THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

JUDGEMENT

ON BEHALF OF THE REPUBLIC OF LATVIA

in Case No. 2012-22-0103

27 June 2013, Riga

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

having regard to the application submitted by Daina Priedniece, Andžela Klaģe, Ilze Mālmeistere, Aelita Triba, Gaida Rutkovska, Sandra Rundele, Sandra Paegle, Valija Baltā, Iveta Kruka, Artis Cerbulis, Zane Filatova, Zane Trasūne, Ilona Kalniņa, Pārsla Bērziņa, Ilze Zēberga and Katrīna Baltalksne (application No. 170/2012), as well as application by Dana Galzone and Lilija Solovjova (application No. 42/2013) (hereinafter all persons jointly – the Applicants),

with the participation of the Applicants' authorised representatives – sworn attorney Inese Nikuļceva and sworn bailiff Iveta Kruka, as well as

the authorised representative of the institution, which adopted the contested act, – the Saeima of the Republic of Latvia, Jānis Pleps, legal advisor of the Legal Bureau of the Saeima, and

the authorised representative of the institution, which adopted the contested act – the Cabinet of Ministers of the Republic of Latvia, Inita Ilgaža, Director of the Court System Policy Department,

and the secretary of the court hearing Elīna Kursiša,

on the basis of Article 85 of the Satversme of the Republic of Latvia (hereinafter – the Satversme) and Para 1 and Para 3 of Section 16 and Para 11 of Section 17(1) of the Constitutional Court Law, on 21 and 28 May 2013, in Riga, examined in open court hearing the case

"On the compliance of the third part of Section 567 of the Civil Procedure Law, insofar as it does not envisage covering the remuneration for the duties of office performed by a sworn bailiff from the state budget resources, when the enforcer of the debt is exempt from paying the costs of enforcing the judgement, with Article 107 of the Satversme of the Republic of Latvia and the compliance of Paragraph 8, 9, 10, 11 and 12 of the Cabinet of Ministers Regulation of 30 August 2011 No. 670 "Regulation on the amount of expenditure necessary for performing enforcement activities and the procedure for paying it" with Article 64 and Article 105 of the Satversme of the Republic of Latvia."

The Facts

1. Section 567(3) of the Civil Procedure Law (hereinafter also – CPL) provides:

"In those cases, when the enforcer of the debt is exempt from paying the enforcement costs, the expenditure necessary for performing the enforcement actions shall be covered from the state budget resources."

Whereas Para 8-12 of the Cabinet of Ministers Regulation of 30 August 2011 "Regulation on the amount and the procedure of paying the expenditure necessary for performing enforcement actions" (hereinafter – Regulation No. 670) provide:

"8. In enforcement cases, when the enforcer in accordance with law has been exempt from paying the costs of enforcing the judgement, the Ministry of Justice shall cover the expenditure necessary for performing the enforcement actions from the funding of the Ministry allocated for this purpose, paying once per month to a sworn bailiff reimbursement in accordance with the set procedure and in the set amount for each district of the sworn bailiff where he or she permanently executes duties of office.

9. The amount of reimbursement to be paid to a sworn bailiff shall be established in accordance with the amount of work performed by the bailiff by applying the following formula:

KA = AB x GK, where

KA – amount of reimbursement;

AB – remuneration base;

GK – coefficient of the respective group of workload.

10. The remuneration base for the reimbursement to be paid to the district of a sworn bailiff shall be calculated by dividing the state budget resources available in the budget of the Ministry of Justice for this purpose by the number of districts of sworn bailiffs.

11. The coefficient of a particular group of workload applied in order to identify the reimbursement to be paid to each sworn bailiff shall be established in the following procedure:

11.1. The Council of Latvian Sworn Bailiffs, in accordance the statistical reports on the enforcement of rulings in the previous years submitted by sworn bailiffs in accordance with the procedure established in regulatory enactments, shall determine the workload performed by each sworn bailiff. The workload is determined by taking into account the number of enforcement documents received by each district in the reporting period regarding enforcement of alimony, confiscation of property, enforcing monetary fines in criminal cases or enforcement of a judge’s decision or a court ruling in cases of administrative violations;

11.2. by 1 March every year the Council of Latvian Sworn Bailiffs shall prepare and submit to the Ministry of Justice a list of the districts of sworn bailiffs, arranging them in diminishing order, taking into account the sum of cases referred to in Sub-paragraph 11.1 of this Regulation proportionally to the total number of enforcement documents submitted to the respective district in the reporting period. If several districts have identical proportion of enforcement cases referred above in relations to the total number of all enforcement cases, then the district which at the beginning of the reporting period had a greater back-log of enforcement cases, shall be included in the list with a smaller sequential number.

11.3. The Ministry of Justice, in calculating the amount of reimbursement to be paid to each sworn bailiff, shall divide the districts included in the list referred to in Sub-paragraph 11.2 of this Regulation, in three groups, applying to each of them a specific coefficient from 0.8 to 1.2 in accordance with Annex to this Regulation.

12. Compensation for January, February and March shall be calculated by taking into consideration the coefficient applied to each district of a sworn bailiff in the previous year."

2. The Applicants, who at the court hearing were represented by sworn attorney Inese Nikuļceva and sworn bailiff Iveta Kruka, request the Constitutional Court to examine the compatibility of Section 576(3) of the CPL, insofar it does not envisage covering the remuneration for performing duties of office of a sworn bailiff (hereinafter
– bailiff) from the State budget resources in those cases when the enforcer has been exempt from paying the costs of enforcing of a judgement, with Article 107 of the Satversme and the compliance of Para 8-12 of Regulation No. 670 with Article 64 and Article 105 of the Satversme.

Bailiffs are persons belonging to the judicial system and in performing their duties of office are independent and subject only to law. Bailiffs enforce the rulings made by courts and other institutions and are said to be equal to state officials, however, as representatives of a free legal profession, are financially independent in their professional activities. Bailiffs have no other sources of income apart from remuneration for execution of duties of office, which must cover the office maintenance costs, remunerations of employees, professional skills improvement training, risk insurance regarding their activities, pay taxes, as well as make all other necessary payments. Whereas the costs necessary for performing the duties of office should actually cover the expenditure linked to the enforcement of a judgement.

In the first half of 2012 in the Applicants' districts on average 74 per cent of enforcers were exempt from paying for enforcement; however, in some districts – even 90 per cent of enforcers (10^{th} district of bailiff Ilze Mālmeistere), 93 per cent of enforcers (95^{th} district of Artis Cerbulis), 97 per cent of enforcers (55^{th} district of Sandra Rundele) and 99 per cent of enforcers (76^{th} district of Sandra Paegle).

2.1. CPL Section 567 (3) in the wording of 31 October 2002 envisaged that in cases, where the enforcer has been exempt from covering the costs of enforcing the judgement, the costs linked to the enforcement of a court judgement must be covered from the State budget. Allegedly, the costs linked with the enforcement of a judgement by the court comprise both the remuneration to a bailiff for execution of duties of office, as well as the expenditure necessary for performing the actions of enforcement. However, on 19 June 2003 this provision was expressed in a new wording, envisaging that only the costs linked to the performance of actions of enforcement are to be covered from the State budget resources. Hence, the remuneration to bailiffs for performing their duties of office from the State budget resources is not envisaged at all, even though the enforcer, in cases defined in CPL Section 567(2), is exempt from all costs to cover the enforcement of a judgement, also the remuneration to a bailiff for performing the duties of office.

This situation is said to be incompatible with the fundamental right included in Article 107 of the Satversme "the right to receive, for work done, commensurate remuneration", which manifests itself as the remuneration to a bailiff for performing the duties of office. Not only employees in the meaning of the Labour Law should be recognised as the subjects of the right to receive remuneration for work, included in Article 107 of the Satversme, but also other natural persons, who, in exercising the right to work, defined in Article 106 of the Satversme, have freely chosen their vocation and place of work in accordance with their abilities and qualification, *inter alia*, also bailiffs.

In order to exercise the right to receive commensurate remuneration for the work done, the remuneration to bailiffs for performing the duties of office should not only ensure adequate living conditions, but also should be sufficiently competitive, appropriate for the qualification, responsibility and independence requirements set for this vocation. However, CPL Section 567(3), allegedly, demands enforcement of court rulings without receiving any remuneration for it. The obligation to perform work without payment *per se* is said to be a violation of the requirement for fair remuneration included in Article 107 of the Satversme and Article 7 of the International Covenant on Economic, Social and Cultural Rights. Even if the need to save the State budget resources were recognised as being the legitimate aim of the

restriction to the fundamental right, this restriction is deemed to be disproportionate. CPL Section 567(3) does not envisage any remuneration to bailiffs for performing the duties of office, and, thus, it deprives of the very essence of the right to "receive, for work done, commensurate remuneration".

2.2. Para 8-12 of Regulation No. 670 envisage that in those cases, where the enforcer is exempt from covering the costs of enforcing the judgement, bailiffs are paid reimbursement, the amount of which depends upon their workload and the amount of resources envisaged for this purpose in the State budget. The reimbursement to be paid to bailiffs, allegedly, is calculated not on the basis of the actual expenditure necessary for performing actions of enforcement, but by allocating the State budget resources available for this purpose in the budget of the Ministry of Justice. Depending upon the workload, all districts of bailiffs are divided into three groups, establishing a definite amount of monthly reimbursement to them. Whereas the workload is established by taking into account the number of enforcement documents received by each bailiff's district during the reporting period in such cases, where the enforcer has been exempt from paying the costs of enforcing the judgement.

In accordance with Applicants' calculation, the minimum amount of expenditure necessary for performing actions of enforcement is 7.81 LVL. However, it is alleged that these costs are always higher. In accordance with the calculation made by the Ministry of Justice in 2007, the expenditure of enforcing a judgement, if minimum actions of enforcement have been performed, in one case of enforcement for the State constituted 29.50 LVL. Whereas the compensation granted in accordance with Regulation No. 670, re-calculated per one case, is approximately one lat and on average can ensure funding only for purchasing a postal stamp for sending a registered letter. Thus, all other expenditure necessary for performing actions of enforcement are covered by bailiffs themselves from their own means. Thus, the Applicants' fundamental right, enshrined in Article 105 of the Satversme, is violated.

In assessing, whether the restriction upon the Applicants' right to own property has been established by law, it should be taken into consideration that abiding by the procedure for adopting a legal norm is a pre-requisite for the validity of the norm.

Thus, the restriction of fundamental right included in Article 105 of the Satversme should be examined in interconnection with the compliance of Para 8-12 of Regulation No. 670 with Article 64 of the Satversme and the delegation included in the Civil Procedure Law. Regulation No. 670 was adopted on the basis of CPL Section 567(4) and CPL Section 620^{10} (2). CPL Section 567(4) comprises authorisation to the Cabinet of Ministers to establish the amount of expenditure necessary for performing actions of enforcement and the payment procedure.

The Applicants hold that neither CPL Section 567(4), nor Section 620^{10} (2) envisage the legislator's authorisation to the Cabinet of Ministers to differentiate the amount of expenditure necessary for performing enforcement actions depending upon whether the enforcer covers the costs of enforcing the judgement or is exempt from the payment. Moreover – allegedly, the legislator did not authorise the Cabinet of Ministers to envisage that in cases, where the enforcer was exempt from covering the costs of enforcing the judgement, bailiffs would be paid reimbursement depending upon the availability of the State budget resources. It is alleged that, therefore, the Cabinet of Ministers has acted *ultra vires*, violating Article 64 of the Satversme, and the restriction to the Applicant's right to own property has not been established by law.

The aim set for the restriction to the fundamental rights could be achieved by measures less restrictive upon the Applicants' fundamental rights, for example, by ensuring to bailiffs access to State and local government registers free of charge. Allegedly, the benefit that society gains in the particular case does not counterbalance the damage inflicted to the Applicants.

2.3. The Applicants do not uphold the opinions provided by the Saeima and the Cabinet of Ministers regarding termination of legal proceedings.

Allegedly, the opinion expressed by the Saeima that the compatibility of CPL Section 567(3) with the norms of the Satversme should be examined in interconnection with Article 83 and Article 92 of the Satversme, not Article 107, is unfounded. Even though bailiffs are persons that belong to the judicial system, moreover, are independent in their actions and subject only to law, yet they are not judges and do not administer justice, therefore Article 83 of the Satversme is not applicable to bailiffs. Whereas the Panel of the Constitutional Court has refused to initiate a case in the part

of the claim regarding the compatibility of the contested norms with Article 92 of the Satversme. Hence, Article 83 and Article 92 of the Satversme do not cover all issues of bailiffs' remuneration. Even if these issues were to be examined in the context of Article 83 and Article 92 of the Satversme, the Applicants cannot be deprived of the fundamental rights defined in Article 107 of the Satversme.

Likewise, the Applicants do not uphold the opinion expressed by the Saeima and the Cabinet of Ministers that the term for submitting an application had not been met. Moreover, Applications No. 42/2013 was submitted to the Constitutional Court on 26 February 2012, but the applicants Dana Galzone and Lilija Solovjova had been appointed to the office of a bailiff on 1 November 2012. Thus, the contested norms had been applicable to them less than six months.

3. The institution, which submitted the contested act, – **the Saeima of the Republic of Latvia**, which was represented at the court hearing by Jānis Pleps, legal advisor to the Legal Bureau of the Saeima, does not uphold the Applicants' opinion and holds that CPL Section 567(3) complies with Article 107 of the Satversme.

3.1. The Constitutional Court recognises that the right to receive commensurate remuneration for the work done, guaranteed in Article 107 of the Satversme, applies also to bailiffs.

The Saeima holds that commensurate remuneration for all work done by a bailiff is the totality of revenue gained from a bailiff's practice, not the remuneration for each separate official activity. Bailiffs have chosen a free legal vocation, and this, allegedly, means that they do not have guaranteed certain amount of remuneration for work done they would receive irrespectively of their professional activities. The professional activity of bailiffs is said to be linked to a certain risk, since the amount of remuneration varies, depending upon the number of enforcement cases and the successes of enforcement.

CPL Section 567(3), allegedly, was adopted with the aim to ensure the rights of other persons to effective enforcement of a judgement, which falls within the scope of the first sentence in Article 92 of the Satversme. I.e., in cases, where the enforcer is

exempt from covering the costs of enforcing a judgement, the contested norm helps to ensure funding for performing enforcement in the respective cases.

It is alleged that the Applicants' statements that in these cases they are not paid remuneration for official activities from the State budget resources and that they are made to do unremunerated work is unfounded. In accordance with CPL Section 568(1) the costs of the enforcement of a judgement are to be covered by the debtor, i.e., the debtor has the obligation to reimburse the costs of enforcing a judgement. Thus, bailiffs can, in any case, collect from the debtor the costs of enforcing a judgement, as well as remuneration for the office of a bailiff. Thus, the State takes it upon itself to provide for the expenditure necessary for performing the enforcement activities, but remuneration for the office of a bailiff is not paid until the judgement has been enforced.

3.2. The Saeima holds that the Application No.170/2012 has not been submitted within the term established by the second sentence in Section 19^2(4) of the Constitutional Court Law. According to the information provided by the Ministry of Justice, all applicants of Application No.170/2012 have been appointed to the office of a bailiff and started to perform their duties of office more than six months prior to submitting the Application to the Constitutional Court. Thus, they have not submitted the Application within the term defined by the Constitutional Court Law.

Likewise, the Saeima notes that CPL Section 567 (3) pertains to Article 83 and Article 92 of the Satversme, instead of Article 107 of the Satversme. Section 3 and Section 4 of Law on Bailiffs provide that bailiffs are persons belonging the court system and in their official activities are independent and subject only to law. Allegedly, in the context of the importance of execution of court rulings in ensuring a person's right to a fair court, the issues of bailiffs' remuneration for work are covered by Section 83 and Section 92 of the Satversme. Therefore the Saeima holds that a violation of fundamental rights set out in Article 107 of the Satversme cannot be established.

4. The institution, which adopted the contested act, – **the Cabinet of Ministers of the Republic of Latvia**, which at the court hearing was represented by Inita Ilgaža, Director of the Judicial Policy Department of the Ministry of Justice, does not uphold the Applicants' opinion and holds that Para 8-12 of Regulation No. 670 comply with Article 64 and Article 105 of the Satversme.

4.1. The Cabinet of Ministers, on the basis of considerations similar to the ones noted by the Saeima, expresses the opinion that the Application No. 170/2012 was not submitted within the term defined by the second sentence in Section 19^2 (4) of Constitutional Court Law. Regulation No.670 allegedly entered into force more than six months before the Application was submitted and has been infringing upon the rights of all Applicants for more than six months already. The Cabinet of Ministers finds it incomprehensible why issues that are important for the bailiff's profession are not being dealt with the mediation of the Council for the Judiciary, as dealing with all issues linked to the functioning of court system falls within its competence.

4.2. Regulation No. 670 was adopted on the basis of delegation defined in CPL Section 567(4), pursuant to which the Cabinet of Ministers defines the amount of expenditure necessary for performing enforcement activities and the procedure of payment.

Before Regulation No. 670 entered into force, the amount of expenditure necessary for performing enforcement activities and the procedure of payment was regulated by Cabinet Regulation of 1 June 2004 No. 510 "Regulation on the amount of expenditure necessary for performing enforcement activities and the procedure of paying it." However, the procedure for reimbursing the expenditure necessary for performing enforcement activities established in it had been very bureaucratic and unwieldy. Moreover, under conditions of very limited State budget recourses, it could not ensure reimbursing expenditure from the State budget resources in the actual amount in all enforcement cases belonging to concrete categories.

To solve the situation, the Cabinet had adopted Regulation No. 670, pursuant to which all bailiffs for all districts, where they permanently perform their official duties, receive funding in the form of reimbursement, and the amount of this reimbursement is

determined proportionally to the number of new enforcement cases, where the enforces are exempt from covering the costs of enforcing the judgement, that the bailiff has received for enforcement during the reporting period. Thus, allocation of financing to all bailiffs is ensured, simultaneously ensuring larger funding from the State budget resources to those bailiffs, who have to enforce more cases, where the enforcer is exempt from paying the costs of enforcing the judgement.

The Cabinet holds that Para 8-12 of Regulation No. 670 do not infringe upon the Applicants' fundamental rights embedded in Article 105 of the Satversme. Since 2003 bailiffs perform their activities in accordance with the principles of a free legal profession. Within the framework of reforms in the system of bailiffs' remuneration for work, the burden of covering the costs linked to ensuring the enforcement process has been transferred to the parties involved in the proceedings. In accordance with the legal norms that regulate the enforcement of a judgement, all costs of enforcing the judgement must be covered by the debtor. Hence, bailiffs could collect all expenditure from the debtor, and the contested norms do not cause an infringement to fundamental rights enshrined in Article 105 of the Satversme.

Allegedly, Para 8-12 of Regulation No. 8–12 do not trespass the legislator's delegation and comply with Article 64 of the Satversme. In accordance with the legislator's delegation the Cabinet of Ministers defines the amount and the procedure for paying for the expenditure necessary for performing enforcement activities. It specifies neither the limits of expenditure to be covered, nor the criteria for defining it, nor any kind of restrictions or basic principles for establishing the mechanism for covering expenses. These issues have been left to be solved by regulatory enactments adopted by the Government. This allows concluding that by changing the procedure for disbursing State budget resources, i.e., moving from the system of individual advance payment requests and paying of bills to a system of reimbursement, Para 8-12 of Regulation No. 670 do not trespass the scope of delegation defined in CPL Section 567(4).

5. The summoned person – **the Ministry of Justice** – notes that in accordance with an order by the Cabinet of Ministers it has prepared the written reply by the

Cabinet of Ministers, hence, it fully upholds the arguments expressed in it, as well as expresses additional considerations.

The Ministry of Justice holds that the contested norms do not restrict the bailiffs' right to receive remuneration for work. Likewise, the right to own property, established in Article 105 of the Satversme, is not violated either, since the expenses necessary for performing enforcement activities in cases, where the enforcer is exempt from covering the costs of executing the judgement, are paid in the form of reimbursement.

The State has fulfilled its obligation to create the structural framework for bailiffs' work, and their right to material provision is exercised through it. The model of funding bailiffs' activities has been developed to ensure enforcement of judgements also in those cases, where the sums to be collected are small or the possibility of successful enforcement is small. Moreover, if enforcement is successful in cases, where the enforcer is exempt from covering the costs linked to the enforcement of judgement, all expenditure can be collected from the debtor.

Allegedly, there are no grounds to consider that Para 8-12 of Regulation 670 trespasses the scope of delegation included in CPL Section 567(4). The legislator has made a choice by defining the cases, where the enforcer is to be exempt from covering the expenses linked to enforcement of judgement. Whereas the Cabinet of Ministers has been delegated the right to establish the procedure for covering the expenditure linked to the enforcement of judgement form the State budget. Thus, it may be considered that the right to establish such a procedure comprises also the establishment of a system, where bailiffs receive compensation, not full reimbursement of expenditure. Hence, it is alleged that Para 8-12 of Regulation 670 comply with Article 64 and Article 105 of the Satversme.

The representative of the Ministry of Justice – Evija Timpare, legal advisor of the Judicial Policy Department, admitted that the expenditure linked to enforcement of judgement is not covered in all cases; however, the model that Regulation No. 670 comprises had been recognises as the most appropriate and fair system of payment, taking into consideration the State budget resources available to the Ministry of Justice.

6. The summoned person – **the Council for the Judiciary** – notes that institutionally bailiffs are self-employed persons; however, functionally should be considered as being state officials belonging to the court system. Bailiffs' status of self-employed persons should be linked only with the model of financing established by the State.

The performance of each function that the bailiffs have been entrusted with incurs expenditure, which can be objectively assessed and clear and stable funding to cover it should be envisaged from the State budget or payments made by private persons. The legislator's will to envisage financial resources for performing particular official activities is said to clearly follow from the legal regulation.

In the particular case bailiffs' right to receive remuneration for work is restricted in cases, where the enforcer is exempt from covering expenditure. Bailiffs have to compensate for the unearned remuneration by revenue gained in other enforcement cases. Even though such "cross-subsidising" could be an appropriate measure for ensuring the protection of the rights of private persons, in particular, persons in need of social support, however, it should be proportional to the restrictions upon bailiffs' rights and the additional burden imposed upon paying enforcers. In view of the large share of cases, where the enforcer is exempt from covering the costs of enforcing the judgement, it can be concluded that the interests of all involved persons are not ensured in a proportional way. The contested norms are said to threaten the stability of bailiffs' practice and possibilities of effective enforcement of court judgements.

7. The summoned person – **the Ombudsman of the Republic Latvia**, represented at the court hearing by Monta Tīģere, legal advisor at the Department of Social, Economic and Cultural Rights of the Ombudsman of the Republic Latvia, holds that performance of paid work is the most essential criteria for determining, whether a person has been endowed with the rights enshrined in Section 107 of the Satversme. However, inclusion of some self-employed person into the range of subjects of Section 107 of the Satversme cannot be excluded, in particular, if these persons, irrespectively of their legal status and independence in work, perform certain functions in the interests of the State, if their activities are regulated by law, and if they

in their activities can be equalled to state officials. Thus, fundamental rights included in Article 107 of the Satversme are applicable also to bailiffs.

Even though in cases, where the enforcer is exempt from covering the costs of enforcing the judgement, the respective expenditure can be recovered from the debtor; however, in very many cases like these recovery is impossible. Moreover, in some cases the legal regulation does not envisage such a possibility at all, and bailiffs have to perform the work without remuneration. Fair remuneration for the official activities performed by bailiffs could be ensured not only by envisaging remuneration for every official activity, but also by alternative mechanisms (principle of cross-subsidising). However, these measures should be effective and equally accessible to all bailiffs, irrespectively of the location of their practice. No legitimate aim can be established for the restriction to fundamental rights established in CPL Section 567, therefore this norm should be recognised as being incompatible with Article 107 of the Satversme.

The aim of the regulation included in Para 8-12 of Regulation No. 670, allegedly, is not to reimburse to bailiffs the expenditure necessary for performing enforcement actions, but only to reimburse it partially. This causes situations, where bailiffs have to cover the rest of expenditure linked to enforcement of court judgements from their own revenue. Thus, the Applicants' fundamental right included in Article 105 of the Satversme is violated.

Para 8-12 of Regulation 670 have been adopted with the aim of saving the State budget resources and ensuring a fairer distribution of resources among all bailiffs. However, in view of the fact that Regulation No. 670 was adopted on 30 August 2011, i.e., at the time when the country experienced economic growth, it is questionable, whether these considerations could be recognised as a legitimate aim of the restriction to fundamental rights. Moreover, it would have been possible to reach this aim by using other, more lenient measures, *inter alia*, ensuring that bailiffs are included in the circle of those institutions and officials, to whom access to public registers of national importance are free of charge for performing the functions delegated to them by the State. Thus, Para 8-12 of Regulation 670 should be recognised as being incompatible with Article 105 of the Satversme.

The Ombudsman expresses the opinion that the right of the Cabinet of Ministers to establish the procedure for paying for the expenditure linked to the enforcement of

judgement should be primarily assessed as the right to establish the procedure and cannot comprise substantive norms that restrict fundamental rights. Para 8-12 of Regulation No. 670 have been adopted on the basis of delegation included in CPL Section 567(4) and CPL Section 620^{10} (2). Assessment of the content of the act adopted by the Cabinet leads to the conclusion that it comprises not only procedural regulation, but also norms of substantive law, which decrease the amount of bailiffs' expenditure to be reimbursed. Thus, Regulation No. 670 is incompatible with the delegation included in the Civil Procedure Law and Article 64 of the Satversme.

As regards abiding by the term of six months envisaged in Section 19^2 (4) of the Civil Procedure Law, the Ombudsman expresses the opinion that the violation of the Applicants' fundamental rights is on-going, therefore the term of six months should be counted as of the day of receiving the last, not the first enforcement case, where the enforcer is exempt from covering the costs of enforcing judgement.

8. The summoned person – **the Council of Latvian Sworn Bailiffs** (hereinafter – the Council of Bailiffs), represented at the court hearing by Andris Spore, the chairman of the Council of Bailiffs, – notes that the State, in establish the profession of a bailiff as a free legal profession, had to envisage a mechanism for ensuring not only in law, but also in practice, the funding necessary for the existence of this profession and for performing the functions delegated to it by the State. However, the contested norms do not envisage remuneration to bailiffs for the work performed and full reimbursement for the expenditure necessary for performing enforcement activities in those cases, where the enforcer is exempt from paying the costs of enforcing the judgement. The Council of Bailiffs holds that in those cases, where the enforcer is exempt from covering the costs of enforcing the judgement, the State has transferred its duty to fund the enforcement of the judgement to the bailiffs, creating a collision with the fundamental rights guaranteed in the Satversme. I.e., in such cases, where pursuant to CPL Section 567(3) remuneration for performing duties of office is not envisaged to one third of bailiffs, their right to receive commensurate remuneration for the work performed, established in Article 107 of the Satversme, is violated. Whereas the fact that bailiffs must invest their personal resources to cover the actual enforcement of a judgement in the part, where it is not covered by the reimbursement

disbursed by the State, causes an infringement upon the right to own property guaranteed in Article 105 of the Satversme.

It is alleged that the problem is not being solved by the right established by Civil Procedure Law to recover the costs of enforcing the judgement from the debtor, since in some cases the legal regulation does not provide for this right at all, moreover, the right to recover the costs linked to the enforcement of judgement does not mean that this right can be exercised in practice. The State has set a high threshold with regard to property, which cannot be subject to recovery, thus, the effectiveness of bailiff's work is said to depend not only upon his knowledge, diligence and other personal features, but mainly upon circumstances that he cannot influence, for example, the material status of the debtor, referred to above, and the legal regulation on enforcement activities.

The Council of Bailiffs notes that various sources of cross-subsidies had been available (interests payments for depositing monetary resources in the accounts with credit institutions, larger rates of remuneration for performing duties of office), however, upon the initiative of the Ministry of Justice, these had been abolished. Moreover, the system of cross-subsidies is said to be unfair to those persons, to whom it imposes the obligation to pay not only for the services they receive, but also for the services provided to other persons, who are exempt from paying. Hence, the Council of Bailiff holds that the regulation, which imposes upon bailiffs the obligation to perform enforcement of court rulings without remuneration for it and at the same time does not ensure remunerations for official activities by alternative mechanisms, can be neither sustainable, nor fair.

CPL Section 567(3) does not envisage that the expenditure necessary for performing enforcement activities should be covered from the State budget resources only partially or that only select types of expenditure should be covered. During the court hearing the chairman of the Council of Bailiffs A. Spore noted that in some places, where bailiffs practise, in particular, bailiffs' districts outside Riga, financial situations are very different. A situation like this could threaten the quality of enforcing court rulings.

9. The summoned person – **Linards Muciņš**, sworn attorney-at-law, former chairman of the Legal Affairs Committee of the Saeima of the Republic of Latvia, – expressed the opinion that bailiffs, being an independent executive body belonging to the judicial power and being state officials, at the same time act as representative of a free legal profession. Therefore bailiffs have the right to receive commensurate remuneration for the work done, in accordance with the provisions of Article 107 of the Satversme. If the State has decided to decrease rates for poor inhabitants or has introduced measures for the protection of a vulnerable social group, then this decrease should be appropriately compensated for from the State budget.

In envisaging remuneration for performing duties of office to bailiffs in the form of a rate, the State should abide by certain criteria. Firstly, these rates should reflect the nature of the legal assistance provided, actual expenditure, time consumption and possible risks. Secondly, the rates should be set in compliance with social justice, i.e., when the remuneration for small sums to recover or in socially sensitive cases is decreased, this decrease should be compensated for by increasing reimbursement for the recovery of large sums. Thirdly, the State may entrust to bailiffs the obligation to provide legal aid to groups of persons envisaged by law, exempting these from covering the expenditure or reducing the rates. However, the State is obliged to cover the financial deficit caused by all these decreases, not only the direct expenditure, otherwise the rates established by the State would not comply with the requirements referred to in the first two points.

The negligible sums of monthly reimbursement show that Article 107 of the Satversme is not abided by with regard to bailiffs, since a representative of a free legal profession should receive not only commensurate remuneration for the work done, but also compensations for all expenditure necessary for maintaining an office and performing enforcement. Thus, in fact, the enforcement of court judgements is being ensured at the expense of bailiffs' property. In view of the amount of enforcement cases referred to in the Application and the negligible sums paid as reimbursement, the procedure, which is currently in force, infringes the right to own property guaranteed in Article 105 of the Satversme. There are no grounds to consider that the income from some enforcement cases should be used to subsidise the enforcement of judgement in other cases.

The Findings

10. It follows from the case materials that the participants of the case hold different opinions on the possibility to continue legal proceedings in this case. The Saeima and the Cabinet of Ministers are of the opinion that the issues to be examined in the case cannot be examined in the procedure of a constitutional complaint; moreover, the Applicants, in turning to the Constitutional Court, have not abided by the term for submitting an application. Whereas the Applicants hold that the right of the Council for the Judiciary to deal with issues linked to court system *per se* may not exclude the Applicants' right to turn to the Constitutional Court to protect their fundamental rights, and the procedural terms cannot be calculated from the date as of which the contested norm entered into force.

It has been recognised in the case law of the Constitutional Court that issues of procedural nature regarding termination of legal proceedings are usually examined before examining the constitutionality of the contested norm on its merits (*see, for example, Judgement of 19 October 2011 by the Constitutional Court in Case No. 2010-71-01, Para 11).* Thus, the Constitutional Court will start by examining the arguments provided by the parties to the case regarding the necessity and the possibility to continue examining the case in the proceedings before the Constitutional Court.

11. The Saeima notes that the enforcement of court rulings as an important element of a person's right to a fair court in interconnection with the issues of bailiffs' remuneration should be analysed in connection with Article 83 and Article 92 of the Satversme. Allegedly, the compatibility of CPL Section 567 with the Satversme should be examined in this context. Therefore there is no need to examine the contested norm in connection with the infringement of the fundamental right included in Article 107 of the Satversme. Moreover, the issue of the compatibility of the system of bailiffs' remuneration with Article 83 and Article 92 of the Satversme should be examined as a dispute between branches of State power, and as such could be examined only on the basis of an application submitted by the Council for the

Judiciary, not in the procedure of constitutional complaint (*see written reply by the Saeima, Case Materials, p. 127*).

11.1 Article 83 of the Satversme provides: "Judges shall be independent and subject only to law."

The Saeima, referring to the Constitutional Court Case No. 2011-10-01, notes that the Council for the Judiciary represents not only the interests of courts, but also the interests of all persons belonging to the system of courts.

The Saeima notes, with good reason, that in the aforementioned case the Constitutional Court examined in the context of Article 83 of the Satversme not only the judges' system of remunerations, but also that of prosecutors. However, it is noted in the decision on terminating legal proceedings that this was founded only upon the legislator's own choice to link the prosecutors' salaries to judges' salaries. In the aforementioned case, the contested norms were examined on the basis of guarantees established for judges, and these were applied to prosecutors in compliance with the link between judges' and prosecutors' remuneration established by the legislator (*see Decision of 28 March 2012 by the Constitutional Court on terminating legal proceedings in Case No. 2011-10-01, Para 23).*

Article 83 of the Satversme *expressis verbis* applies only to judges, not to the whole judicial power. Even though bailiffs are persons belonging to the system of courts and in their official activities are independent and subject only to law, in difference to judges they do not administer justice and Article 83 of the Satversme is not applicable to them.

11.2 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 a right to commensurate compensation. Everyone has a right to the assistance of counsel."

The right to effective enforcement of a court judgement also follows from the right to a fair court (*see, for example, Judgement of 22 June 2004 of the European Court of Human Rights in Case "Pini and Others v. Romania", Application No. 78028/01 and 78030/01, Para 174–189).* However, the right to effective enforcement of a court's judgement has been granted to the person, who has turned to

court to protect his or her violated rights, not the bailiff, who enforces the particular court ruling.

The Panel of the Constitutional Court pointed to it by taking the decision to refuse initiating a case in the respective part of the claim (*Decision of 15 November 2012 by the 2nd Panel of the Constitutional Court on refusal to initiate a case, Para 8, Case Materials, Vol.1, p. 33*). The Applicants have the right to turn to the Constitutional Court to protect only their own fundamental rights that have been violated, not those of other persons.

The Saeima's opinion that the Council for the Judiciary would have the right to submit an application to the Constitutional Court regarding issues in the system of bailiffs' remuneration can be upheld. At the same time this consideration may not restrict bailiffs' individual rights to submit an application to the Constitutional Court for the protection of their fundamental rights established by Article 107 of the Satversme.

Thus, the Applicants had the right to submit an application regarding the compliance of the contested norms with Article 107 of the Satversme.

12. The Saeima and the Cabinet of Ministers express the opinion that in submitting application No. 170/2012 the term of six months, envisaged by the second sentence of Section 19^2 (4) of the Constitutional Court Law, had been ignored. It is alleged that the violation of the fundamental right had occurred at the moment when the Applicants became bailiffs and when they received for enforcement the first case, where the enforcer was exempt from covering the costs of enforcing the judgement. The contested norms have been applicable to all applicants of application No. 170/2012 for a period exceeding six months (*see written replies by the Saeima and the Cabinet of Ministers, Case Materials, Vol.1, pp. 125 and 131*). Whereas the Applicants disagree with the opinion by advancing a number of arguments:

First, the violation of Applicants' fundamental right continues, with every newly received enforcement case, where the enforcer is exempt from covering the costs of enforcing the judgement. In the case of a continuous violation, the term of prescription period should be counted from the moment when the violation has stopped.

Secondly, exactly during the period prior to submitting the application the amounts to be reimbursed to bailiffs had been rapidly decreased, at the same time their possibilities to gain income in other enforcement cases had been limited, and, thus, bailiffs' total income had decreased. *Inter alia,* on 1 September 2012 Regulation No. 451 came into force, it significantly decreased the amount of bailiffs' remuneration for performing their duties of office. Thus, during the last six months prior to submitting the application to the Constitutional Court significant changes can be identified, and these served as the point of departure for calculating the term of prescription period.

Thirdly, the applying of contested norms threatens enforcement of judgements, which has a negative impact upon the enforcers' possibilities to exercise their right to a fair court. Consequently, the case under examination should be recognised as being of general importance in the meaning of Section 19^2 (3) of Constitutional Court Law (*see additional explanations provided by the Applicants, Case Materials, Vol.2, pp. 141 – 146).*

12.1. The Constitutional Court has explained the procedure for calculating procedural terms in Case No. 2012-16-01: if a person has no possibility to defend his or her rights by general legal remedies, the term of six months defined by the second sentence in Section19^2 (4) of the Constitutional Court Law begins at the moment when fundamental rights are violated. I.e., a person may not submit a constitutional complaint to the Constitutional Court if more than six months have elapsed from the moment when the violation occurred.

The main purpose for establishing this term is ensuring legal stability and protecting the legal certainty of other persons. Over time the rights acquired by other persons may become more important than the adverse consequences for the submitter of a constitutional complaint, caused by the contested norm. This term has been set also to ensure that persons turns to the Constitutional Court only in cases where their rights have actually been violated. Already before the second sentence was added to Section 19^2 (4) of Constitutional Court Law, the following insight had been embedded in the case law of the Constitutional Court: "[..] the longer a person tolerates a violation of his or her rights, the less interested he or she is in protecting his or her rights" (*see Judgement of 26 November 2002 by the Constitutional Court in Case*

No. 2002-09-01, Para 1 of the Findings). The legislator, by setting the term of six months in the second sentence of Section 19^2 (4) of the Constitutional Court Law, has envisaged that in case the contested norm (act) causes substantial violation of a person's fundamental rights, he or she would immediately turn to the Constitutional Court. If a person has not done this within six months after the violation occurred, then the violation, most probably, is not substantial (*see Judgement of 10 May 2013 by the Constitutional Court in Case No. 2012-16-01, Para 22.3).*

In those cases, where the probable violation occurs already at the moment when the legal norms enters into force or at the moment when the person for the first time encounters a situation, where the particular legal norms may be applied to it, then the term of six months defined by the second sentence in Section19^2 (4) of Constitutional Court Law begins at the very same moment. If a person does not abide by this term, he or she loses the right to turn to the Constitutional Court (*see Judgement of 10 May 2013 by the Constitutional Court in Case No. 2012-16-01, Para 22.4).*

12.2. The Applicants hold that in the case of continuous violation of rights the term should be calculated not from the beginning of the violation, but from the end of it, and this should be recognised as a general principle of law. To substantiate it, the Applicants refer to examples from the case law of the European Court of Human Rights (*see additional explanations provided by the Applicants, Case Materials, Vol. 2, pp.141 –142).*

The compliance of a legal norm with a norm of higher legal force is examined in the proceedings before the Constitutional Court. Legal norms are applicable to an indefinite circle of persons and regulate an abstract situation in a prolonged period. Thus, any legal norm can continuously affect a person's rights; however, this does not mean that the prescription period with regard to a legal norm would never set it.

The principle of legal stability ad the need to safeguard other persons' legal certainty with regard to the validity of legal regulation is of special importance in the proceedings before the Constitutional Court. Thus, a person is expected to protect his or her rights actively by contesting the constitutionality of a legal norm immediately after a violation has occurred, not after inactivity lasting for several years.

This was the purpose of supplementing Constitutional Court Law with Section 19^3, which, with regard to some categories of cases, established terms for submitting an application that are to be calculated as of the date when the contested act entered into force (*see annotation to the draft law No. 1445/Lp9 "Amendments to the Constitutional Court Law").* Thus, during the time while the legal regulation is in force, the protection of legal stability and other persons' legal certainty are to be considered as a significant fact, due to which the calculation of the prescription period in the proceedings before the Constitutional Court may differ from other legal proceedings.

12.3. At the same time the Constitutional Court notes that in every case the particular facts of the case should be taken into consideration.

No legal norm exists outside the system of law and the actual circumstances, in which it is applied (*see Judgement of 6 October 2003 by the Constitutional Court in Case No. 2003-08-01, Para 4 of the Findings).*

When one element in the system of law or objective external circumstances change, it is possible that a legal norm, which previously did not violate a person's rights or the infringement caused by it seemed insignificant, at a particular moment starts influencing a person's fundamental rights in a way that makes a person feel significant infringement. Correspondingly the moment, when the person felt this violation, could be considered to be the moment when fundamental rights were violated and the point of departure for calculating the term for submitting an application.

The Constitutional Court recognises that a person has right to submit an application to the Constitutional Court by providing appropriate substantiation and evidence that proves that during the last six months before submitting the application objective changes to the legal or actual circumstances can be identified, due to which a person feels a violation that follows from the particular legal norm.

The Applicants have submitted this kind of substantiation, indicating that during the last six months before submitting the application Regulation No. 451 had come into force, decreasing the rates of remuneration for bailiffs. The Applicants also express the opinion that these changes influence also bailiffs' possibilities to cover

different kind of expenditure in enforcement cases, where the enforcer is exempt from covering the costs of enforcing the judgment. These should be considered as objective changes in the legal and actual circumstances, which apply to all Applicants submitting application No. 170/2012 and may serve as appoint of departure for calculating the term of six months defined by the second sentence of Section19^2 (4) of Constitutional Court Law.

Thus, the Application has been submitted in compliance with the term established in Constitutional Court Law.

13. Article 107 of the Satversme provides: "Every employed person has the right to receive, for work done, commensurate remuneration which shall not be less than the minimum wage established by the State, and has the right to weekly holidays and a paid annual vacation." It follows from the case materials that in this case the compliance of Section CPL 567 (3) with the right to receive commensurate compensation for work done, included in Article 107 of Satversme, must be examined.

In view of bailiffs' status, it must be assessed, whether the rights guaranteed in Article 107 of the Satversme apply also to bailiffs.

13.1. Firstly, bailiffs, as any other person, enjoy all fundamental rights established in the Satversme.

As regards the right to receive "commensurate remuneration for work done", it has been recognised in the case law of the Constitutional Court that it should be commensurate with the responsibility of the office and the work-load, requirements of independence, and restrictions that follow from the office, as well as the rank of the office in the constitutional legal order (*see Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-12-01, Para 21).* However, the Constitutional Court has also noted that Article 107 of the Satversme does not impose an obligation upon the State to ensure remuneration for work complying with an employee's wishes (*see, Decision of 8 November 2012 by the Constitutional Court on terminating legal proceedings in Case No. 2012-04-03, Para 17.2).* These considerations must be taken into account when determining remuneration for work, however, *per se*, they do not

define clear legal criteria that would allow a person to demand concrete amount of remunerations or an increase of remuneration.

Article 107 of the Satversme predominantly applies to legal labour relations – such relations that, on the basis of a labour contract, have developed between an employee and an employer and are regulated by Labour Law (*see Judgement of 21 May 2004 by the Constitutional Court in Case No. 2003-23-01, Para 10)*. However, the aforementioned does not exclude the possibility to apply Article 107 of the Satversme also to other persons, for example, judges, civil servants, as well as elected state officials. The Constitutional Court has recognised that Article 107 of the Satversme defines the scope of fundamental rights in the field of employment, which is specified in regulatory enactments and is applicable to all persons, who are in paid employment (*see Judgement of 21 October 2008 by the Constitutional Court in Case No. 2008-02-01, Para 8.3).*

Pursuant to Section 79 of Law on Bailiffs, bailiffs are entitled to receive remuneration for each official activity. This norm could be assessed as the basic principle, established by the legislator, which regulates the procedure for collecting bailiffs' remuneration, as well as exercising the fundamental rights of bailiffs included in Article 107 of the Satversme. Thus, Article 107 of the Satversme is applicable also to the bailiffs' right to receive remuneration for the work done.

13.2. Secondly, bailiffs are representatives of a free legal profession.

In accordance with Sub-paragraph 4.1.3 of the Cabinet Regulation No. 150 of 27 March 2001 "Regulation on Registering Tax Payers and Structural Units of Tax Payers with the State Revenue Service" and Sub-paragraph "k" of Para 3, Article 1 of the law "On the State Social Insurance", bailiffs are self-employed persons, who register with the State Revenue Service as persons engaging in economic activities. Whereas Section 137(2) of the Law on Bailiffs envisages that bailiffs, in their professional activities, are financially independent.

The representatives of free legal professions as financially independent self-employed persons are responsible themselves for gaining income, *inter alia*, taking care of income necessary for covering personal expenditure and assuming a certain financial risk for their professional liabilities. However, it must be taken into

consideration that bailiffs have no right to set the rates for services arbitrarily or to agree upon them with the enforcer. Ensuring the enforcement of court rulings is the State's obligation. Thus, the financial independence of bailiffs does not exclude the State's obligation to establish the procedure in which bailiffs collect remuneration for the performing their duties of office.

13.3. Thirdly, pursuant to Section 134(1) of Law on Bailiffs, the purpose of bailiffs' professional activity (practice) is not gaining profit. However, this norm should not be interpreted outside the social reality.

The wording of the aforementioned norm does not exclude the fact that bailiffs need financing for maintaining their practice, paying remuneration to employees, ensuring enforcement of court rulings, as well as resources for covering their daily expenditure. Unless the legislator envisaged a procedure, in accordance with which bailiffs could obtain financial resources that they need, the institute of sworn bailiffs would be unable to function and the rights of persons, involved in legal proceedings, to an effective enforcement of court ruling would be threatened. Therefore, the legislator must establish a procedure, in accordance with which bailiffs can gain the resources necessary for their everyday activities, and at the same time ensure fundamental rights included in Article 107 of the Satversme.

Thus, Article 107 of the Satversme is applicable also to bailiffs' right to receive remuneration for performing their duties of office, whereas the State has the obligation to establish the procedure for funding bailiffs' activities.

14. The concept "remuneration for performing duties of office" is linked with the right, established in Article 107 of the Satversme to receive commensurate remuneration for the work done. The Applicants note that bailiffs have no other source of income, except for the remuneration for performing duties of office. Bailiffs must cover from it the costs for maintaining an office, pay salaries to employees, must cover expenses linked to professional skills upgrade, insure their professional risk, pay taxes, as well as cover all other necessary expenditure (*see Application, Case Materials, Vol.*

1, p. 3). However, there are no specific legal criteria for determining, what "commensurate remuneration for work done" should be.

The Applicants' claims is not linked with the right to receive at least minimum salary, nor claiming specific amount of remuneration for performing duties of office. The Applicants note that in those cases, where the enforcer is exempt from covering the costs of enforcing the judgement and recovery from the debtor is impossible, bailiffs are not receiving any remuneration for performing duties of office at all.

The Constitutional Court in Case No. 2012-04-03 examined in the context of Article 107 of the Satversme the issue, whether the contested norm did not prohibit receiving remuneration for work substantially (*see Decision of 8 November 2012 by the Constitutional Court on terminating legal proceedings in Case No. 2012-04-03)*. Similarly, also in the case under review, the Constitutional Court must examine whether CPL Section 567 (3) does not prohibit bailiffs from receiving remuneration for work substantially.

15. As the Constitutional Court has noted before, pursuant to Section 79 of Law on Bailiffs, bailiffs are entitled to remuneration for every official activity. This norm can be seen as the basic principle established by the legislator, which regulates the procedure for collecting bailiffs' remuneration for performing duties of office, and, thus, also exercising of bailiffs' fundamental rights included in Article 107 of the Satversme.

Even though Section 79 of the Law on Bailiffs envisages the right to receive remuneration for every official activity, the text of this norm cannot be given only grammatical interpretation. Regulation No. 451 envisages procedure, in which remuneration for performing duties of office is to be paid in an enforcement case of recovery. It consists of the fixed remuneration for performing duties of office, corresponding to the sum to be recovered, as well as amount of remuneration for performing duties of office in per cent, which depends on the financial resources that have been actually recovered. This kind of aggregated remuneration for performing duties of office does not consist of payment for each official activity, but for the whole enforcement activities performed in an enforcement case.

Following the principle *a minore ad maius* (from smallest to largest), the arguments provided by the Saeima can be upheld, i.e., that bailiffs' remuneration for performing duties of office, which ensures all expenditure for maintaining a practice, should be calculated in total, taking into consideration all income gained from engaging in professional activity, not for each action performed or for each enforcement case.

The Cabinet of Ministers, by establishing rates of remuneration for performing duties of office in Regulation No. 451, has envisaged that these should ensure not only payment in a particular enforcement case, but also that "first of all, bailiffs would be able to cover all expenditure linked to their practice, secondly, that the received remuneration would at least partially compensate for the unearned income in those enforcement cases, where the enforcers have been exempt from covering the costs of enforcing the judgement and these costs cannot be recovered, as well as to ensure to bailiffs such level of income that is adequate to the requirements regarding their professional education and work experience, as well as responsibility" (*see Report on the initial impact assessment for the Cabinet of Ministers draft regulation "Regulation on the Remuneration Rates for Bailiffs" (annotation), pp. 7-8).*Thus, the Cabinet of Ministers has taken into consideration that the remuneration for work collected by bailiffs must ensure funding also in those enforcement cases, where the enforcer has been exempt from covering the costs of enforcing the judgement.

Moreover, CPL Section 568 (1) provides: "Enforcement of a judgment shall be performed at the expense of the debtor. When the enforcement document has been submitted for enforcement, voluntary enforcement of a judgment or enforcement of a judgment directly to the judgment creditor shall not exempt the debtor from reimbursement of the enforcement of the judgment expenditures." In accordance with the aforementioned norm, a bailiff has the right to recover the costs of enforcement of the judgement, *inter alia*, also remuneration for performing duties of office from the debtor.

Thus, bailiffs receive remuneration for performing duties of office both in those cases, where the enforcer has not been exempt from covering the costs of enforcing the judgement, as well as in those cases, which are concluded with successful recovery from the debtor. In these cases the collected remuneration for performing duties of

office ensures cross-subsidy to those cases, where bailiffs do not receive remuneration for performing duties of office.

Thus, the State has implemented measures for implementing fundamental rights included in Article 107 of the Satversme.

16. The Applicants point to some cases, where due to lack of resources the enforcement of the judgement had been delayed, as well as to considerations regarding the role of sufficient resources in ensuring high quality and effective activities by bailiffs. However, in the case under review the Applicants have not provided evidence that currently, due to lack of financing, the bailiffs were not able to ensure the functioning of their practice or that enforcement of court rulings were under threat.

The Constitutional Court has no grounds to conclude that the system established by the legislator would be unable to ensure sufficient funding for covering the expenditure linked to maintaining bailiffs' practice. Thus, the Applicants have been ensured the possibility to exercise their rights at least on the minimum level.

Since bailiffs have the right to recover the costs of enforcing the judgement from the debtor and a system of cross-subsidies exists, they can receive remuneration for performing duties of office also in those cases, where the enforcer has been exempt from covering the costs of enforcing the judgement. Moreover, there are no objective grounds to consider that the system established by the legislator would be enable to ensure funding for maintaining bailiffs' practice and for covering personal expenses. Thus, CPL Section 567(3) does not cause a violation of the fundamental rights enshrined in Article 107 of the Satversme.

Thus, CPL Section 567 (3) complies with Article 107 of the Satversme.

17. The Applicants contest the compatibility of Para 8-12 of Regulation No. 670 with Article 64 and Article 105 of the Satversme. The Applicants hold that the legislator had envisaged covering the expenditure necessary for performing enforcement actions in cases, where the enforcer is exempt from covering the costs of enforcing the judgement, in full from the State budget. Whereas Para 8-12 of Regulation No. 670 envisage only partial compensation of the expenditure necessary for performing enforcement actions. Allegedly, the Cabinet of Ministers has not

complied with the authorisation granted by the legislator and has acted contrary to Article 64 of the Satversme. Hence, the Applicants' right to own property, embedded in Article 105 of the Satversme, has been violated.

The Constitutional Court has recognises that very diverse claims can be considered as being property, i.e., such claims, the enforcement of which could be requested, since clear legal grounds exist, *inter alia*, also in those cases when the income has already been earned or a claim, which can be satisfied, exists (*see, for example, Judgement of 3 November 2011 by the Constitutional Court in Case No. 2011-05-01, Para 15.2).* CPL Section 567 (3) envisages that in those cases, where the enforcer is exempt from covering the costs of enforcing the judgement, the expenditure necessary for performing enforcement actions are covered from the State budget resources. This legal norm is the grounds, on which bailiffs may demand reimbursement of the expenditure necessary for performing enforcement actions from the State budget, and this claim should be recognises as being such that can be satisfied. The restriction to this right, insofar it follows from Para 8-12 of Regulation No. 670, may be assesses as a violation of the fundamental rights included in Article 105 of the Satversme.

In assessing the legality of the violation of the fundamental rights embedded in Article 105 of the Satversme, first of all it must be assessed, whether the restriction has been established by law or on the basis of law (*see, for example, Judgement of 11 March 2011 by the Constitutional Court in Case No. 2010-50-01, Para 9).* Whether the restriction has been established on the basis of law, depends upon the fact, whether the contested norms have been adopted in compliance with the authorisation granted by the legislator.

In compliance with Para 1 of Section 31(1) of the Cabinet of Ministers Structure Law , the Cabinet of Ministers may adopt external regulatory enactments – regulations, if the law has in particular authorised the Cabinet of Ministers to do so. The main outlines of the content are set in the authorisations. An authorisation of this kind to adopt the contested norms is included in CPL Section 567(4), which provides: "The Cabinet shall determine the amount of expenditures required for performance of enforcement activities and the procedure for payment of such." Therefore the

Constitutional Court must assess, what is the scope of authorisations included in the law.

The authorisation included in CPL Section 567(4) applies to all enforcement cases, both those, to which general procedure applies, and those, where the enforcer is exempt from covering the costs of enforcing the judgement. The issues to be examined in the framework of the case under review are closely linked with the disbursements from the State budget resources; therefore the authorisation provided by the legislator should be assessed in interconnection with CPL Section 567(3). This norm envisages that in those cases, where the enforcer is exempt from covering the costs of enforcing the judgement, the expenditure necessary for performing enforcement actions is covered from the State budget resources. However, the legislator, neither in this, nor in any other legal norm has granted *expressis verbis* to the Cabinet the right to envisage different amount of expenditure necessary for performing enforcement activities, depending upon whether these are reimbursed by the enforcer or from the State budget resources.

Thus, bailiffs have the right to receive reimbursement of the expenditure necessary for performing enforcement activities in the same amount, irrespectively of the fact, whether it is paid by the enforcer or are covered from the State budget resources.

18. In the framework of the case under review, it is important to differentiate between two terms used in CPL Section 567(4), the term "amount", which gives the right to adopt legal norms of substantive nature, and the term "procedure", which gives the right to adopt legal norms of procedural nature.

The amount of expenditure necessary for performing enforcement activities is regulated in Chapter II of Regulation No. 670, whereas Chapter III regulates the procedure for reimbursing the expenditure necessary for performing enforcement activities. Chapter II of Regulation No. 670 is applicable to all enforcement cases, irrespectively of whether the expenditure necessary for performing enforcement activities is paid for by the enforcer or is reimbursed from the State budget resources. Moreover, substantially, it envisages covering of all expenditure in its actual amount, and the case does not contain dispute with regard to this regulation.

The Constitutional Court agrees that perhaps the Cabinet of Ministers in Chapter III of Regulation No. 670, which contains also the contested norms, should establish a different procedure for reimbursing expenditure in cases, where the enforcer is exempt from covering the costs of enforcing the judgement. The procedure in which the enforcer covers the expenditure necessary for performing enforcement activities, undeniably, will differ from the procedure, in which this expenditure is reimbursed from the State budget.

The Cabinet of Ministers expresses the opinion that the authorisation granted by the legislator specifies neither the limits of expenditure to be reimbursed, nor criteria for defining it, likewise, it envisages no restrictions, nor fundamental principles for establishing the mechanism for reimbursing expenditure, but has left the aforementioned issues to be regulated by regulatory enactments adopted by the Government (*see written reply by the Cabinet of Ministers, Case Materials, Vol.1, p. 137*).

The Constitutional Court has already noted before that the legal norm, by which the legislator authorises the Cabinet of Ministers to regulate the procedure for exercising a person's fundamental rights established in the Satversme or restrictions to the exercise of this right, should be clear and precise. Referring to a legislator's authorisation that is unclear or is easy to misinterpret in restricting a person's fundamental rights is inadmissible. If the scope of the legislator's authorisation causes doubt, then the Cabinet of Ministers, in exercising this authorisation, should, to the extent possible, avoid restricting a person's fundamental rights, unless the authorising norm directly points to the need of restriction (*see Judgement of 21 November 2005 by the Constitutional Court in Case No. 2005-03-0306, Para 10).*

The term "procedure" points to the procedural nature of regulation by the Cabinet of Ministers, i.e., creating a certain procedure (*see, for example, Judgement of 2 May 2012 by the Constitutional Court in Case No. 2011-17-03, Para 13.3).* Therefore the Cabinet of Ministers has the right to envisage various procedural pre-requisites, for example, the types of documents that a bailiff must submit, when requesting reimbursement of expenditure, the procedure of evaluating them, the term or the frequency of making disbursements, etc. However, the procedure established by

the Cabinet of Ministers, unless it is founded upon a clear authorisation by the legislator, may not comprise legal norms of substantive nature that influence the amount of expenditure reimbursed.

Para 8-12 of Regulation No. 670, substantially, not only establishes the procedure of reimbursement, but also establishes a system of reimbursement, in accordance with which only a small part of the expenditure necessary for performing enforcement activities is reimbursed. Thus, the procedure established by the Cabinet of Ministers comprises not only legal norms of procedural nature, but also substantial legal regulation, which has an impact upon the amount of resources to be disbursed. Since the legislator has not authorised the Cabinet of Ministers to establish different amounts of reimbursement of expenditure necessary for performing enforcement activities depending upon the fact, whether this expenditure is covered by the enforcer or from the State budget resources, it can be considered that the Cabinet of Ministers has acted *ultra vires* – by exceeding the limits of its authorisation. Thus, restrictions to the Applicants' fundamental rights included in Article 105 of the Satversme have not been established in accordance with law.

Hence, Para 8-12 of Regulation No. 670 are incompatible with Article 64 and Article 105 of the Satversme.

19. The Applicants request recognising Para 8-12 of Regulation No. 670 as being invalid as of the date of submitting the constitutional complaint. Already now the bailiffs had been placed in an unfair situation, where in addition to performing their duties of office they must find sufficient resources for performing these duties. It is alleged that if this situation were to continue, the performance of bailiffs' duties of office would become impossible.

Constitutional Court Law authorises the Court to decide on ensuring the enforcement of the judgement, i.e., to define the legal consequences of its judgement. At the same time the law not only grants authorisation to the Constitutional Court, but also imposes responsibility to see to it that its judgements would ensure in social reality legal stability, clarity and peace (*see Judgement of 21 December 2009 by the Constitutional Court in Case No. 2009-43-01, Para 35.1).* Section 32(3) of Constitutional Court Law envisages the basic principle that the contested norm

becomes invalid as of the date when the judgement is published. If the Constitutional Court determines another date, as of which the contested norm becomes invalid, to the extent this is not substantiated by the reasoning included in the judgement itself, the Court must substantiate its decision.

The Constitutional Court has recognised Para 8-12 of Regulation No. 670 as being incompatible with the Satversme. However, in the case under review it is impossible to eliminate the violation of the Applicants' fundamental rights without actions taken by the Cabinet of Ministers. I.e., the Cabinet of Ministers must introduce amendments to Regulation No. 670, envisaging a procedure, according to which, in conformity with the tasks set by the legislator for performing enforcement activities, the necessary expenditure shall be reimbursed from the State budget resources in cases, where the enforcer is exempt from covering the costs of enforcing the judgement.

Amending Regulation No. 670 requires time, therefore the most appropriate solution in the case would be recognising the contested norms as being invalid as of a particular moment in the future. In view of the fact that the reimbursement of expenditure necessary for performing enforcement activities is inseparably linked with the resources planned in the State budget, 1 January 2014 should be considered as date appropriate for introducing amendments to Regulation No. 670 and coming into force of the State budget for the following year. This solution gives the Cabinet of Ministers sufficient time for improving the legal regulation.

Thus, Para 8-12 of Regulation No. 670 shall be recognised as being invalid as of 1 January 2014.

The Substantive Part

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

1) to recognise Section 567 (3) of the Civil Procedure Law as being compatible with Article 107 of the Satversme of the Republic of Latvia;

2) to recognise Paragraph 8, 9, 10, 11 and 12 of the Cabinet of Ministers Regulation of 30 August 2011 No. 670 "Regulation on the amount of expenditure necessary for performing enforcement activities and the procedure for paying it" as being incompatible with Article 64 and Article 105 of the Satversme of the Republic of Latvia and invalid as of 1 January 2014.

The Judgement is final and not subject to appeal.

The Judgement enters into force as of the date of its pronouncement.

Chairperson of the Court sitting G. Kūtris