



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

J U D G E M E N T

on Behalf of the Republic of Latvia

19 November, 2013, Riga

in Case No. 2013-09-01

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

having regard to an application submitted by the Administrative District Court,

on the basis of Article 85 of the Satversme of the Republic of Latvia and Para 1 of Section 16, Para 9 of Section 17(1), as well as Section 19¹ and Section 28¹ of the Constitutional Court Law,

on 22 October 2013 examined in written procedure the case

“On Compliance of the Words in Section 21(2) of Latvian Administrative Violations Code “if the fine intended for it does not exceed 30 lats” with the first sentence of Article 91 of the Satversme of the Republic of Latvia”.

The Facts

1. On 7 December 1984 the Supreme Soviet adopted the Administrative Violations Code. It entered into force on 1 July 1985, and Section 21 of this Code granted to the body applying legal norms the discretion to release a person from administrative liability for a petty administrative violation. Initially the aforementioned section envisaged the following:

“If the administrative violation that has been committed is petty, the body (official), who is authorised to decide on the case, may release the offender from administrative liability and confine itself to oral warning.”

On 16 October 2003 the Saeima adopted the law “Amendments to the Latvian Administrative Violations Code”. This law added second part to Section 21 of the Latvian Administrative Violations Code (hereinafter also – LAVC):

“An administrative violation committed in road traffic, if the fine intended for it does not exceed LVL 10 and if this violation has not caused threats to other participants in road traffic or property thereof, may be considered as petty.”

On 28 May 2009 the Saeima adopted the law “Amendments to the Latvian Administrative Violations Code”. These amendments replaced the word “ten”, which Section 21(2) of LAVC comprised, with the word “thirty”.

Thus, at the moment of submitting the application, Section 21(2) of LAVC provided:

“An administrative violation committed in road traffic, if the fine intended for it does not exceed thirty lats and if this violations has not caused threats to other participants in road traffic or property thereof, may be considered as petty.”

2. The Applicant – the Administrative District Court (hereinafter – the Applicant) – request the Constitutional Court to assess the compliance of the words of Section 21(2) of LAVC “if the fine intended for it does not exceed thirty lats” (hereinafter – the contested norm) with the principle of equality included in the first

sentence of Article 91 of the Satversme of the Republic of Latvia (hereinafter – the Satversme).

The Applicant, while examining the case, which was initiated having regard to an application pertaining to the revoking of a decision by Road Police Board of Riga Municipal Police, established that a person had been made administratively liable in accordance with Section 149³¹ (8) of LAVC for a violation of road traffic rules (hereinafter – RTR). I.e., the person had parked his vehicle within the zone, where the road sign No. 532 “Parking place”, as well as additional road sign No. 837 “For Disabled Persons” operated, even though he did not have the card allowing to use the parking place for disabled persons. Because of this Riga Municipal Police imposed a fine to the person in the amount of forty lats.

In the course of reviewing the case of administrative violation it was established that a fixed sum of money – forty lats – had been set for the violations of Section 149³¹ (8) of LAVC. In this case Section 32(2) of LAVC, which envisages assessment of mitigating circumstances, cannot be applied. The applicant holds that in this case mitigating circumstances should be taken into consideration, which would allow recognizing the violation as being petty. However, the contested norm prohibits taking into consideration such circumstances.

The Applicant notes that those persons, who are made administratively liable for RTR violations, are in the same legal circumstances as the persons, who have been made administratively liable for groups of violations, the object of which is not road traffic. However, in Section 21 of LAVC the legislator had especially distinguished persons, who had committed RTR violations, and by the contested norm had established additional criteria for recognising such violations as petty. The Applicant holds that the contested norm allows unfounded differential treatment of RTR violators, since it prohibits recognising a concrete violation as being petty, when the actual circumstances allow it, and it also prohibits assessing the proportionality of the fixed fine. Moreover, the existing legal regulations allow recognising violations as being petty in all those cases, which are not linked to RTR, even if the amount of fine envisaged for these violations significantly exceeds thirty

lats, for example, in cases pertaining to violations of Section 159 and Section 114² of LAVC.

Recognising an administrative violation as being petty should not depend upon the amount of sanction. A situation, when a person receives too strict penalty for a petty crime, should be inadmissible. The Applicant holds that this has not been the legislator's aim, since this restricts the possibilities to apply the principle of proportionality.

The legislator's task is to achieve greater individualisation in setting sanctions, to the extent possible. However, the legislator has the right to set out such legal regulation, which does not ensure absolute individualisation, and yet, the regulation should equally apply to cases, which are objectively comparable, even if different. Moreover, the Applicant does not find the grounds for the restriction included in the contested norm, since releasing a person from administrative liability is one of the ways to achieve compliance with the principle of democratic order and the principle of proportionality.

The Applicant assumes that the legislator's aim, in adopting the contested norm, was to simplify the processing of cases pertaining to RTR violations. The legislator, perhaps, had tried to ensure that the body applying legal norms would not have the possibility to recognise unfoundedly significant violation as being petty and release the offender from liability. However, the Applicant, having assessed the aims of the contested norm, holds that the legitimate aim of the contested norm cannot be inferred from it. Moreover, the contested norm places disproportional restrictions upon the rights of those persons, the RTR violations committed by whom could be recognised as petty, in view of the individual circumstances of the case.

3. The institution, which adopted the contested act, – the Saeima – holds that the contested norm complies with the first sentence of Article 91 of the Satversme.

The legislator had envisaged in Section 21(2) of LAVC special regulation with regard to administrative violations in road traffic. The Saeima, referring to what

has been disclosed by the Road Traffic Safety Directorate, notes that approximately 80 per cent of all administrative violations are committed exactly in road traffic. Therefore special regulation was needed, pertaining only to road traffic, and also it was necessary to envisage that the mitigating and aggravating circumstances envisaged in Latvian Administrative Violations Code were not applicable to road traffic.

The Saeima does not uphold the Applicant's argument that all persons, who have been imposed an administrative penalty, are in similar and comparable circumstances, but the contested norm envisages differential treatment of persons, who have committed administrative violations in road traffic. Section 21(2) of LAVC was created as a special legal norm with regard to the first part of the same Section. The legislator has the right to envisage different regulations with regard to different types of violations, as well as to establish different procedure for imposing sanctions for concrete unlawful offences. In a democratic, judicial state such decisions by the legislator create the penal policy.

A vehicle should be considered a source of increased hazardousness. Thus, setting special legal liability to its owner or driver is admissible. Likewise, the legislator has the right, considering the peculiarities of administrative liability in the field of road traffic, to include in the Latvian Administrative Violations Code and also in other laws special legal provisions, establishing different regulation regarding a person's administrative liability in the field of road traffic.

The Saeima points to the fact that the application contests only one feature, which allows recognising a violation committed in road traffic as petty. The Applicant has not contested the second feature, i.e., that the violation has not caused threat to other participants of road traffic or the property thereof.

The regulation that the contested norm contains ensures predictability of legal norms to be applied in the field of road traffic, it also promotes legal certainty. The criteria included in Section 21(2) of LAVC are understandable for the persons participating in road traffic, and thus, it is also clear, which violations may be recognised as being petty.

The Saeima notes that by granting to the bodies applying law total discretion in recognising the administrative violations committed in road traffic as being petty, the individual assessment of circumstances would be granted excessive importance. It could create a risk of corruption, as well as violations of the principle of legal equality, when different parties applying the law would take different decisions under similar circumstances. Administrative violations are committed extremely frequently in road traffic, and decisions regarding them are adopted by various bodies applying the law. Because of this it is admissible that the legislator defines special criteria for recognising a concrete administrative violation as petty in a special legal norm.

The amount of fine defined in the contested norm reflects the legislator's opinion on what kind of administrative violations can be recognised as being petty. The respective amount of monetary fine was aligned with the penal policy included in the Latvian Administrative Violations Code regarding violations in road traffic, which are assessed as to their public dangerousness.

4. The summoned person – **the Ministry of Justice** – upholds the Applicant's view that the persons, who are made administratively liable for violations of RTR, are in similar and comparable circumstances with persons, who are made administratively liable for other violations; however, the contested norm envisages differential treatment of these two groups of persons. I.e., it prohibits recognising as being petty a violation committed by a person in road traffic, the envisaged monetary fine for which exceeds thirty lats.

The significance of a violation is characterised by the circumstances, in which it has been committed, the importance of infringement of legally protected interests and the offender's personality, not the type and scope of penalty envisaged by the sanction. The fact that the maximum monetary fine or a more severe punishment is envisaged for a concrete violation *per se* is not argument for disallowing recognising this violation as being petty. The purpose of the administrative penalty can be reached by other institutes of law, for example, by releasing a person from

administrative liability and issuing oral warning only, not by applying administrative penalty.

The possibility to release from administrative liability is applicable to administrative violations that have created such threat to legally protected interests, which in view of the nature of violation and the offender's personality, cannot be considered as being so significant as to impose administrative penalty. These criteria, and not the penalty envisaged by the sanction of the legal norm, are decisive in recognising a violation as being petty.

The possibility to recognise a violation as being petty, irrespectively of the sanction envisaged for it, is applicable to all types of administrative violations, *inter alia*, also such, for the commitment of which a maximum monetary fine or even administrative arrest is envisaged, however, not to violations in road traffic, for which the monetary fine applicable exceeds thirty lats. This different regulation should be considered as being disproportional, since it prohibits recognising as petty such violations committed in road traffic, which as to their nature are formal and under the particular circumstances should be recognised as being petty.

In view of the abovementioned, the Ministry of Justice does not support establishment of such criteria, in accordance with which the significance of a violation depends upon the penal measure envisaged by the sanction, especially in separate categories of administrative cases. The Ministry of Justice had included this approach in the draft Administrative Violations Penal Law, which was elaborated as part of the reform in the system of administrative penalties. Section 25(1) of this draft law envisages: if the administrative violation committed by a person has not created actual threat to legally protected interests (a petty offence) under the concrete circumstances, the official may choose not to initiate a procedure of administrative violation, but, if it has been initiated, a higher standing official or court may terminate it at any stage, without imposing the penalty. The draft law does not envisage special conditions for recognising as being petty violations committed in road traffic, nor in any other field.

In view of the abovementioned, the Ministry of Justice holds that the contested norm is incompatible with the first sentence of Article 91 of the Satversme.

5. The summoned person – **the Ministry of Transport** – upholds the opinion expressed in the written reply by the Saeima that the contested norm is not incompatible with the first sentence of Article 91 of the Satversme.

In addition, the Ministry of Transport notes that the law of 16 October 2003 “Amendments to the Latvian Administrative Violations Code” introduced a number of significant amendments to the Latvian Administrative Violations Code. I.e., chapter ten “a” had been added to LAVC, envisaging fixed penalties for a number road traffic violations. These amendments are aimed at ensuring effective application of penalties for RTR violations.

Before the amendments of 16 October 2003 were adopted, it was possible to recognise as a petty RTR violation also, for example, drunk driving or exceeding the legal speed limit even by 50 kilometres per hour. To prevent a situation, when a large part of all violations committed in road traffic could be recognised as being a petty RTR violation, Section 21(2) of LAVC sets special criteria for recognising a RTR violation as being petty.

The Ministry of Transport emphasizes that Section 21(2) of LAVC makes the procedure of applying administrative penalties both simpler and also speedier and more effective, moreover, ensures that the principle of inevitability of punishment is implemented. The aforementioned norm in interconnection with other amendments introduced to the Latvian Administrative Violations Code has facilitated decrease in the number of persons who have perished in road traffic.

6. The summoned person – **the Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) – holds that the contested norm is not incompatible with the first sentence of Article 91 of the Satversme.

The legislator has included in the Latvian Administrative Violations Code significant administrative violations and petty administrative violations. The petty administrative violations, in their turn, are subdivided as follows: petty violations in road traffic and other petty administrative violations. Thus, three different groups of persons exist: persons, who have committed petty RTR violations, persons, who have committed other petty administrative violations, and persons, who have committed such administrative violations that cannot be recognised as being petty.

The contested norm envisages differential treatment of persons, who are made administratively liable for RTR violations, and persons, who are made administratively liable for other administrative violations.

The differential treatment established by the contested norm is proportional. Imposing an administrative penalty is one of the legal means that ensure that the violator of legal norms does not reoffend, and it also deters other persons from offending.

The accessibility of parking places to persons with disability is one aspect of the right to accessible environment. The State has the obligation to ensure that persons with disability can move around freely and park their car in the parking places envisaged for them.

The Findings

7. The first sentence of Article 91 of the Satversme provides: “All human beings in Latvia shall be equal before law and the courts.”

The principle of equality enshrined in the first sentence of Article 91 of the Satversme must guarantee the existence of a uniform legal order. I.e., its task is to ensure that such requirement of a judicial state as comprehensive impact of law upon all persons and application of law without any privileges whatsoever is ensured. It also guarantees total effect of a law, objective and passionless application of it, and also that no one is allowed not to abide by the legal injunctions (*see, Judgement of 14 September 2005 by the Constitutional Court in Case No. 2005-02-0106, Para*

9.1). However, such uniformity of the legal order does not mean levelling out, since “equality allows differential treatment, if it can be justified in democratic society” (*Judgement of 26 June 2001 by the Constitutional Court in Case No. 2001-02-0106, Para 4 of the Findings*).

The Constitutional Court in its interpretation of Article 91 of the Satversme has recognised that the principle of equality prohibits state institutions to adopt such norms, which without reasonable grounds allow differential treatment of persons, who are in similar and according to concrete criteria comparable circumstances. The principle of equality allows and even demands differential treatment of persons, who are in different circumstances, as well as allows differential treatment of persons, who are in similar circumstances, if there are objective and reasonable grounds for it (*see, for example, Judgement of 3 April 2001 by the Constitutional Court in Case No. 2000-07-0409, Para 1 of the Findings, and Judgement of 11 November 2005 in Case No. 2005-08-01, Para 5*). Differential treatment does not have objective and reasonable grounds, if it lacks legitimate aim or if the relationship between the chosen means and the set aims is not proportional (*see Judgement of 23 December 2002 by the Constitutional Court in Case No. 2002-15-01, Para 3 of the Findings*).

Thus, to assess, whether the contested norm complies with the principle of equality included in the first sentence of Article 91 of the Satversme, it must be established:

- 1) whether and which persons (groups of persons) are in similar and according to concrete criteria comparable circumstances;
- 2) whether the contested norm envisages equal or differential treatment of these persons;
- 3) whether such treatment has objective and reasonable grounds, i.e., whether it has a legitimate aim and whether the principle of proportionality is abided by.

8. The Applicant notes that all those persons, upon who one of the monetary fines envisaged in the Latvian Administrative Violations Code has been imposed, are in similar and comparable circumstances.

The Saeima, however, holds that Section 21(2) of LAVC is a special legal norm in relation to the first part of this Section. Hence, the persons, who have committed administrative violations in road traffic, are not in similar and comparable circumstances with those persons, who have committed administrative violations of other kind.

The Constitutional Court has recognised that the legislator has the right to adopt new laws, which comprise special legal norms. The legislator needs this discretion in order to regulate, by means of legal norms, under the changing social and economic circumstances various legal situations in conformity with the social reality (*see Judgement of 3 February 2012 by the Constitutional Court in Case No. 2011-11-01, Para 12*).

From the vantage point of the first sentence of Article 91 of the Satversme, the decisive aspect is, whether several groups of persons are united by one important feature, attributable to all of them. In the case under review it is important that all persons, to whom Section 21 of LAVC applies, have committed one of the administrative violations envisaged by the Latvian Administrative Violations Code.

Thus, the Constitutional Court upholds the Applicant's opinion that all those persons, upon who one of the monetary fines envisaged in the Latvian Administrative Violations code has been imposed, are in similar and comparable circumstances.

9. The Applicant notes that the contested norm establishes differential treatment, since the violations committed in road traffic can be recognised as being petty only if the monetary fine envisaged for it does not exceed thirty lats, however, another violation, not related to road traffic, which a person has committed, can be recognised as being petty irrespectively of the amount of monetary fine envisaged for it.

Section 21 of LAVC grants to an institution or an official discretion, allowing this institution or an official, in case of a petty crime, to release the guilty person from administrative liability, substituting it with oral warning. However, the second part of this Section defines two criteria for recognising violations committed in road traffic as being petty: firstly, the monetary fine envisaged for this violation does not exceed thirty lats; secondly, this violations has not caused threat to other road traffic participants or property thereof.

Section 21 of LAVC does not grant subjective rights to a person, but envisages discretion to the body that takes the decision to release a person from administrative liability. However, in all cases the body applying legal norms is obliged to asses, whether the signs of *corpus delicti* of an administrative violation can be discerned in the concrete offence committed by the person and whether any circumstances that might exclude a person's administrative liability exist.

Thus, the differential treatment caused by the contested norm manifests itself as restricting the discretion of the body applying the legal norm in recognising the administrative violation committed in road traffic as being petty.

10. The Constitutional Court examines and assesses the concrete case insofar it is possible to apply legal (juridical) arguments to it, differentiating these from law policy considerations. The law policy considerations define the aim to be reached, i.e., economic, political and social changes of general nature. The outcome of juridical considerations are rules, which must be abided by not because they would ensure he desirable economic, political and social situation, but because it is required by the rule of law I.e., the principle of justice, *inter alia*, requires that the body taking decisions, in adopting new regulation or amending the legal regulation, which is in force, would comply both with appropriate procedure and the requirements of legal norms with higher legal force.

However, the legal system comprises also such issues, for deciding on which strict legal limits have not been set, but the adopted decisions predominantly depend

upon political usefulness. Political bodies of the state, which have been legitimised in a democratic way, first of all – the legislator, should decide upon these issues (*see Decision of 20 January 2009 by the Constitutional Court on terminating judicial proceedings in Case No. 2008-08-0306, Para 12*). In establishing, whether a legal norm is incompatible with the principle of equality, the field of law, to which the contested norm belongs, should be taken into consideration (*see Judgement of 11 November 2005 by the Constitutional Court in Case No. 2005-08-01, Para 5*).

The Constitutional Court notes that the legislator has broad discretion to establish penalties for specific offences, as well as to envisage conditions for releasing a person from liability for them. In adopting this kind of regulation the legislator usually takes the opinions, views and values, which have been accepted by society and which it has the right to express in a normative way, as the foundation. The legislator, in creating penal policy, sets the framework for a person's behaviour, thus protecting public safety.

The penal policy implemented by the legislator should be understood not only as establishing sanctions for concrete offences or violations. This field, *inter alia*, comprises also such legal norms, which regulate the preconditions under which the body applying a legal norm may release a person from liability for violation.

It means that the verification, which falls within the jurisdiction of the Constitutional Court, reaches only as far as assessing, whether the legislator has not obviously overstepped the limits of the discretion granted to it by the *Satversme* (*see Judgement of 29 October 2003 by the Constitutional Court in Case No. 2003-05-01, Para 29 and Decision of 6 January 2011 on terminating judicial proceedings in Case No. 2010-31-01, Para 5*). For example, a situation, in which a legal norm poses serious threat to a person's fundamental rights, should be considered as overstepping the limits of discretion defined in the *Satversme*.

In the case under review the contested norm is one of the means for implementing the administrative penal policy. I.e., the contested norm contains preconditions for recognising a violation committed in road traffic as being petty and releasing a person from administrative liability for this violation.

Thus, the Constitutional Court, within the limits of assessing the constitutionality of the contested norm, may verify, whether the legislator, in adopting the contested norm, has not obviously exceeded the limits of discretion granted to it by the Satversme.

11. The legislator may adopt legal regulation, which causes differential treatment of reciprocally comparable groups of persons, only if such action is justified by the legitimate aim to be reached.

The Applicant holds that it is impossible to infer the legitimate aim of the contested norm from the norm itself, but assumes that the legislator's aim in adopting the contested norm had been simplification of case processing in connection administrative violations in road traffic, as well as to curb the widely spread corruption in connection with such violations.

11.1. With the law of 28 May 2009 "Amendments to the Latvian Administrative Procedure Code" the legislator increased the amount of monetary fine, initially set by Section 21(2) of LAVC as ten lats, to thirty lats. When the contested norm was discussed at the Saeima Legal Affairs Committee, the representative of the Ministry of Transport noted that Section 21(2) of LAVC, with the amount of fine "ten lats", was a norm which prohibited releasing from administrative liability persons with special needs in cases, when they had parked a vehicle in places, where stopping and standing was prohibited. Namely, at the time the fine for violating standing or stopping rules usually was in the amount of twenty lats, and in such cases the body applying the legal norms did not have the right to release a person with special needs from administrative liability (*see Minutes 24 March 2009 meeting of the Saeima Legal Affairs Committee No. 338, Case Materials, p.56*).

Thus, thirty lats as a criterion for recognising an administrative violation as being petty was included in the contested norm, first and foremost, to protect persons with special needs.

11.2. The Constitutional Court has recognised that the hazardousness and dangerousness of a violation that threatens traffic safety manifests also in the fact

that the person, which has at his or her disposal a source of increased dangerousness – a vehicle, does not comply with RTR or rules of vehicle maintenance included in legal acts, resulting in harm to human life, health and also to public safety. Violation of RTR or rules of vehicle maintenance causes treat to other participants in traffic. Pursuant to Section 19(4) of the Road Traffic Law, every participant of road traffic has the right to consider that other persons shall abide by the set requirements in road traffic (*see Judgement of 11 January 2011 by the Constitutional Court in Case No. 2010-40-03, Para 9.2*).

The contested norm applies to the field of road traffic, where the legislator has the duty to protect the fundamental rights of other persons (traffic participants) – the right to life, health and property. Thus, the purpose of the penalty in this field is to increase the level of road traffic safety. The Constitutional Court has recognised such considerations by the legislator as being legitimate. In view of the fact that a vehicle must be considered as a source of increased dangerousness, it can be assumed that a different regulation of its owner's or driver's liability is defined (*see Judgement of 28 March 2013 by the Constitutional Court in Case No. 2012-15-01, Para 15.4 and Para 18.2*).

11.3. The contested norm should be examined in a broader context, in interconnection with other amendments to LAVC, which were adopted on 16 October 2003 at the Saeima. I.e., considering the number of persons, who had died or had been injured in traffic accidents, as well as the growing number of vehicles registered in the state, significant amendments were introduced to LAVC and the liability for road traffic violations was increased.

For example, a new type of administrative penalty was introduced – a prohibition to obtain a driver's licence for a certain period of time, the jurisdiction of the state institutions supervising road traffic safety and the decision taking procedure was reviewed, a new procedure for enforcing monetary fines imposed for violations in road traffic elaborated (*see Opinion of the Ministry of Transport, Case Materials, p.92*).

The Constitutional Court notes that the contested norm in interconnection with other norms of LAVC fulfils an important preventive function – it accustoms drivers to discipline in general and also deters them for committing repeated violations of RTR. The general and special prevention plays an important role in protecting the safety and health of other persons. The contested norm is one of those legal measures, by which the aim chosen by the legislator is reached.

Thus, the contested norm protects public safety, as well as persons' rights to life, health and property.

12. The Applicant, holding that the contested norm does not have a legitimate aim, only notes that the contested norm prevents the court to individualise the penalty to be imposed for each concrete administrative violation and adopting a ruling that would be appropriate for the specific offence and be just. The Saeima, however, notes that the contested norm ensures uniform practice in imposing administrative penalties in the field of road traffic.

The fact that a legal norm contains mandatory injunctions or generally binding regulation is one of the main features of a legal norm. The State, by using legal norms, abiding by the principles of justice and equality, finds a solution to already existing or potential conflict of interests situations (*see, Judgement of 9 July 1999 by the Constitutional Court in Case No. 04-03(99, Para 3 of the Findings*). If a legal norm fails to reach the aim – reasonable solution to various conflicts of interest, then it is not effective. It does not comply with the principle of a judicial state enshrined in the Satversme. However, the legislator, in looking for balance and a solution to the situation of dispute, has broad discretion (*see Judgement of 5 March 2002 by the Constitutional Court in Case No. 2001-10-01, Para 8 of the Findings*).

It is the task of the legislator to create preconditions for uniform application of legal norms and to safeguard effectively, by using legal norms, the fundamental rights of other persons. The granting of broader discretion to the body applying legal norms opens up the possibility to individualise penalties for a concrete

administrative violation and might facilitate reaching individual justice, however, in some cases, it could, to the same extent, threaten uniformity in applying legal norms and this process could be made more complicated and less effective.

Under the conditions when the number of registered RTR violations in the state reach approximately 400 – 500 thousand annually and the decisions with regard to these violations are adopted by institutions and officials belonging both to the executive power and the judicial power, the legislator may decide in favour of abiding by the principle of procedural economy. The large number of violations committed in road traffic is a sufficiently serious indicator, allowing the legislator to decide on introducing fixed sanctions, thus limiting the discretion of the body applying law, however, ensuring as effective as possible protection of public safety.

13. The Applicant has noted in its application that the contested norm is incompatible with the first sentence of Article 91 of the Satversme, since it denies the possibility to adopt a fair decision in each particular case. However, the Saeima and the summoned persons in their written opinions have provided more extensive substantiation for the compatibility of the contested norm with the principle of equality.

Thus, the Constitutional Court in the case under review will examine also those considerations, which are included in the written reply by the Saeima and the opinions provided by the summoned persons.

13.1. The Ministry of Justice notes that it is possible to achieve the purpose of the penalty by other means, for example, by releasing a person from the administrative liability and issue an oral warning only, without imposing the administrative penalty (*see Opinion of the Ministry of Justice, Case Materials, p.74*).

The Constitutional Court has already recognised that it cannot re-assess the actions by the decision taker, which is based upon estimates on a possible or hypothetical future event. The body adopting the decisions enjoys discretion in making estimates and taking decisions insofar the fundamental principles of the

constitutional order of the state are not violated (*see Judgement of 3 February 2012 by the Constitutional Court in Case No. 2011-11-01, Para 11.2*).

Thus, neither the Constitutional Court, nor the summoned persons can take the legislator's place and reassess the effectiveness of those means, which are intended for reaching the aim of the administrative penal policy.

13.2. To answer the question, whether the contested norm, indeed, causes significant threat to a person's fundamental rights, it must be taken into consideration that the application was submitted to the Constitutional Court by the Administrative District Court. Thus, in order to adjudicate the case under review, the facts of the concrete case of administrative violation are important.

It can be inferred from the application that the person, who submitted the complaint in the particular case of administrative violation, had been made administratively liable for RTR violation in accordance with Section 149³¹ (8) of LAVC, the sanction of which envisages a monetary fine in fixed amount – forty lats. The Applicant holds that there are circumstances in the case, due to which the violation committed by the person, who has submitted the complaint, could be recognised as being petty. The sanction of Section 149³¹ (8) of LAVC envisages a monetary fine in a fixed amount, which exceeds the amount defined in the contested norm, therefore there is no need to assess the mitigating circumstances envisaged in Section 32(2) of LAVC.

The Constitutional Court has already recognised that the benefit that the society gains from the possibility of accustoming to discipline drives of vehicles, manifests itself as the protection of persons' life and health, as well as ensuring of public order (*see Judgement of 28 March 2013 by the Constitutional Court in Case No. 2012-15-01, Para 18.3.3.1*). It must be admitted in the case under review: the legislator had the right to establish that the set of measures aimed at the protection of persons' life and health should be given precedence both compared to the obligation imposed upon a private person to pay a monetary fine for an administrative violation he has committed, and to restrictions to the discretion of the body applying legal

norms with regard to recognising the committed administrative violation as being petty.

13.3. The Constitutional Court has repeatedly recognised that a legal norm cannot be understood outside the practice of its application and the legal system, in which it functions (*see, for example, Judgement of 23 November 2006 by the Constitutional Court in Case No. 2006-03-0106, Para 24.5 and Judgement of 28 June 2013 in Case No. 2012-26-03, Para 12.1*).

It must be established, how the institutions, which made the person, who submitted the complaint, administratively liable for RTR violation in accordance with Section 149³¹ (8) of LAVC, usually apply Section 21(2).

For example, the information provided by the Riga City Council shows that in the period from 1 January 2011 to 31 July 2013 the Riga Municipal Police has identified 153 038 administrative violations in road traffic, for which in 128 734 cases a monetary fine not exceeding thirty lats was imposed. During the aforementioned period the Riga Municipal Police applied Section 21(2) in 2191 cases (*see information provided by the Riga Municipal Police, Case Materials, pp. 69 and 70*). Thus, in approximately 85 per cent of cases, when a person had committed an administrative violation in road traffic, the body applying legal norm had had discretion in this field, in deciding on releasing a person from administrative violation.

Thus, the contested norm could not be applied in a comparatively small share of all cases, when the Riga Municipal Police imposed administrative penalties in the field of road traffic.

13.4. Section 149³¹ (8) of LAVC, which was applied in the particular case of administrative violation, protects persons with special needs. I.e., this norm envisages monetary fine to a vehicle driver, who has parked his or her car in a parking place designated for persons with disability, unless he or she has the card allowing use of such parking places.

The Constitutional Court has recognised that the State is obliged to meet the commitments it has assumed pursuant to international agreements that have been

ratified by the Saeima (*see Judgement of 7 July 2004 by the Constitutional Court in Case No. 2004-01-06, Para 6 of the Findings*).

Pursuant to Article 9 of 13 December 2006 UN Convention on the Rights of Persons with Disabilities (hereinafter – the Convention) states must ensure to persons with special needs the right of access to the physical environment, so that they would be able to live independently and full-fledgedly participate in activities taking place in all fields of life. The aforementioned article obliges the member states to ensure to persons with special needs access to public infrastructure, transport or public services.

Moreover, in applying national regulatory enactments, the legal acts of the European Union must also be taken into consideration (*see, for example, Judgement of 17 January 2008 by the Constitutional Court in Case No. 2007-11-03, Para 24.2*), which aim to ensure to persons with special needs as beneficial conditions as possible (*see. http://ec.europa.eu/justice/discrimination/disabilities/index_en.htm, accessed on 29 October 2013*). *Inter alia*, it has been recognised that persons with special needs should be ensured the same access to public infrastructure as other persons. It might be difficult for persons with special needs to access publicly important sites with their personal transport. Therefore accessibility of parking places designated for these persons is very important [*see, for example Council Recommendation of 4 June 1998 on parking card for people with disabilities and the European Commission Disability Strategy (2010 – 2020), COM (2010) 636, Para 2.1 of the final wording*].

The Ombudsman has also emphasized that those vehicle drivers, who restrict the right of persons with special needs to access infrastructure, should be appropriately punished. Releasing such drivers from administrative liability would mean not only failure to reach the purpose of the administrative penalty, but also that the State would fail to meet its obligations that are defined by the Convention (*see, the Opinion of the Ombudsman, Case Materials, p. 83*).

The access to parking places for persons with special needs is one the guarantees that the rights of such persons to access to infrastructure will be

respected. The State must ensure that persons with special needs can move around freely, park their vehicles in specially designated parking places and, thus, exercise their rights.

Thus, the contested norm in interconnection with Section 149³¹ (8) of LAVC provides for the rights of such persons, who need special legal protection.

14. The Constitutional Court notes that the contested norm in general is aimed at the protection of other persons' fundamental rights. In the particular case of administrative violation Section 21(2) and Section 149³¹ (8) of LAVC protect the rights of persons with special needs. Section 21(2) does not grant subjective right to a person, and the legislator, in adopting this norm, has acted in compliance with the Satversme.

Thus, the legislator, in restricting the discretion of a body applying the law to recognise some administrative violations committed in road traffic as being petty, has not violated the principle of equality included in the first sentence of Article 91 of the Satversme.

The Substantive Part

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

held:

to recognise the words of Section 21(2) of the Latvian Administrative Violations Code “if the fine intended for it does not exceed thirty lats” as being

compatible with the first sentence of Article 91 of the Satversme of the Republic of Latvia.

The Judgement is final and not subject to appeal.

The Judgement comes into force as of the day of its publication.

The Presiding Judge

G. Kūtris