



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## JUDGEMENT ON BEHALF OF THE REPUBLIC OF LATVIA in Case No. 2012-18-01 15 April 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 an application by the Department of Administrative Cases of the Supreme Court Senate,

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

on 19 March 2013 at a court sitting examined in written procedure the case

**“On Compliance of Words included in Section 33<sup>3</sup> (1) of the Law “On Taxes and Fees” “if the taxpayer agrees to the additional amount of estimated tax, fee or other State-established payment [including a late charge that is calculated for the period of tax payment delay starting from the following day after the setting in of the term of payment of the tax up to the starting date of a tax audit] and, within 30 days as from the day when a decision of tax administration on results of the tax audit is received, pays the total sum of calculated tax, fee or other State-**

**established payment into the budget at the amount of 15 per cent of the basic tax debt” in the wording that was effective before 9 November 2011, with Article 1 of the Satversme of the Republic of Latvia”.**

### **The Facts**

1. On 2 February 1995 the Saeima adopted the law “On Taxes and Fees” (hereinafter – the Tax Law), which entered into force on 1 April 1995. This law sets out the general principles for tax application in the state, as well defines liability for tax law infringements. Monetary fines, as a form of this liability, have been included in the Tax Law from the date of its coming into force.

The law “Amendments to the Law “On Taxes and Fees”” adopted by the Saeima on 26 October 2006 envisaged supplementing the Tax Law with Section 33<sup>3</sup> “Decreasing the Fine Imposed (calculated) by Tax Administration”. These amendments came into force on 1 January 2007.

From 4 March 2008 to 8 November 2011 the following wording of Section 33<sup>3</sup> (1) of the Tax Law was effective:

“The highest official of the tax administration or a person authorised by it shall adopt a decision to decrease the fine imposed (calculated) upon tax payers as the result of tax audit in the amount stipulated in this section, if the taxpayer agrees to the additional amount of estimated tax, fee or other State-established payment [including a late charge that is calculated for the period of tax payment delay starting from the following day after the setting in of the term of payment of the tax up to the starting date of a tax audit] and, within 30 days as from the day when a decision of tax administration on results of the tax audit is received, pays the total sum of calculated tax, fee or other State-established payment into the budget at the amount of 15 per cent of the basic tax debt.”

With the law “Amendments to the Law “On Taxes and Fees””, adopted by the Saeima on 13 October 2011, Section 33<sup>3</sup> was deleted from the Tax Law. The amendments came into force on 9 November 2011.

**2. The Applicant – the Department of Administrative Cases of the Supreme Court Senate** (hereinafter also – the Applicant) – has submitted to the Constitutional Court an application regarding compliance of the words in Section 33<sup>3</sup> (1) of the Tax Law “if the taxpayer agrees to the additional amount of estimated tax, fee or other State-established payment [including a late charge that is calculated for the period of tax payment delay starting from the following day after the setting in of the term of payment of the tax up to the starting date of a tax audit] and, within 30 days as from the day when a decision of tax administration on results of the tax audit is received, pays the total sum of calculated tax, fee or other State-established payment into the budget at the amount of 15 per cent of the basic tax debt” (hereinafter – the contested norm) with the principle of proportionality enshrined in Article 1 of the Satversme of the Republic of Latvia (hereinafter – Satversme).

The Applicant notes that it is reviewing an administrative case No. A42681709 (SKA-666/2012), which has been initiated on the basis of an application by a closed joint-stock company “Rostek-Pskov”, registered in the Russian Federation, regarding revoking of a decision of 6 January 2009 by the State Revenue Service No. 19/81. The submitter of cassation complaint, “Rostek-Pskov”, regards the amount of fine imposed upon it as being disproportional. The Applicant holds that Section 33<sup>3</sup> (1) and Section 33<sup>3</sup> (5) are essential in this case, providing to the tax administration the possibility to decrease the amount of fine imposed in accordance with Para 1 of Section 34 of this Law. One restriction has been set for the tax administration’s discretion, i.e., it can be exercised only upon the condition – if the tax payer agrees to the additional amount of estimated tax, fee or other State-established payment (hereinafter – the additional amount of calculated tax) and late charge and pays

it into the state budget, i.e., does not contest the tax administration's decision on the result of tax audit (hereinafter – the audit).

The Applicant notes that the contested norm sets out an imperative requirement, which denies tax administration and also administrative courts the right to assess the proportionality of the calculated fine or decrease its amount, if the tax payers does not agree to the amount of calculated additional tax and late charge and uses its rights established in law to contest the decision by tax administration. Thus, the contested norm denies the possibility to decrease the fine and therefore should be assessed as a restriction.

The Applicant notes that the restriction has been established by law and has a legitimate aim – protecting the welfare of society. However, the legislator has chosen to ensure the possibility to decrease the fine by forcing a private person to waive its right to contest tax administration's decision on audit results. Thus, the right to good governance (review of an adopted decision by a higher standing institution) and the right to a fair court (review of an adopted decision by an administrative court) have been denied.

The tax payer, feeling afraid of losing the possibility to decrease the fine, most probably, will waive the right to contest the tax administration's decision, but this denies the possibility to enjoy in full the legality in the operations of public governance. Such restriction to rights is neither admissible, nor necessary in a democratic state, since the most effective measure for establishing legality is verification of a decision before a higher standing institution or court.

The Applicant holds that it is not correct that the decrease of the amount of fine is rather achieved by a party, who in case a violation – even gross and intentional – is identified, admits its violation, not the one, who considers that has not committed a violation and therefore does not admit it.

The Applicant notes that it is possible to reach the aim of the contested norm without denying the right to good governance and the right to a fair court. If the contested norm were recognised invalid, tax administration would have

the right to assess on case-by-case basis the essence and nature of the violation and take a decision, whether and in what amount the calculated fine can be decreased. This would ensure individualised application of penalties.

**3. The institution, which adopted the contested act, – the Saeima** – notes in its written reply that the contested norm is compatible with Article 1 of the Satversme.

The Saeima draws the attention of the Constitutional Court to the fact that the Applicant had not established the content of the contested norm by using methods for construing legal norms that are generally recognized in the theory of law. The condition that the contested norm comprises “taxpayer agrees to the additional amount of estimated tax, fee or other State-established payment” should not be interpreted and it had never been interpreted in practice as such that demands that a person, wishing to receive decrease of the fine envisaged by Section 33<sup>3</sup> of the Tax Law, should not contest the tax administration’s decision on audit results. The preparatory materials and the practice of application of the contested norm, show that its application did not restrict a person’s right to good governance and the right to a fair court, i.e., it had been possible to decrease the fine also in those cases, when a person later contested the tax administration’s decisions. The contested norm had been adopted within the framework of discretion granted to the legislator with the aim of ensuring more effective implementation of the principle of proportionality in the field of taxes.

The Saeima also notes that the Applicant’s arguments regarding the procedure of tax administration are of law policy nature, as they reflect the Applicant’s vision on its preferable legal regulation on the procedure of tax administration. However, the fact that the Applicant might regard other regulation on tax administration as better or more correct is not legal grounds for automatically recognising the regulation established by the legislator as incompatible with the Satversme.

It is noted in the written reply that the contested norm has become invalid, however, during the period of its application there had been no suspicion that the right to good governance or the right to a fair court had been restricted.

**4. The summoned person – the Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) – notes that liability for tax violations should depend upon the severity of the violation, the tax payer’s attitude towards its actions and other considerations of assessment. However, the contested norms transfers the responsibility for assessing a tax violation from the tax authority upon tax payer, as it does not envisage the right of tax administration to differentiate the amount of fine depending on, for example, the tax payer’s attitude towards its actions. The Ombudsman holds that the possibility to apply more commensurate fine should not be linked with a condition of agreeing to the decision. An attempt to restrict a person’s initiative to attain a fair decision can be discerned in the contested norm, and it does not ensure to tax administration the possibility to assess each individual case and a commensurate amount of fine.

The Ombudsman holds that the contested norm has the aim to decrease the number of cases when it is necessary to review the legality and usefulness of decisions adopted by public administration, which is not important enough to set it against the aim of ensuring legality of decisions adopted by public administration and applying commensurate fine.

**5. The summoned person – the Ministry of Finance** – informs that it fully support the opinion and substantiation presented in the written reply by the Saeima, since the contested norm did not hinder tax payers’ possibility to contest tax administration’s decisions on audit results.

**6. The summoned person – the State Revenue Service** (hereinafter – SRS) – notes that the contested norm had established an

imperative requirement, which prohibited SRS and also administrative courts to assess the proportionality of the applied fine, i.e., to decrease the fine, if the tax payer had not paid the additionally calculated tax. The contested norm, essentially, had been a condition restricting the possibility to decrease fine, which should be linked with the basic principles of penal policy introduced in the Tax Law.

SRS notes that decreasing of fine in compliance with the contested norm did not restrict the tax payer's right to contest the audit results on their merits and in practice the contested norm was never interpreted as one demanding that a person should not contest a decision adopted by tax administration, if it wished to receive decrease of fine envisaged in Section 33<sup>3</sup> of the Tax Law. If the fine calculated for the tax payer as the result of audit has been decreased and if it has exercised its right to contest the audit results, then a reference to the decision regarding decrease of the fine is included in the decision of reviewing the contesting appeal submission. If, by reviewing the appeal submission, the initial decision is amended, then, correspondingly, also the decision on decreasing fine is amended.

SRS holds that the restriction included in the contested norm has been established by law, adopted in due procedure, that it has a legitimate aim and is proportional. The preparatory materials and the practice of applying the contested norm show that it has not restricted the right to good governance and the right to a fair court.

### **The Substantive Part**

7. A technical error has occurred in the title of the case. I.e., the contested norm was in force until 8 November 2011, since on 9 November 2011 the law of 13 October 2011 “Amendments to the Law “On Taxes and Duties””, which excluded Section 33<sup>3</sup> from the Tax Law, became effective.

Thus, the title of the case shall be worded as follows: “On Compliance of Words included in Section 33<sup>3</sup> (1) of the Law “On Taxes and Fees” “if the

taxpayer agrees to the additional amount of estimated tax, fee or other State-established payment [including a late charge that is calculated for the period of tax payment delay starting from the following day after the setting in of the term of payment of the tax up to the starting date of a tax audit] and, within 30 days as from the day when a decision of tax administration on results of the tax audit is received, pays the total sum of calculated tax, fee or other State-established payment into the budget at the amount of 15 per cent of the basic tax debt” in the wording that was effective until 8 November 2011, with Article 1 of the Satversme of the Republic of Latvia”.

**8.** The Applicant requests examination of the contested norm in the wording that was effective from 4 March 2008 until 8 November 2011. When the Constitutional Court received the application – on 5 September 2012 – the contested norm had been invalid already for more than a year. From the perspective of the effectiveness of the judicial proceedings before the Constitutional Court, a judgment in cases like these is meaningful only if it can be made effective retroactively. Whereas judicial proceedings in such cases is possible, if the legal relationship to be reviewed allows the Constitutional Court to grant to the judgement by the Constitutional Court retroactive force. However, if the revoking of the contested form as of the moment of its adoption or coming into force could cause, for example, essential violation of the interests of the State (society), the usefulness of continuing judicial proceedings should be assessed in the course of preparing ruling by the Constitutional Court (*see Judgement of 3 April 2008 by the Constitutional Court in Case No. 2007-23-01, Para 6*).

**9.** The application contains a request to review the compatibility of the contested norm with the principle of proportionality embedded in Article 1 of the Satversme. The Applicant holds that the legislator has envisaged a possibility to decrease the fine imposed by tax administration, forcing tax payer to waive the right to contest the tax administration’s decision. Moreover, the

contested norm allegedly sets out an imperative requirement, which prohibits tax administration and administrative courts to review the proportionality of the calculated fine, i.e., to decrease the imposed fine, if the tax payer does not agree to the amount of additional calculated tax and lay payment charge.

Whereas the Saeima in its written reply, as well as the Ministry of Finance and SRS have expressed the opinion that the Applicant has misinterpreted the contested norm. It did not prohibit taxpayers to contest the tax administration's decisions on audit results.

The Constitutional Court has noted: "To assess, whether there are grounds for reviewing the compatibility of contested norms with the Satversme, their true meaning must be established. Grammatical method of interpretation is only the first of methods for construing, and following only the verbal meaning of a legal norm is not correct. The result obtained by interpreting a legal norm only with the grammatical method is not final, and cannot always be confirmed after application of other methods for construing. If the party adopting a legal norm, in expressing its will in text, has done it inaccurately, its true will must be taken into consideration" (*Decision of 22 April 2005 by the Constitutional Court on terminating judicial proceedings in Case No. 2004-25-03, Para 6*).

Thus, first and foremost, the true meaning of the contested norm must be established, i.e., it must be established, whether the contested norm restricted tax payers right to appeal against tax administration's decisions and denied reviewing the proportionality of the imposed fine.

**10.** The Constitutional Court has concluded that the State has great discretion in the field of taxes and the right to establish the obligation to pay taxes, which, *per se*, does not infringe upon a person's fundamental rights. Whereas the obligation to pay taxes is inseparably connected with the implementation of measures that would ensure meeting this obligation. Thus, the legislator has the right to set the procedure and terms for calculating, collecting and paying taxes, as well as the rights, obligations and liability of tax

payers and tax administration, using its own discretion, abiding by the principle of proportionality. Due administration of taxes includes timely and effective collection of taxes and simultaneously prevents tax evasion.

However, the State's discretion and, thus, also the limits of constitutional control with regard to the procedure for establishing the amount of taxes and the procedure for collecting fine for failure to pay taxes, differ. Legal norms, which regulate the liability for violations of tax laws, to a larger extent are applicable not to the field of taxes, but to that field of State's activities, where the State implements the function of imposing sanctions (*see Judgement of 11 April 2007 by the Constitutional Court in Case No. 2006-28-01, Para 13 and Para 19.1, and Judgement of 3 April 2008 in Case No. 2007-23-01, Para 7 and Para 11*).

The contested norm pertains to the field of taxes, however, sets out pre-conditions for decreasing fine. Therefore the State's discretion with regard to this norm is narrower, but the limits of constitutional control – broader than with regard to a norm, which establishes, for example, the amount of a particular tax.

**11.** The case materials allow concluding that the proposal to add Section 33<sup>3</sup> to the Tax Law was expressed by the Cabinet of Ministers, which submitted to the Saeima an appropriate draft law.

The wording “if the taxpayer agrees to the additional amount of estimated tax” was included in the contested norm at the initial stage of drafting it. The original proposal by the Ministry of Finance envisaged including in the contested norm the following pre-condition “If the taxpayer agrees to the additional amount of estimated tax and waives the right to contest the decision of the tax audit.” However, the Ministry of Justice objected to this wording, noting that “a person cannot waive the right to contest something” (*see Case Materials, Vol.1, pp. 78, 79, 147 and 190*).

The objections by the Ministry of Justice were taken into consideration and the conditional part “and waive s the right to contest the decision of the tax audit” was deleted from the draft of the contested norm.

Even though the word “agrees” was not deleted from the draft contested norm, the information provided by SRS shows that the contested norm had not made tax payers understand that their claim to have the calculated fine decreased denied them the right to contest tax administration’s decision on audit results.

I.e., in 2007 the Director General of SRS in 29 cases adopted a decision that left unchanged or revoked in part the initial decision by tax administration on audit results, at the same time decreasing the amount of fine, upon establishing that the preconditions set out in the contested norm had been met. In 2008 decisions like this was adopted in five cases, in 2010 – 11 cases, but in 2011 – in 22 cases. Thus, contrary to the Applicant’s allegations that those tax payers, who have paid into the State budget the additional calculated tax and 15 per cent of the calculated fine, could not appeal against the initial decisions by tax administration, it has been done.

Moreover, a number of cases, in which, on the basis of the contested norm, a decision was taken to decrease the calculated fine, but the tax administration’s decision on audit results was contested and later appealed against at court, were reviewed by the Department of Administrative Cases of the Supreme Court Senate, for example, Case No. A42836409 and Case No. A42728209 (*see Case Materials, Vo.2, pp. 3 and 4*).

**12.** In accordance with the wording of the Tax Law, which was in force until 8 November 2011, the fine could be decreased only in case, if the tax payer within 30 days from the day of receiving the decision by tax administration, paid into the budget the additional calculated tax and a fine in the amount of 15 per cent of the sum of basic debt. If the tax payer immediately did not have at its disposal this, possibly, at the particular moment rather

substantial sum of money, later it was no longer possible to achieve decreasing of the fine.

It must be taken into consideration that the Tax Law did not envisage other mechanisms for assessing the proportionality of the fine applied by tax administration or for decreasing the fine, except for the condition included in the contested norm that tax payer pays into the budget within 30 days the additional calculated taxes and part of the fine. Pursuant to subsequent parts of Section 33<sup>3</sup> of the Tax Law, the total decrease of the fine imposed depended upon the type of tax violation committed, whether it was committed for the first time or repeatedly and the amount of decrease of the fine imposed for the first violation.

Thus, the procedure of adopting the contested norm and the practice of its application do not lead to the conclusion that it had restricted persons' rights to contest the decisions by tax administration on audit results. However, the Constitutional Court concludes that the contested norm restricted tax administration's possibility to review the proportionality of the imposed fine and decreasing its amount. Thus, compatibility of the contested norm with Article 1 of the Satversme must be assessed.

**13.** The obligation to all state institutions to abide in their work by the fundamental principles of judicial state follows from the concept of a democratic republic included in Article 1 of the Satversme. The principles of a democratic and judicial state are based upon equilibrium in society between fundamental values and exercise of rights. The principle of justice and rule of law provide that an institution and court, in adopting decisions, must aim at reaching a fair outcome, respecting the rights and legal interests of the involved persons [*see Judgement of 24 March 2000 by the Constitutional Court in Case No. 04-07(99), Para 3 of the Substantive Part, and Judgement of 11 April 2007 in Case No. 2006-28-01, Para 20.2*].

Whereas the principle of proportionality means that if public power places restrictions upon a person's rights and legal interests, then a reasonable

balance should be observed between the interests of a person and those of the State or society (*see, for example, Judgement of 19 March 2002 by the Constitutional Court in Case No. 2001-12-01, Para 3.1 of the Substantive Part, and Judgement of 3 April 2008 in Case No. 2007-23-01, Para 7*).

The Constitutional Court must assess, whether the restriction included in the contested norm has been established by law, whether it has a legitimate aim and whether it is proportional.

**14.** The contested norm has been established by law, adopted in due procedure. I.e., it is included in the Tax Law, and the law was adopted and promulgated in accordance with the procedure set out by the Saeima Rules of Procedure.

The opinion expressed by the Applicant that the contested norm denies tax payers the right to contest the tax administration's decision on audit results may show that the contested norm is not sufficiently clear. However, pursuant to the information provided by SRS, tax payers have availed of the possibility envisaged by the contested norm to pay the tax debt and fine in the amount of 15 per cent within 30 days from receiving the decision by tax administration, at the same time contesting these decisions and later – appealing against it in court.

**Thus, the contested norm is sufficiently clear and the restriction included in it has been established by law.**

**15.** Every restriction to rights should be based upon circumstances and arguments regarding its necessity, i.e., the restriction should be established because of important interests – a legitimate aim (*see, for example, Judgement of 22 December 2005 by the Constitutional Court in Case No. 2005-19-01, Para 9*).

The Constitutional Court has concluded that the norms, which envisage liability for violations of tax laws, appropriate and timely paying of taxes is facilitated, in a broader sense – tax payers' behaviour is influenced. Therefore,

legal norms, which establish liability for violations of tax law or pre-conditions for being released from such liability, have been established in the interests of societal welfare (*see Judgement of 3 April 2008 by the Constitutional Court in Case No. 2007-23-01, Para 15*).

It is noted in the annotation appended to the draft law, which envisaged adding Section 33<sup>3</sup> to the Tax Law, that the amendments to the Tax Law would facilitate voluntary payment of taxes and decrease the number of decisions by tax administration that are contested, thus decreasing the administrative expenditure of the institution, as well as promoting faster payment of planned revenue into the budget (*see Case Materials, Vol. 2, p. 26. accessible at [http://www.saeima.lv/saeima8/lasa?dd=LP1827\\_0](http://www.saeima.lv/saeima8/lasa?dd=LP1827_0), accessed on 19 March 2013*).

The Saeima holds that the submitter's will with regard to the content and the aim of the contested norm can be clearly discerned in the annotation to the draft law – facilitation of voluntary payment of taxes. Neither does the Applicant deny that the contested norm had a legitimate aim – protection of societal welfare.

**Thus, the restriction included in the contested norm has a legitimate aim – protection of societal welfare.**

**16.** The principle of proportionality requires abiding by reasonable balance between the interests of society and those of a person, if public power restricts a person's rights and legal interests.

In assessing the proportionality of a restriction, the Constitutional Court, firstly, verifies, whether the selected measures are appropriate for reaching the legitimate aim; secondly, whether the legitimate aim cannot be reached by other means, less restrictive to an individual's rights; thirdly, whether the benefit gained by society exceeds the damage inflicted upon an individual's rights.

If it is recognised that the restriction included in a legal norm is incompatible with one of these criteria, then the restriction is incompatible with

the principle of proportionality and therefore unlawful (*see Judgement of 19 March 2002 by the Constitutional Court in Case No. 2001-12-01, Para 3.1. of the Substantive Part*).

**17.** The Constitutional Court already reviewed regulation pertaining to tax administration's possibility to decrease the calculated fine in Case No. 2007-23-01.

Until the contested norm came into force, Section 33<sup>1</sup> of the Tax Law was in force, its first part envisaged: if the tax payer had contested the decision on audit results, tax administration had the right to assess the essence and nature of the violation, recurrence of a violation, the damage caused, as well as the tax payer's integrity and to decrease the fine imposed. The condition that this norm comprised that such an assessment may be performed only once in three years (in the wording of the law of 13 April 2000) or once per year (in the wording of the law of 31 March 2004) was recognised as being incompatible with Article 1 of the Satversme by the Judgement of 3 April 2008 by the Constitutional Court in Case No. 2007-23-01). It was concluded that this restriction essentially denied a tax payer the right to request that in each individual case the possibility to decrease the imposed fine would be assessed, whereas the regulation without this restriction ensured individualised application of penalties.

The Constitutional Court concluded that the State had the obligation to create an effective system for collecting taxes in the interests of societal welfare; however, at the same time the State had also the obligation to protect persons against disproportional sanctions, even if these were imposed for violations of tax laws.

Imposing sanctions is admissible only within the limits of necessity and insofar it ensures due compliance with other legal regulation. The effectiveness of the system for preventing tax violations is guaranteed both by the inevitability and the severity of sanctions, if it is commensurate with the violation or the "benefit", gained as the result of it, or the possible "benefit".

However, in this field it is the obligation of the State, to the extent the specificity of relationships that are regulated allows it, to ensure individualisation of sanctions, i.e., compatibility with the violation committed. Therefore the sanctions for violations of tax laws should not be obviously disproportional to the aim that the legislator wants to reach by them. It is important to strike a balance between the rights of individuals to individual assessment of a violations and the State's obligation to ensure an effective system for tax administration (*see Judgement of 3 April 2008 by the Constitutional Court in Case No. 2007-23-01, Para 11, 12, 16.2 and 16.3, and the Part of the Ruling*).

**18.** The measures selected by the legislator are appropriate for reaching the legitimate aim, since this aim is reached by the concrete regulation.

The contested norm was adopted with the intention to facilitate that tax payers pay into the budget voluntarily and in due time the additional amounts of taxes calculated by tax administration, as well as part of the fine imposed. Moreover, it was planned that at the same time the number of decisions that tax administration had to adopt would decrease.

It is noted in the annotation to the draft law, which on 13 October 2011 deleted Section 33<sup>3</sup> from the Tax Law: "It is important to note that the aforementioned possibility to pay off the fine can be used only by those payers who have free monetary resources, however entrepreneurs, who are in difficult situations, cannot afford to pay off immediately the payments set out in law. Thus, the regulation favourable to tax payers operates only with regard to a limited number of participants, it is ineffective and difficult to administrate" (*see Case Materials, Vol. 2, p. 41, accessible at <http://titania.saeima.lv/LIVS10/SaeimaLIVS10.nsf/0/10B0D5E7F2E4B0B8C22578A90048ECE5?OpenDocument>, accessed on 19 March 2013*).

Thus, the legislator itself admitted that the contested norm was not appropriate for reaching the legitimate aim.

19. In Case No. 2007-23-01 the Constitutional Court reviewed only the condition that tax administration, assessing compliance with various criteria, could decrease the fine imposed upon a tax payer only once within a certain period of time. However, actually the Judgement in this case recognised that the regulation, apart from this condition, as it was in force until the contested norm in the case under review came into force, was compatible with the Satversme. The Constitutional Court concluded that Section 33<sup>1</sup> (1) of the Tax Law “includes a possibility to make a more lenient and individually assessed decision in the cases when the decision of the tax administration, wherewith the fine was imposed, could be appealed against”, and also that this norm “is appropriate for reaching the legitimate objective, namely, it provides the SRS and courts with a possibility to assess the essence and nature of the violation committed by a taxpayer [...], as well as to assess proportionality of the fine imposed” (*Judgement of 3 April 2008 by the Constitutional Court in Case No. 2007-23-01, Para 16.1*).

The contested norm in the case under review, in difference to the regulation that was in force previously, did not give the possibility to a tax payer to request assessment of the proportionality of the fine imposed or decreasing its amount, but to tax administration and court – to assess such a request, unless the tax payer had within 30 days paid into budget the additional amount of calculated tax and 15 per cent of the calculated fine. Thus, there are more lenient ways to reach the legitimate aim.

Moreover, the contested norm did not ensure either individualisation of sanctions or reaching the legitimate aim, therefore it cannot be considered that the public benefit from the contested norm exceeded the damage inflicted upon a person’s rights.

**Thus, the contested norm places disproportional restrictions upon a person’s rights and is incompatible with Article 1 of the Satversme.**

20. In Case No. 2007-23-01 the Saeima noted that recognition of the contested norm as being invalid would not solve all problems, since the

judgement by the Constitutional Court would demand positive regulation by the legislator. However, the Applicant – the Department of Administrative Cases of the Supreme Court Senate – at the time noted that the revoking of the contested norm would not require positive regulation, i.e., “the case, where the contested norm previously was applied by an institution, could be decided by taking into consideration the essence and nature of the violation and by directly applying the principle of proportionality”. The Constitutional Court concluded that its basic task was not deciding on the correct way of applying legal norms in each particular cases, and that the cases pertaining to application and interpretation of concrete legal norms basically were within the competence of courts of general jurisdiction, as well as administrative courts (*see Judgement of 3 April 2008 by the Constitutional Court in Case No. 2007-23-01, Para 18*).

The participants of the case under review have not expressed their opinion, whether, in case the Constitutional Court were to recognise the norm as invalid, review of other norms would be necessary. The Constitutional Court holds that also on in this occasion it does not have to decide on issues of interpreting and applying legal norms in the particular case.

**21.** Deciding on the date as of which the contested norm becomes ineffective, the Constitutional Court recognizes that no other date, except for the date when the norm was adopted, can be defined as the one as of which the norm can be recognised as being invalid.

**22.** The Constitutional Court also takes into consideration the fact that the revoking of the contested norm as of the date of its adoption or coming into force can cause significant infringement or threat to the interests of the State (society).

**23.** Since the field of tax law is an important field of State activities, a situation, where following the recognition of the contested norm as invalid all or very many SRS decisions, which have entered into force and which applied

this norm, had to be reviewed, would be inadmissible (*see, for example, Judgement of 16 December 2005 by the Constitutional Court in Case No. 2005-12-0103, Para 25, and Judgement of 3 April 2008 in Case No. 2007-23-01, Para 20*).

Thus, the Constitutional Court holds that in this case the revoking of the contested norm could not be granted universal retroactive force. A solution appropriate for this legal situation would be revoking the contested norm only with regard to those cases, which are still under judicial review.

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

**held:**

**with respect to cases still under judicial review to recognise the words included in Section 33<sup>3</sup> (1) of the Law “On Taxes and Fees” “if the taxpayer agrees to the additional amount of estimated tax, fee or other State-established payment [including a late charge that is calculated for the period of tax payment delay starting from the following day after the setting in of the term of payment of the tax up to the starting date of a tax audit] and, within 30 days as from the day when a decision of tax administration on results of the tax audit is received, pays the total sum of calculated tax, fee or other State-established payment into the budget at the amount of 15 per cent of the basic tax debt” in the wording that was effective before 8 November 2011, incompatible with Article 1 of the Satversme of the Republic of Latvia.**

The Judgement is final and not subject to appeal.

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

Chairperson of the court sitting

G. Kūtris