THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

J U D G E M E N T
on Behalf of the Republic of Latvia
in Case No. 2013-12-01
24 April 2014, Riga

The Constitutional Court of the Republic of Latvia comprised of: chairperson of the court sitting Aija Branta, Justices Kaspars Balodis, Kristīne Krūma, Uldis Ķinis, Gunārs Kusiņš and Sanita Osipova,

having regard to the constitutional complaint submitted by Inese Nikuļceva,

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) and Section 28^1 of the Constitutional Court Law,

at the sitting of 25 March 2014 examined in written procedure the case

"On the compliance of Section 43^2 of the Road Traffic Law, insofar it affects the rights of the vehicle owner in administrative violations record–keeping, with Article 92 of the Satversme of the Republic of Latvia".

The Facts

1. On 1 October 1997, the Saeima of the Republic of Latvia (hereinafter – the Saeima) adopted the Road Traffic Law, which entered into force on 4 November 1997 and Section 43 thereof provided:

"(1) For the violation of requirements of this Law and other acts regulating road traffic safety, the offender shall be made liable as provided for in law.

(2) In those cases, where pursuant to the Latvian Administrative Violations Code the liability of the vehicle driver sets in, but the driver has not been identified and the owner (possessor) is unable to indicate who had been the driver of the vehicle at the moment when the offence was committed, the vehicle owner (holder) shall be responsible for the committed offence. If the vehicle has left the possession of the owner (possessor) not due his own fault but as the result of illegal actions committed by another person, then this person shall be liable for the committed offence."

1.1. With the amendments of 15 February 2001 to the Road Traffic Law, Section 43 thereof was expressed in new wording, which entered into force on 13 March 2001:

"(1) For the violation of requirements of this Law and other acts regulating road traffic safety, the offender shall be made liable as provided for in law.

(2) In cases, where pursuant to the Latvian Administrative Violations Code liability for violating parking rules sets in, as well as for ignoring the requirements of road signs and markings with regard to parking a vehicle, but the vehicle driver is not at the place where offence is committed, the make and the state registration number of the vehicle is indicated in the report on administrative violations, information about the offender is not indicated, the case is heard in the absence of the offender and the fine is imposed at the place where offence has been committed.

(3) The fine, which has been imposed for violations of legal acts that regulate road traffic safety, shall be paid within ten days from the day when the fine was imposed. If the fine is not paid, it shall be collected from the vehicle owner (possessor, holder).

(4) Until the fine has been paid, it is prohibited to undergo the technical inspection of the vehicle, to perform registration of the vehicle on the register of vehicles and drivers, as well as to drive the vehicle outside Latvia. The proof that the fine has been paid is a respective payment document.

(5) If the vehicle is no longer in the possession of the owner (possessor, holder) not due to the fault of vehicle owner, but because of illegal activities committed by other person, then this person shall be liable for the committed offence.

(6) Procedures, by which the offocials, who have been auhtorised to hear the cases of administrative violations referred to in this Section, shall draw up the report on the imposed fine and forwards it to the vehicle owner (posessor, holder), as well as the procedure for the collection the fine shall be determined by the Cabinet."

1.2. Whereas with the law of 8 July 2003 "Amendments to the Road Traffic Law", which entered into force on 1 January 2004, Section 43^2 "Specific Characteristics in the Administrative Procedure in Connection with the Violation of Parking Provisions" was added to the Law, worded as follows:

"(1) If parking provisions have been infringed, but a driver is not present at the place of offence, persons, who are entitled to draw up an administrative offence report and impose a penalty, shall draw up a report – notification, the form and content of which shall be determined by the Cabinet.

(2) If the administrative fine imposed for infringements of parking rules has not been paid with the term established in law, the fine shall be collected from the vehicle owner (possessor), except the case where at the moment when the offence was committed the vehicle was not in the possession of the owner (possessor) due to illegal activities committed by another person.

(3) Procedure, by which a report-notification shall be drawn up regarding the fine imposed and information shall be sent to the owner (possessor, holder) of the vehicle, as well as the procedures for the collection and control of the fine shall be determined by the Cabinet."

1.3. On 26 May 2005 the Saeima expressed Section 43^2 of the Road Traffic Law in a new wording, and it entered into force on 29 June 2005. The legislator used these amendments to specify the regulation that this Section comprised on the information to be indicated in the report-notification, as well as regulated in detail the legal consequences affecting the vehicle owner (possessor, holder), if the driver failed to pay the imposed fine within the set term.

Section 43^2 of the Road Traffic Law has been amended also on 13 May 2010, 23 February 2012, 29 November 2012, and 21 November 2013, when the Saeima adopted laws "Amendments to the Road Traffic Law". Currently it is in force in the following wording:

(1) If parking provisions has been infringed, but a driver is not present at the place of offence, persons, who are entitled to draw up an administrative offence report and impose a penalty, shall draw up a report – notification, where the following information shall be indicated:

1) the date of drawing up of report – notification;

2) the authority, the official of which has imposed the penalty, and the position, name, surname of the person, who has drawn up the report-notification;

3) the date and time of determination of the offence;

4) the place where the offence was committed (name, address of the city or other populated area);

5) the make of the vehicle and its State registration number;

6) the Paragraph of the Road Traffic Regulations infringed;

7) a decision regarding the imposing of fine and amount of fine;

8) the time period for payment of the fine;

9) the payment order prerequisites and the authorities, where it is possible to pay a fine;

10) the procedures for the contestation (appeal) of a decision taken; and

11) information regarding the consequences, which arise, if the fine is not paid.

(2) If a driver arrives at the place of commitment of the offence during the determination of the offence of parking, the procedures for the imposing of a penalty shall not change and the report-notification shall be drawn up.

(3) The fine imposed shall be paid within the time period specified in the Administrative Violations Code of Latvia.

(4) If the fine imposed is not paid within the time period specified in the Administrative Violations Code of Latvia, the State Register of Vehicles and Drivers shall send a notification to the holder indicated in the vehicle registration certificate or if the holder is not indicated – to the owner (possessor) of the vehicle regarding the unpaid fine. If the offence has been committed with a vehicle that is permanently registered in a foreign country, but for the use of which in Latvia in the cases determined in Section 9, Paragraph five of this Law a permit has been received, a notification shall be sent to the person who has received the permit. If an offence has been committed with a vehicle that is transferred for trade (registration number plates of the state of trade have been installed for it or a vehicle has been registered in the trade register), a notification shall be sent to a merchant who performs the trade of the relevant vehicle. A notification shall contain the following information:

1) the authority, the official of which has imposed the fine;

2) the make of the vehicle and its State registration number;

3) the data of the vehicle owner (possessor, holder);

4) the place where the offence was committed (name, address of the city or other populated area, address);

5) the report- notification number;

6) the amount of the unpaid fine;

7) the payment order prerequisites and authorities, where it is possible to pay a fine;

8) information regarding the consequences, which have arisen, if the fine is not paid within the time period specified in the Administrative Violations Code of Latvia.

(5) If the fine imposed has not been paid within the time period specified in the Administrative Violations Code of Latvia, a note shall be made in the State Register of Vehicles and Drivers regarding the prohibition to perform a technical inspection of a vehicle, with which the offence has been made, and register it in the State Register of Vehicles and Drivers, until the payment of the fine.

(6) If the fine imposed regarding the violation of parking provisions is not paid within the time period specified in the Administrative Violations Code of Latvia, it shall be collected from the holder indicated in the vehicle registration certificate or, if the holder is not indicated – from the vehicle (possessor), except for a case, when a vehicle has not been in the possession of the owner (holder, possessor) at the moment of commitment of the offence due to the wrongful act of other person.

(7) A decision regarding the application of fine shall come into effect at the time of drawing up of such decision. A decision regarding the fine imposed may be contested within a month, submitting the relevant submission to a higher institution (official). Decisions of a higher institution (official) may be appealed to a court.

(8) Procedures, by which a report shall be drawn up – a notification regarding the fine imposed and information shall be sent to the owner (possessor, holder) of the vehicle, as well as the procedures for the collection and control of the fine shall be determined by the Cabinet."

2. The applicant – **Inese Nikuļceva** (hereinafter – the Applicant) **–** holds that Section 43^2 of the Road Traffic Law, insofar it affects the rights of a vehicle owner in administrative violations record-keeping (hereinafter also – the contested regulation), is incompatible with Article 92 of the Satversme of the Republic of Latvia (hereinafter – the Satversme). The application comprises a request to recognise the contested regulation as invalid with regard to the Applicant as of 1 December 2011.

2.1. The Applicant owns a car; on 1 December 2011 an administrative violation was committed by it. It is noted in the report-notification on the administrative violation drawn up by a Road Traffic Police inspector that the said vehicle had been parked in a place, where parking was prohibited, thus committing the offence referred to in Para 1 of Section149^{10} (4) of the Latvian Administrative Violations Code (hereinafter also – LAVC). Therefore the vehicle driver, who was absent from the place of offence, was imposed a fine in the amount of 20 lats (twenty lats) for violating parking rules, *inter alia*, applying the contested regulation. The Applicant underscores that she had not parked the car in the place indicated in the report-notification on administrative violation (hereinafter – report-notification).

2.2. Allegedly, the contested regulation for a number of reasons denies to the Applicant the right to free access to court and the right to be heard, guaranteed in Article 92 of the Satversme.

Neither the vehicle driver, nor the police officials have been set the obligation to inform the vehicle owner about the committed offence and the imposed fine. Thus, in those cases, where the driver of the vehicle upon his own initiative does not hand over the report-notification to the vehicle owner, the latter does not find out about it. Hence, the contested regulation is said to be incompatible with Article 92 of the Satversme, since the vehicle owner is not informed about his subjective obligation to ensure that the fine is paid.

Allegedly, the contested regulation does not provide for the right of the vehicle owner to contest the report-notification before a higher institution (official) and to appeal against its decision before a court.

Moreover, the Road Traffic Law does not define the obligation of a vehicle owner to provide information about the person who drove or was entitled to use the vehicle and violated the parking rules. The Applicant holds that the driver of the vehicle is not under the threat of any sanctions for not paying the fine; thus, he is neither interested in paying it, nor in contesting or appealing against the imposed fine. Whereas if the vehicle driver fails to pay the fine within the term defined in the law, the obligation to pay is placed upon the vehicle owner.

The opinion that the situation to be examined in the case is analogous to the facts examined in the Judgement of 28 March 2013 by the Constitutional Court in Case No. 2012-15-01 is expressed in the application. I.e., Section 43^2 of the Road Traffic Law envisages imposing a fine upon the driver of the vehicle, but the owner thereof must ensure that this fine is paid.

2.3. The Applicant holds that the restriction set out in the contested regulation has not been established by law, that it lacks a legitimate aim and is incompatible with the principle of proportionality.

The contested regulation is said to be insufficiently accurate and foreseeable for the vehicle owner. The restrictions upon the vehicle owner's rights that it establishes are said to be unnecessary for the protection of other persons' rights or other constitutional values. Allegedly, the measures used by the legislator are not appropriate for reaching the possible legitimate aim. Society is said to gain no benefit from the damage caused to the vehicle owner. It is stated in the application that a legal regulation that would envisage the

obligation for the State to identify the driver of the vehicle and to punish the person, who in fact has violated road traffic rules, would be compatible with the Satversme.

2.4. Allegedly, the contested regulation causes adverse consequences for vehicle owners. If the vehicle owner must pay the fine, then his property is decreased by this amount. Likewise, an entry is made into the state register of vehicles and their drivers (hereinafter – the Register) regarding the prohibition to perform the state technical inspection of the vehicle in which the offence was committed and register it on the Register until the fine has been paid. However, a vehicle, which has not undergone technical inspection, cannot be used in road traffic and it may not be alienated. These consequences may significantly restrict the vehicle owner's rights defined in Article 105 of the Satversme.

3. The institution, which adopted the contested regulation, **– the Saeima –** notes that the legal issues that this case pertains to should be solved by way of interpreting legal norms. Since neither the Satversme, nor the Constitutional Court Law envisages a person's right to contest before the Constitutional Court the application of legal norms, the Saeima request termination of legal proceedings in the case.

3.1. The Saeima holds that the findings by the Constitutional Court included in the Judgement in Case No. 2012-15-01 cannot be directly applied to the case under review. The norms of the Road Traffic Law that were examined in the aforementioned case provided *expressis verbis* that the report-decision could be contested by the driver of the vehicle, who at the moment when the violation was recorded was driving the vehicle. Whereas in Section 43^2 of the Road Traffic Law the legislator has indicated the subject, who would have the right to contest and appeal against the decision on imposing a fine. Pursuant to the requirements of legal technique, it is not necessary to indicate mandatorily in every legal norm that regulates the right to contest or appeal against a ruling that such ruling can be contested or appealed against, nor the persons who have the right to do so. Only those cases should be indicated mandatorily, where a decision cannot be contested or appealed against, or persons who have deprived of this right.

Thus, the party applying Section 43^2 of the Road Traffic Law must identify the subject by applying in a systemic way the regulation that this Section comprises and Article 92 of the Satversme. The Saeima notes that a

person, whose rights and legal interests have been infringed upon by the decision on applying the fine, may contest and appeal against it. Allegedly, every person's right to contest or appeal against a decision directly follows from Article 92 of the Satversme.

3.2. It is contended that the statement that LAVC Section 279 regulates the procedure of contesting and appealing against a decision on applying a fine that has been adopted is ungrounded. The seventh part of Section 43^2 of the Road Traffic Law is said to be a special legal norm with respect to LAVC, and therefore the legislator has deemed it admissible to envisage the scope of right to contest and appeal that differs from LAVC regulation.

It has been recognised in the judicature of the Department of Administrative Cases of the Supreme Court Senate: the fact that the vehicle owner has the obligation to pay the fine, which the vehicle driver has failed to pay, does not create the right of the vehicle owner to appeal against the decision adopted in the administrative violation case. This conclusion has been reached through interpretation of legal norms. However, a legal norm that would deprive a vehicle owner of the right to contest and appeal against a decision on applying a fine in the cases regulated by Section 43^2 of the Road Traffic Law has been identified neither in the judicature of the Department of Administrative Cases of the Supreme Court Senate, nor in the Applicant's constitutional complaint.

3.3. Allegedly, the Applicant had expressed considerations regarding the content of Article 105 of the Satversme to underscore that her rights envisaged in Article 92 of the Satversme had been violated. Whereas reference to Article 90 of the Satversme had been made by the Applicant to substantiate that the restriction upon the right to a fair trial included in the contested regulation had not been established by a law adopted in due procedure.

The Saeima holds that Section 43^2 of the Road Traffic Law provided for a sufficiently clear regulation on the way a vehicle owner may protect his or her rights and legal interests. Allegedly, legal regulation ensures that vehicle owner is duly informed about the existence of a report-notification. I.e., a vehicle owner, by using e-services offered by the Road Traffic Safety Directorate (hereinafter – RTSD), can obtain information whether an administrative violation has been committed with a vehicle that he owns.

4. The summoned person – **the Ministry of Justice** – notes that the contested regulation is incompatible with Article 92 of the Satversme, since the adverse consequences of the fine applied for violation of parking rules are incurred by the vehicle owner, not the driver, who committed the violation.

4.1. Allegedly, LAVC allows specifying the administrative liability of a vehicle owner in other laws, in this case – the Road Traffic Law. With regard to vehicle owner's right to contest and appeal against decisions adopted in the framework of record keeping regarding administrative violation, Section 43^2 of the Road Traffic Law does not envisage any particularities. The provisions included in this section are said to regulate the vehicle owner's liability only in those cases, when the fine imposed upon the vehicle driver has not been paid within the term defined in LAVC.

Section 43^2 of the Road Traffic Law is said to be a special legal norm with regard to legal norms included in LAVC. In the absence of special regulation defining the subject, who has the right to contest or appeal against the decision on fine, general regulation should be applied, i.e., the first part of LAVC Section 279. The aforementioned legal norm allows concluding that a vehicle owner, who has not violated parking rules, has no right to submit a complaint regarding the imposed fine. It has also been recognised in case law that the decision on applying a fine does not affect the rights or legal interests of a vehicle owner.

4.2. The Ministry of Justice holds that the procedure that does not allow informing the vehicle owner about the imposed fine before the term for paying it has expired is not justified. The vehicle owner is able to become involved in the record-keeping regarding an administrative violation only if the fine has not been paid within the term defined in the Administrative Violations Code. Thus, the vehicle owner gains such right only after the dispute regarding the legality of applying the fine has been already adjudicated on its merits. The contested regulation does not envisage the possibility for the vehicle owner to object to the validity of the imposed fine neither at the time when the fine is imposed, nor when it is enforced. Thus, allegedly, the vehicle owner does not have the right to access to court. Vehicle owners are denied the right, *inter alia*, to be heard, to submit evidence, to present their arguments and considerations, to submit requests, and to participate in the adjudication of the case.

4.3. The contested regulation has been adopted and promulgated in accordance with the procedure established by regulatory enactments; however,

it is said to be incompatible with the principle of proportionality. Since a person must pay a fine for an administrative violation that he or she has not committed, the restriction that the contested regulation comprises is said to incommensurate to the benefit gained by society.

Moreover, the norm included in Section 43^2 of the Road Traffic Law that prohibits performing technical inspection of the vehicle and to register it on the Register is not justifiable. The Ministry of Justice holds that the enforcement of the decision on imposing a fine cannot be achieved by so significant restriction upon a person's right to own property. Allegedly, the contested regulation also places unfounded restrictions upon a vehicle owner's right guaranteed in Article 90 of the Satversme to be informed about his or her rights; i.e., to be aware of the legal consequences that follow from the imposed fine.

5. The summoned person – **the Ministry of Transport** – notes that the contested regulation complies with Article 92 of the Satversme and does not restrict a person's right to access to court.

Prior to 2004 it had been possible to impose a fine only upon the person, who was recorded by the police officer as being at the place where violation was committed. After examining the practice of other states, the procedure had been amended, and currently a fine can be imposed also in the absence of this person.

Pursuant to Section 43^2 of the Road Traffic Law, it is possible to turn against the vehicle owner only in an exceptional case, where the driver of the vehicle fails to pay the fine voluntarily and within the term established by law.

The driver, not the owner of the vehicle is the one who receives the report-notification. Whereas in those cases, when the decision on imposing a fine is not implemented voluntarily within the term established by law, the vehicle owner receives information about the violation. Since 2009 vehicle owners have the possibility to use RTSD e-service system free of charge to follow what kind of violations have been committed by vehicles that they own. Moreover, the statistical data on fines that have been imposed for violation of parking rules allow concluding that the existing procedure is effective.

6. The summoned person – **the Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) – notes that the contested regulation is incompatible with Article 92 of the Satversme.

6.1. Allegedly, the procedure for adopting a decision envisaged in Section 43^2 of the Road Traffic Law does not provide for an official's duty to identify the person, who has committed the administrative violation. Moreover, the vehicle owner, who has not committed the violation, does not fall within the range of subjects referred to in LAVC Section 279 who have the right to contest the decision adopted in a case of administrative violation.

The Constitutional Court in its judgement in Case No. 2012-15-01 has already recognised that a vehicle owner, who has not been the driver of the vehicle at the moment when a violation was committed, has no procedural possibility to provide timely information on who the guilty person is and, thus, prevent negative consequences for himself or herself. Section 43^2 of the Road Traffic Law, to the extent it does not grant the right to contest the report-notification to the vehicle owner, is said to be incompatible with Article 92 of the Satversme.

6.2. The notification about unpaid fine is an administrative act and the vehicle owner may appeal against it in court. The vehicle owner is informed about it. Thus, the contested regulation does not restrict a person's right established in Article 90 of the Satversme.

The prohibition to perform the state technical inspection of the vehicle that has been used to commit the violation and to register it on the Register denies a person the right to act freely with his property, for example, alienate the vehicle. The Ombudsman holds that such prohibition may not be established for the sole aim of achieving that a specific sum of money is paid into the state budget in connection with the administrative violation that has been committed. Allegedly, this aim cannot be considered to be legitimate, if it is not ensured that the fine is paid by the offender. Hence, the right of vehicle owner, established in Article 105 of the Satversme, is violated in those cases, where parking rules have been violated by someone else.

7. The summoned person – **the Department of Administrative Cases of the Supreme Court of the Republic of Latvia** (hereinafter – the Supreme Court) – notes that the contested regulation complies with Article 92 of the

Satversme. Neither is it incompatible with Article 90 and Article 105 of the Satversme.

7.1. The Supreme Court draws attention to the fact that since 1 January 2009 the ruling by an appellate instance court in a case of administrative violation cannot be appealed against at a higher instance of courts. It can be concluded from the case law of the Supreme Court in the period, when hearing cases of administrative violations in cassation procedure was within its jurisdiction, that the administrative fine for violation of parking rules was imposed upon the driver of the vehicle. Vehicle owners that were legal persons had turned to court. The Supreme Court had concluded that in these cases the subject of the violation could be only the natural person who had been driving the vehicle.

7.2. A vehicle owner may incur material losses only if the driver of the vehicle fails to pay the imposed fine within the set term. Direct material consequences due to an administrative violation committed by the vehicle driver are not incurred by the vehicle owner. Hence, the vehicle owner is said to be neither the person, with regard to whom a decision has been adopted in a case of administrative violation, nor the victim in the meaning of LAVC Section 279.

7.3. The prohibition to perform the state technical inspection of the vehicle by which the violation was committed and to register it on the Register until the fine is paid are said to be the consequences of compulsory enforcement. Whereas compulsory enforcement is performed only if the decision on applying an administrative penalty has not been implemented voluntarily. The Supreme Court underscores that a vehicle owner bears responsibility for giving his or her vehicle to other persons.

The notification about the unpaid fine, essentially, is a decision adopted in the procedure of enforcing the penalty imposed for an administrative violation. It is said to cause direct legal consequences to the vehicle owner in those cases, where the violation was committed by another person. The aforementioned notification is not to be considered as being an administrative act, and the vehicle owner may appeal against it in court.

8. The summoned person – **Anita Kovaļevska, lecturer at the Faculty of Law of the University of Latvia** – notes that the contested regulation complies with Article 92 of the Satversme.

8.1. LAVC Section 149^{10}, allegedly, directly provides that the driver of a vehicle is to be made liable for violating parking rules. Thus, the administrative penalty is applied only to the vehicle driver, not the owner thereof. Whereas failure to pay the fine within the term defined in law causes consequences for the vehicle owner. It is said to be incorrect to promote the effectiveness of record-keeping regarding administrative violations by imposing upon the vehicle owner the full responsibility for a sanction applied to another person. The negative consequences envisaged by the contested regulation may affect the vehicle owner even in those cases, when the vehicle driver is present at the moment when the report-notification is drawn up.

Making an entry into the Register is an administrative act that is adverse for the vehicle owner; therefore he has the right to turn to the administrative court with application requesting that it is revoked. Hence, the Applicant has a legal remedy that she can use with regard to the entry made in the Register. The vehicle owner may request verification, whether the enforcement of the fine has been turned against him and the entry made into the Register in compliance of the provisions of the contested regulation.

8.2. Allegedly, it follows from LAVC Section 279 that the vehicle owner does not have the right to appeal against a decision adopted in an administrative case, if the violation has been committed by another person. The measures envisaged by Section 43^2 of the Road Traffic Law, which are turned against the vehicle owner, should not be considered as being an administrative sanction. These are not direct consequences of the violation, because they set in only if the person that has been made liable, i.e., the driver of vehicle, fails to pay the fine within the term defined in law.

A person's right to access to court and the right to be heard are not an end in itself; i.e., a person should not be granted the right to participate in legal proceedings and to be heard, if this cannot directly affect the rights of this person. Thus, the right to access to court and to be heard guaranteed to the vehicle owner by Article 92 of the Satversme is not restricted.

Moreover, the obligation to ensure that the report-notification is sent to the vehicle owner does not follow from Article 90 of the Satversme. The procedure for contesting and appealing against administrative acts should not

be mandatorily defined by the contested regulation. It is already regulated by the Administrative Procedure Law.

The Findings

9. The Applicant holds that Section 43^2 of the Road Traffic Law, to the extent it affects the vehicle owner's rights in the record-keeping regarding administrative violations, is incompatible with Article 92 of the Satversme.

9.1. The norms included in Section 43^2 of the Road Traffic Law regulate the proceedings in cases of administrative violations, when parking rules have been violated. These legal norms define the procedure in which an administrative fine for violation of parking rules is imposed and comprise the terms for paying the fine, as well as envisage the possibility to contest the decision on imposing a fine before a higher institution (official) and to appeal against its decision in court.

The aforementioned issues of law that cover the record-keeping regarding administrative violation from the moment when the violation is detected until the imposed fine is paid are closely interconnected. The Applicant and the Saeima also consider the regulation of Section 43^2 of the Road Traffic Law as uniform totality of norms. Therefore the contested regulation, i.e., Section 43^2 of the Road Traffic Law, insofar it affects the rights of a vehicle owner in the record-keeping regarding an administrative violation, in the case under review shall be examined as a uniform regulation.

9.2. Article 92 of the Satversme provides: "Everyone has the right to defend his or her rights and lawful interests in a fair court. Everyone shall be presumed innocent until his or her guilt has been established in accordance with law. Everyone, where his or her rights are violated without basis, has aright to commensurate compensation. Everyone has the right to the assistance of a counsel."

It follows from the content of the application that the Applicant holds the contested regulation as being incompatible only with the first sentence of Article 92 of the Satversme. Allegedly, she as the owner of a vehicle does not have the possibility to be heard in the framework of record-keeping regarding an administrative violation and to defend her rights in an institution or in a

court. The application comprises no arguments that would substantiate possible incompatibility of the contested regulation with the second, third or fourth sentence of Article 92 of the Satversme.

Moreover, the Applicant notes that the contested regulation places disproportional restrictions upon her right, defined in Article 90 of the Satversme, to know her rights and upon her right to own property, established in Article 105 of the Satversme. However, she has not requested examining the compatibility of the contested regulation with these Articles of the Satversme. The Applicant has provided arguments regarding incompatibility of the contested regulation with Article 90 and Article 105 of the Satversme to substantiate the incompatibility of the contested regulation with Article 92 of the Satversme (*see Case Materials, Vol. 2, pp. 47-48*). The Saeima, likewise, points to these considerations (*see Case Materials, Vol. 2, pp. 41-42*).

Therefore, in the framework of the case under review the Constitutional Court will examine the compatibility of the contested regulation with the first sentence of Article 92 of the Satversme.

10. The Saeima, on the basis of Para 6 of Section 29(1) of the Constitutional Court Law, has requested termination of legal proceedings, since the claim that the application comprises is said to be an issue of interpreting and applying legal norms, the examination of which does not fall within the jurisdiction of the Constitutional Court. The finding that the vehicle owner does not have the right to contest and appeal against the decision (report-notification) on applying a fine is said to have developed in case law (*see Case Materials, Vol. 1, pp. 36- 38*).

If a request to terminate legal proceedings has been expressed in a case, then usually this is the first issue that the Constitutional Court decides on, unless in order to adopt this decision some aspects of the case should be examined on their merits (*see, for example, Judgement of 19 October 2011 by the Constitutional Court in Case No. 2010-71-01, Para 11 – 14*).

The Constitutional Court has recognised that in accordance with the jurisdiction defined by the Satversme and the Constitutional Court Law, it does not have the right to examine the application of legal norms by institutions of public administration, nor the legality of rulings by courts of general jurisdiction (*see, for example, Judgement of 23 April 2003 by the Constitutional*

Court in Case No. 2002-20-0103, Para 7 of the Findings, and Judgement of 3 June 2009 in Case No. 2008-43-0106, Para 12).

To examine, whether legal proceedings in the case should be terminated, the content of Section 43^2 of the Road Traffic Law should be established.

11. Section 43^2 of the Road Traffic Law provides that a responsible official, upon detecting a violation of parking rules, draws up a report-notification on applying a sanction in accordance with provisions included in the first part of this Section and the Cabinet Regulation of 7 March 2006 No.182 "Procedure for drawing up a report-notification regarding an administrative violation of breaching parking rules" (hereinafter – Regulation No. 182). The seventh part of Section 43^2 of the Road Traffic Law provides that this decision may be contested by submitting a corresponding application to a higher institution (official), the decision of which may be appealed against in court.

If the imposed fine is not paid within the term set in the Latvian Administrative Violations Code, a notification about the unpaid fine is sent to the holder of the vehicle indicated in the registration certificate or, if the holder is not indicated in the registration certificate of the vehicle, – to the vehicle owner. It is indicated in the notification that it can be contested within a month by submitting a corresponding application to a higher institution (official), the decision of which may be appealed against in court.

Thus, legal norms comprise not only requirements with regard to the report-notification and the notification about the unpaid fine, but also provide for the possibility to contest these at a higher institution (official) and appeal against its decision in court. However, the legislator in Section 43^2 of the Road Traffic Law has not made a direct reference to those persons, who have the right to contest these procedural documents at a higher institution (official) and appeal against these in court.

The Applicant expresses the opinion that Section 43^2 of the Road Traffic Law is unclear, since the vehicle owner is not quite sure about his or her right to appeal against the decision (report-notification) on imposing a fine (*see Case Materials, Vol. 1, pp. 2-3).*

Therefore the Constitutional Court must examine, what the content of a vehicle owner's rights and obligations in administrative violations record-keeping is, to the extent it applies to violations of the vehicle parking rules.

12. Section 43^2 of the Road Traffic Law does not *expressis verbis* refer to persons who have the right to: 1) contest the report-notification on an unpaid fine; 2) appeal in court against a decision of a higher institution (official) on the report-notification, as well as the notification on unpaid fine. Therefore it must be established, whether it can be concluded from this Section of the Road Traffic Law in interconnection with other legal norms, which persons have this right.

12.1. In the eighth part of Section 43^2 of the Road Traffic Law the legislator has delegated to the Cabinet of Ministers to establish a procedure for drawing up the report-notification on the imposed fine and for sending and information to the owner (possessor, holder) of the vehicle, as well as the procedure for collecting the fine and the procedure of control. In view of the above, the Cabinet of Ministers has provided in Annex 1 to Regulation No. 182 that the driver of the vehicle, who is not present at the place where the violation has been committed, has committed an administrative violation for which he should be imposed a fine.

The Supreme Court has recognised that the report-decision on an administrative violation is an administrative act, which is adopted with regard to an individually determined natural person – the particular driver of the vehicle, who is known to the vehicle owner (*see Decision of 26 January 2007 by the Department of Administrative Cases of the Supreme Court Senate in Case No. SKA-107, Para 11).*

Likewise, in the record-keeping regarding an administrative violation that has been referred to in the Application and where a violation referred to in Para 1 of LAVC Section 149^{10} (1) was detected, a record-notification was drawn up and was addressed to the driver of the vehicle. This norm of LAVC provides that for an administrative violation the driver of the vehicle is imposed a fine in the amount of thirty euros.

Thus, both legal regulation and the case law confirm that the driver of the vehicle, who is imposed the administrative sanction, and not the owner of the vehicle is to be considered as the person, who has committed the administrative violation.

Whereas pursuant to LAVC Section 279(1), the person, who has been made administratively liable, as well as the victim in an administrative violation case have the right to contest the decision adopted in the

administrative violation case by an institution (official) in a higher institution, and if such is non-existent, then to appeal against it in district (city) court. Pursuant to LAVC Section 261(1), a victim in a case of administrative violation may be a natural or legal person, to whom a damage has been inflicted by the administrative violation, i.e., moral injury, physical suffering or material loss. Thus, a vehicle owner, who at the moment when the administrative violation was committed was not the driver of the vehicle and was not a victim, does not have the right to contest and appeal against the report-notification.

The Constitutional Court has recognised that the Road Traffic Law comprises special legal norms, whereas the Latvian Administrative Violations Code – general legal norms. Moreover, these all are norms of equal legal force (*see Judgement of 28 March 2013 by the Constitutional Court in Case No. 2012-15-01, Para 15.4*). Thus, the legislator has the right to establish in the Road Traffic Law a procedure differing from the general regulation – LAVC. However, with regard to the procedure for contesting and appealing against the report-notification, the norms of the Road Traffic Law and LAVC do not differ. Thus, the statement made by Saeima that LAVC Article 279 is not applicable in those situations to which the contested regulation applies is unfounded.

The legislator has provided that the person, who has been made administratively liable, that is, the vehicle owner, and the victim in a case of administrative violation have the right to contest the report-notification in a higher institution (official) and appeal against its decision in court. The contested regulation does not envisage such rights for the vehicle owner.

12.2. The notification about the unpaid fine is addressed to the holder of the vehicle or, if the holder is not indicated in the registration certificate of the vehicle, – to its owner.

It follows from the contested regulation that the aforementioned notification serves a number of aims, which are as follows:

1) to inform the addressee of the notification that an administrative violation has been committed by a vehicle owned or held by him or her and that the person who has been made administratively liable – the driver of the vehicle – has not paid the imposed fine with the term defined in law;
2) to inform that the fine imposed for the administrative violation must be collected from the holder of the vehicle indicated in the

registration certificate or from the owner (possessor) of the vehicle. Such collection does not take place, if at the moment when the violation was committed the vehicle was not in the possession of the owner (holder, possessor) due to unlawful actions by another person;

3) to inform that until the fine is paid an entry shall be made into the Register that the vehicle, by which the violation was committed, is prohibited from undergoing the state technical inspection.

Thus, the obligation of the person, who committed the administrative violation, – the offender to pay the imposed fine, in case it is not done, falls upon the holder or the owner (possessor) of the vehicle. Moreover, an entry is made into the Register, which causes adverse consequences for the holder or owner (possessor) of the vehicle.

Section 76(1) of the Administrative Procedure Law provides that the addressee of an administrative act has the right to contest it. In view of the fact that the addresses of the notification about the unpaid fine, undoubtedly, is the holder or the owner of the vehicle, he has the right to contest the notification in a higher institution (official) or to appeal against it in court.

The Supreme Court has also recognised that the notification about the unpaid fine is to be considered as being an administrative act and that the vehicle owner may appeal against it in court (*see Decision of 26 January 2007 by the Department of Administrative Cases of the Supreme Court Senate in Case No. SKA-107, Para 8 and Para 9*).

12.3. Section 43^2 of the Road Traffic Law in interconnection with norms of LAVC defines the content of the vehicle owner's rights within the framework of record-keeping regarding an administrative violation – i.e., ignoring the parking rules. I.e., the vehicle owner has the right to contest and appeal against the notification about the unpaid fine, since he is the addressee of this notification. Whereas the addressee of the report-notification is the driver of the vehicle, who has committed the administrative violation. The legal regulation that is in force does not envisage the rights of the vehicle owner to contest and appeal against the report-notification, by which the decision on applying a fine has been adopted.

Thus, the opinion of the Saeima that legal regulation, *inter alia*, Section 43^2 of the Road Traffic Law, in the case of violations of parking regulation, allows the vehicle owner to contest or appeal against the decision on applying a fine, is unfounded. To verify whether the Applicant's and other

persons' right to a fair trial is ensured, legal proceedings in the case must be continued.

Hence, the Saeima's request to terminate legal proceedings in the case in accordance with Para 6 of Section 29(1) of the Constitutional Court Law must be rejected and legal proceedings in the case must be continued.

13. The right of every person to protect his or her rights and lawful interests in a fair court have been enshrined in the first sentence of Article 92 of the Satversme. The aforementioned concept of "a fair court" comprises two aspects; i.e., "a fair court" as an independent institution of the judicial power, which hears the case, and "a fair court" as a due procedure appropriate for a judicial state, in the framework of which the case is heard (*see Judgement of 5 March 2002 by the Constitutional Court in Case No. 2001-10-01, Para 2 of the Findings, and Judgement of 18 October 2012 in Case No. 2012-02-0106, Para 11.1*).

13.1. A fair court as due legal proceedings, appropriate for a judicial state, comprises a number of interconnected elements, for example, the right to access to court, the principle of equality of parties, the right to be heard, the right to a reasoned ruling by the court, and the right to appeal against the adopted ruling. These are interconnected rights (*see Judgement of 5 November 2008 by the Constitutional Court in Case No. 2008-04-01, Para 8.2, and Judgement of 17 May 2010 in Case No. 2009-93-01, Para 8.3*). The State, in turn, has the obligation to provide for legal guarantees that the principles of the rule of law and fairness will be complied with in the adjudication of cases (*see Judgement of 18 October 2012 by the Constitutional Court in Case No. 2005-18-01, Para 8*).

To ensure that the procedure of hearing cases is fair, the requirement to ensure to a person the right to be heard on the issue that is examined, the right to procedural equality or guarantees of equal opportunities, the possibility to express counter-arguments regarding the evidence submitted by the other party, as well as the right to use to full extent the possibility to submit evidence must be complied with (*see Judgement of 11 April 2007 by the Constitutional Court in Case No. 2006-28-01, Para 12*).

13.2. The Applicant in her application has pointed to a number of reasons, why her fundamental rights, established in Article 92 of the

Satversme, as the owner of a vehicle by which another person has committed an administrative violation, are disproportionally restricted, i.e.:

1) the contested regulation does not envisage the right of a vehicle owner to receive the report-notification;
2) the contested regulation does not envisage the right of a vehicle owner to contest the report-notification in a higher institution (official) and to appeal against its decision in court. Thus, the owner of the vehicle is heard neither before, nor after the administrative sanction is imposed;
3) the contested regulation does not envisage the possibility for the vehicle owner to inform about the person, who was driving the vehicle and committed the administrative violation;
4) in those cases, where the imposed fine has not been paid, the vehicle owner incurs adverse consequences, – the unpaid fine is to be collected from the holder or the owner (possessor) of the vehicle, and also an entry is to be made into the Register regarding prohibition, until the fine is paid, to conduct the state technical inspection of the vehicle by which the violation was committed and to register it on the Register.

The adverse consequences envisaged by Section 43^2 of the Road Traffic Law affect the owner of the vehicle, if another person – the driver of the vehicle – fails to pay the administrative fine for the violation that he or she committed within the defined term. I.e., the fine that has not been paid by the driver of the vehicle is to be collected from the vehicle owner, and also an entry is to be made into the Register that prohibits the conduct the state technical inspection of the vehicle by which the violation was committed and prohibits registering it on the Register. These adverse consequences are incurred by the vehicle owner; however, he has no legal remedies to prevent the onset of these consequences.

The Constitutional Court has recognised that, thus, the vehicle owner has no possibility to contest the imposed fine and to point to the circumstances of the violation or the actual offender even if he has grounds to believe that the offender will not pay the fine (for example, if this person has died, has been recognised as being legally incapable or has left the country) or that it ill be impossible to collect the paid fine from this person (for example, this person

has been recognised as being insolvent) (*see, Judgement of 28 March 2013 by the Constitutional Court in Case No. 2012-15-01, Para 17*).

Hence, the contested regulation restricts the Applicant's right to access to court and the right to be heard.

14. The Constitutional Court has repeatedly noted that the Satversme does not directly provide for cases, where the right to a fair court could be restricted; however, this right cannot be regarded as absolute. Since the right to a fair court is one of the most important among a person's rights, restrictions upon it should be established only in cases of utmost necessity (*see, for example, Judgement of 4 January 2005 by the Constitutional Court in Case No. 2004-16-01, Para 7.1, Judgement of 14 March 2006 in Case No. 2005-18-01, Para 10, and Judgement of 5 November 2008 in Case No. 2008-04-01, Para 13*).

If, nevertheless, such a restriction has been established, then it must be examined, whether it has been established by a law, adopted in due procedure, whether the restriction has a legitimate aim and whether the restriction is proportional to this aim (*see Judgement of 27 June 2003 by the Constitutional Court in Case No. 2003-04-01, Para 1.2 of the Findings, Judgement of 7 October 2010 in Case No.2010-01-01, Para 12, and Judgement of 20 April 2012 in Case No. 2011-16-01, Para 9*).

Cases, in which the rights of vehicle owners in record-keeping regarding an administrative violation, when an administrative violation with a vehicle in the ownership of the vehicle owner had been committed by another person, have been examined in the case law of the Constitutional Court (*see, Judgement of 28 March 2013 by the Constitutional Court in Case No. 2012-15-01, and Judgement of 24 October 2013 in the Case No. 2012-23-01*).

The Constitutional Court has recognised that the regulation of the Road Traffic Law, insofar it does not envisage the right of a vehicle owner to contest and appeal against a report-decision in case, where a violation that has been recorded automatically was committed by a driver of this vehicle, who possessed the car on lawful basis, is incompatible with Article 92 of the Satversme, because it places disproportional restriction upon the vehicle owner's right to be heard and the right to access to court (*see, Judgement of 28 March 2013 by the Constitutional Court in Case No. 2012-15-01, Para 18.3.3.2*).

Likewise, the Constitutional Court has noted that a vehicle is a source of increased danger and that the State may establish special obligations to its owner and set sanctions for failure to perform these obligations. However, both the obligation of this kind and the respective sanction should be sufficiently clearly defined in law (*see Judgement of 24 October 2013 by the Constitutional Court in Case No. 2012-23-01, Para 13.2, and Judgement of 28 March 2013 in Case No. 2012-15-01, Para 15.4 – 15.5*).

15. The Applicant has expressed the opinion that the contested regulation is unclear and therefore the restriction upon fundamental rights that it comprises cannot be considered as having been established by law. Allegedly, Section 43^2 of the Road Traffic Law does not define the procedure for informing about the report-notification and notification about the unpaid fine, neither does the Section indicate the persons, who have the right to contest and appeal against the aforementioned documents of record-keeping regarding an administrative violation (*see Case Materials, Vol. 1, p.11).*

The Satversme provides for a person's subjective right to be informed about his rights and obligations. A norm that is adopted by a legislator should be drafted in a way that would allow a person, in case of necessity looking for appropriate advice, to understand this norm and regulate his actions (*see Judgement of 30 March 2011 by the Constitutional Court in Case No. 2010-60-01, Para 15.2, and Judgement of 1 November 2012 in Case No. 2012-06-01, Para 7.2*).

The Constitutional Court already found in Para 12.1 and Para 12.2 of this Judgement that Section 43^2 of the Road Traffic Law defined the subject, who had the right to contest and appeal against the acts referred to by the Applicant. I.e., the driver of the vehicle has the right to contest and appeal against the report-notification, whereas the vehicle owner has the right to contest and appeal against the notification about the unpaid fine. Moreover, the procedure for informing about the notification about the unpaid fine and of the report-notification has been regulated in the Regulation No. 182, in accordance with the authorisation granted to the Cabinet of Ministers in Section 43^2 of the Road Traffic Law. Thus, the Applicant's opinion that the contested regulation is unclear and unpredictable for the vehicle owner is unfounded.

The case does not comprise a dispute on whether the contested regulation has been adopted and promulgated in the procedure provided for by the Satversme and the Saeima Rules of Procedure.

Thus, the restriction upon fundamental rights that follows from the contested regulation has been established by law.

16. Every restriction upon fundamental rights should be based upon circumstances and arguments regarding its necessity, i.e., the restriction should be established for the sake of important interests – a legitimate aim (*see Judgement of 14 March 2006 by the Constitutional Court in Case No. 2005-18-01, Para 13)*. Pursuant to Article 116 of the Satversme, fundamental rights may be restricted to protect the rights of other people, the democratic structure of the State, and public security, welfare and morals.

When such restrictions are established, in the proceedings before the Constitutional Court the obligation to present and substantiate the legitimate aim of such restrictions lies upon the institution, which adopted the contested act (*see, for example, Judgement of 1 November 2012 by the Constitutional Court in Case No. 2012-06-01, Para 12*). The Saeima has not indicated such an aim in its written reply and in the supplements to it. Whereas the Applicant holds that the contested regulation has no legitimate aim (*see Case Materials, Vol. 1, pp. 5-6*). Therefore the Constitutional Court must establish, whether the restriction upon fundamental rights established by the contested regulation has a legitimate aim.

Pursuant to LAVC Section 149^{10} on violations of parking rules, the driver of the vehicle must be made administratively liable, i.e., the person who committed the administrative violation, and he must be imposed an administrative sanction – a fine. An administrative sanction is a means of liability aimed at educating the person, who has committed an administrative violation, in the spirit of law abiding. It also has the aim of preventing the offender and other persons from committing new violations (*see LAVC Section 22*).

The procedure established in Section 43^{2} of the Road Traffic Law, which provides for imposing sanctions upon the vehicle driver for violations of parking rules, actually was introduced already with the law adopted by the Saeima on 8 July 2003 "Amendments to the Road Traffic Law", which entered into force on 1 January 2004. Such regulation was needed, since a solution had

to be found for a situation, where it was impossible to make a person, who had violated parking rules, liable (*see Case Materials, Vol. 1, p. 86, and Vol. 2, pp. 58 – 59*). Likewise, in drafting the contested regulation, the provisions of the Road Traffic Law on violations of parking rules had to be harmonised with the principles established in the Administrative Procedure Law (*see Case Materials, Vol. 1, p. 106).*

Without envisaging the right of the vehicle owner to contest and appeal against the report-notification, faster proceedings in the case of administrative violations is ensured when parking rules have been violated. In the framework of record-keeping regarding an administrative violation the facts of the case are established, the person who has been made liable is heard and the collected evidence is examined. By envisaging the possibility for the vehicle owner to become involved in this process, the hearing of cases, most probably, would become longer, and the responsible institution (official) and the court would have additional obligations, which would make the hearing of an administrative violation case more complicated. Moreover, a procedure that promotes procedural economy and allows terminating record-keeping regarding an administrative violation sooner conforms to public interests.

These considerations are closely linked to the possibility of ensuring more effective and complete collection of administrative sanctions. The regulation included in Section 43^2 of the Road Traffic Law serves as an incentive for vehicle owners to be more careful in choosing the person they can entrust their vehicle with. The greater the vehicle owners' awareness of their responsibility for their actions when transferring their vehicles into the use of other persons, the less frequent violations of parking rules will become and there will be less threats upon the lives, health and property of other persons.

Hence, the restriction has been established with the contested regulation to protect other persons' rights.

17. To establish, whether in restricting the vehicle owner's right to an access to court and to be heard, the principle of proportionality has been complied with, the Constitutional Court must examine:

1) whether the measures chosen by the legislator are appropriate for reaching the legitimate aim;
2) whether no more lenient measures exist for reaching this aim;

3) whether the benefit gained by society exceeds the damage caused to an individual's rights and lawful interests. If, upon examining a legal norm, it is recognised that it is incompatible with even one of these criteria then it is also incompatible with the principle of proportionality and is unlawful (*see Judgement of 19 March 2002 by the Constitutional Court in Case No. 2001-12-01, Para 3.1 of the Findings, and Judgement of 20 April 2012 in Case No. 2011-16-01, Para 12*).

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

The contested regulation establishes a procedure, by which the vehicle owner's right to access to court and the right to be heard are restricted. However, at the same time the contested regulation, in the interests of other persons, promotes effectiveness of record-keeping regarding an administrative violation and enforcement of administrative sanctions.

This has been confirmed also by the Ministry of Transport, which has provided information on the number of violations of parking rules and the enforcement of imposed sanctions in the recent years. For example, in 2010 the fines were enforced in the amount of 90 per cent, whereas in 2011 and 2012 – in the amount of 89 and 86 per cent, respectively (*see Case Materials, Vol. 2, pp. 59 – 60*). The contested regulation allows effective protection of other persons' rights.

Thus, the contested regulation is appropriate for reaching the legitimate aim.

19. The restriction upon fundamental rights is necessary if no other measures exist that would be as effective and the selection of which would lead to a lesser restriction upon the particular fundamental right (*see, for example, Judgement of 1 November 2012 by the Constitutional Court in Case No. 2012-06-01, Para 13.2*).

The Constitutional Court has repeatedly concluded in its judgements that is does not have to assess the extent to which any alternative means would or would not be a more appropriate solution to the situation (*see, for example,*

Judgement of 8 March 2006 by the Constitutional Court in Case No. 2005-16-01, Para 15.8, and Judgement of 13 February 2009 in Case No. 2008-34-01, Para 22).

The Applicant has mentioned as a possible alternative measure the introduction of such procedure that would require the vehicle owners to indicate the person, who had been the driver of the vehicle and committed the administrative violation.

Such procedure, possibly, would ensure that the enforcement of the fine could be turned only against the person who had violated the parking rules. Thus, the offender would be the one to pay the fine imposed upon him. However, such regulation would make the record-keeping regarding an administrative violation more complicated and encumber enforcement, it could also decrease the incentives for a vehicle owner to entrust his or her vehicle only to such persons, who are responsible participants of road traffic.

Moreover, the Constitutional Court in its Judgement in Case No. 2012-15-01, examining the regulation on recording road traffic violations by technical means (photo or video equipment), without stopping the vehicle, already pointed to the practice of some other countries, which envisaged the right of a vehicle owner to turn to the police and provide information on the actual driver of the vehicle. It was found in the aforementioned judgement: there were no sufficient grounds to conclude that this regulation would reach the legitimate aim – protection of other persons' rights – in the same quality (*see Judgement of 28 March 2013 by the Constitutional Court in Case No. 2012-15-01, Para 18.3.2*). Likewise, in the case under review the Constitutional Court has no grounds to recognise that the possible alternative measure indicated by the Applicant would allow reaching the legitimate aim of the contested regulation in at least the same quality.

Thus, no alternative means exist that would allow reaching the legitimate aim in the same quality.

20. In assessing the compliance of the restriction upon fundamental rights with the legitimate aim, it must be verified, whether the adverse consequences incurred by the vehicle owner as the result of his or her fundamental rights being restricted do not exceed the benefit that society in general gains from this restriction.

20.1. It has been noted in legal science that "cases of administrative violations on their merits can be equalled to criminal cases" (*Litvins G., Aperāne K. Administratīvā pārkāpuma lietvedība ceļu satiksmē. Rīga: SIA „Nordik", 2011, 7. lpp.*). The Constitutional Court has already concluded with respect to a number of LAVC norms that the sanctions defined in them should be equalled to a criminal sanction in the meaning of the European Convention for the Protection of Human Rights and Fundamental Freedoms and has underscored, in particular, that they have both punitive and preventive function, which complies with the objectives of imposing a criminal sanction (*see Judgement of 20 June 2002 by the Constitutional Court in Case No. 2001-17-0106, and Judgement of 18 October 2012 in Case No. 2012-02-0106, Para 16).*

The administrative liability for violation of parking rules is incurred by the vehicle driver, who is imposed a fine for it. The contested regulation allows a possibility that the obligation to pay the fine that has been imposed upon the offender must be fulfilled by the vehicle owner, who has not been made administratively liable. The aforementioned obligation is imposed upon the vehicle owner if it is established that: 1) an administrative violation has been committed with a vehicle that he or she owns; 2) the offender (the driver of the vehicle) has failed to pay the fine imposed upon him or her within the set term. Thus, the vehicle owner must bear the consequences of an offence committed by another person. Whereas the offender can evade the responsibility for failure to pay the fine, unless the vehicle owner turns to court requesting collection of the paid fine in civil law procedure.

Para 12.2 and Para 13.2 of this Judgement already point to significant adverse consequences incurred by the vehicle owner in connection with an administrative violation committed by another person. I.e., by imposing upon the vehicle owner the obligation to pay the fine applied to the offender, at the same time an entry is made into the Register prohibiting to perform the state technical inspection of the vehicle with which the violation was committed. However, the contested regulation does not ensure that the vehicle owner, who was not the driver of the vehicle at the moment when the administrative violation was committed, could be heard before the adverse consequences set in.

20.2. If the vehicle owner contests the notification about the fine that has not been paid by the vehicle driver in a higher institution (an official) and later

appeals against it in court, then the higher institution (official) and the court have only the jurisdiction to verify, whether: 1) the person owns the vehicle with which the administrative violation has been committed; 2) the fine for the committed violation has been paid within the term defined in law. Upon establishing these circumstances, the higher institution (official) and the court do not have the right to release the vehicle owner from fulfilling the obligation imposed by the notification about the unpaid fine.

The Constitutional Court has already recognised that the obligation of the vehicle owner, established in legal norms, to be responsible for the failure to abide by the term for paying the fine imposed upon the driver of the vehicle cannot be identified with the liability for violations of road traffic rules committed by the vehicle driver. I.e., legal acts do not provide for a vehicle owner's liability for administrative violations that another person has committed with a vehicle owned by him or her (*see, Judgement of 28 March 2013 by the Constitutional Court in Case No. 2012-15-01, Para 15.3*).

Also in cases of violations of parking rules when the driver does not pay the fine voluntarily, the administrative liability, essentially, is transferred from the offender upon the vehicle owner, who has no possibility to be heard.

Since the vehicle owner has no possibilities to contest and appeal in court against the report-notification, he also has no right to express his opinion about the circumstances indicated in it before expiry of the term for paying the fine imposed upon the driver of the vehicle. Therefore he has no possibility to verify the legality of the procedural documents drawn up by the responsible institution (official).

The requirement to hear a person in the framework of record-keeping regarding an administrative violation ensures that all disputes can be identified and the most correct solution can be found. Pursuant to the provisions of LAVC Section 260, the person, who is made administratively liable, has this right, i.e., the vehicle driver, who committed the administrative violation. However, the legislator has not envisages such right to the vehicle owner, even though he or she may incur consequences that are even more adverse than those incurred by the offender.

20.3. The Applicant draws attention to the fact that the report-notification is not sent to the vehicle owner, therefore he or she cannot find out abut the administrative violation that has been committed (*see Case Materials, Vol. 1, pp. 4–7, and Vol. 2, pp. 47. – 49*).

It clearly follows from Section 43^2 of the Road Traffic Law that information about a violation of parking rules that has been committed by a vehicle owned by him or her is not sent to the vehicle owner. Pursuant to Para 5 of the Regulation No. 182, one copy of the report- notification is attached to the frontal wind-screen on the driver's side in a way that it would not get lost or would not be damaged because of weather conditions and would be easily noticed by the driver. The second copy is kept at the institution, the official of which adopted the decision on imposing the fine. Thus, the procedure established by Regulation 182 ensures that the person, who committed the administrative violation, – the driver of the vehicle is informed about the fine imposed upon him or her and about the consequences of failing to pay it.

If the driver of the vehicle does not inform the vehicle owner about the violation and the sanction imposed, then the latter can obtain information about the committed violation, *inter alia*, about the place, date and time of it, as well as the amount of fine, by using RTSD e-services, which are available free of charge on its home page (*see https://e.csdd.lv/*).

The vehicle owner has the possibility, upon his or her own initiative, to obtain the aforementioned information; however, Section 43^2 of the Road Traffic Law does not define the State's obligation to inform in writing the vehicle owner about the committed violation of parking rules. Such forwarding of notification to the vehicle owner would be necessary, so that he or she could defend his rights by contesting and, if necessary, appealing against the report-notification.

20.4. The Constitutional Court has already recognised as being incompatible with Article 92 of the Satversme a situation, where a vehicle owner, who has not been the driver of the vehicle at the moment when a violation was committed, is not heard before adverse consequences for him set in and he has no right to contest the report-notification. The benefit that society gains by imposing upon the vehicle owner the obligation to ensure that the fine for the violation, which he has not committed, is paid manifests itself as the simplification of the process taking place in a state institution, decreasing its costs and adding to the state budget the collected administrative fines. However, this benefit does not compensate for the fact that a person has been essentially deprived of the right to a fair trial (*see Judgement of 28 March 2013 by the Constitutional Court in Case No. 2012-15-01, Para 18.3.3.2*).

Likewise, in the case under review it cannot be recognised that the benefit that society gains from the contested regulation would exceed the damage caused to a vehicle owner.

Therefore the contested regulation, insofar it does not provide for a vehicle owner the right to contest and appeal against a report-notification in a case where a violation has been committed by a driver of the vehicle, having the vehicle in his possession on legal basis, does not comply with the principle of proportionality and, thus, also with Article 92 of the Satversme.

21. The third part of Section 32 of the Constitutional Court Law provides that a legal norm, which has been recognised by the Constitutional Court as being incompatible with a norm of higher legal force, should be regarded as being invalid as of the day when the Judgement by the Constitutional Court is published, unless the Constitutional Court has ruled otherwise. Pursuant to Para 11 of Section 31 of the Constitutional Court Law, the Constitutional Court may indicate in the judgment the moment, as of which the contested legal norm (act), which has been recognised as being incompatible with a norm of higher legal force, becomes invalid.

21.1. The legislator has not only the right, but also the obligation to elaborate and adopt regulation that decides important issued in the life of the State and society (*see Judgement of 21 December 2009 by the Constitutional Court in Case No. 2009-43-01, Para 35.3*).

The Saeima has broad discretion both in selecting one law from among several in which the respective regulation is included (*see Decision of 16 April 2008 by the Constitutional Court on terminating legal proceedings in Case No. 2007-21-01, Para 17*), as well as with regard of issues linked to legislative technique within the framework of one law (*see Judgement of 19 June 2010 by the Constitutional Court in Case No. 2010-02-01, Para 9.4.2*).

Hence, the Saeima has the obligation to select the most appropriate solution that would ensure the compatibility of the contested regulation with the Satversme. In performing this obligation, the Saeima must take into consideration the findings expressed in the judgements by the Constitutional Court. Since the legislator needs time for drafting and adopting legal regulation that would be compatible with the Satversme, the Constitutional Court holds

that the deficiencies in the contested regulation must be eliminated by 1 November 2014.

Thus, to ensure the compatibility of the contested regulation with the Satversme, the Saeima must introduced amendments to legal acts by 1 November 2014.

21.2. The Constitutional Court, exercising the right granted to it in the third part of Section 32 of the Constitutional Court Law, must, to the extent possible, make certain that the situation that might developed as of the moment when the contested norms have been recognised as being invalid until the moment the legislator adopts new norms to replace these, would not cause infringements of persons' fundamental rights guaranteed in the Satversme, and would not cause significant harm to the interests of the State or society (*see Judgement of 16 December 2005 by the Constitutional Court in Case No. 2005-12-0103, Para 25, and Judgement of 31 January 2013 in Case No. 2012-09-01, Para 16.1*).

It was already concluded in Para 12 of this Judgement that legal regulation defines, which persons have the right to contest and appeal against the decisions adopted in the framework of record-keeping regarding an administrative violation. Legal disputes, for the solving of which the legislator has established a concrete procedure in legal norms, cannot be solved by ignoring this procedure and applying only the norms of Chapter VIII of the Satversme. In a situation like this direct application of the norms of the Satversme can be a temporary measure for solving legal disputes, if the legal regulation has been recognised as being incompatible with the Satversme.

To ensure that in the period until the deficiencies in the contested regulation are eliminated persons' right to a fair trial, established in the Satversme, were not violated in connections with violations that are committed after the Judgement by the Constitutional Court has entered into force, the right of a vehicle owner to contest and appeal against the report-notification envisaged in Section 43^2 of the Road Traffic Law shall be guaranteed by directly applying Article 92 of the Satversme. I.e., the right to contest in a higher institution (official) the report-notification and appeal against its decision in court, envisaged in the contested regulation, until the new legal regulation has entered into force shall be ensured not only to the driver of the vehicle, but also to the vehicle owner.

21.3. The Applicant has expressed a request to recognise the contested regulation as being invalid with respect to her as of 1 December 2011, i.e., the day, when an administrative violation was committed with a vehicle owned by her.

Recognising the contested regulation as being invalid as of the moment when the Applicant's fundamental rights were violated is the only possibility to protect her fundamental rights. Therefore, the Applicant has the right to contest the report-notification, drawn up by an inspector of Riga Municipal police Board of Road Police on 1 December 2011 No.109066741 in a higher institution.

The Substantive Part

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

held :

1. To recognise Section 43^2 of the Road Traffic Law, insofar it does not provide for the right to contest and appeal against a report-notification to a vehicle owner, who has not been the driver of the vehicle at the moment when parking rules were violated, as being incompatible with Article 92 of the Satversme of the Republic of Latvia.

2. To recognise Section 43^2 of the Road Traffic Law, insofar it does not provide for the right to contest and appeal against a report-notification to a vehicle owner, who has not been the driver of the vehicle at the moment when parking rules were violated, with respect to Inese Nikuļceva as being incompatible with Article 92 of the Satversme of the Republic of Latvia and invalid as of 1 December 2011.

3. To prescribe that until the moment, when the legislator has ensured compatibility of Section 43^2 of the Road Traffic Law, insofar it affects the rights of a vehicle owner in record-keeping regarding an administrative violation, with Article 92 of the Satversme of the Republic of Latvia, the fundamental rights of a vehicle owner, who has not been the

driver of the vehicle at the moment when parking rules have been violated, established in this Article shall be ensured by granting to him the same right to contest and appeal against the report-notification as the one envisaged for the driver of the vehicle.

The Judgement is final and not subject to appeal.

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

Chairperson of the court hearing A. Branta