictions on combining offices determined in Section 7, Para 2, 3, 4, 5, 5^1, 6, 7, 8 and 13 of this Law, to combine the office of the public official with no more than two other paid offices or offices compensated in some other way in other institutions of a public person. The work of a teacher, scientist, doctor, professional athlete and creative work shall not be considered as the offices referred to in this Paragraph. The combining of offices referred to in this Paragraph shall be permissible if it does not entail a conflict of interest, is not in contradiction with the ethical norms binding upon the public official and does not harm the performance of the direct duties of the public official."

The special restrictions on combining offices defined in Para 2, 3, 4, 5, 5^1, 6, 7, 8 and 13 of Section 7 of the Law on Prevention of Conflict of Interest do not comprise a prohibition for administrators to combine the office of a public official with an advocate's office.

The Applicants' opinion that Para 11 of Section 15 of the Advocacy Law of the Republic of Latvia (hereinafter – the Advocacy Law) contains a direct prohibition for an advocate to be simultaneously also an administrator cannot be upheld, even if an administrator is a public official in the meaning of the Law on Prevention of Conflict of Interest. This norm of the Advocacy Law provides that such persons cannot be admitted as advocates, who are employed in a direct or

indirect State administrative institution, derived public persons, other State institution or State (local) government capital company. The concept used in this legal provision "a person in public service" differs from the concept "public official". I.e., the concept "public official" is broader. Any person in public service is also a public official in the meaning of the Law on Prevention of Conflict of Interest, however, pursuant to law, other persons, who hold particular offices, may also be public officials.

Thus, the fact that an administrator is a public official in the meaning of the Law on Prevention of Conflict of Interest, does not lead to a prohibition to combine this office with activities of an advocate, if combining thereof does not cause a conflict of interest, does no violate ethical norms that are binding upon a public official, does not harm the performance of direct duties of a public official, and neither are incompatible with legal norms that regulate an advocate's activities.

21. The Applicants hold that with the establishment of the status of a public official new restrictions, prohibitions and obligations are imposed upon administrators, which hinder them in their professional activities in advocacy and, essentially, make it impossible. The obligation imposed upon a public official to submit the declaration of a public official and indicate in it information as stipulated in the Law on Prevention of Conflict of Interest is said to be contrary to an advocate's independence and obligation to abide by confidentiality with regard to a client's matters. Likewise, it is alleged that the prohibition to engage in advertising, laid down in the Law on Prohibition of Conflict of Interest, restricts the Applicants' fundamental rights. Whereas the Saeima and the Ministry of Justice note that the contested norms neither directly, nor indirectly establish such new restrictions, prohibitions and obligations for the Applicants that would prohibit them from due performance of advocate's work.

Therefore, the Constitutional Court must establish, whether the contested norms create a restriction of the fundamental rights included in the first sentence of Article 106 of the Satversme for administrators, who at the same time are also advocates.

21.1. Pursuant to Section 23(1) of the Law on Prevention of Conflict of Interest, a public official has the obligation to submit a declaration of a public official within a term and according to the procedure that has been determined. In

accordance with Section 24 of the Law on Prevention of Conflict of Interest, the declaration must include, *inter alia,* information about other offices that the public official holds in addition to the office of a public official, information on all kinds of income and transactions conducted, if the sum thereof exceeds 20 minimum monthly wages, indicating the amount and parties of these transactions.

To ensure protection of personal data, declarations have publicly accessible and publicly inaccessible parts. Pursuant to Section 26(4) of the Law on Prevention of Conflict of Interest, the publicly inaccessible part comprises the public official's personal identity code and place of residence, information about minor relatives (also adopted ones) and information about the partners of liabilities and transactions indicated in the declaration.

Pursuant to Section 26(5) of the Law on Prevention of Conflict of Interest, only those public officials and institutions, which examine declarations in accordance with this Law, as well as in cases stipulated by law – also a prosecutor and investigatory or state security institutions may familiarize themselves with the publicly inaccessible part of the declaration.

The scope of information to be included in the declaration is determined by Cabinet Regulation of 22 October 2020 No. 478 "Procedure for Completion, Submission, Registration and Keeping of Declarations of Public Officials and for Drawing up and Submission of Lists of Persons Holding the Office of a Public Official" (hereinafter – Regulation No. 478). Pursuant to Para 2 of this Regulation, a public official specifies the type of declaration and completes the publishable and the non-publishable part of the declaration.

Pursuant to Para 3 of Regulation No. 478 a public official, *inter alia*, indicates in the publishable part of the declaration: 1) information regarding other offices, which he occupies in addition to the office of a public official, as well as regarding work-performance contracts or authorisations, liabilities specified by which he fulfils; 2) information regarding identification data of those legal persons, where the submitter of the declaration holds offices, regarding natural persons (indicating name and surname) or identification data of legal persons that are employers or authorisers of the submitter of the declaration; 3) information regarding cash and non-cash savings, if their amount exceeds 20 minimum monthly wages specified by the Cabinet; 4) information regarding all types of income earned in the reporting period, indicating the place (source) of earning, the identification data of legal persons and the given name and the surname of natural persons, as well as the amount; 5) information regarding transactions performed, if

the amount thereof exceeds twenty minimum monthly wages specified by the Cabinet, providing information about the type and amount of each transaction in monetary terms in the respective currency.

Whereas in completing the non-publishable part of the declaration, pursuant to Para 4 of Regulation No. 478, the submitter of declaration, *inter alia*, indicates: 1) information regarding work-performance contracts and authorisations, if the employer, the other contracting party or the authoriser is a natural person, as well as indicates the income earned from natural persons in the reporting period (indicating also the identification data of a natural person); 2) information regarding transactions performed, if the amount thereof exceeds twenty minimum monthly wages specified by the Cabinet, providing information regarding the amount of each transaction in the respective currency and identification data of the parties to transactions.

Pursuant to Regulation No. 478 identification data of a person are the name, legal address and registration number of a legal person or the given name, surname and personal identity number of a natural person.

Thus, in the meaning of Regulation No. 478, in the publishable part of the declaration information about the work-performance contracts that the public official has concluded and authorisations are indicated, providing information also about the other contracting party, in case of a natural person only the given name and the surname are indicated in the declaration, in the case of a legal person – its name, legal address and registration number. Likewise, information about all types of income earned in the reporting period is indicated in the publishable part of the declaration, as well as information about the place (source) of earning it, providing identification data of legal persons and the given name and surname of natural persons, as well as the amount.

21.2. The Applicants hold that the obligation to submit a declaration of public official, where information about their clients must be published, restricts their right to perform obligations of an advocate, since they do not protect an advocate's independence and do not guarantee that in their relationships with clients confidentiality is observed.

21.2.1. Section 3 of the Advocacy Law provides that an advocate is an independent and professional lawyer, who provides legal assistance in defending and representing the lawful interests of persons in court proceedings and pre-trial investigations, providing legal consultations, preparing legal documents and performing other legal activities. Pursuant to Section 106 of the Advocacy Law

sworn advocates practice a liberal profession. Section 7 of the Advocacy Law provides that advocates may not be identified with their clients or the cases thereof in relation to fulfilling of the professional duties of an advocate. The principle of advocates' independence has been enshrined in Section 6 of the Advocacy Law – pursuant to it advocates are independent and subject only to the law in their professional activities.

The fact that an advocate not only has to comply with requirements of regulatory legal acts, but also must abide by the professional ethical norms also should be taken into consideration (*see Judgement of 7 February 2014 by the Constitutional Court in Case No. 2013-04-01, Para 28*). Section 71 of the Advocacy Law provides that disciplinary proceedings may be initiated against a sworn advocate for violation of the norms of the professional ethics of sworn advocates.

Pursuant to Para 1.1 of the Code of Ethics of the Sworn Advocates of Latvia (hereinafter – the Code of Ethics) an advocate must be absolutely independent and free from any influence whatsoever, in particular such that might arise due to his own personal interest or as the result of any influence. An advocate may not become involved in other work or field of activity, if that could have an impact upon his independence. In explaining this principle it is noted in the Charter of the Core Principles of the European Legal Profession that a lawyer needs to be free – politically, economically and intellectually – in pursuing his activities of advising and representing the client (*see: Charter of the Core Principles of the European Legal Profession. Adopted by the Council of Bars and Law Societies in Europe on 24 November 2006. Available: http://www.ccbe.eu/*).

Section 28 of the Law on Prevention of Conflict of Interest regulates the procedure for verifying declarations and the facts indicated therein. Pursuant to Section 28(4) of the Law on Prevention of Conflict of Interest, the Bureau, which controls implementation of this law has the right to request and receive information and documents from the relevant public official, institutions of a public person, merchants, public or political organisations and associations thereof, religious organisations or other institutions, as well as from the persons that are indicated or in accordance with the provisions of this Law should have been indicated in the relevant declaration. Thus, the law envisages to state institutions the right to request additional information that confirms the facts indicated in the declaration. Pursuant to Section 214^2 of the Latvian Administrative Violations Code, the Bureau reviews cases of administrative violations in the field of

corruption prevention and has the right to impose sanctions. Likewise, to disclose criminal offences in service of public institutions envisaged in the Criminal Law, if these are linked to corruption, pursuant to Section 386 and Section 387 of the Criminal Procedure Law the Bureau is in charge of the proceedings. Likewise, to disclose criminal offences envisaged in the Criminal Law in service of public institutions, if these are linked to corruption, pursuant to Section 386 and Section 387 of the Criminal Procedure Law, the Bureau is in charge of the proceedings. Pursuant to Section 2(3) of the Law on Corruption Prevention and Combating Bureau and Investigatory Operations Law, the Bureau is a body performing operational activities, having the right to conduct special investigatory activities, use measures and methods of operational activities.

The concept of a public official is defined also in Section 316 of the Criminal Law. The Constitutional Court has already recognised that the persons referred to in the Law on Prevention of Conflict of Interest essentially comply with the concept of public officials included in Section 316 of the Criminal Law (*see Judgement of 29 October 2003 by the Constitutional Court in Case No. 2003-05-01, Para 35*). A person, who is a public official in the meaning of the Law on Prevention of Conflict of Interest, in difference to persons, who are not public officials, upon the proposal by the person in charge of proceedings may be made criminally liable for committing criminal offences envisaged in Sections 317-330 of the Criminal Law.

The Applicants are administrators and at the same time – also advocates. Pursuant to Section 79(2) of the Criminal Procedure Law advocates may act as defence counsels in criminal proceedings. Due to the status of a public official established for administrators, in those cases, when the Bureau is in charge of criminal proceedings, the independence those administrators, who are at the same time administrators, would be subjected to risk. A number of summoned persons – the Council of Sworn Advocates of Latvia and J. Pastille – indicate that the contested norms could leave an adverse impact upon advocates' independence (*see Case Materials Vol. 5, p. 38 and pp. 121 –122*). An advocate's independence is necessary, *inter alia*, to ensure in criminal proceedings protection of the defendant's rights and interests and procedural equality of parties. Therefore the advocate's independence is an essential precondition for exercising a person's right to fair trial.

21.2.2. The principle of an advocate's confidentiality follows from Section 6 of the Advocacy Law, which prohibits to interfere in the professional activities of

advocates, exert influence or bring pressure upon them, to request information and explanation from advocates, as well as interrogate them as witnesses regarding the facts, which have become known to them in providing legal assistance. Likewise, it is prohibited to control post and telegraph correspondence and the documents, which advocates have received or prepared in providing legal assistance, to request information from clients regarding the fact of assistance provided by advocates and the contents thereof, subject advocates to any sanctions or threats in relation to the provisions of legal assistance to clients in accordance with the law, hold advocates liable for written or oral announcements, which they have made while performing their professional duties in good faith.

The content of the confidentiality principle is revealed in Para 1.3 of the Code of Ethics. Pursuant to this principle an advocate may not disclose what has come into his knowledge while providing legal assistance, even if he is no longer the counsel of the client and is not conducting his matters. This obligation applies also the assistants and employees of advocates.

To explain the content of the confidentiality principle, it is noted in the Charter of the Core Principles of the European Legal Profession that an advocate has the right and the obligation to observe confidentiality in client's matters and to respect professional secret. It is the duty of an advocate to abide by the confidentiality of all the information that has come into his knowledge at the time of his professional activity. Moreover, the duty of confidentiality is not limited in time. The official obligations of an advocate are based upon the possibility for the client to entrust to an advocate things that the client would not reveal to other persons – personal information or valuable commercial secrets. Therefore the mutual exchange of information between an advocate and his client must be confidential. Trust cannot exist without certainty regarding confidentiality. Therefor confidentiality is the main and the basic right and obligation of an advocate.

Section 122 of the Criminal Procedure Law establishes prohibition to interrogate an advocate as a witness regarding facts that have become known to him while providing legal assistance in any form, to control, inspect or seize documents that an advocate has drawn up, or correspondence that he has received or sent in providing legal assistance, as well as to conduct a search in order to find and seize such correspondence and documents. It is prohibited to control the information systems and means of communication to be used by an advocate for

the provision of legal assistance, to take information from such systems or means, and to interfere in the operation thereof.

The European Court of Human Rights (hereinafter – ECHR) has noted that the mutual exchange of information between an advocate and his client, irrespectively of its purpose, deserves special protections. An advocate cannot perform his duties of office, if he cannot guarantee confidentiality in the client's matters. Confidentiality of advocates is one of the principles of legal proceedings that are recognised in states governed by the rule of law. However, the confidentiality principle is not absolute. ECHR has assessed the obligation of sworn attorneys to report on suspicious transactions and has recognised that it is not an incommensurate restriction upon the principle of advocates' confidentiality (*see ECHR Judgement of 6 December 2012 in Case "Michaud v. France", Application No. 12323/11, Para 117, 118 and 123–131*).

The protection of the mutual exchange of information between an advocate and his client as a professional secret follows from the rights of the client not to assist in incriminating himself (*see ECHR Judgement of 24 July 2008 in Case* "*André and Another v. France", Application No. 18603/03, Para 41*). In view of the fact that information indicated in an advocate's bank account statements is protected by professional secrecy, ECHR has recognised that law enforcement institutions, in scrutinising an advocate's bank account statements, had to invite representatives of an independent institution – bar association – to participate (*see ECHR Judgement of 1 December 2015 in Case "Brito Ferrinho Bexiga Villa-Nova v. Portugal", Application No. 69436/10, Para 57*).

Legal assistance provided by an advocate is effective and ensures protection of a person's rights and lawful interests at a fair trial only in confidentiality regarding the client's matters is guaranteed. There may be situations, when the confidentiality principle prohibits requesting information not only about the content of legal assistance provided by an advocate, but also about the concrete persons it has been provided to. This prohibition applies also to state institutions, which must respect an advocate's independence.

The Saeima notes in its written reply that the confidentiality principle of an advocate applies only to that information that has come into his knowledge while providing legal assistance. Allegedly, this does not prohibit an advocate to disclose information regarding the client, in whose interests the assistance has been provided, and the payment therefor. However, this opinion by the Saeima could be contradictory to the guarantees for advocate's professional activities set out in

Section 6 of the Advocacy Law. As noted before, sometimes the very fact that legal assistance has been provided to a particular person is absolutely confidential. Moreover, pursuant to Section 67 of the Advocacy Law an advocate may not divulge the secrets of his clients also after being relieved from conducting the case or after completion of the case.

The obligation set for a public official to include in the declaration information required by legal acts regarding the work-performance or authorisation contracts and the contractual parties thereof, as well as regarding income and the sources thereof may enter into conflict with the confidentiality principle of an advocate's activities, since this would disclose information that an advocate has provided legal assistance to a concrete person. Moreover, the regulation included in the Law on Prevention of Conflict of Interest envisages the rights of state institutions to request additional information and documents in connection with information included in the declaration. This could lead to a violation of advocate's confidentiality in the matters of his client and a person's right to a fair trial would not be ensured.

21.3. The applications underscore that the Applicants' fundamental rights are restricted by the prohibition established in the Law on Prevention of Conflict of Interest for a public official to engage in advertising.

Section 17 of the Law on Prevention of Conflict of Interest prohibits a public official to engage in any kind of advertising, except for the cases, when this falls with the official duties of the public official. The Insolvency Law does not establish such official duties of administrators that would be linked to advertising.

Whereas Section 113 of the Advocacy law provides that only sworn advocates and assistants to sworn advocates of Latvia have the right to offer advocate's assistance in conducting matters in court, as well as to advertise such assistance. Thus, the Advocacy Law allows advocates to advertise their services. The decision of 23 March 2010 by the Council of Sworn Advocates of Latvia No. 77 "Basic Personal Advertising Principles of the Council of Sworn Advocates of Latvia" explains that an advocate may inform about the legal assistance to be provided, including in the advertisement also information about the advocate's professional activities.

An advocate's right to advertise his professional activities ensures that persons are informed about the possibility to receive legal assistance from an advocate. However, the provision of Section 17 of the Law on Prevention of

Conflict of Interest that a public official is prohibited to engage in any kind of advertising applies also to administrators, who are at the same time also advocates.

The Constitutional Court has already recognised that the right to a fair trial comprises also the right to legal assistance (*see Judgement of 6 October 2003 by the Constitutional Court in Case No. 2003-08-01, Para 1 of the Findings).* An objective possibility to receive legal assistance from an advocate ensures to a person the right to a fair trial enshrined in Article 92 of the Satversme (*see Judgement of 7 February 2014 by the Constitutional Court in Case No. 2013-04-01, Para 24 and 26*). Thus a person should have an actual possibility to receive, according to his own choice, legal assistance from an advocate, whereas an advocate should have the possibility to offer these services.

In the particular situation, where the Applicants are administrators, who are at the same time acting also as advocates, the prohibition to engage in advertising, established in the Law on Prevention of Conflict of Interest, leaves a negative impact upon accessibility of legal assistance provided by advocates, moreover, limits the Applicants' possibility to offer their services and thus restricts their right to keep the employment of their own choice.

21.4. The Constitutional Court concludes that the prohibition established in the Law on Prevention of Conflict of Interest is incompatible with the Advocacy Law, which sets out the procedure, in which advocates may advertise their activities, thus ensuring to persons the possibility to receive legal assistance from an advocate. It should be taken into consideration that an administrator, who is at the same time also an advocate, can be a counsel in criminal proceedings. In defending his client an advocate should be independent, since only in such a case the legal assistance provided by an advocate ensures protection of a person's rights and legal interests in a fair trial. And yet the contested norms may subject to risk an advocate's independence in criminal proceedings. Likewise, due to the obligation of a public official to submit a declaration of a public official, which, *inter alia*, should provide information about clients and transactions that have been concluded, a situation may arise, where confidentiality and a person's right to a fair trial are not ensured. Thus, the Applicants as public officials in their professional activity must abide by such obligations and prohibitions that pose a threat to the right to act both as an administrator and an advocate that they have acquired.

Thus, the contested norms restrict the Applicants' right, established in the first sentence of Article 106 of the Satversme, to retain their current employment.

22. The right that the first sentence of Article 106 of the Satversme comprises to retain the existing employment may be restricted; however, the Constitutional Court must assess, whether the restriction is justifiable; i.e., whether 1) it has been established by law; 2) whether it has a legitimate aim; 3) whether it is proportional (*see, for example, Judgement of 20 May 2003 by the Constitutional Court in Case No. 2002-21-01, Para 2 of the Findings).*

23. Even though the contested norms are to be assessed as a united regulation, the Constitutional Court, nevertheless, has to verify, whether each of the contested norms has been adopted in due procedure.

The Applicants note that the restriction upon fundamental rights set out in the contested norms has not been established by a law, which has been adopted in due procedure.

The Constitutional Court has noted repeatedly that complying by the procedure for adopting a legal norm is a pre-requisite for the validity of the contested norm (*see, Judgement of 21 November 2005 by the Constitutional Court in Case No. 2005-03-0306, Para 10.4, and Judgement of 23 September 200 in Case No. 2008-01-03, Para 14*). To assess the compliance of the restriction upon fundamental rights that the contested norms comprise with the first sentence of Article 106 of the Satversme, it must be verified, whether the restriction upon fundamental rights has been established by law adopted in due procedure, i.e.:

1) whether the law was adopted in compliance with the procedure envisaged in regulatory enactments;
2) whether the law has been promulgated and is publicly accessible in compliance with the requirements of regulatory legal acts;
3) whether the law has been worded with sufficient clarity, so that a person would be able to understand the content of rights and obligations following from it and to anticipate the consequences of application thereof, as well as whether the law ensures protection against arbitrary application thereof (*see, for example, Judgement of 8 April 2015 by the Constitutional Court in Case No. 2014-34-01, Para 14*).

23.1. It is noted in the applications that it is doubted, whether the norm of the law of 25 September 2014 "Amendments to the Insolvency Law" has been adopted in due procedure. The Applicants objections concerning the procedure for adopting the contested norm are linked to the fact that this norm was integrated into the draft law only before its third reading.

On 24 September 2012 the draft law "Amendments to Insolvency Law" was submitted to the Saeima (Nr. 367/Lp11). Member of the Saeima Andrejs Judins, by the letter of 27 December 2013 No. 8/3-22-2006-11/13 "Proposal for the Third Reading of the Draft Law "Amendments to Insolvency Law" (Nr. 367/Lp11)", which was addressed to Economic, Agricultural, Environment and Regional Policy Committee of the Saeima, submitted a proposal to add to the first part of Section 9 of the Insolvency Law the text "in their official activities administrators of insolvency proceedings shall be equalled to public officials" (*see Case Materials Vol.3, p. 70*). This proposal was included in the draft law "Amendments to Insolvency Law" (Nr. 367/Lp11) for its third reading. At the sitting of 25 September 2014 the Saeima approved in the third reading the draft law No. 367/Lp11.

The Constitutional Court has already previously found that the Saeima has the right to adopt in the third reading norms also with regard to an issue, which was not envisaged in the draft law that was initially submitted (*see Judgement of 30 October 2009 by the Constitutional Court in Case No. 2009-04-06, Para 11.2*).

The Applicants also note that in the procedure of adopting both contested norms the interests of administrators, who simultaneously are also advocates, had not been taken into consideration and that discussions with the experts of the field and lawyers were not held.

It follows from the minutes and audio recordings of sittings included in the case materials that discussions about reform in the oversight of administrators' activities and equalling administrators to public officials in the meaning of the Law on Prevention of Conflict of Interest took place at the sitting of the Advisory Council on Insolvency Issues, where a representative from the association "Association of Certified Administrators of Insolvency Proceedings in Latvia" participated (*see Case Materials Vo. 3, pp. 11- 15*). Likewise, the association "Association of Certified Administrators of Insolvency Proceedings in Latvia" expressed its objections against equalling administrators to public officials in letters addressed to Economic, Agricultural, Environment and Regional Policy Committee of the Saeima, requesting it not to submit the draft law No. 367/Lp11

for examination in third reading (*see Case Materials, Vol. 3, pp. 76-86 and pp. 114 –125*).

The draft law "Amendments to the Law on Prevention of Conflict of Interest in Activities of Public Officials" (No. 1273/Lp11) was examined in urgent procedure. It follows from the case materials that both representatives of association "Association of Certified Administrators of Insolvency Proceedings in Latvia" and sworn advocates V. Ritenberga and R. Sjademe participated in the sittings of the Legal Affairs Committee of the Saeima and they had the possibility to express their opinion on equalling administrators to public officials in the meaning of the Law on Prevention of Conflict of Interest (*see Case Materials Vol. 3, pp. 114-122*).

It has been recognised in the case law of the Constitutional court that even though it is preferable to hear the opinion of the addressees' of the norms, neither the Satversme, nor the Saeima Rules of procedure define such hearing as a mandatory pre-requisite for adopting legal norms. The opinion of the addreessees of legal norms about legal norms cannot prohibit the Saeima from adopting decisions (*see Judgement of 25 March 2015 by the Constitutional Court in Case No. 2014-11-0103, Para 18.1*).

Thus, it follows from the case materials that the contested norms have been adopted in compliance with the procedure established in regulatory legal acts.

23.2. There is no dispute in the case on whether the contested norms have been promulgated in the procedure established in regulatory enactments and had been publicly accessible. Thus, the contested norms have been promulgated and are publicly accessible in compliance with the requirements of regulatory legal acts.

23.3. The Constitutional Court has noted that a legal norm that restricts a person's fundamental rights must be worded with sufficient clarity, so that an individual, in case of necessity seeking appropriate advice, could plan his actions (*see Judgement of 11 May 2011 by the Constitutional Court in Case No. 2010-55-0106, Para 13.1*).

It is noted in the application, *inter alia*, that the contested norms are unclear, since it cannot be understood what new rights and obligations the regulation included in these norms would create for a person.

A norm is to be recognised as being unclear, if its true meaning cannot be established by methods of interpretation (*see Judgement of 30 March 2011 by the Constitutional Court in Case No. 2010-60-01, Para 15.2*).

The contested norms provide only that administrators in their official activities are to be equalled to administrators in the meaning of the Law on Prevention of Conflict of Interest. The obligations and restrictions that the status of a public official imposes upon a person are defined by other norms of the Law on Prevention of Conflict of Interest. Thus, to establish, what kind of legal consequences the contested norms create for the Applicants, they must be examined systemically together with other norms of the Law on Prevention of Conflict of Interest. The fact that the respective obligations and restrictions follow from a number of legal norms does not mean that the contested norms should be recognised as being incomprehensible and unclear.

It must be noted in addition that on 11 May 2015 the Ministry of Justice held a seminar "Administrator – a Public Official" with the aim of presenting to administrators the planned amendments in legal regulations, in view of the fact that the norms of the Law on Prevention of Conflict of Interest, which grant to administrators the status of a public official, would enter into force on 1 January 2016.

Thus, the restriction upon fundamental rights included in the contested norms has been established by law.

24. Any restriction upon fundamental rights should be based upon circumstances and arguments regarding its necessity; i.e., the restriction is established for important interests – a legitimate aim (*see, for example, Judgement of 22 November 2011 in Case No. 2011-04-01, Para 16*). Article 116 of the Satversme provides that rights established in Article 106 of the Satversme "may be subject to restrictions in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State and public safety, welfare and morals."

24.1. If restrictions upon rights have been established, then in the legal proceedings before the Constitutional Court the institution, which has issued the contested act, has the obligation, first and foremost, to indicate and substantiate the legitimate aim of such restrictions, in this particular case it is the Saeima.

The Saeima notes that the contested norms have been adopted to ensure transparency in administrators' activities, to decrease the risk of conflict of interest and corruption in administrators' activities, as well as to reinforce public trust in administrators. I.e., the legitimate aim of the restriction upon fundamental rights is said to be the protection of other persons' rights and of public welfare (*see Case*

Materials, Vol. 5., pp. 84-85). The Ministry of Justice notes that the contested norms ensure legal course of insolvency proceedings, protection of the rights of debtors, creditors and third persons in insolvency proceedings, as well as legal and economic certainty of society with regard to the system of financial stability established by the State. Moreover, the contested norms are said to be of preventive importance, since they prevent a situation, where the official duties of a public official are performed in a situation of conflict of interest (*see Case Materials, Vol. 5, pp. 93 and 101).*

To establish, what the legitimate aim of the restriction upon fundamental rights is, the Constitutional Court must examine, why in the particular case the legislator has equalled administrators in their official activities to public officials.

24.2. Section 1 of the Insolvency Law provides that the purpose of this Law is to promote honouring of the obligations of a debtor in financial situations and, where possible, the renewal of solvency, applying the principles and lawful solutions specified in this Law.

The Constitutional Court has recognised that insolvency proceedings are mainly aimed at protecting the rights of creditors and debtors (*see Decision of 20 April 2010 by the Constitutional Court on Terminating Legal Proceedings in Case No. 2009-100-03, Para 9.4*).

The Constitutional Court, in examining the qualification requirements set for administrators, has recognised that an administrator is a person appointed by a court, who performs functions that are important for the State (*see Judgement of 22 November 2011 by the Constitutional Court in Case No. 2011-04-01, Para 19.4*). The main task of an administrator is to ensure effectiveness of insolvency proceedings (*see Judgement of 23 February 2006 by the Constitutional Court in Case No. 2005-22-01, Para 10.2*). Moreover, an administrator in performing his official duties must ensure lawful course of insolvency proceedings.

The Insolvency Law envisages broad authorisation to an administrator in insolvency proceedings of a legal person and insolvency proceedings of a natural person, *inter alia*, by authorising an administrator to take over the debtor's property and handle it, to adopt decisions that have an impact upon creditors' interests, as well as to become actually the sole manager (official) of an insolvent merchant with the most extensive rights to adopt decisions and conclude transactions. However, neither the Insolvency Law, nor other regulatory legal acts provide that the profession of an administrator belongs to a certain group of offices and thus do not define for administrators any obligations and restrictions, typical of

any group of offices (*see Informative Report by the Ministry of Justice "On Improving the System of Oversight of Activities by Administrators of Insolvency Proceedings", taken note of at the sitting of the Cabinet of Ministers on 10 December 2013).* The Insolvency Administration notes that notwithstanding the regulation of the Insolvency Law, which already envisages control over administrators' activities and does not allow performance of administrator's official duties in a situation of conflict of interest, complaints about administrators' work are still rather numerous (*se Case Materials, Vol. 5, pp. 67- 68).*

Likewise, Organisation of Economic Cooperation and Development in its report on Latvia of 25 February 2015 has indicated the low effectiveness of insolvency proceedings, i.e., that the indicators regarding recovery of creditor's resources are low and the number of successful renewal of solvency – low. Abuse of insolvency proceedings may leave a negative impact upon economy and cause losses to the main stakeholders thereof: enterprises, investors, employees and the public sector (*see: OECD Economic Surveys: Latvia 2015, p. 99. Available: http://www.oecd.org/*). Thus, improving the oversight of and control over administrators' activities is an important policy issue for the State.

24.3. Section 2 of the Law on Prevention of Conflict of Interest provides that the purpose of the law is to ensure that the actions of public officials are in the public interest, prevent the influence of a personal or financial interest of any public official, his relatives or partners in transactions upon the actions of public officials, to promote openness regarding actions of the public officials and their liability to the public, as well as public confidence regarding the actions of public officials.

The opinion of the Saeima that the legislator has equalled administrators in their official activities to public officials, *inter alia,* to ensure transparency of administrators' activities, to decrease the risk of conflict of interest and corruption, can be upheld. Equalling administrators to public officials may facilitate not only protection of creditors' and debtors' rights and interests in insolvency proceedings, but also public trust in the effectiveness of the legal regulation on insolvency. The restriction upon fundamental rights established in the contested norms must ensure compliance of administrators' activities with public interests, as well as foster openness in administrators' activities.

Thus, the regulation that the contested norms comprise is aimed at protection of other persons' rights, i.e., the rights and interests of creditors and debtors in insolvency proceedings. Effective and legal course of insolvency proceedings is

significant for the whole national economy; thus, the contested norms serve also the purpose of protecting public welfare.

Thus, the restriction upon fundamental rights has a legitimate aim – protection of other persons' rights and public welfare.

25. In assessing the proportionality of a restriction upon fundamental rights, the Constitutional Court must verify:

1) whether the chosen measures are appropriate for reaching the legitimate aim or whether the legitimate aim can be reached by the chosen measure;

2) whether such action is necessary or whether the legitimate aim could be reached by other measures, less restrictive upon an individual's rights;

3) whether the restriction is appropriate or whether the benefit gained by society exceeds the damage inflicted upon the rights of an individual.

If the scrutiny of a legal norm leads to a finding that it is incompatible with even one of these criteria, then it is also incompatible with the principle of proportionality and is unlawful (*see, for example, Judgement of 16 May 2007 by the Constitutional Court in Case No. 2006-42-01, Para 11*).

26. The measures chosen by the legislator are appropriate for reaching the legitimate aim, if this aim is reached by the particular regulation (*see, for example, Judgement of 7 October 2010 by the Constitutional Court in Case No. 2010-01-01, Para 13*).

The Law on Prevention of Conflict of Interest regulates, *inter alia*, restrictions and prohibitions that public officials must abide by, declaration of their material status by public officials, as well as the mechanism for verifying declarations of public officials. The status of a public official imposes an obligation upon a person to submit the declaration of a public official. Pursuant to Section 26 of the Law on Prevention of Conflict of Interest this declaration, except for its non-publishable part, is publicly accessible. The Law on Prevention of Conflict of Interest also defines the procedure for verifying the declaration and the facts included in it.

Section 30(1) of the Law on Prevention of Conflict of Interest provides that persons are made liable according to laws for violations of this law. Pursuant to the provisions of this Section, a public official has the obligation to compensate for the damages caused. Pursuant to Section 31(1) of the Law on Prevention of Conflict of

Interest the Bureau and the SRS have the obligation to inform society about violations of this law detected in the activities of public officials by publishing information on the Internet webpage of the respective institution.

This regulation is aimed at ensuring transparency in administrators' activities, at decreasing the risk of conflict of interest and corruption. Effective and transparent insolvency proceedings are one of the factors that ensure economic growth and stability.

Thus, the measures chosen by the legislator are appropriate for reaching the legitimate aim.

27. A restriction upon fundamental rights is necessary in the absence of other measures that would be as effective and by the choice of which persons' fundamental rights would be restricted to a lesser extent.

The Constitutional Court has the jurisdiction to verify, if in the particular case due considerations have been made of possibilities to use such alternative measures that would infringe upon a person's fundamental rights established in the Satversme to a lesser degree, but would allow reaching the legitimate aim in the same quality (*see Judgement of 30 January 2012 by the Constitutional Court in Case No. 2011-09-01, Para 14*).

27.1. The Applicants note that a comprehensive and sufficient system for supervising the activities by administrators has been established and currently exists. If the existing system of supervision over administrators' activities is not effective, it could be improved by introducing amendments to regulatory legal acts and improving application thereof. Thus, the Constitutional Court must establish, what the existing system of supervision over administrators is and whether possible improvement thereof is a more lenient measure for reaching the legitimate aim of the restriction upon fundamental rights that the contested norms comprise.

The system for supervising administrators' activities is regulated in the Insolvency Law. First, pursuant to Section 85 of the Insolvency Law, after announcing insolvency proceedings of a legal person an administrator prepares a quarterly report on his activities and forwards it electronically to creditors and the Insolvency Administration. The information to be included in the form of administrator's report on activities is defined by the Cabinet Regulation of 26 October 2010 No.1003 "Regulation on the Report on the Administrator's of Insolvency Proceedings Activities and the Procedure for Completing it". The report includes information on costs of ensuring the insolvency proceedings, the

resources from which and the amount in which the costs of insolvency proceedings have been covered, on the debtor's property, income earned by the debtor, the amount of money that the debtor has allocated for covering creditors' claims and expenses of insolvency proceedings. The report also comprises information about amounts disbursed to creditors, transactions of the debtor assessed by the administrator, legal proceedings initiated by the administrator, creditors' meeting and further activities planned in insolvency proceedings. Thus, the report on an administrator's activities comprises only such information, which is linked to the particular insolvency proceedings, but does provide full oversight of all income earned by the administrator.

Second, the Insolvency Administration may control the work of an administrator by using instruments referred to in Section 174(2) of the Insolvency Law, *inter alia*, it may submit an application to court to remove an administrator from the legal protection proceedings and from performing the obligations of an administrator.

To ensure supervision of the legal protection proceedings, insolvency proceedings of a legal person and insolvency proceedings of a natural person, the Insolvency Administration, pursuant to Section 174(1) of the Insolvency Law controls the activities of an administrator in legal protection proceedings, insolvency proceedings of a legal person and insolvency proceedings of a natural person, as well as reviews complaints about an administrator's activities. Pursuant to Section 174(2) of the Insolvency Proceedings, to ensure supervision of the legal protection proceedings, insolvency proceedings of a legal person and insolvency proceedings of a natural person, the Insolvency Administration has the right to request from state and local government institutions information linked to legal protection proceedings and insolvency proceedings, necessary information and documents regarding the course of legal protection proceedings and insolvency proceedings; to request and to receive from the administrator the necessary information and respective documents about the course of legal protection proceedings and insolvency proceedings; to request the administrator to present the original documents, to receive copies of documents needed to verify the legality of the administrator's activities; to request o receive the administrator's explanations about his activities in legal protection proceedings and in insolvency proceedings; to invite the administrator to visit the Insolvency Administration to provide explanations on the course of legal protection proceedings and insolvency proceedings; to impose a legal duty upon the administrator; to submit to court an

application regarding removal of the administrator from fulfilling the duties of an administration of legal protection proceedings and insolvency proceedings, put forward the issue of terminating the validity of an administrator's certificate or annulment thereof.

It follows from the aforementioned legal norms that it is the task of the Insolvency Administration to supervise compliance of legal protection proceedings, insolvency proceedings of legal persons and insolvency proceedings of natural persons with regulatory legal acts, by controlling an administrator's activities. The Insolvency Administration may inspect and control an administrator's activities by using the instruments referred to in Section 174(2) of the Insolvency Administrator. However, this control is also linked to concrete insolvency proceedings. Moreover, as the Insolvency Administration notes, this mechanism of control is insufficient for ensuring transparency in the activities of administrators (*see Case Materials, Vol. 5, p. 65*).

Third, also the court controls an administrator's activities, examining complaints about an administrator's decisions and activities in concrete insolvency proceedings. Moreover, supervision of an administrator's activities is ensured also by creditors, who have been granted extensive possibilities of control by the Insolvency Law. However, also the supervision implemented by the court and creditors is limited to a concrete case, which does not always allow gaining a comprehensive insight into an administrator's activities.

The Applicants have not indicated, what kind of amendments should be introduced into the regulation on supervision of administrators' activities that would less restrictive upon their rights. The considerations referred to in the applications regarding the need to improve supervision of administrators' activities are linked to improving the application of the valid legal regulations. However, possible improvement of legal norms cannot be recognised as an alternative measure for reaching the aim.

27.2. The Applicants also consider that imposing an obligation upon administrators to submit additional reports or declarations would be a more lenient, but as effective measure for improving control over administrators' activities, instead of establishing the status of a public official. The summoned person A. Strupišs also notes that a regulation that imposes upon administrators an obligation to submit a declaration that as to its contents would be similar to the declaration of a public official, without equalling administrators to public officials could be an alternative measure (*see Case Materials, Vol. 5, p. 149*).

The decision on whether administrators in their official activities are to be equalled to public officials is an issue that falls within the legislator's jurisdiction, and such equalling *per se* does not yet mean incompatibility with the Satversme. However, the Constitutional Court has previously noted that it has the right to verify, whether such more lenient measures for reaching the legitimate aim exist, by choosing of which the Applicants' fundamental rights would be restricted to a lesser extent.

The Constitutional Court notes that the contested norms are part of the reform in supervision of administrators' activities, which is rather sizeable (*see Case Materials, Vol. 1, p. 150).* When introducing amendments as significant as these into the supervision of administrators' activities, the legislator must examine, whether the additional restrictions, prohibitions and obligations do not place disproportional restrictions upon their fundamental rights. In amending the regulation on the supervision of administrators' activities, the legislator must choose such measures for reaching the legitimate aim that would also ensure protection of the fundamental rights of those administrators, who are also advocates.

The Constitutional Court has already recognised that it does not itself search for optimum solutions, since this is the legislator's task. The Court can merely indicate that such more lenient measures exist (*see Judgement of 4 November 2005 by the Constitutional Court in Case No. 2005-09-01, Para 14.3*).

In the case under review such more lenient measures could be establishing an exemption with regard to those prohibitions for public officials set out in the Law on Prevention of Conflict of Interests, which are incompatible with guarantees for advocates' professional activities, first of all those, which have been defined in the Advocacy Law. For example, the legislator could decide not to apply the prohibition to engage in advertising, which is established in the Law on Prevention of Conflict of Interest, to administrators, who simultaneously are also administrators.

Likewise, it could be possible to decrease the adverse consequences that the contested norms cause for the Applicants by introducing such regulation with regard to submitting the declaration of public official that would ensure guarantees for professional activities to those administrators, who simultaneously are also advocates. By providing for administrators, who are simultaneously also advocates, different regulation only with regard to the publishable and non-

publishable part of the declaration, they would be released from the obligation to include in the declaration of a public official the same amount of information, which all other public officials are obliged to provide. This would allow the institutions, which supervise implementation of the Law on Prevention of Conflict of Interest, to find out also such information about an advocate's activities in the capacity of an administrator, to which the confidentiality principle applies.

27.3. The Constitutional Court has already recognised – if the defined legitimate aim could be reached by such measures that would be less restrictive upon a person's rights, but at the same time would require from the State and society incommensurate investment, then it could not be considered that the State were obliged to choose this measure (*see Judgement of 6 October 2010 by the Constitutional Court in Case No. 2009-113-0106, Para 19.2*).

The fact that on 10 September 2015 the legislator adopted the law "Amendments to the Law on Prevention of Conflict of Interest in the Activities of Public Officials", by which it specified regulation with regard to combining of offices and the obligation to submit the declaration of a public official, means that elaboration of a different regulation would not require incommensurate investment.

With regard to obligation to submit the declaration of a public official with Section 8 of the law of 10 September 2015 "Amendments to Law on Prevention of Interest of Conflict in the Activities of Public Officials", the fourth part of Section 26 of the Law on Prevention of Conflict of Interest has been supplemented with a sentence worded as follows: "If the declaration is submitted by public official referred to in Para 26 of Section 4(1) of this Law, then in addition to the provisions of this part, information about the work-performance contracts and authorisations to be implemented as part of an advocate's professional activities, as well as on transactions and the amount transactions conducted in the framework of an advocate's professional activities, shall also be included in the part of declaration that is not publicly accessible." Pursuant to Para 9 of the Transitional Provisions of this Law the amendments enter into force on 1 January 2016. As noted in the annotation to the draft law, amendments were introduced in order not to provide in the publishable part of the declaration confidential information about and advocate's professional activities and to ensure the confidentiality of an advocate's client (*see annotation to the draft law No. 275/Lp12 "Amendments to the Law on Prevention of Conflict of Interest in the Activities of a Public Official")*.

27.4. Materials collected in the case do not prove that the legislator, in adopting the contested norms, had duly considered the consequences caused by the application thereof to those administrators, who are simultaneously also advocates, and whether the restrictions, prohibitions and obligations that the contested norms impose upon administrators are not contrary to the principles of independence and confidentiality in an advocate's activities. The Constitutional Court notes that advocates make up almost half of the total number of administrators. I.e., in 2015 there were 333 administrators in Latvia, of which 158 were sworn advocates (*see Case Materials, vol. 5, p. 45*).

It is not the task of the Constitutional Court to express its opinion on the most appropriate of the different possible solutions. This choice is the right and the obligation of the legislator. The case materials do not reveal that the legislator had identified the risks to which the contested norms subject the Applicants' fundamental rights and had considered alternative measures that would ensure to those administrators, who are simultaneously also advocates, the guarantees for the professional activities of advocates that are defined in laws. The abovementioned allows concluding that measures that are less restrictive upon Applicants' fundamental rights exist, that would allow reaching the legitimate aim of the restrictions upon fundamental rights included in the contested norms in equal quality. I.e., there are measures that simultaneously with equalling administrators to public officials would ensure to persons, who are not solely administrators, but are also advocates, guarantees for professional activities allowing to retain the chosen employment.

The Constitutional Court does not have to enumerate in its decision all possible more lenient measures (*see Judgement of 23 April 2009 by the Constitutional Court in Case No. 2008-42-01, Para 17.2).* If it is established that at least one less restrictive measure exists, there are grounds for recognising that the contested norms place disproportional restriction upon fundamental rights.

Hence, the contested norms, to the extent they do not ensure to administrators, who are at the same time also advocates, guarantees for professional activities to retain the chosen employment, are incompatible with the principle of proportionality.

28. Upon establishing incompatibility of the contested norms with the first sentence of Article 106 of the Satversme, it is not necessary to examine in addition their compliance with Article 1 of the Satversme.

29. Pursuant to Section 32(3) of the Constitutional Court Law, a legal norm, which has been recognised by the Constitutional Court as being incompatible with a legal norm of higher legal force, is to be recognised as being invalid as of the date when the judgement by the Constitutional Court is published, unless the Constitutional Court has provided otherwise. Pursuant to Para 11 of Section 31 of the Constitutional Court Law the Constitutional Court may indicate in the judgement the date, as of which the contested legal norm (act), which has been recognised as being incompatible with a norm of higher legal force, becomes invalid.

The Applicants have requested to recognise the contested norms as being invalid with respect to them as of the date of their adoption. The contested norm of the law "Amendments to the Insolvency Law" was adopted on 25 September 2014, whereas the contested law "Amendments to the Law on Prevention of Conflict of Interest in the Activities of Public Officials" – on 30 October 2014.

Thus, the Constitutional Court must consider the date, as of which each contested norm should be recognised as being invalid.

29.1. The contested law of 30 October 2014 "Amendments to the Law on Prevention of Conflict of Interest in Activities of Public Officials" shall enter into force on 1 January 2016. Thus, the restrictions, prohibitions that are established for public officials by the Law on Prevention of Conflict of Interest will affect the Applicants only starting with 1 January 2016.

Hence, the Constitutional Court has no grounds to recognise the contested law of 30 October 2014 "Amendments to the Law on Prevention of Conflict of Interest in the Activities of Public Officials" as invalid as of the date of its adoption.

29.2. Pursuant to Para 34 of the Transitional Provisions in the Insolvency Law, the contested norm of the law of 25 September 2014 "Amendments to the Insolvency Law" has entered into force on 1 March 2015.

The Constitutional Court has already recognised that in deciding upon the date as of which the contested norm (act) becomes invalid, it should take into consideration that its task is, to the extent possible, to prevent infringements upon applicants' fundamental rights (*see Judgement of 16 December 2005 by the Constitutional Court in Case No. 2005-12-0103, Para 25*). In this case the Constitutional Court should establish, whether the contested norm causes infringement of the Applicants' fundamental rights guaranteed in the Satversme.

The contested norm of the law of 25 September 2014 of the law "Amendments to the Insolvency Law" is closely linked to the contested law of 30 October 2014 "Amendments to the Law on Prevention of Conflict of Interest in Activities of Public Officials". The case materials do not confirm that the contested norm of the law of 25 September 2014 "Amendments to the Insolvency Law" at the moment of drafting the ruling would infringe upon the Applicants' rights so much, that in order to eliminate this infringement a retroactive force of the ruling should be established.

The Substantive Part

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

held :

to recognise Section 2 of the law of 25 September 2014 "Amendments to the Insolvency Law" and the law of 30 October 2014 "Amendments to the Law on Prevention of Conflict of Interest in the Activities of Public Officials", to the extent they do not ensure to administrators of insolvency proceedings, who are simultaneously also advocates, guarantees for professional activities for retaining the chosen employment, as being incompatible with the first sentence of Article 106 of the Satversme of the Republic of Latvia.

The Judgement is final and not subject to appeal

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

Chairman of the court sitting A. Laviņš