REPORT ON THE WORK OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA 2018

Report on the Work of the Constitutional Court of the Republic of Latvia in 2018.
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INTRODUCTION

This report has been drawn up in the format of the report introduced last year. At the same time, it is also a step towards a new tradition – instead of 1 January choosing as the demarcation line for the report 9 December which is considered to be the date when the Constitutional Court was established. Accordingly this report reflects the work of the Constitutional Court from 1 January 2018 to 8 December 2018, whereas the next reporting period will run from 9 December 2018 to 8 December 2019. The cause of this new tradition is predominantly practical – it allows to better prepare the report which is published in Latvian at the beginning of January.

The Report is introduced by a foreword by the President of the Constitutional Court Ineta Ziemele, followed by the statistics on the applications received by the Constitutional Court, as well as the initiated and adjudicated cases.

The principal section of the report comprises information on the case-law of the Constitutional Court. First of all, it is information on the trends in the development of case-law in the cases heard during the reporting period, as well as short descriptions of the aforementioned cases. The adjudicated cases have been sub-divided in accordance with the following areas of law – fundamental rights, international law and the European Union law, public law, administrative law, tax and budget law, as well as civil law and civil procedure. However, this division is rather relative, since fundamental rights have been examined almost in all the cases heard by the Constitutional Court; moreover, one and the same case may be attributed to various areas of law.

Unlike in the previous report which included also general observations on the whole existing case-law of the Constitutional Court, these observations are not repeatedly presented in this report. On the other hand, like previously, alongside the trends in the development of case-law and case descriptions, also decisions by the Constitutional Court on terminating legal proceedings are examined, as well as decisions by the Constitutional Court's panels on initiating a case or refusing to initiate a case.

The concluding part of the report describes the dialogue between the Constitutional Court and the general public and state institutions, as well as the judicial dialogue in the European legal space and the international cooperation. The report comprises also a list of publications by judges and staff of the Constitutional Court as well as select excerpts from these publications.

CONTENT

FOREWORD

Ineta Ziemele, President of the Constitutional Court. Photo: Reinis Inkēns.

In 2018, the Constitutional Court continued reinforcing the lines of action that had been commenced. It reinforced the transparency of the Court's work, spread the legal thought in Latvia and fully participated in the European judicial dialogue.

In this regard, I would like to express my gratitude to the judges of the Constitutional Court and their assistants, as well as the communications specialist for the work and time they have contributed to preparing information about the adopted rulings, *inter alia*, also in a video format. It must be underscored that amendments to State-Ensured Legal Aid Law were adopted in 2018 and are in force since 1 January 2019; these amendments provide the possibility to receive state legal aid for submitting a constitutional complaint to the Constitutional Court. This positive outcome was possible only thanks to the cooperation between the Ministry of Justice, the Legal Aid Administration and the Court's Legal Department. These are some significant examples of the Court's work that promote the public awareness of the work done by the Constitutional Court.

The Constitutional Court continued addressing various audiences in the Latvian society, and each judge and each staff member of the Court has contributed to consolidating the dialogue between the Court and the society. The interdisciplinary discussions about Latvia need to be highlighted in particular; two discussions already have been held. The first one, together with the writer Māra Zālīte and literature scholar Viesturs Vecgrāvis turned to the issue of the burden of history which we take with us into the new centenary, and whether we have found out everything about the past of our nation to be able to walk freely into the future. The second discussion, in turn, focused on the symbols that the state requires and the Daugava River as the paradigm of the Latvian unity and the nation's will for statehood.

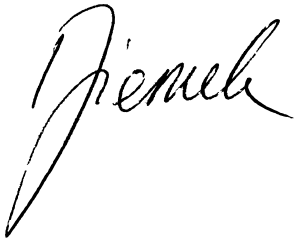
In the framework of Latvia's centenary, the Constitutional Court commenced a broader discussion with other constitutional jurisdictions of other European states about their role in the globalised world, advancing an idea of the role of the constitutional courts in maintaining a balance between the constitutional and the international law, in view of the increasing consolidation of the international society (*see the information about* **the international conference** *organised by the Constitutional Court "The Role of Constitutional Courts in the Globalised World of the 21st Century"*). It is constitutional courts who stand at the meeting point of the international and the national. The concept of interaction and reciprocal application of constitutions, the international law and the European Union law is in the hands of the constitutional courts, in interaction with the European courts.

The Constitutional Court, being a body that belongs to the judicial power, perceives the performance of its functions creatively. The development of society requires ideas. Ideas that can later be formulated in law, legal institutions, as well as implemented in practice. Hence, the Constitutional Court, drawing inspiration from the best global experiences, creates those ideas which, as the implementation of these ideas shows, are needed for consolidating the legal culture in Latvia.

At the same time, the Constitutional Court has repeatedly underscored in its rulings that the foundation of the development of a democratic state governed by the rule of law is an orderly functioning of the mechanism of checks and balances of the branches of state power. In 2018 the Constitutional Court particularly focused on this issue, by explaining it in a dialogue with the branches of power. Why does the Court regard this issue as being so important? It is a matter of implementing the purpose of the state of Latvia, the essence of which is to ensure to the inhabitants of Latvia a dignified life. A human being is born equal in his rights and dignity. The state is a mechanism for ensuring human dignity. This mechanism is characterised by a special relationship of checks and balances between the branches of power. If the balance is upset, the human dignity is not fully guaranteed in the state. People want to trust the courts and their state. Trust in courts is one of the most essential features of the joint existence and actions of a contemporary society. For a sustainable development of Latvia the wish of every inhabitant of the state to be in this society, to develop and, in the case of necessity, seek protection is important. A lawyer masters it all while obtaining legal education. This knowledge determines a lawyer's special mission in the society. Whereas a judge has both a special mission and a special responsibility.

I would like to thank my colleagues at the Constitutional Court for their selfless work in implementing the competence of the Constitutional Court and in reinforcing the values included in the *Satversme*.

President of the Constitutional Court
Ineta Ziemele



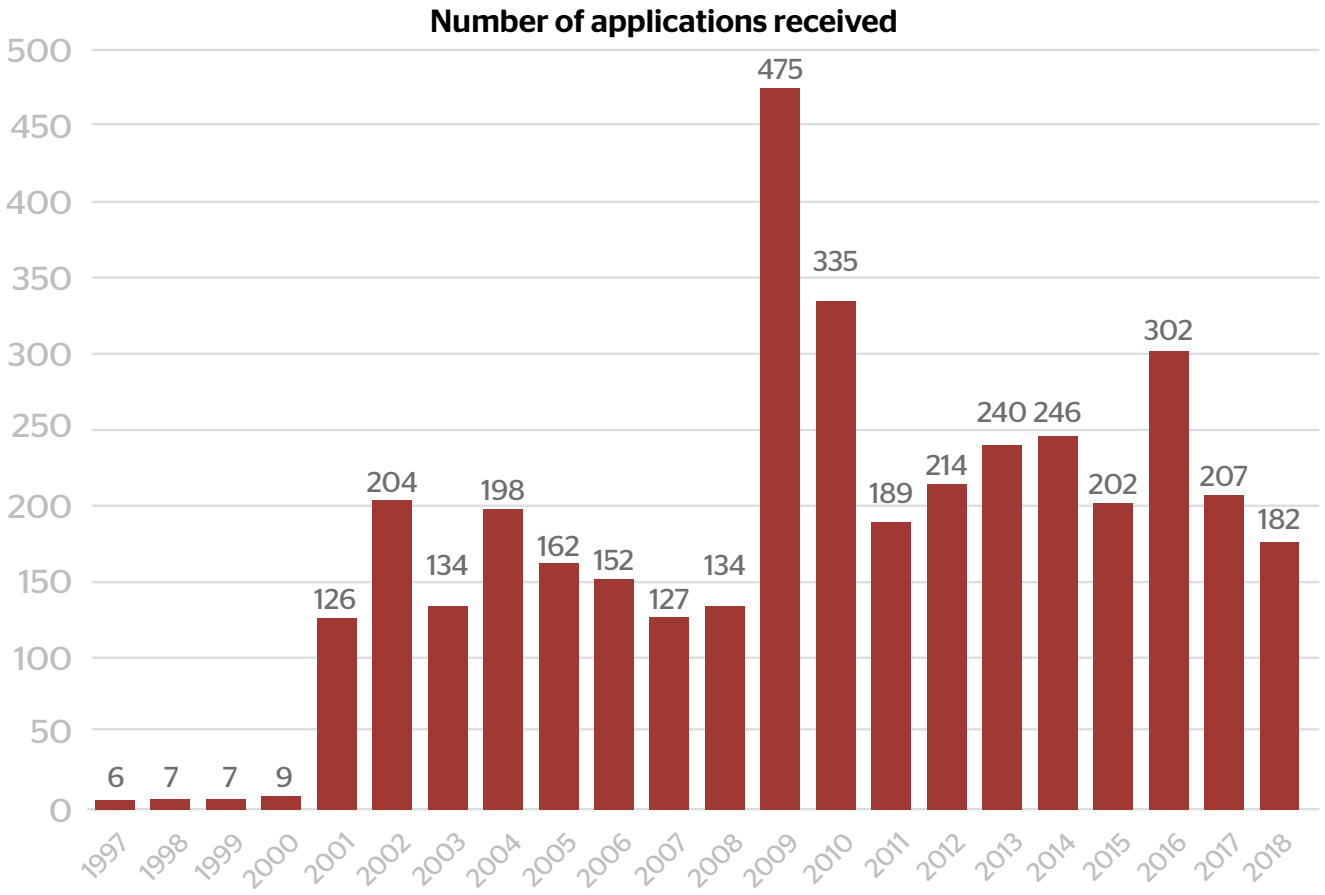
1 STATISTICS

Justices of the Constitutional Court. From left: Jānis Neimanis, Daiga Rezevska, Sanita Osipova, Ineta Ziemele, Aldis Laviņš, Gunārs Kusiņš, Artūrs Kučs. Photo: Toms Norde.

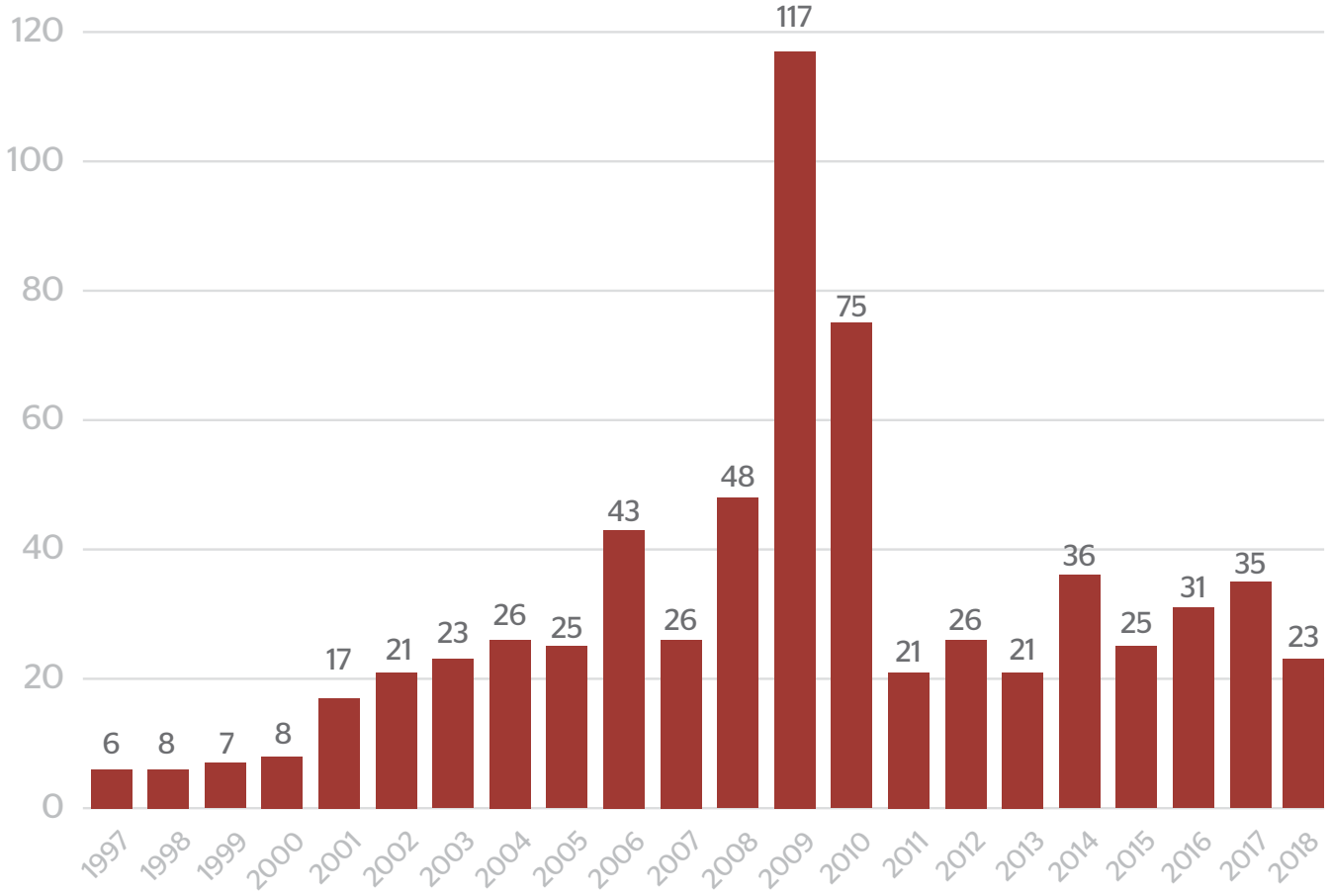
In the period from 1 January 2018 to 9 December 2018, 363 applications regarding initiation of a case were received at the Constitutional Court. Of these, 181 were recognised as obviously falling outside the Court's jurisdiction, whereas 182 were registered as applications and submitted for examination by the Constitutional Court's panels.

Last year the Constitutional Court has initiated 23 cases. From among these, 13 were initiated on the basis of individual constitutional complaints, six – on the basis of application by courts, two – on the basis of applications by twenty members of the *Saeima*, and one on the basis an application by, respectively, the Ombudsman and a municipal council.

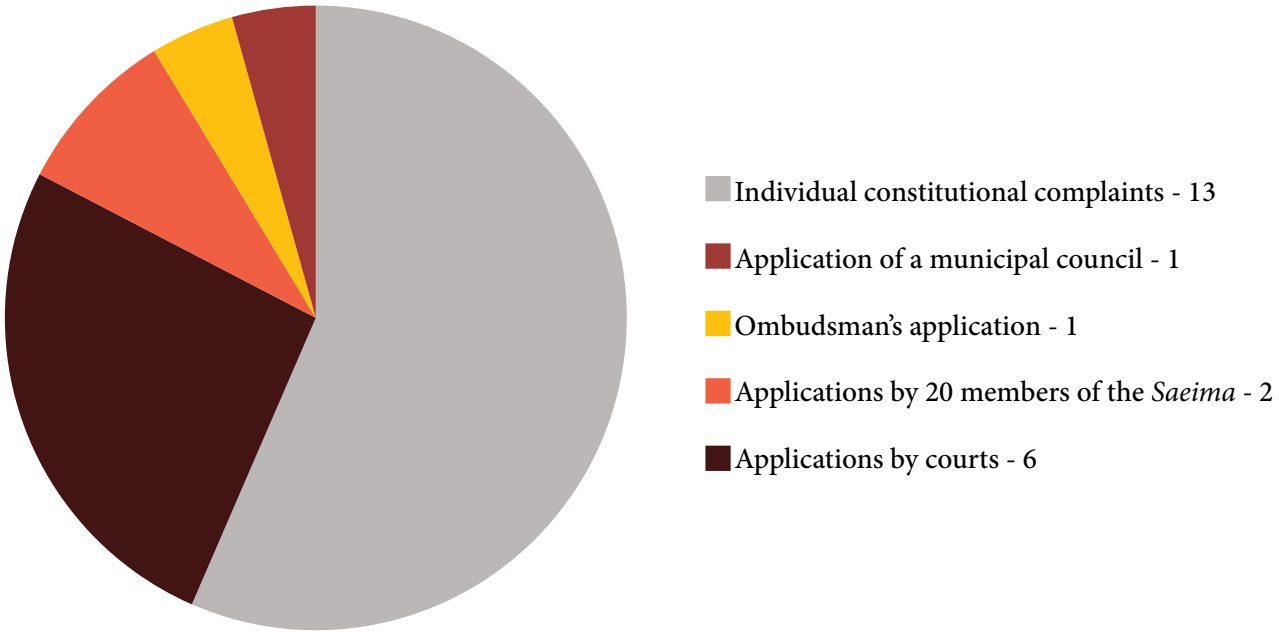
During the reporting period, the Constitutional Court reviewed 21 cases. Judgments were adopted in 17 cases and legal proceedings were terminated in four cases. The constitutionality of 28 legal norms and the legality of two orders issued by a minister were examined in the judgments. In 10 judgments, at least one legal provision was recognised as being incompatible with the *Satversme*. In seven cases, judges appended their separate opinions to the judgment.



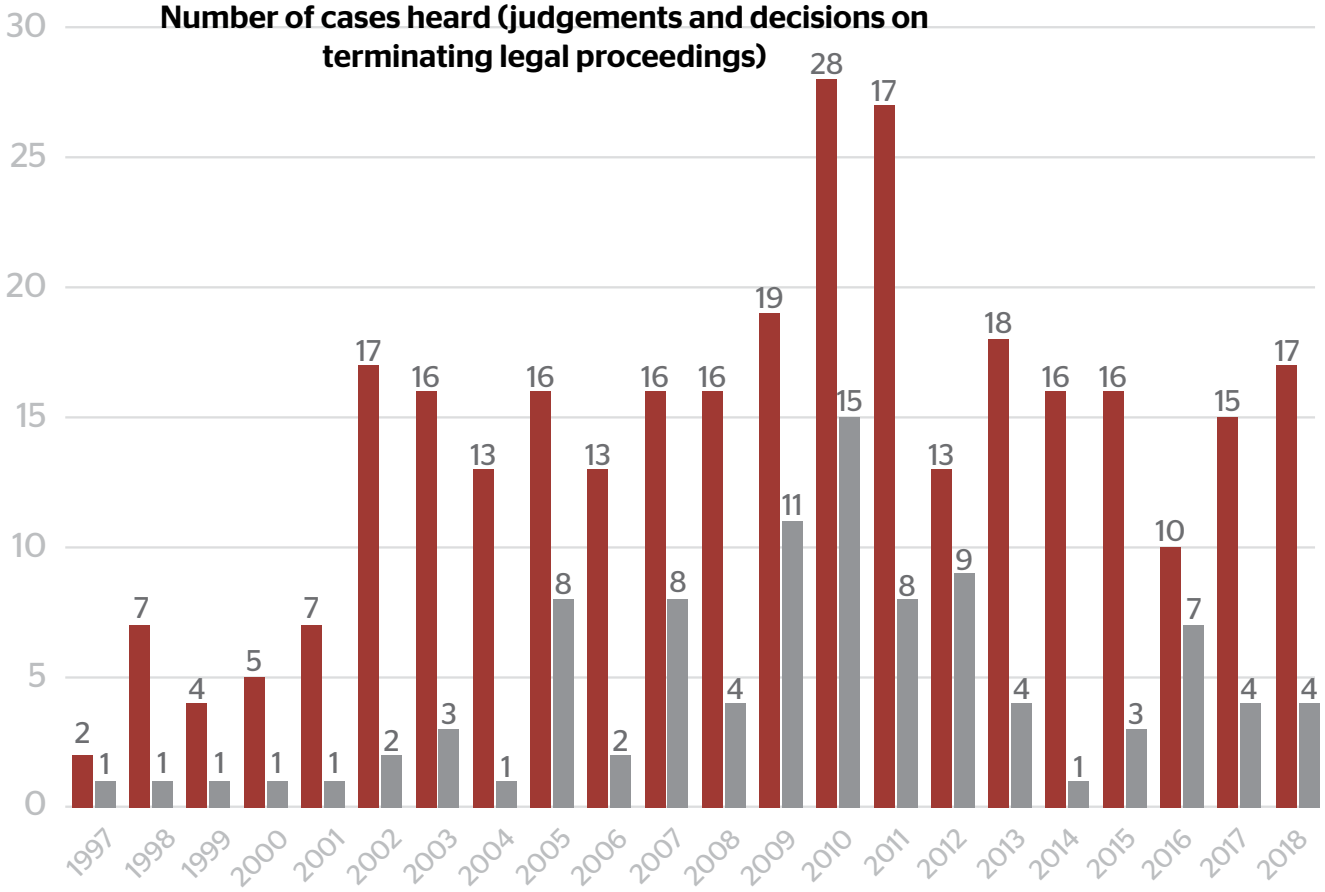
Number of initiated cases



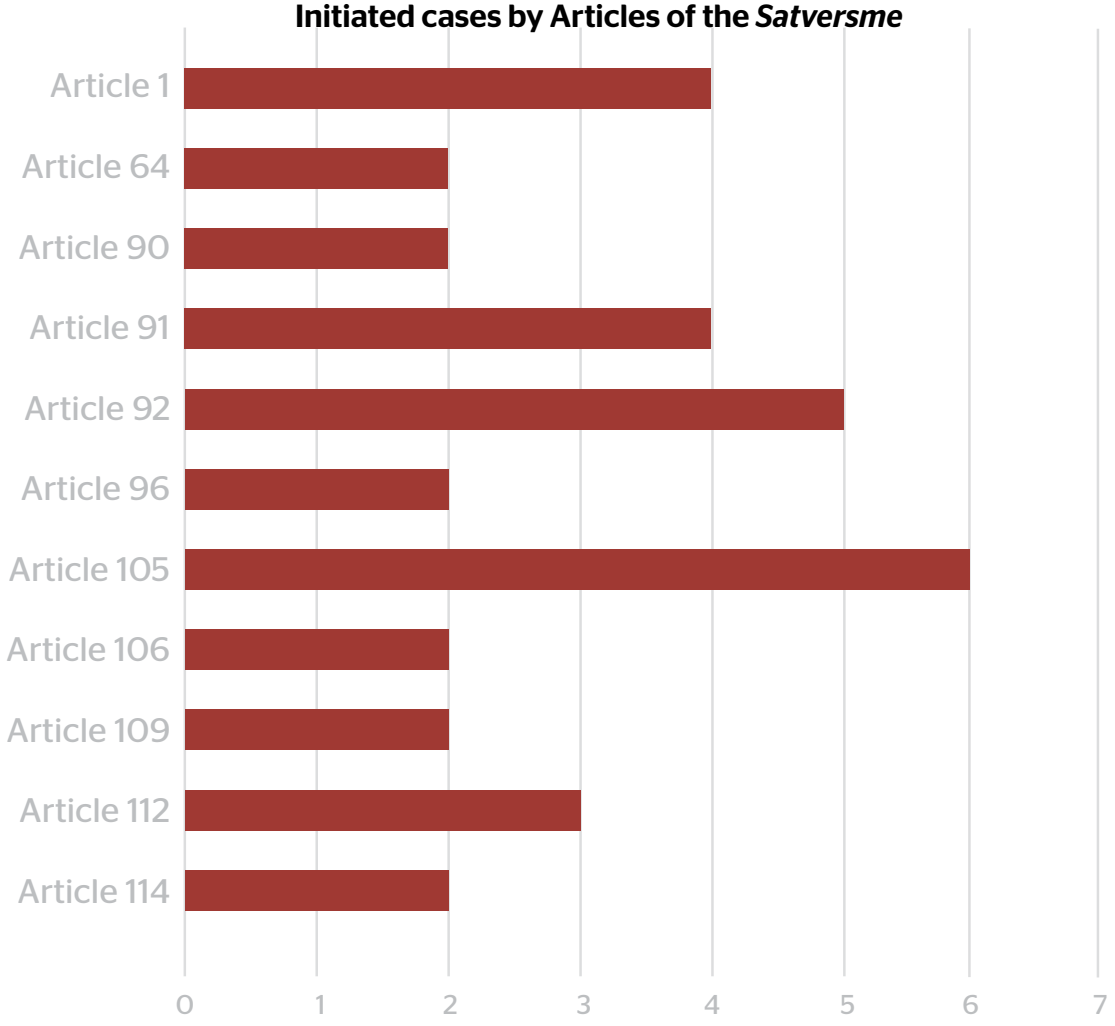
Breakdown of the initiated cases depending on the applicant



Number of cases heard (judgements and decisions on terminating legal proceedings)



Initiated cases by Articles of the *Satversme*



2 CASE-LAW

2.1. FUNDAMENTAL RIGHTS

This section includes information about cases in which the Court reviewed the compliance of the contested norms with the fundamental rights guaranteed in the *Satversme* and in which the examined legal issues were not closely linked to another area of law. First of all, the trends in the development of the Constitutional Court's caselaw in the particular field of fundamental rights are analysed, followed by an insight into the adjudicated cases.

The right to stand for elections

The right to stand for elections which follows from Articles 1, 6, and 9 of the *Satversme* was examined in the case no. 2017-25-01. Similarly to the case no. 2000-03-01 and the case no. 2005-13-0106, the Court examined the prohibition to stand for the *Saeima* elections for those persons, who after 13 January 1991 had been active in the Communist Party of Latvia, the Working People's International Front of the Latvian SSR, the United Board of Working Bodies, the Organisation of War and Labour Veterans, the All-Latvia Salvation Committee or its regional committees.

The Constitutional Court provided a new interpretation of the contested norm, pointing out that the prohibition envisaged in it applied to persons who, by being active in the organisations referred to in the contested norm, by their actions not only had threatened but continued to threaten the independence of the state of Latvia and the principles of a democratic state governed by the rule of law. To characterise the current level of development of Latvia as a democratic state governed by the rule of law, the Court underscored that a significant part of the society still was open to totalitarian ideas and positively assessed the period of occupation by the USSR. The Court also pointed to external threats to the national security which was an important factor for retaining the restriction on fundamental rights included in the contested norm. In accordance with the principle of militant democracy, the state has the right to demand that the persons who hold public offices are loyal to the state and, in particular, the constitutional principles that it is based on. The Court also emphasised that the *Saeima* which exercises the legislative power as a body of deputies has a particularly important role in a parliamentary democratic state. The status of a member of the *Saeima* demands the state to set special requirements for the respective person with the aim of protecting the independence of the state of Latvia and the principles of a democratic state governed by the rule of law.

The right to a fair trial

The right to a fair trial enshrined in Article 92 of the *Satversme* was examined in the case no. 2017-16-01, the case no. 2017-23-01, and the case no. 2017-20-0103. The scope of the right to a fair trial, the role of the cassation instance court in criminal proceedings, as well as several elements of procedural justice – the impartiality of a court, the principle of collegiality and the principle of reasoning, as well as the guarantees of a fair trial in the process of protecting official secrets were examined in these cases.

In the case no. 2017-16-01 the Court found that the legislator had established the right of all persons to appeal against the ruling adopted in all administrative violations cases to a higher instance court and had not envisaged any exceptions, even with respect to minor violations. Thus, the legislator had established a higher level of protection of fundamental rights than the one envisaged in the European Convention for the Protection of Fundamental Human Rights and Freedoms, since it had applied the guarantees of a fair trial to all the administrative violations cases. Therefore the state has the obligation to establish such a procedure for examining cases of administrative violations that would ensure to a person, in all the aforementioned cases, the same guarantees of a fair trial as in criminal cases.

The role of the cassation instance court in criminal procedure was described for the first time in the case no. 2017-23-01. The Constitutional Court found that the special legal nature of the cassation instance court in criminal procedure followed from the nature of this procedure. It is aimed at securing the public legal interests and can cause significant legal and social consequences for a person who in the particular criminal proceedings has the right to a defence. Namely, criminal proceedings may result in the occurrence of such

legal consequences that significantly restrict a person's fundamental rights. Hence, the cassation instance court has an essential role in the development of the legal system, ensuring the unity of application and interpretation of legal norms, as well as the protection of a person's fundamental rights, in particular, – in criminal proceedings.

Impartiality of a court is one of the guarantees of a fair trial. In the case no. 2017-16-01 it was examined in connection with the absence of the right of the participants of a case to request the recusal of judges who were deciding on the matter of initiating appellate proceedings in cases of administrative violations. The Constitutional Court found that the institution of the recusal of a judge was subordinated to a judge's obligation to recuse himself from adjudication of case. Thus, the responsibility for ensuring the right to an impartial hearing of the case first and foremost lies upon the particular judge who hears the case. However, the decision on refusal to initiate appellate proceedings is not subject to appeal. Therefore in a case if a judge should have recused himself from hearing of case but had failed to do so a person has no further procedural tools to protect his fundamental right to an impartial hearing of the case. Thus, a person's right to a fair trial is not ensured.

Whereas in the case no. 2017-23-01 the court's impartiality was examined in connection with the fact that in criminal proceedings the issue of initiating cassation proceedings is decided by a single judge. The Constitutional Court noted that the court should be both subjectively neutral (a judge should not have a personal bias) and objectively neutral (valid doubts regarding a judge's impartiality should be excluded). A single judge's decision to refuse initiation of cassation proceedings may cause a person doubt the court's impartiality.

In the case no. 2017-23-01, alongside the court's impartiality, the principle of collegiality was analysed for the first time. When a single judge decides on initiating cassation proceedings in criminal procedure, a dialogue is not evolving regarding uniform application of legal norms and the development of law; moreover, there could be doubts regarding a correct application of legal norms. Such a procedure is incompatible with the right to a fair trial.

The case no. 2017-23-01 contributes significantly to the Constitutional Court's case-law regarding the principle of reasoning. In this case the Constitutional Court examined the possibility envisaged in the Criminal Procedure Law to not provide reasons for the refusal to initiate cassation proceedings. It was concluded that a court's obligation to provide reasoning on why the legal arguments set out in the cassation complaint regarding the need to initiate cassation proceedings in criminal procedure should be rejected followed from the first sentence of Article 92 of the *Satversme*. Providing the reasoning in a court's ruling is one of the measures that allow persons to ascertain that they have been heard and that their arguments have been examined. A reasoned ruling also facilitates the acceptance of the court's findings by the person.

The principle of reasoning was examined also in the case no. 2017-16-01, assessing the possibility envisaged in the Administration Violations Code of Latvia (hereinafter also – the Code) to not provide reasoning in decisions on refusal to initiate appellate proceedings. The Constitutional Court underscored that reasoning should be provided in such decisions, *inter alia*, to allow the submitter of the appeal and the public to understand how the court had arrived at exactly this decision and not a different one and that the court's ruling was not based on arbitrary grounds.

In the case no. 2017-20-0103 the guarantees of a fair trial in the process of protecting official secrets were assessed. The Constitutional Court found that a person did not have a subjective right to access official secrets and that the state enjoyed broad discretion in choosing the measures for protecting official secrets. However, this does not meant that in the process of protecting official secrets there could be no interference with such rights and lawful interests of persons that are to be protected in a fair trial. For example, if the right to property, established in Article 105 of the *Satversme*, is restricted, persons should have the possibility to protect their interests in a way that complies with the first sentence of Article 92 of the *Satversme*. In the particular case a restriction of property rights was not identified. However, the Court noted – although a refusal to issue an industrial security certificate did not pertain to rights and lawful interests, the protection of which was envisaged in Article 92 of the *Satversme*, this provision of the *Satversme* did not prohibit the establishment of a procedural order in the framework of which the decision on refusal to issue an industrial security certificate or on annulling this certificate could be appealed by submitting a complaint to the Prosecutor General whose decision, in turn, could be appealed against at administrative courts. The legislator has already envisaged this procedure in amendments to the law "On Official Secrets".

The right to private life

The right to private life, protected by Article 96 of the *Satversme*, was examined in the case no. 2017-30-01 regarding the obligation to indicate the defendant's declared place of residence in the statement of claim. Information about this case is included in the "Civil law and civil procedure" section of the report.

The right to property

The right to property, guaranteed by Article 105 of the *Satversme*, was examined in five cases – in the case no. 2017-12-01 on refunding the overpaid value added tax (hereinafter also – VAT),[1] in the case no. 2017-17-

1 Information about the case no. 2017-12-01 is included in the section "International law and the European Union law" of the report.

01 on compulsory lease,[2] in the case no. 2017-21-01 on compulsory civil liability insurance of owners of motor vehicles,[3] in the case no. 2018-04-01 on additional real estate tax rate,[4] as well as in the case referred to above, no. 2017-20-0103, on the industrial security certificate.

In the case no. 2017-20-0103 it was analysed, *inter alia*, whether the right to receive an industrial security certificate fell within the scope of the right to property. The Constitutional Court recognised that in certain cases – if an economic operator was carrying out publicly procured works – it could have in its possession objects of official secrets, on the condition that the economic operator had received an industrial security certificate. However, the existence of the aforementioned certificate is not a mandatory requirement that the economic operator must meet in order to engage in economic activities in the area of its own choosing. A refusal to issue an industrial security certificate does not restrict an economic operator's right to engage in economic activities and, following such a refusal, the economic operator has the right to continue economic activities in the chosen area. An industrial security certificate is a privilege which opens the possibility to participate in classified procurement procedures to an economic operator who already is engaged in certain economic activities. Hence, the right to receive an industrial security certificate does not fall within the scope of the right to property.

The right to religious conviction and the freedom of association

The right to the freedom of religious conviction established in Article 99 of the *Satversme* and the right to the freedom of association, enshrined in Article 102, were examined in the case no. 2017-18-01. Until now, these rights had been analysed only in a few cases (freedom of religious conviction – in the case no. 2002-07-01 and in the case no. 2010-50-03; freedom of association – in the case no. 2012-16-01). Moreover, in the case no. 2017-18-01 these two rights were for the first time examined jointly. The Constitutional Court recognised that the association of religious organisations for the purpose of expressing a religious conviction fell within the scope of both Articles 99 and 102 of the *Satversme*. In other words, the right of a religious organisation to the freedom of religion in its external manifestation or the right to express one's religious conviction protects also the rights which are protected also by the right to the freedom of association. Therefore the right to freedom of religion in its external manifestation must be specified in the context of the right to freedom of association. Having examined the compliance of the contested norms with the above-mentioned fundamental rights, the Court concluded that the re-registration requirement of newly established congregations, as well as the prohibition of establishing a religious association (a church) before the period of re-registration expired was incompatible with the principle of proportionality. Whereas the restriction which prohibited from registering more than one church per one denomination lacked a legitimate aim.

The right to the protection of a family

The right to the protection of a family, included in Article 110 of the *Satversme*, was examined in the case no. 2017-09-01 regarding parents' benefits. Unlike the case no. 2009-44-01 in which, at the time, a reduction of the respective benefit during a period of economic recession was reviewed, in the case no. 2017-09-01 it was examined whether the state, by granting this benefit only to self-employed persons who are not gaining income had complied with its positive obligation, following from Article 110, to ensure a system of social security for a family. The Constitutional Court found that the state had the obligation to ensure only the minimum of social security – it had to establish a social security system for a family by providing support to a family when it was unable to provide for itself. Since professional activities and gaining income proves a person's abilities to provide for the family herself, in such cases the parents' benefit does not constitute the minimum of social security. However, being aware of the fact that the amount of a self-employed person's income may differ in different periods, the Court noted that the legislator was unable to create pre-requisites for granting a benefit that would fully comply with the actual situation of each person. The legislator, by exercising its discretion, has the right to rely on reasonable perceptions of social reality that are based on the previous experience.

The right to equality

The right to equality, guaranteed in Article 91 of the *Satversme*, was examined in the case no. 2017-15-01 on remuneration for the work of medical practitioners, the case no. 2017-25-01 on the restrictions on electoral rights, as well as in the case no. 2017-35-03 on the reduced rates of the real estate tax[5], and in the case no. 2017-28-0306 on the real estate tax rate for foreigners.[6]

In the case no. 2017-15-01 the following groups of persons were compared: 1) medical practitioners and the members of emergency medical assistance teams who work extended normal working hours; 2) other employees who work overtime. Persons belonging to both these groups are in comparable situations since the working hours set for them exceed the normal working time. However, differential treatment of medical practitioners has been envisaged because an extra pay, in the amount of 100 percent has been set for overtime

2 Information about the case no. 2017-17-01 is included in the section "Public law (institutional part of the *Satversme*)" of the report.
3 Information about the case no. 2017-21-01 is included in the section "Civil law and civil procedure" of the report.
4 Information about the case no. 2018-04-01 is included in the section "Tax and budget law" of the report.
5 Information about the case no. 2017-35-03 is included in the section "Tax and budget law" of the report.
6 Information about the case no. 2017-28-0306 is included in the section "International law and the European Union law" of the report.

work, whereas for the extended normal working hours the extra pay has been set in accordance with a different – lower – rate. The Constitutional Court found that the extended normal working time was introduced in 2009 to stabilise the situation in the health care sector in conditions of the economic crisis. Whereas in 2017 the legislator had established a transitional period until 2020, envisaging giving up the extended normal working time gradually. The Court noted that considerations that were linked to the need of ensuring the stability of the state budget could be the grounds for establishing a transitional period. However, such arguments *per se* are insufficient to substantiate that a lower rate of remuneration for work should be retained during the transitional period. Hence, the Court found that the differential treatment envisaged in the contested norm lacked a legitimate aim.

In the case no. 2017-25-01 the applicant alleged that those citizens who had been active in the Communist Party of Latvia were in similar and comparable circumstances with other citizens of Latvia and, thus, these persons should be treated equally. However, the Constitutional Court did not agree to this opinion. Although citizenship is the most essential common feature of the groups of persons (the contested norm includes one of the restrictions included in the *Saeima* Election Law which prohibits a citizen of Latvia who on the election day is older than 21 to run for the *Saeima* elections), one common feature *per se* not always can serve as a sufficient argument for establishing that persons are in similar and mutually comparable circumstances. The contested norm instead of differential treatment due to a person's political conviction (opinions) envisages a restriction on the electoral rights due to actions taken against the restored democratic order. Therefore those citizens of Latvia to whom the restriction included in the contested norm applies and those citizens of Latvia to whom neither this nor other restrictions on voting rights established in the *Satversme* or the *Saeima* Election Law apply are in different and mutually incomparable circumstances.

Case no. 2017-09-01

Judgment [in Latvian]
Press release [in English]

On 15 February 2018 the Constitutional Court adopted a judgment in case "On the compliance of Article 104 (1)(3) of the law "On Maternity and Sickness Insurance" (in the wording that was in force from 1 January 2012 until 31 December 2013) with Article 110 of the *Satversme* of the Republic of Latvia".

The cases concerned a provision bestowing the entitlement to the parents' benefit only to self-employed persons who during the period of caring for the child did not gain income.

The case was initiated on the basis of a constitutional complaint. It was noted in the application that the applicant was a sworn attorney who had resumed her pro-

fessional activities before her child had reached the age of one. From this moment the payment of the parents' benefit to the applicant was discontinued. By this, the legislator, allegedly, had failed to fulfil the obligation to ensure social security to families.

First, the Constitutional Court noted that the state had an obligation to establish and maintain a system of social protection for families, which followed from Article 110 of the *Satversme*. In fulfilling this obligation, various mechanisms of protection have been established in law, *inter alia*, the right to parents' benefit. The Court also underscored that the state provided particular support to families with children below the age of two. Infants need special care, and usually the care is provided by the child's parents; therefore they are unable to gain the same level of income as before the birth of the child.

Second, the Constitutional Court found that by the contested norm the legislator had attempted to ensure to the child, during his first year of life, the presence of at least one parent, by compensating to this parent a certain amount of their income lost due to caring for the child. The state has the obligation to create a system that envisages a family's right to at least minimum level of social protection. Hence, a family has the right to support at the time when it is unable to provide for itself. Whereas a self-employed person who continues gaining income during the period of caring for the child is able to provide for her family herself. In this case, social risk does not set in because the family does not lose financial security due to caring for the child. Therefore the legislator has been right to define the absence of income as a pre-requisite for the right to parents' benefit.

Third, the Constitutional Court declared that the system of social security should be sustainable, so that both the current and the future generations could exercise their right to social security. Insofar as a family is ensured at least the minimum of the right to social security, the state is allowed not to ensure the right to social insurance benefit in cases where that would jeopardise the sustainability of the social budget. The state cares for the interests of children, the future generation included, also in this way.

Fourth, the Constitutional Court noted that self-employed persons who continued their professional activities while caring for the child were not in similar and mutually comparable circumstances with persons who received the child-care benefit. Moreover, with respect to the employment risk related to suspending professional activities due to caring for the child, neither were self-employed persons in similar and comparable circumstances with employees within the meaning of the Labour Law.

In view of the above, the Constitutional Court found that the contested norm was compatible with Article 110 of the *Satversme*.

In ensuring at least the minimum of family's right to social protection, the state has the obligation to establish such system of social protection for a family that would ensure support to the family when the family is unable to provide for itself.

Case no. 2017-15-01

Judgment [in Latvian]
Press release [in English]

On 15 May 2018 the Constitutional Court adopted the judgment in the case no. 2017-15-01 "On the compliance of Article 531 (7) of the Medical Treatment Law with the first sentence of Article 91 and Article 107 of the *Satversme* of the Republic of Latvia".

The procedure in which the remuneration for working extended normal working hours was set for medical practitioners was examined in the case.

The case was initiated on the basis of the Ombudsman's application. The application argued that the extended normal working hours envisaged in the Medical Treatment Law are in fact overtime work within the meaning of the Labour Law. Additional payment in the amount of 100 per cent is envisaged for overtime work. Whereas the payment for the normal extended working hours is determined in accordance with a different – lower – rate. Hence, allegedly, the contested norm restricted the right to receive appropriate remuneration for overtime work; moreover, it was said to be incompatible also with the principle of equality.

First, the Constitutional Court dismissed the *Saeima*'s argument that the contested norm had become invalid. Although Article 531 (7) of the Medical Treatment Law had been deleted, the regulation it comprised had been included in para. 31 of the transitional provisions of the Law. Likewise, the argument that the Ombudsman had not complied with the procedure for the out-of-court examination of the dispute also was dismissed. The Ombudsman had requested the *Saeima* to eliminate the incompatibility of the contested norm with the *Satversme*; the *Saeima*, however, had failed to fulfil this request. Hence, the proceedings in the case were continued.

Second, the Constitutional Court found that the extended normal working hours had been introduced in 2009 to stabilise the situation in the health care sector in the conditions of economic crisis. In 2017 the legislator had established a transitional period until 2020, envisaging gradual elimination of the normal extended working hours. The Court noted that the establishment

of a transitional period could be based on considerations linked to the need to ensure the stability of the state budget. However, such arguments *per se* were not sufficient to substantiate the legitimate aim of the differential treatment in the transitional period – i.e., to substantiate why still the remuneration for the extended normal working hours had been set at a rate that was lower than the rate set for overtime work in the Labour Law. When adopting a regulation of a transitional period, the legislator still has the obligation to indicate and substantiate the legitimate aim of the restrictions established thereby. Such assessment must be performed also in the case where it is envisaged to gradually eliminate a previous legal regulation.

In view of the above, the Constitutional Court recognised that the differential treatment envisaged by the contested norm lacked a legitimate aim and, thus, the contested norm was incompatible with the equality principle included in the first sentence of Article 91 of the *Satversme*. The compliance of the contested norm with Article 107 of the *Satversme* was not examined.

In a democratic state governed by the rule of law, in order to establish transitional rules that comply with the principle of justice, the legislator must every time examine the impact of the intended legal solution on both the interests of the society and the rights of those persons whose fundamental rights will be restricted.

Case no. 2017-16-01

Judgment [in Latvian]
Press release [in English]

On 15 March 2018 the Constitutional Court adopted a judgment in the case no. 2017-16-01 "On the compliance of Article 213 and Article 289[20] (5) and (57) of the Administrative Violations Code of Latvia with the first sentence of Article 92 of the *Satversme* of the Republic of Latvia".

The procedure that has been established for reviewing cases indicated in Article 213 of the Administrative Violations Code of Latvia and the procedure in which the matter of initiating appellate procedure is decided on was examined in the case.

The case was initiated on the basis of a number of constitutional complaints. The applicants had been made received administrative penalties and punished, *inter alia*, by administrative arrest and monetary fine. They had appealed against the judgment made by the first instance court. However, the judges of the appeal court, by a decision drawn up in a form of resolution, had refused to initiate appeal proceedings. It was alleged in the applications that the procedure for examining cases of administrative violations indicated set out in Article 213 of the Code did not ensure a person's right to a fair trial. It was alleged that the court takes the role

of "the accuser" which should be done by a prosecutor. Whereas Article 289[20] (5) and (7) was said to deny access to a court, and also to not ensure the right to a reasoned ruling and an impartial examination of complaints.

First, the Constitutional Court found that the state had an obligation to guarantee to a person in the administrative violations cases the same guarantees of the right to a fair trial as in criminal cases.

Second, the Constitutional Court found that in the administrative violations cases referred to in Article 213 of the Code a court may impose an administrative sanction. However, the court may not, on its own motion, obtain evidence, since the principle of objective investigation is not applicable in the procedure of administrative violations. Moreover, the participation of a prosecutor in the examination of these cases is not necessary since the role of "the accuser" is assumed by the competent institution (the official) who has initiated the administrative violation proceedings. Hence, the aforementioned cases are examined in a procedure that ensures an impartial adjudication. Thus, Article 213 of the Code is compatible with the *Satversme*.

Third, the Constitutional Court noted that in cases of administrative violations a person has the right to appeal in at least once instance. This right is ensured also if a person must first request the court of appeal to examine the submitted appeal, irrespective of whether the appeal proceedings are eventually initiated on the basis of the submitted appeal. Thus, the applicants had not been denied access to a court with respect to the initiation of the appeal proceedings.

Fourth, the Constitutional Court found that at that stage of the proceedings when the issue of initiating appellate proceedings is decided, the participants of the administrative violation case do not know which judges will be deciding this issue, and they cannot demand the recusal of a judge. Moreover, the decision to refuse the initiation of appeal proceedings is not subject to appeal. Thus, in case where a judge who adopted such a decision should have recused himself from the examination of the case but had not done so, a person has no procedural tools for protecting his right to an impartial examination of a case. Thus, Article 289[20] (5) and (7) of the Code, insofar as they do not provide for the right to demand the recusal of judges of the appeal court who decide on the matter of refusing the initiation of the appeal proceedings in administrative violations cases, are incompatible with the first sentence of Article 92 of the *Satversme*.

Fifth, the Constitutional Court found that the right to a fair trial comprised also the right to a reasoned court's ruling. This right should be ensured also in those cases where a decision is adopted in a case of administrative violation to refuse the initiation of the appeal proceedings. Arguments, *inter alia*, with respect to a person's guilt in committing the violation and the punishment applied to a person that have not been examined by the first instance court may be advanced in the appeal. This, in particular, applies to the cases of administrative violations referred to in Article 213 of the Code, since the submission of an appeal in these cases is the applicant's first and only possibility to express objections to his being found guilty of committing the violation and to the punishment applied to him. In such situations a decision drawn up in the form of a resolution on refusal to initiate the appeal proceedings denies a person the possibility to verify that the court has examined the objections that have been expressed and to find out the reasons for the dismissal of these objections. Moreover, providing the reasoning in the court's ruling is one of the tools that promote the development of a uniform case-law, in particular in cases of administrative violations, in which the cassation instance is not envisaged. Hence, Article 289[20] (7) of the Code, insofar as it does not oblige a court to include reasoning in the decision on refusing to initiate the appeal proceedings in cases of administrative violations, is incompatible with the first sentence of Article 92 of the *Satversme*.

A fair trial as a due process compatible with a state governed by the rule of law comprises also the right to a reasoned court ruling. The purpose of a reasoned ruling is to ensure that both the participants of the case and the public could understand how the court has reached exactly this rather than a different outcome in the case, thus excluding the possibility of a court's arbitrariness.

Case no. 2017-18-01

Judgment [in Latvian]
Press release [in English]

On 26 April 2018 the Constitutional Court adopted the judgment in the case no. 2017-18-01 "On the compliance of Article 7 (2) and Article 8 (4) of the Law on Religious Organisations with Articles 99 and 102 of the *Satversme* of the Republic of Latvia and on the compliance of Article 7 (3) of the Law on Religious Organisations with Articles 91, 99 and 102 of the *Satversme* of the Republic of Latvia".

The prohibition for newly established congregations[7] to establish a religious association (a church) prior to the expiry of the re-registration period of ten years, as well as the restriction to establish more than one religious association (a church) in one denomination were examined in the case.

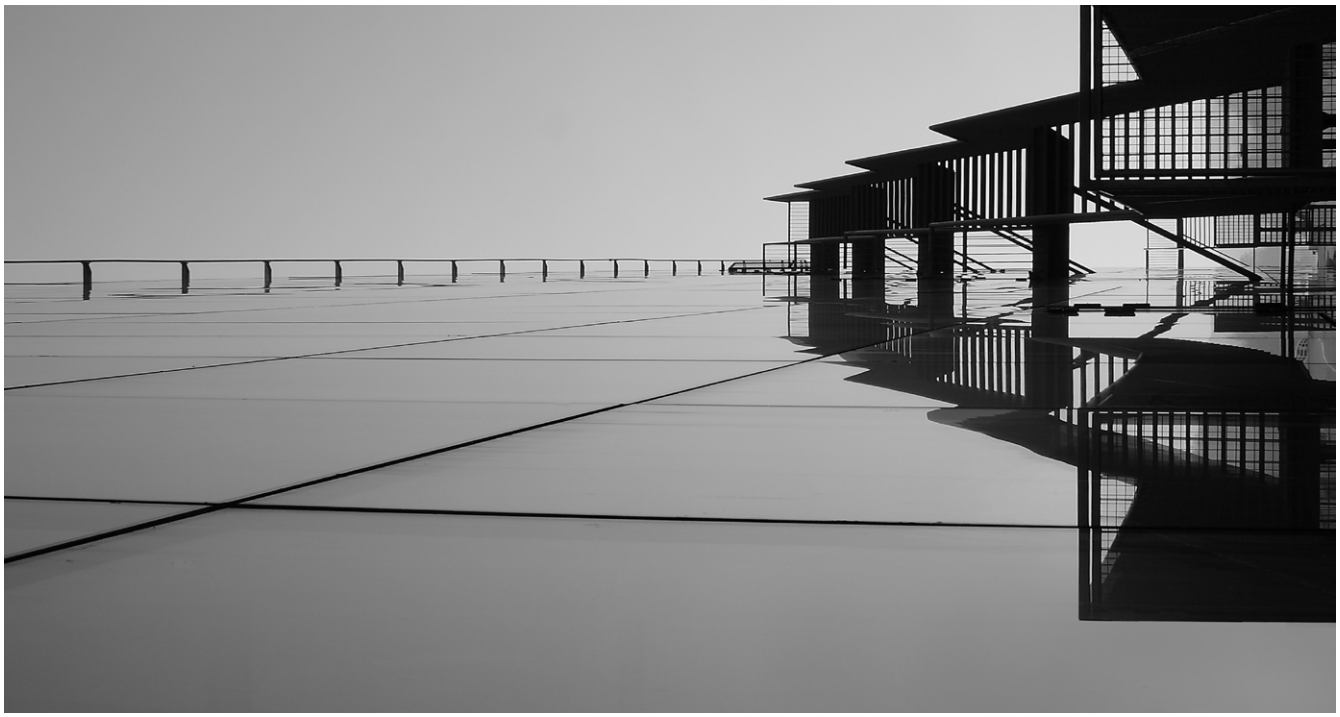
The case was initiated on the basis of an application by the Supreme Court. It was indicated in the application that the contested norms unduly restricted the rights of religious organisations to the right of freedom of religion and association. Moreover, allegedly, the restriction providing that only one religious association could be established within one denomination was incompatible also with the principle of equality since only those congregations could establish religious associations who had been the first to do that.

First, the Constitutional Court found that the right of a religious organisation to the freedom of association with the nature of religious activity fell within the scope of both Article 99 and Article 102 of the *Satversme*. The freedom of religion comprised also the right "to manifest religion", *inter alia*, together with others who share the same faith. Hence, the right to religious freedom is closely linked to the right to freedom of association and must be clarified in conjunction.

Second, the Constitutional Court noted that the re-registration requirement had been imposed on newly established congregations to prevent abuse of the status of a religious association. Hence, this requirement is directed towards protecting the rights of others and the public security. However, these legitimate aims of the restriction on fundamental rights could be reached at least in the same quality by measures that are less restrictive upon a person's rights. Namely, law-enforcement institutions are supervising the legality of the activities of religious organisations. This measure is an alternative to the obligation of annual re-registration; moreover, this measure is effectively individualised and applicable exactly to those religious organisations that endanger the rights of others and the public security. Hence, the contested norms which envisage the re-registration of newly established congregations are incompatible with the principle of proportionality and, thus, also with Articles 99 and 102 of the *Satversme*.

Third, the Constitutional Court found that the restriction which prohibited congregations from registering within the framework of one denomination more than one religious association, had been established to decrease schisms within religious organisations and, thus, possibly, to promote the protection of members of the society against deception regarding the affiliation of a new organisation with an already existing religious association. However, in a democratic society, it is not necessary for the state to take measures to ensure that religious communities would be subject to united leadership. In the case of a schism within a religious community, the state has the obligation to remain neutral and to refrain from any measures that would give priority to one or another leader of the religious community and that would be aimed at forcing the religious community, contrary to its wishes, to be subjected to a united leadership. Therefore the state does not have the right to refuse the registration of a religious association to a religious community that identifies itself with a denomination in the framework of which a religious association as a legal person of private law already has

7 Congregations which commence their activities for the first time in the Republic of Latvia and which do not belong to any religious associations (churches) that already have been registered in the state in accordance with the terminology used in Article 8 (4) of the law "On Religious Organisations".



been registered within the state. Moreover, the legislator has ensured that a religious organisation, upon registration, may no deceive the society as to its affiliation with another religious organisation – *inter alia*, by providing that the name of the religious organisation must clearly differ from the names of other religious organisations. Hence, the contested norm that envisages the restriction allowing the establishment of only one religious association within the framework of one denomination lacks a legitimate aim and is incompatible with Articles 99 and 102 of the *Satversme*. Due to this reason the compatibility of the norm with Article 91 of the *Satversme* was not examined.

One of the fundamental values of a democratic state governed by the rule of law is respect for the person's freedom to follow one's consciousness, beliefs and conviction.

Case no. 2017-20-0103

Judgment [in Latvian]
Press release [in English]

On 23 May 2018 the Constitutional Court adopted the decision to terminate the proceedings in the case no. 2017-20-0103 "On the compliance of the sixth and the eighth sentence of Article 7 (5) of the Law "On Official Secrets" with Article 92 of the *Satversme* of the Republic of Latvia and of the second sentence of para. 12 of the Cabinet Regulation of 23 May 2006 no. 412 "Procedure of Applying for, Granting, Registering, Using, Changing the Category of or Annulment of an Industrial Security Certificate" with Article 105 of the *Satversme* of the Republic of Latvia".

The case concerned the procedure in which the issuing of an industrial security certificate to economic operators is refused.

The case was initiated on the basis of a constitutional complaint submitted by several economic operators. It was indicated in the application that an industrial security certificate gave the right to engage in economic activities in an area that required the use of official secrets. The Director of the Constitution Protection Bureau decided on issuing the aforementioned certificate. If the issuing of an industrial security certificate is refused or if the certificate is annulled, the economic operator may submit a complaint to the Prosecutor General. Pursuant to the contested norms, the Prosecutor's General decision is not subject to appeal and the reasoning for the refusal to issue the certificate is not provided in the refusal; moreover, a repeated application for the certificate may be submitted not earlier than five years after the refusal. Allegedly, this term of five years placed a disproportionate restriction on the applicants' right to engage in economic activities and, thus, also on the right to property. Whereas the prohibition to appeal against the refusal in court and the prohibition to familiarise oneself with the grounds for the refusal was said to place disproportionate restrictions on the applicants' right to a fair trial.

First, the Constitutional Court established that the legislator had amended the law "On Official Secrets". Starting from 1 July 2018 it will be possible to appeal the refusal to issue an industrial security certificate to the Prosecutor General whose decision, in turn, will be subject to appeal in the administrative court. Moreover, the Constitution Protection Bureau will have to ensure that the economic operator is informed and heard in the same procedure that has been established with respect to a person who applies for an access to official secrets. The Court nevertheless decided to continue the proceedings in the case since the applicants had requested that the contested norms of the law "On Official Secrets" be recognised as void from the moment when the infringement on fundamental rights occurred – otherwise, the possible infringement on fundamental rights could remain unrectified.

Second, the Constitutional Court noted that a person did not have the subjective right to access official secrets and that the state had broad discretion in choosing the measures to protect official secrets. However, such rights and lawful interests of persons that need to be protected in a fair trial might be restricted in the process of protecting official secrets. In the particular case, it was found that it was not mandatory for economic operators to meet the requirement of having an industrial security certificate in order to engage in business activities in the area of their own choice. The possession of an industrial security certificate is an advantage that opens to economic operators who are already engaged in business activities of a specific type the possibility to participate in classified procurement procedures. Hence, the right to receive an industrial security certificate does not fall within the scope of the right to property. Therefore the contested norms of the law "On Official Secrets" do not restrict the applicants' right to property and do not pertain to such rights and lawful interests for which protection in a fair trial should be ensured.

At the same time the Constitutional Court recognised that the state was not prohibited from establishing a procedure by which a decision of the Prosecutor General to refuse to issue an industrial security certificate could be appealed in the administrative court. Since the amendments to the law "On Official Secrets" provide for the possibility to appeal in a court the refusal to issue an industrial security certificate, this procedure has become an element of the legal system. The rights and procedural safeguards following from the right to a fair trial should be ensured.

Third, the Constitutional Court found that also the prohibition to apply for an industrial security certificate for five years following the refusal to issue it contained in the contested norm of the Cabinet Regulation, did not restrict the applicants' right to property. Hence, the proceedings in the case were terminated.

The right to receive an industrial security certificate does not fall within the scope of the right to property, therefore the refusal to issue it does not restrict a person's right to property and, hence, does not pertain to such rights and lawful interests for the protection of which in a fair trial should be ensured.

Case no. 2017-23-01

Judgment [in Latvian]
Press release [in English]

On 14 June 2018 the Constitutional Court adopted a judgment in the case no. 2017-23-01 "On the compliance of Article 573 (2) and (3) of the Criminal Procedure Law with the first sentence of Article 92 of the *Satversme* of the Republic of Latvia".

The case concerned the procedure in which the issue of initiating cassation proceedings in criminal proceedings is decided.

The case was initiated on the basis of a constitutional complaint. The complaint alleged that the procedure established by the contested norms was incompatible with the right to a fair trial. The fact that the decision to refuse to initiate cassation proceedings in criminal procedure is adopted by a single judge and that the court's reasoning is not indicated in the decision was claimed to be incompatible with the aforementioned right.

First, the Constitutional Court found that in criminal proceedings the court of cassation instance had a particular legal nature which followed from the nature of such proceedings. Criminal proceedings are directed

at ensuring public legal interests. Moreover, as a result of criminal proceedings a person's fundamental rights may be significantly restricted. Since the cassation instance court performs the final review of the validity of restrictions on fundamental rights, access to this court must be ensured to make an effective protection of fundamental rights possible.

Second, the Constitutional Court found that collegiality was one of the principles that guaranteed the impartiality of a court and that fell within the scope of the first sentence of Article 92 of the *Satversme*. The legislator may provide for exemptions from the aforementioned principle – a person's right to a fair trial is ensured also in proceedings where the case is heard by a single judge. However, in the case where the proceedings are being concluded in the last court instance deviations from the principle of collegiality may be justified only by important considerations. In this particular case, the Constitutional Court did not identify such considerations. The Court emphasised the importance of the cassation instance court in criminal proceedings and the significance of the collegiality principle in the cassation instance court. If a single judge decides on the initiation of cassation proceedings, there is no dialogue regarding uniform application of legal norms and the development of law; moreover, the society might develop doubts as to whether the legal norms have been correctly applied. Hence, the fact that in criminal proceedings the issue of initiating cassation proceedings is decided by a single judge does not ensure the right to a fair trial.

Third, the Constitutional Court found that the principle of reasoning was one of the most significant measures for ensuring procedural justice. The inclusion of reasoning in a court's ruling allows a person to verify that he has been heard and that the provided arguments have been examined. This is of particular importance in criminal cases, because a person's understanding of why he has been found guilty of a criminal offence is formed, first and foremost, by the reasoning provided in the ruling. Hence, the court's obligation to provide reasoning as to why the legal arguments regarding the necessity to initiate cassation proceedings in criminal procedure presented in the cassation complaint should be dismissed follows from the right to a fair trial. The principle of a democratic state governed by the rule of law is abided by only if the court's reasoning regarding the considerations presented in the cassation complaint is made known. The degree of detail provided in the reasoning part of the ruling depends on the significant arguments expressed in the case under review. However, the reasoning that is provided must be sufficient for the person to understand why, following the examination of the arguments presented in the complaint, the cassation legal proceedings have not been initiated.

In view of the above, the contested norms of the Criminal Procedure Law, insofar as they did not envisage the obligation to provide reasons in a decision on refusal to initiate cassation legal proceedings, were found to be incompatible with the first sentence of Article 92 of the *Satversme* and void as of the day when the judgment was published. It was ordered that until the moment when the legislator improved the legal regulation, the right to a fair trial had to be ensured by directly applying Article 92 of the *Satversme* and the findings of this judgment.

The legislator should develop an effective and harmonious legal system that would guarantee the observance of fundamental rights in all court proceedings. This, in particular, applies to the cassation instance court which is important in ensuring the supremacy of the *Satversme* and the law in a democratic state governed by the rule of law.

Case no. 2017-25-01

Judgment [in Latvian]
Judgment [in English]
Press release [in English]

On 29 June 2018 the Constitutional Court adopted a judgment in the case no. 2017-25-01 "On the compliance of Article 5 (6) of the *Saeima* Election Law with Articles 1, 9, and 91 of the *Satversme* of the Republic of Latvia".

The prohibition for persons who after 13 January 1991 had been active in the Communist Party of Latvia or other organisations directed against the democratic state order of Latvia to run for the *Saeima* elections was examined in the case.

The case was initiated on the basis of a constitutional complaint. It was noted in the application that the applicant had been active in the Communist Party of Latvia after 13 January 1991. Thus, the contested norm deprives her of the right to run for the *Saeima* elections. The applicant alleged that the restriction on the electoral no longer has a legitimate aim and that it was incompatible with the principle of proportionality and also the principle of equality.

First, the Constitutional Court established the content of the contested norm. The contested norm provides that persons who after 13 January 1991 had been active in the Communist Party of the Soviet Union (CPL), the

Communist Party of Latvia, the Working People's International Front of the Latvian SSR, the United Board of Working Bodies, the Organisation of War and Labour Veterans, the All-Latvia Salvation Committee or its regional committees could not be proposed as the candidates and could not be elected to the *Saeima*. The aim of this norm was to protect the democratic state order, national security and the territorial unity of Latvia. This norm should be interpreted to mean that it prohibits from running for the *Saeima* elections a person who, by being active in the aforementioned organisations after 13 January 1991, by her actions posed a threat and continued to pose a threat to the independence of the Latvian state and the principles of a democratic state governed by the rule of law.

Second, the Constitutional Court found that the compliance of the contested norm with the legal norms of higher legal force had already been examined in 2000 and 2006. However, the claims included in the application cannot be deemed as having been already adjudicated because the interpretation of the contested norm has changed over time; moreover, arguments that have not been examined in the previous judgments had been included in the application. Whereas with respect to the existence of an infringement on the applicant's fundamental rights it was recognised that the right to run for elections was extremely significant in a democratic state and, abiding by the principle of procedural economy, waiting for the moment when the applicant would be prohibited from running for the *Saeima* elections would not be expedient. Hence, it was decided to continue the proceedings in the case.

Third, the Constitutional Court indicated that an effective exercise of a person's rights and freedoms was best possible in the conditions of democracy. However, the exercise of a person's rights may not be directed against the independence of the state and the principles of a democratic state governed by the rule of law. Hence, it may be necessary for the state to take special defensive measures to guarantee the stability and effectiveness of its democratic system. Moreover, the awareness of statehood and democracy has not become sufficiently consolidated in the Latvian society yet – democracy is far from being considered as being self-evident.

Fourth, the Constitutional Court noted that the internal and external threats to the state should be taken into consideration when examining the restriction on fundamental rights included in the contested norm. The fact that persons who previously were active in the organisations referred to in the contested norm are expressing opinions and taking actions that are contrary to the national security and interests must be mentioned as an internal threat. The most significant external threat is caused by Russia's aggressive foreign policy. These threats are a significant factor that justifies the retention of the restriction on fundamental rights included in the contested norm.

Fifth, the Constitutional Court found that the benefit to society provided by the restriction included in the contested norm outweighed the adverse consequences that a person incurred as a result of this restriction. However, if the political situation in the state were to change and the foreign policy threats were to decrease, the legislator has the obligation to review the restriction included in the contested norm and to amend the *Saeima* Election Law.

In view of the above, the Constitutional Court recognised that the contested norm, if appropriately interpreted, complied with Articles 1 and 9 of the *Satversme*.

Moreover, the contested norm was recognised as being compatible also with Article 91 of the *Satversme*, since the Court concluded that persons referred to in the application were not in similar and comparable circumstances.

The judge of the Constitutional Court Jānis Neimanis added his **separate opinion to the judgment [in Latvian]**. It is noted in the opinion that in accordance with the previous interpretation the contested norm should be found to be incompatible with the *Satversme*, since the restriction on the electoral rights included in the norm is no longer necessary and is not proportionate The legislator should provide for restrictions on the electoral rights of persons who pose a threat to the democratic order of the state, without linking it to the events of 1991.

The legislative power is realised also by the *Saeima*, as the body of its members, which has a particularly important role in a parliamentary democratic state. The status of the member of the *Saeima* requires the state to set special requirements to these persons, the aim of which is to protect the independence of the state of Latvia and the principles of a democratic state governed by the rule of law.

2.2. INTERNATIONAL LAW AND THE EUROPEAN UNION LAW

During the reporting period, the Constitutional Court heard two cases in which issues of the European Union law were examined: the case no. 2017-12-01 on the procedure for refunding the overpaid VAT, and the case no. 2017-28-0306 on a different real estate tax rate for foreigners.

The case no. 2017-12-01 pertained to the compliance with the first three sentences of Article 105 of the *Satversme* of a legal regulation in accordance with which the amount of taxpayer's overpaid VAT which was not used for covering its current VAT payments or other payments determined by the state was carried over to subsequent taxation periods until the end of the taxation period. Since the contested norms were adopted in transposing Article 183 of Directive 2006/112/EC[8] the Constitutional Court in examining them took into consideration the Directive and the principle of VAT neutrality.

The Constitutional Court had already examined the procedure for refunding the overpaid VAT in the case no. 2010-02-01, finding, *inter alia*, that entirety financial assets of a taxpayer, including also the over-

8 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, OV L 347, 11.12.2006, p. 1.

paid VAT, were to be deemed his property, protected by Article 105 of the *Satversme*. In the case under review, however, the Constitutional Court developed that case-law in accordance with Article 183 of Directive 206/112/EC and the principle of VAT neutrality, taking into consideration the respective case-law of the Court of Justice of the European Union. The Constitutional Court found that Member States had procedural autonomy with respect to the way in which they refund the overpaid VAT to the taxpayer, as envisaged in Directive 2006/112/EC. The Member States may, in accordance with their own rules, transfer carry over the excess to the subsequent taxation period or refund it, or combine both of these forms. However, the principle of VAT neutrality restricts this discretion of the Member States.

The principle of VAT neutrality defines the limits of a Member State's discretion in choosing the procedure for refunding the overpaid VAT and also provides that the test of the procedure's compatibility with the European Union law should be applied. In principle, the procedure by which the state refunds the overpaid VAT to the taxpayer should be such that would allow the taxpayer, with appropriate conditions, regain the entire amount of overpaid VAT in due time or, to put it differently, the procedure established by the state may not cause a financial burden for the taxpayer. To prevent the occurrence of such a burden, the overpaid amount must be refunded to the taxpayer within a reasonable term. If the overpaid VAT is not refunded within a reasonable term, the state has the obligation to compensate to the taxpayer the financial burden caused, by paying the default interest.

Additionally, the Constitutional Court indicated that the carrying over of the overpaid VAT could be even advantageous for the taxpayer – there is no need to use the financial assets at its disposal to pay the current calculated VAT amount and other payments defined by the state. Moreover, Article 183 (2) of Directive 2006/112/EC provides for the Member States' right to refuse to refund or to carry forward the overpaid VAT if the amount of the excess is insignificant. However, within the meaning of Article 183 (2) of Directive 2006/112/EC only such overpaid amount of VAT, the loss of which would not cause to the taxpayer considerable adverse consequences and the refunding of which would require investing larger financial resources that this overpaid amount, is deemed to be insignificant.

In examining the reasonability of the term for refunding the overpaid VAT, the Constitutional Court held that this term was reasonable if the unavailability of the respective amount of money in this period did not cause a financial burden for the taxpayer. The Court concluded that, in accordance with the-case law of the Court of Justice of the European Union, three months were a reasonable term for refunding the overpaid VAT, whereas terms that lasted for six months and more were recognised by the Court of Justice of the European Union as being unreasonable. If the overpaid amount of VAT is not refunded to the taxpayer within a reasonable term a financial burden is caused for the taxpayer, and the state must compensate for it. Since the contested norm does not envisage compensation for this financial burden by paying default interest, the contested norms are incompatible with the principle of VAT neutrality enshrined in the European Union law. Hence, the Court found that the restriction caused by the contested norms was not proportional and, thus, held that the contested norms were not compatible with Article 105 of the *Satversme*.

In the case no. 2017-28-0306, the Constitutional Court had to decide whether establishing a different rate of real estate tax for foreigners was compatible with Article 91 of the *Satversme* and Article 18 (1) and Article 21 (1) of the Treaty on the Functioning of the European Union (hereinafter – TFEU).

In this case the Constitutional Court proclaimed number of new findings regarding citizenship as one of the criteria included in the content of Article 91 of the *Satversme*. First, the Constitutional Court for the first time recognised that citizenship was one of the criteria included in the content of Article 91 of the *Satversme*. Second, the Court interpreted Article 91 of the *Satversme* in compliance with the obligations that Latvia had assumed by being a Member State of the European Union, i.e., pursuant to Article 18 (1) and Article 21 (1) of TFEU. Third, the Court underscored that within the space of the European Union law differential treatment because of citizenship could be justified only by objective considerations that were unrelated to the citizenship of persons.

In view of the practice of the Human Rights Committee and the case-law of the European Court of Human Rights, the Constitutional Court also concluded that it followed from the norms of international human rights binding upon Latvia – Article 26 of the International Covenant on Civil and Political Rights and Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms – that citizenship was to be considered as one of the prohibited grounds for discrimination. However, the establishment of differences on the basis of the aforementioned criteria is not absolutely prohibited – in certain cases the use of this criterion may be justified.

The Constitutional Court noted that Article 21 (1) of TFEU in interconnection with Article 18 (1) of TFEU established to all citizens of the European Union the right to equal treatment in the host Member State, i.e., the right to the same treatment that was applied to the citizens of this Member State. The right to free movement of a citizen of the European Union means not only the right to move physically and to reside in another Member State but also the right not to be discriminated against in another Member State only because of not being the citizen thereof. Moreover, the right to free movement protects the citizen of the European Union also against such measures of the Member States that

could deter them from exercising the respective right or to place him in a more unfavourable situation only because he has exercised the right to free movement.

Case no. 2017-12-01

Judgment [in Latvian]
Press release [in English]

On 11 April 2018 the Constitutional Court adopted the judgment in the case no. 2017-12-01 "On the compliance of Article 12 (12.3) and (12.5) of the law "On Value Added Tax" (in the wording that was in force from 1 January 2010 until 31 December 2012), insofar as they restrict the right to have a tax over-payment refunded within a reasonable term, with the first, second and third sentence of Article 105 of the *Satversme* of the Republic of Latvia".

The case concerned the procedure for refunding the overpaid value added tax.

The case was initiated on the basis of an application by the Supreme Court. It was noted in the application that, pursuant to the contested norms, a taxpayer's overpaid VAT in the current taxation period was used, primarily, to cover its default taxes, duties and other payments established by the state, as well as to pay the current taxes. The remaining amount was carried over to the subsequent taxation periods until the end of the taxation year. The overpaid VAT was refunded to the taxpayer only at the end of the taxation year. It could be refunded to the taxpayer within the current taxation period only in exceptional cases. Hence, it was alleged that the contested norms restricted the taxpayer's right to property. The failure to refund the overpaid amount within a reasonable term prevents the taxpayer from using its financial assets and could have a negative impact on its ability to engage in business activities.

First, the Constitutional Court recognised that the constitutionality of the contested norms should be examined in compliance with the principles that followed from the Council Directive of 28 November 2006 2006/112/EC on the common system of value added tax. The Court also found that the content of the norms of the Directive and the principle of VAT neutrality was clear and, thus, there was no need to turn to the Court of Justice of the European Union by means of a request for a preliminary ruling.

Second, the Constitutional Court noted that in accordance with the principle of VAT neutrality the amount of overpaid VAT should be refunded to the taxpayer within a reasonable term, i.e., without causing a financial burden. However, if the refunding of the overpaid VAT exceeds a reasonable term, the state has the obligation to compensate to the taxpayer the damages caused by the unavailability of the respective money by paying to the taxpayer the default interest rate. The Court of Justice of the European Union had recognised the term of six months for refunding VAT as being reasonable and the term of six months as being unreasonable.

Third, the Constitutional Court underscored that the

legislator's task in the area of taxation policy was to establish a taxation system aimed at sustainable national development. Only a sustainable taxation system can ensure public welfare. This, in particular, applies to taxes that are imposed on economic activities since the economic activities that private persons engage in under conditions of free market economy are one of the main pillars for the national economy and the main sources of its revenue. If the VAT system causes financial burden for economic operators, encumbering performance of economic activities, this may leave an impact also on the national economic development.

Fourth, the Constitutional Court found that, pursuant to the contested norms, the term, in which the amount of overpaid VAT is refunded to the taxpayer, may vary between one month and one year, and even longer. Hence, the amount of overpaid VAT may be refunded to the taxpayer also within a term that cannot be deemed to be reasonable. Moreover, the law does not envisage a compensation for the financial burden caused by carrying over the overpaid amount by default interest. Hence, the contested norms were found to be incompatible with the principle of VAT neutrality and the restriction on fundamental rights established thereby was held to be not proportionate. Due to this, the contested norms were recognised as being incompatible with Article 105 of the *Satversme*.

Only a sustainable taxation system can ensure public welfare. This, in particular, applies to taxes that are imposed on economic activities since economic activities that private persons engage in under conditions of free market economy are one of the main pillars for the national economy and one of the main sources of its revenue.

Case no. 2017-28-0306

Judgment [in Latvian]
Press release [in English]

On 29 June 2018 the Constitutional Court adopted a judgment in the case no. 2017-28-0306 "On the compliance of para. 3^1 of the Binding Regulation of 9 June 2015 of the Riga City Council no. 148 "On the Real Estate Tax in Riga" with Article 91 of the *Satversme* of the Republic of Latvia and Article 18 (1) and Article 21 (1) of the Treaty on the Functioning of the European Union".

The case concerned the procedure according to which the reduced tax rates were applied to the payers of the real estate tax in Riga if the place of residence of a foreigner[9] had been declared in the property.

The case was initiated with on the basis of an application submitted by the Ombudsman. It was noted in the application that the Binding Regulation of the Riga City Council envisaged several rates of the real estate tax – the basic rate and reduced rates. Pursuant to the contested norm, if a foreigner's place of residence had been declared in the property the reduced tax rates were allegedly applied only if the foreigner's place of residence in Latvia had been declared on 1 January seven years prior the respective taxation year. However, if the place of residence of a citizen or a non-citizen of Latvia was declared in the respective taxation object, such an additional requirement is not imposed. Thus, the reduced tax rate is applied to the payer of the real estate tax in whose property the place of residence of a citizen or a non-citizen of Latvia or a foreigner who meets the requirement set in the contested norm has been declared. Whereas the basic real estate tax rate is applied to the payer of the real estate tax in whose property the place of residence of a foreigner who does not meet the requirement set in the contested norm has been declared. Allegedly, this legal regulation violates the principle of prohibition of discrimination.

First, the Constitutional Court noted that citizenship was one of the criteria included in Article 91 of the *Satversme* as one of the prohibited grounds for discrimination. However, differences that are based on this criterion could be justified in certain cases.

Second, the Constitutional Court found that the differential treatment, established by the contested norm, of the taxpayers in whose property the place of residence of a citizen of a Member State of the European Union, of a state of the European Economic Area or a citizen of the Confederation of Switzerland had been declared, could not be justified. The requirement included in the contested norm differentiates, in a comparable situation, between the citizens of the aforementioned countries and the citizens and non-citizens of Latvia. This requirement is incompatible with the essence of the right to freedom of movement and violates the principle of prohibition of discrimination. Within the legal space of the European Union differential treatment on the basis of citizenship could be justified only by objective considerations that were unrelated to the citizenship of the respective persons. The contested norm, however, establishes a differential treatment of taxpayers directly on the basis of the state of the citizenship of the person who has declared his place of residence in the property

9 A foreigner – a citizen of another Member State of the European Union, a state of the European Economic Area or the Confederation of Switzerland or a person who has received a permanent residence permit in Latvia.

owned by the taxpayer.

Third, the Constitutional Court found that the differential treatment established by the contested norm of those taxpayers in whose property the place of residence of a foreigner who was not the citizen of another Member State of the European Union, a state of the European Economic Area or the Confederation of Switzerland had been declared lacked a legitimate aim. The Riga City Council had not substantiated the existence of such an aim; neither had it indicated objective differences between the taxpayers that would require setting different tax rates. Likewise, the Court was not provided a reasonable explanation on how the requirement of a prolonged and permanent link of the aforementioned foreigners to Latvia ensured or facilitated the performance of those functions and tasks of the municipality for the fulfilment of which the real estate tax was collected.

In view of the above, the Constitutional Court found that the contested norm was incompatible with Article 91 of the *Satversme* and, thus, did not proceed to examine its compliance with Article 18 (1) and Article 21 (1) of the Treaty on the Functioning of the European Union.

Within the legal space of the European Union the citizenship criterion may not be used to establish a differential treatment of taxpayers who are citizens of the European Union.

2.3. PUBLIC LAW (INSTITUTIONAL PART OF THE *SATVERSME*)

During the reporting period the Constitutional Court examined three cases that are related to public law within the broadest understanding of this concept. The compliance of the legislative process with the *Satversme* was examined in all three cases. In two cases the Court examined whether the Cabinet of Ministers had acted in compliance with the authorisation granted to it by the legislator. In the third case a number of new findings were presented regarding the compliance with the *Satversme* of the legislative procedure in the *Saeima*.

In the case no. 2017-11-03, the compliance of the norms of two Cabinet of Ministers Regulations with the *Satversme* and the Education Law was contested. The contested norms regulated the procedure according to which teachers applied for the assessment of the quality of their professional activities and the procedure for calculating remuneration of teachers depending on the assessment results.

With respect to one of the contested norms, the Constitutional Court noted, *inter alia*, that the Cabinet of Ministers in adopting it had not complied with the requirements of the Rules of Procedure of the Cabinet of Ministers. Namely, at the time when the respective draft amendments were examined at the Cabinet of Ministers, the opinions of ministries or non-government organisations had not been annexed to it. Neither were such opinions annexed when the respective amendments were adopted as a legal act. Moreover, the annotation to the aforementioned draft amendments had not been filled out in accordance with the established requirements.

However, the main reason why the Constitutional Court found the contested norms to be incompatible with Articles 1 and 64 of the *Satversme* was the fact that the Cabinet of Ministers had exceeded the authorisation granted by the legislator and had acted *ultra vires*. Specifically, the Cabinet of Ministers by means of the contested norms had established new restrictions on teachers' right to quality assessment and had denied the teachers' right to receive remuneration in proportion to the quality of their work.

In the case no. 2017-33-03 it was examined whether heirs of a deceased patient had the right to receive compensation from the Medical Treatment Risk Fund for the damages inflicted to the patient. The judgment mainly addressed the content of Article 16 (1) of the Law on the Rights of Patients, which was the norm authorising the Cabinet of Ministers.

The Constitutional Court found: if Article 16 (1) of the Law on the Rights of Patients were interpreted to mean that only the patient could receive compensation from the Medical Treatment Risk Fund, then this norm, insofar as it applied to the damage to a patient's life, could not be applied at all. Hence, the aforementioned norm should be interpreted to mean that in the case of a patient's death the compensation for the damage inflicted on him should be disbursed to another person. Thus, the Court concluded that the right of a diseased patient's heirs to compensation from the Medical Treatment Risk Fund followed from the law and, therefore, the Cabinet of Ministers had acted in compliance with the authorisation granted to it.

In the case no. 2017-17-01 the relationship of compulsory land lease that had developed between the owners of multi-apartment buildings and the owners of the land plots on which these houses were built was examined already for the fourth time. For many years, the *Saeima* has been attempting to solve the situation where the land and the houses built on it belong to different owners, by regulating by law the lease fee that the owners of the multi-apartment buildings must pay to the landowners. In the cases that were decided in 2009 and 2011 the Constitutional Court found the fee of the compulsory lease to be incompatible with the *Satversme*.

The judgment in the case no. 2017-17-01 builds on the existing case-law of the Constitutional Court with respect to the legislator's discretion in adopting new legal regulation. The Court noted that in those cases where the constitutionality of the legal norms that regulate the legal relationships under examination had already been reviewed in the past the legislator, in adopting new regulation in the respective field, should take into

consideration, with particular care, the findings expressed in the previous rulings by the Constitutional Court. Particularly in such cases a legislative procedure that promotes the trust in the state and the law, instils confidence that the chosen solution is fair should be ensured. If the legislator fails to ensure such a legislative process, then it must be considered that the restriction on fundamental rights that follows from the contested norms has not been established by law and that such norms are incompatible with the *Satversme*.

The Court found that the *Saeima* had not duly assessed the impact of the restriction on fundamental rights on the landowners' situation and had not substantiated the compliance of the intended solution with the case-law of the Constitutional Court. In the judgments adopted in 2009 and 2011 the Court had drawn the legislator's attention to a number of problems and the need to find solution to them. Moreover, in the course of adopting the contested norms, arguments regarding their possible incompatibility with the legal norms of higher legal force and the case-law of the Constitutional Court had been provided; however, the legislator had not examined these arguments adequately.

Case no. 2017-11-03

Judgment [in Latvian]
Press release [in English]

On 21 February 2018 the Constitutional Court adopted a judgment in the case no. 2017-11-03 "On the compliance of para. 91 of the Cabinet of Ministers Regulation of 17 June 2014 no. 350 "Procedure for Evaluating Professional Activities of Teachers" with Articles 1, 64, and 91 of the *Satversme* of the Republic of Latvia and with Article 49^1 (1) and (3) of the Education Law, and of para. 27 of the Cabinet of Ministers Regulation of 5 July 2016 no. 445 "Regulation on Remuneration for Teachers' Work" with Article 1 of the *Satversme* of the Republic of Latvia".

The case concerned Cabinet of Ministers Regulations which prohibited some groups of teachers from applying for the assessment of the quality of their professional activities and defined the procedure for calculating the bonus payment to be granted for the quality level.

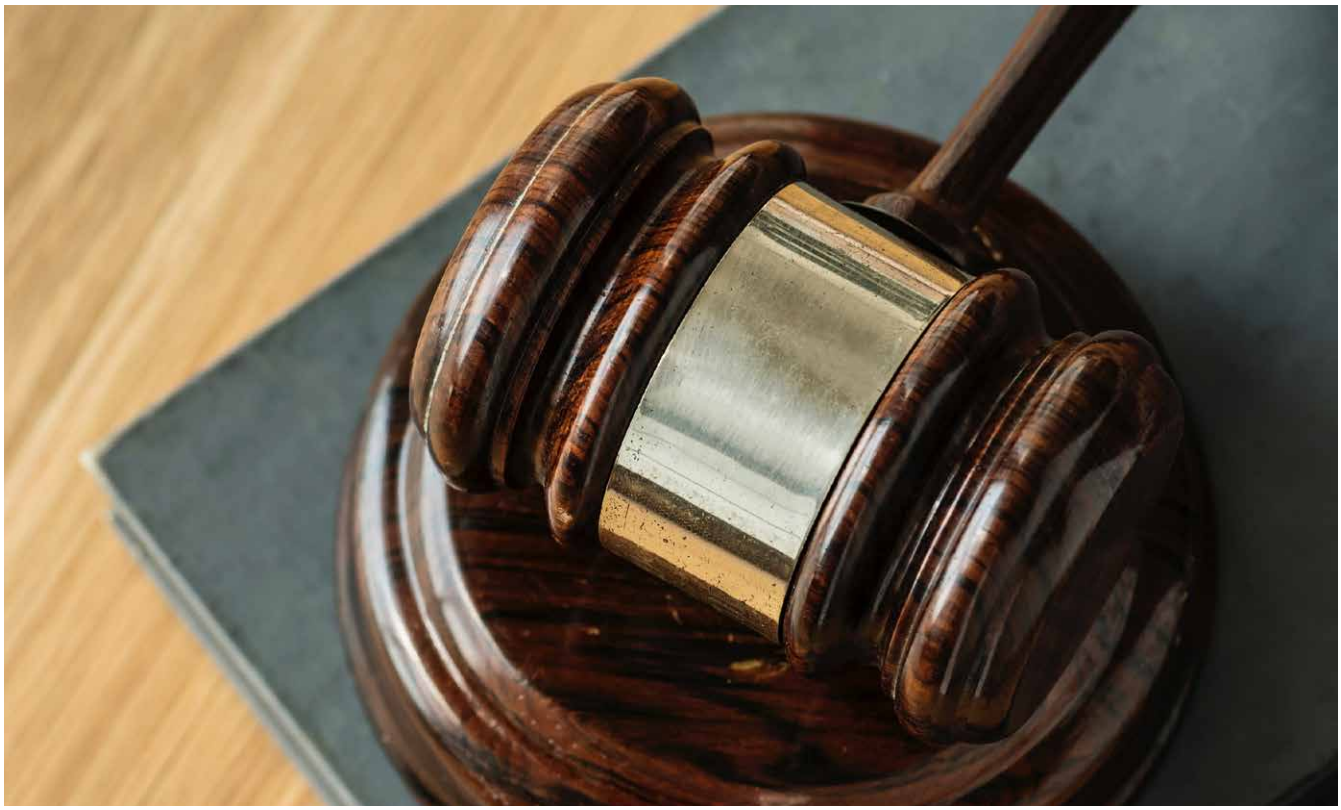
The case was initiated on the basis of an application submitted by twenty-one members of the *Saeima*. It was noted in the application that the Cabinet of Ministers had denied the teachers' legal right to have the quality of their professional activities assessed and, thus, to receive the bonus payment for the quality level. As regards those teachers who already had been granted a quality level, the procedure for calculating the bonus payment had been changed unreasonably. Hence, the Cabinet of Ministers had violated the authorisation granted by the legislator, as well as the principles of legal expectations and equality.

First, the Constitutional Court found that one of the contested norms had become void while the case was being prepared for examination. Nevertheless, the proceedings in the case were continued to verify whether the respective norm had been issued *ultra vires* and whether it could cause legal consequences.

Second, the Constitutional Court held that the legislator had authorised the Cabinet of Ministers to issue regulations to implement the teachers' rights, guaranteed in the Education Law, to assessment of the quality of their professional activities and to a corresponding quality level. However, the legislator had defined also exhaustive restrictions on the aforementioned rights. Therefore, the Cabinet of Ministers was not authorised to impose a new restriction related to applying for the assessment of the professional quality that had not been envisaged in the law. The contested norm prohibited from applying for the quality assessment for more than two years those teachers to whom the quality level had not yet been granted. Likewise, this norm prohibited from applying in due time for quality evaluation also those teachers whose certificates of the quality level had a term of validity close to expiry.

Third, the Constitutional Court noted that the legislator had authorised the Cabinet of Ministers to determine the positions and specialisations of teachers. The Cabinet of Ministers, however, had established different procedures for calculating the quality bonus payments to teachers, by dividing teachers as to their positions and specialisation. The Court found that the authorisation granted by the legislator did not establish the right to develop a legal regulation that defined different rights and obligations to teachers, depending on their position or specialisation. Hence, the Cabinet of Ministers had exceeded the authorisation granted to it. In view of the above, the Constitutional Court held that the contested norms were incompatible with Articles 1 and 64 of the *Satversme* and did not proceed to examine their compliance with the principles of legal expectations and equality. Declaring the contested norms to be void as of the moment of their adoption, the Court noted that in the future the bonus payments to teachers had to be determined in accordance with the regulation envisaged in the transitional provisions of the Education Law.

The Cabinet of Ministers regulations may not comprise such legal norms that would create new legal relationships without the legislator's authorisation. The Cabinet of Ministers may only specify a law adopted by the *Saeima*.



Case no. 2017-17-01

Judgment [in Latvian]
Press release [in English]

On 12 April 2018 the Constitutional Court adopted a judgment in the case no. 2017-17-01 "On the compliance of Article 1 of the law "Amendments to the Law on Privatisation of State and Local Government Residential Houses", adopted on 1 June 2017, and of the law "Amendments to the Law on Land Reform in the Cities of the Republic of Latvia", adopted on 22 June 2017, with Articles 1 and 105 of the *Satversme* of the Republic of Latvia".

The case concerned legal norms that restricted landowners' right to property in the legal relationships of compulsory lease.

The case was initiated on the basis of a number of constitutional complaints. It was noted in the complaints that the applicants owned land plots or undivided shares of land plots on which multi-apartment buildings owned by other persons were located. The relationship of compulsory lease existed between the applicants and the owners of the respective buildings. It was alleged that the contested norms considerably lowered the amount of lease payment and, thus, disproportionately restricted the applicants' right to property. Moreover, the contested norms were said to infringe also their legal expectations because the *Saeima* had not taken into consideration the findings about the restrictions on the compulsory lease payments expressed in judgments of the Constitutional Court.

First, the Constitutional Court found that the right to own property comprised also a person's right to lease his immovable property as he deemed necessary. However, this right could be restricted, in particular in the field of housing which is an important element of the social and economic policy in the contemporary society. Setting the maximum amount of lease payment in the legal relationship of compulsory lease is one of such restrictions.

Second, the Constitutional Court noted: in adopting the legal regulation in the area of compulsory lease, the legislator had to balance the opposite interests of persons and to ensure justice, taking into account the findings included in judgments of the Constitutional Court. The legislator must monitor, to the extent possible, whether a proportionate balance exists in this regal relationship throughout the period of its existence and should avoid adopting regulation that is aimed at protecting the interests of one party in this relationship. In particular, in such cases, where the constitutionality of the norms that regulate this legal relationship has already been examined by the Constitutional Court, the legislator must ensure a process of legislation that instils conviction that the chosen solution is fair. Thus, in planning to include in laws a new restriction on the amount of the compulsory lease payment, the legislator had to ensure proper analysis and substantiation of the constitutionality of such possible regulation, *inter alia*, also in the context of the established case-law of the Constitutional Court in matters of compulsory lease.

Third, the Constitutional Court found that the *Saeima* had not examined properly the impact of the restriction on fundamental rights on the landowners' situation and had not substantiated the compliance of the

intended solution with the Constitutional Court's case-law. Prior to the adoption of the contested norms the legislator did not have at its disposal proper analysis and substantiation regarding the constitutionality of the restriction on the landowners' right to property included in these norms in the context of the Court's case-law related to matters of compulsory lease. Hence, the contested norms had not been adopted in proper procedure and therefore are incompatible with Article 105 of the *Satversme*. Since the contested norms were found to be incompatible with Article 105, their compliance with the principle of legal expectations was not examined.

Fourth, the Constitutional Court found: the principle that a legal norm which has not been adopted in a proper procedure could not have legal consequences was abided by in democratic states governed by the rule of law. However, in exceptional cases where declaring the contested norm void immediately would be even more incompatible with the *Satversme* than leaving it in force, another date as of which the norm becomes void can be set. If, in the particular case, the Constitutional Court were to rule that the contested norms should become void as of the moment of their adoption or any other past date, then the amount of compulsory lease fee would not be defined by law at all. Such a ruling could create a significant threat to the rights and lawful interests of the parties to the legal relationships of compulsory lease, rather than ensure legal stability, clarity and peace in social reality. Therefore the contested norms were declared void as of 1 May 2019.

Judges of the Constitutional Court Aldis Laviņš and Jānis Neimanis added to the judgment **their separate opinion [in Latvian]**. It is noted in the separate opinion that the *Saeima* had not committed significant violations of the legislative procedure. The *Saeima* was said to have the right to deviate from the interpretation of a legal norm provided in a judgment of the Constitutional Court if it considers that this interpretation no longer is appropriate in the light of factual or legal circumstances. Moreover, the finding that the *Saeima* had not ensured proper discussions, analysis of and substantiation for the restriction on the fundamental rights included in the contested norms was said to be unfounded.

A separate opinion [in Latvian] was added to the judgment also by the judge of the Constitutional Court Gunārs Kusiņš. In the opinion, the judge did not agree to the approach taken in the judgment for assessing the constitutionality of the contested norms. The judge also noted that the restriction on fundamental rights included in the contested norms was established by a law adopted in due procedure. However, the restriction is not proportionate, since alternative measures exist for reaching the legitimate aim of the restriction on fundamental rights in at least the same quality, at the same time restricting the landowners' rights to a lesser extent.

The legislator must ensure such a legislative procedure that instils the conviction that the chosen solution is fair, in particular, in those cases, where the constitutionality of the norms that regulate a legal relationship has already been examined by the Constitutional Court.

Case no. 2017-33-03

Judgment [in Latvian]
Press release [in English]

On 18 October 2018 the Constitutional Court adopted a judgment in the case no. 2017-33-03 "On the compliance of paras. 3^1 and 15 of the Cabinet of Ministers Regulation of 5 November 2013 no. 1268 "Regulation on the Functioning of the Medical Treatment Risk Fund" with Article 64 of the *Satversme* of the Republic of Latvia".

The case concerned the procedure by which the heirs of a deceased patient could receive compensation from the Medical Treatment Risk Fund for the damage inflicted on the patient.

The case was initiated on the basis of an application submitted by the Administrative District Court. It is noted in the application that Article 16 (1) of the Law on the Rights of Patients provided for only the patient's right to receive compensation from the Medical Treatment Risk Fund. However, the Cabinet of Ministers had stipulated in the contested norms that in case of a patient's death his heirs succeed in these rights. Thus, the Cabinet of Ministers had unduly expanded the circle of persons who had the right to receive compensation from the Medical Treatment Risk Fund.

First, the Constitutional Court found that the contested para. 15 of the Cabinet of Ministers Regulation had been transformed into para 15.2 but that its substance had not changed. The Court decided to continue the proceedings in the case, examining the compliance of paras. 3^1 and 15.2 of this Regulation as a united legal regulation with Article 64 of the *Satversme*.

Second, the Constitutional Court pointed out that the contested norms had been adopted on the basis of Article 16 (3) of the Law on the Rights of Patients. It provides, *inter alia*, that the Cabinet of Ministers shall establish the procedure for claiming compensation from the Medical Treatment Risk Fund for the damage inflicted on a patient's health and life and for the medical

treatment costs. Hence, the legislator had authorised the Cabinet of Ministers to regulate the procedure for claiming and disbursing compensation from the Medical Treatment Risk Fund, but had not authorised it to adopt substantive legal norms that would create new legal relationships that are not envisaged by law.

Third, the Constitutional Court found: it followed from the grammatical wording of Article 16 (1) of the Law on the Rights of Patients that the person who had the right to receive compensation from the Medical Treatment Risk Fund was the patient. However, it also provided that compensation must be paid not only if damage has been inflicted on the patient's health but also if damage has been inflicted on the patient's life. Thus, compensation must be disbursed also in the case of a patient's death. Hence, Article 16 (1) of the Law on the Rights of Patients is to be interpreted to mean that in the case of a patient's death the compensation for the damage inflicted on him must be disbursed to the patient's heirs.

Fourth, the Constitutional Court concluded that it had been recognised in the Latvian legal doctrine and the courts' case-law that the right to compensation for the damage inflicted upon a person's health by its nature was a purely personal right and therefore could not be inherited. However, the legislator has the right to regulate by special norms particular issues in a way that differs from the general legal order in the respective field. Therefore, the Cabinet of Ministers had been authorised by Article 16 (3) of the Law on the Rights of Patients to establish, *inter alia*, a procedure by which the heirs of a deceased patient had the right to claim and to receive compensation from the Medical Treatment Risk Fund for the damage inflicted upon the deceased patient. The contested norms provide a more detailed regulation on the application of the norms of the Law on the Rights of Patients in the case of a patient's death and do not create new legal relationships that would not follow from the Law on the Rights of Patients. Hence, the contested norms comply with Article 64 of the *Satversme*.

Judges of the Constitutional Court Ineta Ziemele and Sanita Osipova added their **separate opinion [in Latvian]** to the judgment. It is noted in the opinion that the Cabinet of Ministers has exceeded the limits of the authorisation granted to it by the law. By envisaging the right to receive compensation from the Medical Treatment Risk Fund to any heir of a deceased patient, the Cabinet of Ministers had not taken into account the purpose of the Medical Treatment Risk Fund – to ensure that, in the case of a patient's death, his immediate family should receive the compensation. Moreover, in defining the acceptance of the estate as a pre-requisite for receiving compensation from the Medical Treatment Risk Fund, the Cabinet of Ministers has restricted the rights of the patient's immediate family to receive this compensation. The judges also noted that the legislator itself had to decide on the matter regarding an exemption from the general legal procedure in civil law.

The separate opinion [in Latvian] of judge of the Constitutional Court Jānis Neimanis also was added to the judgment. It is noted in the opinion that the claim regarding compensation for the moral damage inflicted upon a person's health was not purely personal and, thus, Article 16 (1) of the Law on the Rights of Patients was not an exception from the general legal order but complied with this order.

The legislator has the right, abiding by the general principles of law and other norms of the *Satversme*, to regulate legal relationships and to determine the rights and obligations of persons, as well as the procedure for their implementation. This means that the legislator may also provide for exceptions and regulate by special norms particular matters in a way that differs from the general legal order in the respective field.

2.4. ADMINISTRATIVE LAW

During the reporting period the Constitutional Court has examined administrative law issues in two cases – in the case no. 2017-32-05 and the case no. 2018-07-05. Both these cases were initiated on the basis of applications of municipal councils, requesting the examination of the legality of orders of a inster authorised by the Cabinet of Ministers which suspended the operation of decisions adopted by the municipal councils. Previously municipal councils had turned to the Constitutional Court with regard to such orders nine times; however, none of the contested orders had been found unlawful.

In the case no. 2017-32-05 it was examined, whether the minister authorised by the Cabinet of Ministers had the right to suspend the operation of a decision by a municipal council by which the municipality established standing committees and determined the composition of these committees. The minister considered that in determining the composition of its committees the council had not complied with the principle of proportionality, since the number of the members elected to the committees was not proportionate with the number of members elected to the council from each political party. The Constitutional Court found that the suspended council decision was to be regarded as an individual legal act which the Minister had no right to suspend. Thus, the Court did not examine the minister's order on its merits because it was concluded that it had been issued *ultra vires*.

A number of important findings pertaining to administrative law issues were expressed in the case no. 2017-32-05; first of all – regarding the subjective public rights of a member of a municipal council and abiding by the principle of proportionality in organising the work of the council in committees and commissions. The Constitutional Court underscored that the participation right of a member of a municipal council was not absolute and did not grant the right to a particular council member to take a particular position. At the same time, the right to participate means the right of every council member to serve, on equal basis, on the standing committees, to participate in the meetings of these committees and in the decision taking.

As regards the proportionality principle, the Constitutional Court found that this principle regulated not only the calculation of the municipal election results but also established the obligation of a municipal council to allow also in the future each council member to participate in full in the work of the council's committees and commissions. Moreover, deviations from compliance with the proportionality principle cannot be justified by referring to a political decision.

Interpretation of Article 101 of the *Satversme* needs to be highlighted as the most significant contribution to the development of the administrative law case-law. The Constitutional Court found that if a municipal government or its bodies in their activities violated the subjective public rights of a council member, the principle of a state governed by the rule of law and Article 101 of the *Satversme* demanded a mechanism for protecting the council member's infringed rights. The dispute between a member of a municipal council and the municipal council or one of its bodies is a public law dispute regarding the exercise of the subjective public rights of the particular council member and it follows from the actions taken by the municipal council or its bodies in the field of executive power. Therefore, the violation of a local government's council member's subjective public rights should be examined by administrative courts, on the basis of an application by the council member.

In the case no. 2018-07-05 two administrative law issues were examined: first, the meeting of the requirements included in Article 49 of the law "On Local Governments" for submitting an application by a municipal council to the Constitutional Court; second, differentiating between a general administrative act and a regulatory enactment.

The Constitutional Court noted that the aim of the regulation included in Article 49 of the law "On Local Governments" was to allow the minister and the municipal government to resolve the dispute regarding the legality of a binding regulation or another legal act, while the municipal government had not yet submitted an application to the Court, requesting it to revoke the

minister's order. The submission of an application is to be regarded as the final measure in dispute resolution if the council does not agree with the reasoning included in the minister's order and is of the opinion that the suspended binding regulation or another legal act should be neither revoked nor amended.

Article 49 of the law "On Local Governments" does not impose on the municipal council the obligation to examine the matter of the legality of the suspended binding regulation or another legal act in one meeting of the Council. If it is impossible to adopt a decision on the legality of the binding regulation or another legal act at an extraordinary meeting of the council which has been convened within two weeks after receiving the minister's order, the council may adopt the respective decision later. However, the council must take into account that pursuant to Article 49 (4) of the law "On Local Governments" it has no right to submit an application to the Constitutional Court requesting revoking of the minister's order if, within two months after receiving the opinion from the ministry, it has not fulfilled the obligation to adopt a decision providing reasoning why does the council does not agree with the statements made in the ministry's opinion.

The time-limit of three months for submitting an application to the Constitutional Court, defined in the first sentence of Article 49 (3) of the law "On Local Governments", is binding upon the council. If the Council does not adopt a decision to revoke the suspended binding regulation, another legal act or some of its paragraphs within three months following the receipt of the minister's order, it loses the right to submit an application to the Constitutional Court, requesting a revocation of the minister's order.

In examining the way how to differentiate between a general administrative act and a regulatory act, the Constitutional Court, by referring to its case-law, noted that a regulatory act was a legal act which includes legal norms – an abstract generally binding instruction regarding conduct which applies to an unspecified circle or persons and is applicable repeatedly. External regulatory enactments are binding upon an abstract circle of persons and they regulate legal relationship, for instance, between a public law subject, as one party, and a private individual, as the other party, or the mutual legal relationships of private persons.

On the other hand, an administrative act is an externally directed legal act which an institution issues in the field of public law with respect to an individually identified person or persons, creating, amending, establishing or terminating a particular legal relationship or establishing a factual situation. An administrative act, unlike a regulatory enactment, does not create new legal norms – it is an act of applying legal norms by which the legal norms included in an external regulatory enactment are applied. In some cases an institution may also issue general administrative acts which are aimed at a circle of persons, who are not individually determined but are in particular and identifiable circumstances. However, also a general administrative act enlivens a regulatory enactment or a legal norm in particular circumstances. Hence, if a particular paragraph of the council's decision has an external effect, it applies to an unspecified circle of persons and a number of cases like that then this paragraph of the council's decision is a generally binding (external) legal norm.

Case no. 2017-32-05

Judgment [in Latvian]
Press release [in English]

On 29 June 2018 the Constitutional Court adopted a judgment in the case no. 2017-32-05 "On the compliance of the order of 1 August 2017 of the Minister for the Environmental Protection and Regional Development no. 1-13/6038 "On suspending paras. 1, 3, 4 and 5 of the decision of 16 June 2017 of the Salaspils Regional Council "On Establishment of the Standing Regional Committees and Election of Members thereof" (minutes no. 12, § 4)" with Article 1 of the *Satversme* of the Republic of Latvia and Article 49 of the law "On Local Governments"".

The case concerned the order of the Minister for the Environmental Protection and Regional Development (hereinafter also – the Minister), partially suspending the operation of the decision of the Salaspils Regional Council on establishing standing committees. The Minister considered that the council had not complied with the principle of proportionality in establishing the standing committees, since in four committees the number of council members elected to the committees was not proportionate to the number of council members elected from each political party.

The case was initiated on the basis of an application of the Salaspils Regional Council. It was alleged in the application that the Minister has the right to suspend only the operations of regulatory enactments issued by a local government, whereas the decision on establishing standing committees, allegedly, was not a regulatory enactment. It was said to be a political decision which may not be subjected to legal review.

First, the Constitutional Court recognised that the basic norm of a democratic state governed by the rule of law and Article 101 of the *Satversme* included also the principle of self-governance which in turn covered a set of minimum requirements regarding the organisation of municipal governments in a democratic state governed by the rule of law – the existence of a local self-government and the direct democratic legitimization of it.

Second, the Constitutional Court pointed out that the activities of municipalities should comply with the general principles of law. The obligation of a municipality to comply with the law and to respect the rights in its activities follows from the principle of a state governed by the rule of law, whereas the state has the obligation

to supervise this compliance of municipalities, and, if necessary, to ensure it. The Minister for Environment Protection and Regional Development supervises the institutional activities of municipalities and has been granted a number of rights, *inter alia*, the right to suspend unlawful regulatory enactments issued by a municipality. However, the Minister does not have the right to suspend individual legal acts (administrative acts and individual institutional decisions), as well as political decisions of a municipality.

Third, the Constitutional Court underscored that the obligation of a municipal council to ensure to all council members equal rights to participate in the work of the council, *inter alia*, to participate in the work of the municipal committees, followed from the obligation to represent the interests of the inhabitants of the municipality. Whereas the model of representing the inhabitants of the municipality in the municipal council established in accordance with the proportionality principle must be complied with also when setting up the standing committees of the municipal council and in the activities of the committees. The number of representatives from each political party or association of electors in the committee must be determined proportionally to the number of council members elected from each political party or association of electors, insofar as it is objectively possible. Derogation from proportionality cannot be justified by referring to a political decision.

Fourth, the Constitutional Court concluded that the decisions of the municipal council on establishing standing committees were individual legal acts. Thus, the Constitutional Court found that the council's decision was not a regulatory enactment and, by suspending it, the Minister had failed to abide by the first sentence of Article 49 (1) of the law "On Local Governments". Hence, the contested order was declared unlawful and from the moment of its adoption. The compliance of the contested order with the principle of the democratic state order included in Article 1 of the *Satversme* was not examined after that.

Additionally, the Constitutional Court noted: the fact that the decision of the Salaspils Regional Council should not be considered a regulatory enactment did not mean that the legality of this order should not be reviewed. The dispute between a member of a municipal council and the council or its body regarding the exercise of the subjective public rights of a particular member of the council is a public law dispute and it follows from the actions taken by the municipal council or its bodies in the field of executive power. Therefore the examination of an infringement of the subjective public rights of a member of a municipal council should be performed by an administrative court on the basis of an application of the member of the council.

Specific subjective public rights follow from a municipal council member's right to participate, *inter alia*, the right to participate in the activities of a municipal committees – in meetings and in the decision-making.

Case no. 2018-07-05

Judgment [in Latvian]
Press release [in English]

On 15 November 2018 the Constitutional Court adopted a judgment in the case no. 2018-05-05 "On the compliance of the order of the Minister for Environmental Protection and Regional Development of 26 September 2017 no. 1-2/7346 "On suspending sub-para 1.3., in the part determining catering costs (parents' payment) in specialised pre-school institutions of education, and suspending para. 7 of the decision of the Rēzekne City Council of 22 December 2016 no. 1872 "On Determining the Catering Costs in the Municipal Institutions of Education of Rēzekne and Approving the Mark-up" (minutes no. 103, para. 13) with Article 49 of the Law "On Local Governments"".

The cases concerned the Minister's order on suspending the operation of paragraphs in a decision by the Rēzekne City Council which established parents' obligation to pay for children's catering in specialised pre-school institutions of education. The Minister considered that the municipality should provide catering in the specialised pre-school educational institutions subordinated to it, covering expenses from the financial resources of its budget.

The case was initiated on the basis of an application of the Rēzekne City Council. It was noted in the application that the Minister had not right to suspend the operation of the paragraphs in the Council's decision since these were not generally binding or external legal norms. Moreover, the Council by establishing parents' co-financing of the catering for children in specialised pre-school educational institutions had acted in compliance with regulatory enactments.

First, the Constitutional Court examined the Minister's request to terminate legal proceedings in the case because the Rēzekne City Council had not complied with the procedure for submitting an application to the Constitutional Court. The Court pointed out that the local government's obligation was to convene an extraordinary meeting and to examine the Minister's order within two weeks following the receipt of the Minister's order. If it proved impossible to adopt a decision on the legality of the suspended regulatory enactment at the extraordinary sitting convened within the respective term the Council may adopt this decision also later. However, the Council should take into consideration that it does not have the right to submit an application to the Constitutional Court requesting the revocation of the Minister's order if within two months from the date of receiving the ministry's opinion it has not adopted a decision providing the reasoning of why the Council disagrees with the statements made in the ministry's opinion. Likewise, the time-limit set for submitting an application to the Constitutional Court is also binding upon the Council. If within three months following the receipt of the Minister's order the Council does not adopt a decision on revoking the suspended binding regulation or another regulatory enactment, or certain paragraphs thereof, it forfeits the right to submit an application to the Constitutional Court requesting revoking of the Minister's order. The Court ruled that the Council had complied with the procedure for submitting an application.

Second, the Constitutional Court also examined the legal nature of the paragraphs of the Rēzekne City Council's decision that had been suspended by the contested order. The Court found that the paragraphs in the decision established parents' obligation to pay for the catering for children in specialised pre-school educational institutions. Thus they had an external effect, applied to an undetermined circle of persons (to all parents whose children were attending or would be attending a specialised pre-school educational institution) and therefore were applicable to several cases of the kind. Hence the suspended paragraphs of the Council's decision were generally binding (external) legal norms.

Third, the Constitutional Court examined whether a municipality was entitled to issue legal norms that obliged parents to pay for catering for children in specialised pre-school educational institutions. The Court noted that external regulatory enactments that regulated the field of education did not grant the right to a local government to establish any kind of parents' payments for catering in specialised pre-school educational institutions subordinated to it. Thus, the Rēzekne City Council had exceeded its competence defined in regulatory enactments and had not complied with subordination to law and rights. Hence, the suspended paragraphs of the Council's decision were unlawful and the Minister by suspending them had complied with Article 49 of the law "On Local Governments".

A local government's authorisation to issue generally binding legal norms that establish the parents' obligation to pay for catering for children in specialised pre-school educational institutions does not follow from external regulatory enactments.

2.5. TAX AND BUDGET LAW

In the reporting period, the Constitutional Court has examined issues of tax law in four cases – in the case no. 2017-12-01 on refunding the amount of overpaid VAT,[10] in the case no. 2017-28-0306 on the rate of real estate tax for foreigners,[11] in the case no. 2017-35-03 on the reduced rates of the real estate tax, and in the case no. 2018-04-01 on additional real estate tax.

In the case no. 2017-35-03 for the first time the Court examined the compliance of the procedure for calculating real estate tax established by a local government with the first sentence of Article 91 of the *Satversme* in interconnection with the first sentence of Article 105 of the *Satversme*. The contested norm established a different procedure for calculating the real estate tax for a natural person who owned an apartment property or a single-apartment building which had not been subdivided into apartments or a group of premises in a non-residential building the purpose of which was residence, and for a person who owned an apartment or a single-apartment building. Thus, in this case, the Court had to examine whether the restriction on the right to property complied with the equality principle.

The Constitutional Court, *inter alia*, focused on the issue of the obligations that a municipality had in determining the rates of real estate tax within the limits of the authorisation granted by the legislator. The Court held that a municipality had the right to set also different tax rates, in compliance with the authorisation granted by the legislator and within the range of real estate tax established by the legislator, provided that it complied with the general principles of law and other legal norms of higher legal force. The Court also ruled that a local government should establish as effective procedure as possible for calculating the tax.

The Constitutional Court found that the criterion included in the contested norm – the area of premises that one person who had declared his place of residence was eligible to – was the local government's choice of the principle for calculating the tax applicable to a particular object of real estate tax and this choice could be substantiated by considerations of law and expedience The principle for calculating a tax established by a local government must be reasonably explicable, and the contested norm itself must comply with legal norms of higher legal force. The Court also pointed out that the information that was used in applying and calculating a tax had to be credible and true.

In the case no. 2018-04-01 it was examined whether the procedure, in accordance with which the obligation to pay additional real estate tax rate for agricultural land that was not cultivated ceased was compatible with Article 105 of the *Satversme*.

In this case, the Constitutional Court for the first time applied the sustainability principle in the field of tax law. Sustainability is one of the constitutional principles that are aimed at protecting the purposes and values included in the *Satversme*, as well as their implementation. Sustainable development is an integrated and balanced development of public welfare, environment and economy, which satisfies the current social and economic needs of inhabitants and ensures that the requirements regarding environmental protection are met. Agricultural land, in turn, is one of the most important natural resources for the national economy. It has a significant influence on a benevolent living environment, it is an important natural treasure and a valuable economic resource. In order to maintain it and preserve it for the future generations, appropriate requirements regarding orderliness need to be set. The obligation to ensure the preservation of agricultural land, its effective use and farming which includes preservation of the biological diversity typical of Latvia, follows from the sustainability principle. The state in fulfilling this obligation may envisage an additional tax rate for agricultural land that is not farmed.

The additional rate of real estate tax not only ensures

10 Information about the cases no. 2017-12-01 and no. 2017-28-0306 is included in the section "International law and the European Union law" of the report.

11 Information about the case no. 2017-28-0306 is included in the section "International law and the European Union law" of the Report.

additional revenue in the municipal budgets but also has a function to regulate the landowners' conduct. The application of the additional tax rate has a positive impact on the farming of agricultural land – it facilitates putting into order of this land and maintaining it constantly in a good agricultural and environmental condition. At the same time, the additional tax rate is also an incentive for the landowner to be interested in producing agricultural products and using the land for agricultural purposes. Therefore, the additional rate ensures also the regulating function of the real estate tax and therefore cannot be regarded as being a punishment within the meaning of the general legal principle *ne bis in idem*.

Case no. 2017-35-03

Judgment [in Latvian]
Press release [in English]

On 18 October 2018 the Constitutional Court adopted a judgment in the case no. 2017-35-03 "On the compliance of sub-para. 3.2.1. of the Binding Regulation of the Riga City Council of 9 June 2015 no. 148 "On the Real Estate Tax in Riga" with the first sentence of Article 91 and the first sentence of Article 105 of the *Satversme* of the Republic of Latvia".

The case concerned the assessment of the procedure, established by the Riga City Council, according to which the real estate tax is calculated for natural persons for multi-apartment buildings which have not been subdivided into apartment properties, or a group of premises in a non-residential building the purpose of which is residence.

The case was initiated on the basis of the Ombudsman's application. It was alleged in the application that the contested norm sets an unjustified different amount and calculation of the real estate tax for: 1) persons who own a multi-apartment building which has not been subdivided into apartment properties, or a group of premises in a non-residential building the purpose of which is residence; 2) persons who own an apartment property or a single-apartment house. To the first group of persons the reduced tax rates are applicable for 30 square metres per each person whose residence is declared in the property, whereas to the second group of persons the reduced rates are applicable irrespectively of the area to which a person who has declared his place of residence in this property is eligible. Firstly, the Constitutional Court held that the first sentence of Article 91 of the *Satversme* in conjunction with the first sentence of Article 105 of the *Satversme* prohibited issuing legal norms that without objective and reasonable grounds allowed differential treatment of taxpayers who were in similar an comparable circumstances. The Court also pointed out that the criterion included in the contested norm – the area of premises to which a person who had declared his place of residence was eligible – was the local government's choice of the principle for calculating the tax applicable to a particular object of real estate tax and this choice could be substantiated by both, considerations of law and expedience The principle for calculating a tax established by a local government must be reasonably explicable, and the contested norm itself must comply with legal norms of higher legal force.

Second, the Constitutional Court found that the selected principle for calculating the tax had a reasonable explanation since the Riga City Council, in defining the area of premises that one person who had declared his place of residence was eligible to, had used statistical data. In calculating the amount of tax in accordance with the contested norm, the Riga City Council uses information that it already has at its disposal, which does not require additional processing or examination. Whereas if the data needed for calculating the tax had to be requested from other public institutions or the taxpayers themselves, the calculation of tax could become less effective.

Third, the Constitutional Court did not agree to the argument that because of the differential treatment established by the contested norm taxpayers were forced to declare in their property more persons than those who actually lived there. The contested norm had a regulatory function – to encourage taxpayers to declare their place of residence in Riga or to allow the persons living in the tax object to declare their place of residence therein. Hence, the taxpayer could adjust his behaviour in a way to ensure that the reduced tax rates were applied to him. Whereas the possible abuse of the contested norm or using it contrary to its aim *per se* do not mean that this norm is incompatible with the *Satversme*.

Fourth, the Constitutional Court dismissed the argument that the contested norm was not proportionate, since the actions taken by one co-owner in handling the property was said to unduly influence the tax burden of other co-owners. The institution of joint ownership *per se* causes such consequences that the actions of one co-owner could, to a certain extent, influence the other co-owners. Therefore, the persons who are in the legal relationship of joint ownership, should be aware of the legal consequences following from it.

Fifth, the Constitutional Court underscored that the public benefit from the differential treatment established in the contested norm was not only revenue in the municipal budget but also an effective tax administration. Moreover, the contested norm also facilitates declaring of the place of residence for persons, for example tenants, at the place where they actually reside, and, thus, fosters a person's reachability in the legal relationships with the state and the municipality. Hence, the benefit gained by society outweighs the harm inflicted on a person's right to property. Therefore the principle of proportionality has been complied with in establishing the differential treatment, and the contested norm complies with the first sentence of Article 91 and the first sentence of Article 105 of the *Satversme*.

Finally the Constitutional Court drew attention to the fact that the legal regulation in the field of real estate tax could affect, *inter alia*, the effective exercise of a person's right to housing. The municipality has the obligation to regularly consider, on its own initiative, whether the criteria it had established for applying different tax rates were proportionate, continued to comply with the social reality and a person's right to housing, and whether the existing legal regulation in this area did not require any improvements.

Judges of the Constitutional Court Ineta Ziemele, Sanita Osipova and Artūrs Kučs added their **separate opinion [in Latvian]** to the judgment. It is noted in the opinion that the differential treatment of the groups of persons in similar conditions that had been identified in the judgment lacked objective and reasonable grounds. An assumption, based on the statistical data on the living space per capita in a local government, that each person who has been declared in an immovable property which has been split into undivided shares, actually uses no more than 30 square metres of this space, cannot be made; likewise, differential treatment of many owners of real estate located in the municipality cannot be envisaged on the basis of this assumption.

A municipality, in accordance with the authorisation granted by the legislator, has the right to establish different real estate tax rates, provided it complies with the general principles of law and other legal norms of higher legal force.

Case no. 2018-04-01

Judgment [in Latvian]
Press release [in English]

On 18 October 2018 the Constitutional Court adopted a judgment in the case no. 2018-04-01 "On the compliance of Article 7 (3) of the law "On Real Estate Tax", insofar it does not provide for the cessation of the duty to pay the additional real estate tax rate for agricultural land that is not being farmed, with Article 105 of the *Satversme* of the Republic of Latvia".

The cases concerned the procedure for ceasing the obligation to pay additional real estate tax rate for agricultural land that is not farmed.

The case was initiated on the basis of an application by the Supreme Court. In the administrative case heard by the Supreme Court, it had to be examined whether the calculation of the additional tax rate for the applicant for agricultural land that was not farmed for the whole year of 2011, although she had sold the respective land already in March, was justified. The Supreme Court considered that the right to property of the former landowner has been disproportionately restricted – it would be more fair and rational to establish the duty to pay the additional rate for the owner who is actually responsible for not farming the land.

First, the Constitutional Court noted that agricultural land was one of the economically most significant natural resources. It has a significant influence on a benevolent living environment and is a significant natural treasure and a valuable economic resource. It follows from the sustainability principle and everyone's duty to take care of the environment and nature, enshrined in the preamble to the *Satversme*, that in order to maintain and preserve this land for future generations also appropriate requirements with regard to taking care for it must be imposed.

Second, the Constitutional Court held that the real es-

tate tax had a fiscal function, since it ensured revenue into the municipal budgets. However, the additional tax rate fulfils also a regulatory function – it fosters the farming and use of agricultural land for agricultural needs or, at least, taking minimal actions to maintain the land in a good environmental and agricultural condition.

Third, the Constitutional Court found that the additional tax rate was linked to the tax rate; therefore the obligation to pay the additional tax rate ceased simultaneously with the cessation of the obligation to pay the tax. The Court also emphasized that within the area of tax law it was essential to ensure certainty in the administration of taxes and to provide for an effective procedure of tax collection. Establishing exceptions by differentiating between the payers of the real estate tax depending on the time when the real estate had been alienated would hinder tax calculation, would increase the costs of administration and decrease its effectiveness. Hence, the contested norm is proportionate and complies with Article 105 of the *Satversme*.

Judge of the Constitutional Court Jānis Neimanis added his **separate opinion [in Latvian]** to the judgment. It is noted in the opinion that the procedure envisaged in the contested norm is incompatible with the principle of legal certainty and places a disproportionate restriction on the right to property. The legislator should not have given a retroactive force to the application of the additional tax rate but rather a prospective force. That would allow the owner of the real estate to anticipate what kind of tax rate would be applied to him.

Pursuant to the sustainability principle a person must take care of the use, farming and preservation of agricultural land for the future generations.

2.6. CIVIL LAW AND CIVIL PROCEDURE

During the reporting period the Constitutional Court examined two cases related to matters of civil law and civil procedure. Since the area of civil law predominantly regulates exactly the relationships between private persons, in these cases the collision of the rights of various private persons was examined. The court built on the existing case-law in both cases, *inter alia*, regarding the methodology for adjudicating cases.

In the case no. 2017-21-01 an insurer's right to bring a subrogation claim against the driver of a vehicle who had caused damages to a third person in a road traffic accident and had failed to submit a completed agreed statement to the insurer was examined. The Constitutional Court found that the legislator had had the obligation to achieve a fair balance between the insurer's and the insured person's right to property.

The Constitutional Court had no doubt that the contested norm restricted the applicant's (the insured person's) right established in Article 105 of the *Satversme* and that the respective restriction on fundamental rights had been established by a law adopted in due procedure and that it had a legitimate aim – protecting other persons' (the insurers') right to property. It was found that the contested regulation was appropriate for reaching the legitimate aim, since it ensured that the insurer could obtain in a timely manner all the information it needed for performing its obligations following from legal acts and the insurance contract. However, in examining whether the legitimate aim could not be reached in the same quality by using more lenient measures, the Court arrived at new findings. It followed from the previous case law that a measure which envisaged establishing a restriction on other persons' fundamental rights could not be found to be a more lenient measure. Whereas in the case no. 2017-21-01 the Court noted that this approach could not be regarded as being absolute, since "the legal relationships between persons that are affected by the contested norm must be taken into consideration, *inter alia*, the rights and interests of each subject of the legal relationship".

Thus, in general, a more lenient measure which affects other persons' rights is permissible, in particular in cases where the rights of two or more private persons collide. In such cases the legislator must balance these interests to ensure that each person's fundamental rights would be restricted as little as possible. In view of the fact that, usually, an insurer has larger resources at its disposal, e.g. material and human resources, compared to the resources at the disposal of the vehicle's owner or its legal possessor, the Constitutional Court noted that the legislator should choose such measures that restricted the rights and interests of the insured party as little as possible, while at the same time not imposing a disproportionate burden on the insurer.

The Constitutional Court found that the insurer's obligation in case of need before bringing to the court a subrogation claim to request the insured person to submit a completed agreed statement would infringe upon the rights of insured persons to a lesser extent and would not impose a disproportionate burden on the insurer. Therefore, the Court held that there were more lenient measures that would allow reaching the legitimate aim in the same quality and, thus, the restriction established by the contested norm was not necessary for reaching the legitimate aim. Consequently, the contested norm was found to be incompatible with Article 105 of the *Satversme*.

The second innovation applied to the retroactive force of the Constitutional Court's judgment. The Court declared the contested norm to be void from the moment when the infringement on rights occurred not only with respect to the applicant but also with respect to those persons to whom the contested norm had been applied or would have to be applied in a court. This means that it might be necessary to review judgments by courts of general jurisdiction that had been adopted by applying the contested norm throughout the term of its validity. Until now, recognising a norm void with so extensive retroactive force had been mainly applied only in cases where the contested norm had been adopted by exceeding the authorisation granted in a law or *ultra vires*.

In the case no. 2017-30-01 it was examined whether the obligation established in the Civil Procedure Law to in-

dicate the defendant's declared place of residence in the statement of claim and the related regulation on determining the court which had jurisdiction over the claim complied with the right to inviolability of private life enshrined in Article 96 of the *Satversme*. This case was initiated on the basis of an application by the Supreme Court. It considered that the contested norms disproportionately restricted the possible defendant's in a civil case right to private life since it required processing of his personal data, i.e., establishing and indicating his declared place of residence.

The Constitutional Court found that information regarding a natural person's declared place of residence was data that were related to a person's private life and that the processing of such personal data was interfering into a person's private life.

The Constitutional Court did not doubt that the respective restriction on fundamental rights had been established by a law adopted in due procedure. In examining the legitimate aim of the restriction on fundamental rights, the Court found that this aim was the protection of the rights of other persons. First, the claimants' right to access to court is protected – thus, a collision between two fundamental rights protected by the *Satversme* evolved. Second, the restriction on fundamental rights established in the contested norms protects also the rights of the defendants, ensuring their communication with the court and that the judicial proceedings take place closer to their place of residence. The idea that a person's fundamental rights may be restricted with the purpose of safeguarding other rights of this very person is not new in the Constitutional Court's case-law.[12] However, in the case no. 2017-30-01 this idea was for the first time expressed in the context of the legitimate aim of the restriction on fundamental rights.

In order to establish whether the restriction on the private life of probable defendants in a civil case was proportionate, the Constitutional Court applied the criteria that had been developed in cases regarding processing of personal data. The Court found, *inter alia*, that if the possible defendants' data were not processed then the possible claimants would be denied of the essence of the right to access to a court for defending their rights in civil procedure. Hence, the benefit that the public gains from restricting the fundamental rights of the possible defendant outweighs the damage inflicted on his fundamental rights.

Finally, the Constitutional Court noted that due to the development of information technologies the legislator could be obligated to review the regulation of the Civil Procedure Law. Namely, as a result of the development of technologies, the court system, and the legal relationships between members of society, the legal regulation which had previously complied with norms of higher legal force could become out-dated and eventually even violate a person's fundamental rights.

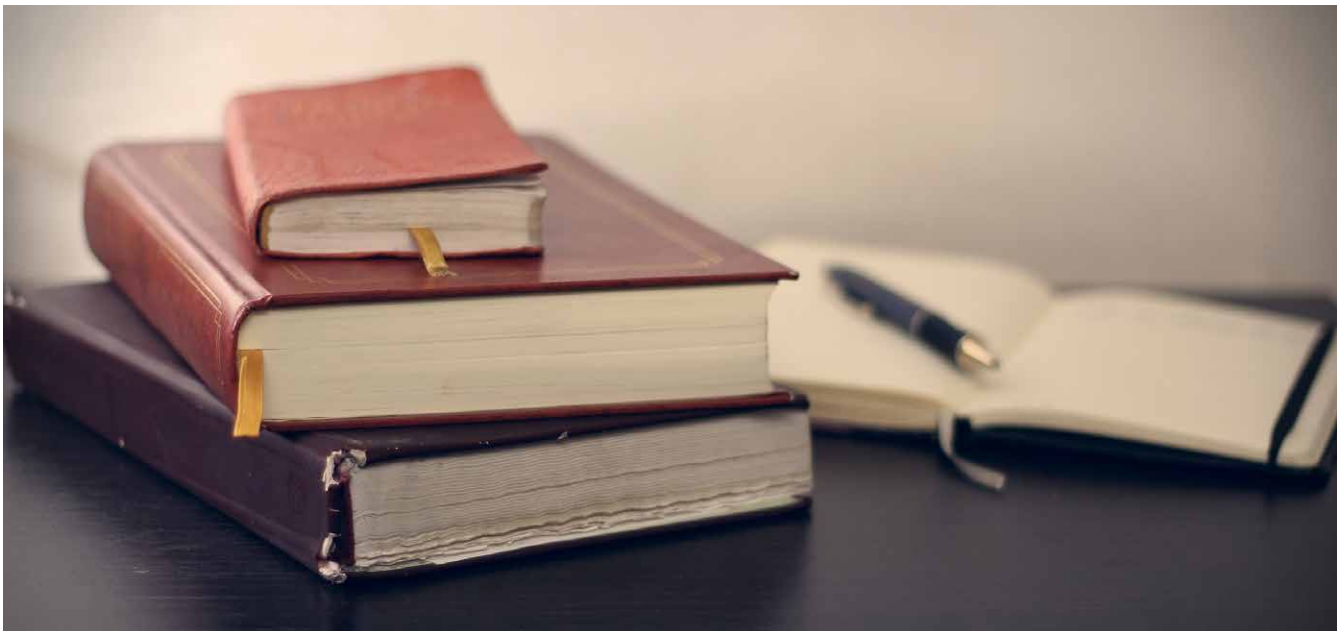
Case no. 2017-21-01

Judgment [in Latvian]
Press release [in English]

On 6 June 2018 the Constitutional Court adopted a judgment in the case no. 2017-21-01 "On the compliance of Article 41 (1) (1) (d) of Compulsory Civil Liability Insurance of Owners of Motor Vehicles Law with Article 105 of the *Satversme* of the Republic of Latvia."

The cases focused on an assessment of an insurer's right to bring a subrogation claim against a driver of vehicle who had caused damages to a third person in a road traffic accident and had not submitted a completed agreed statement.

12 See, for example, the judgment of the Constitutional Court of 26 January 2005 in the case no. 2004-17-01.



The case was initiated on the basis of a constitutional complaint. It was noted in the complaint that the applicant had caused a road traffic accident and that the damages caused to a third person had been compensated by an insurer. Although the persons involved in the traffic accident had completed the agreed statement, the applicant did not submit her copy of the agreed statement to the insurer. The insurer, on the basis of the contested norm, had submitted a subrogation claim against the applicant for compensation of damages. This claim was upheld. Pursuant to the contested norm, an insurer may submit a subrogation claim even if it already has at its disposal one copy of the agreed statement and it has no doubt regarding the circumstances of the accident. Thus, allegedly, the applicant's right to property is disproportionally restricted.

First, the Constitutional Court found that the contested norm had become void. However, the Court decided to continue legal proceedings in the case to ensure the protection of the applicant's fundamental rights.

Second, the Constitutional Court held that informing the insurer that an insurance case had occurred was one of the most essential obligation of the insured party. Meeting of this obligation ensures that the insurer is able to obtain all essential information in a timely fashion. Following a road accident, the insurer might need both copies of the agreed statement to compare the information presented therein and to verify its authenticity, as well as to prevent insurance fraud.

Third, the Constitutional Court found that in the legal relationship of insurance the insurer's and the insured party's rights to property collided. To find a fair balance between them, the legislator must take into account also the unequal situation of all the respective subjects of law – the insurer, usually, has at its disposal much larger resources than the owner or the legal possessor of the vehicle might have. Hence, the legislator must choose measures that would restrict the rights and interests of the insured party as little as possible, while at the same time not imposing a disproportionate burden on the insurer. In the particular case, the legislator had not duly assessed whether such alternative measures existed. An insurer's obligation to request the copy of the completed agreed statement should be recognised as being a more lenient measure. Hence, the contested norm was recognises as being incompatible with Article 105 of the *Satversme*.

Finally, the Constitutional Court held that with respect to the applicant and the persons to whom this norm had been applied in a court or should be applied in a court at legal proceedings that had already been initiated, the contested norm was void from the moment when the restriction of such persons' fundamental rights occurred.

Judge of the Constitutional Court Jānis Neimanis added his **separate opinion [in Latvian]** to the judgment. Judge considered that the judgment does not provide sufficient reasoning as to why with respect to persons to whom the contested norm had been applied in court it should be recognised as being void from the outset (*ex tunc*). Until now, the Constitutional Court had granted a retroactive force to a judgment only in extremely rare cases – predominantly in those cases where the contested norm had been issued by exceeding the authorisation granted by the legislator or *ultra vires*, and even then only in the absence of special considerations that required the protection of legal certainty and stability.

When the rights of two or more private persons collide the legislator must balance them in a way that would restrict the fundamental rights of each person as little as possible.

Case no. 2017-30-01

Judgment [in Latvian]
Press release [in English]

On 11 October 2018 the Constitutional Court adopted a judgment in the case no. 2017-30-01 "On the compliance of Article 26 (1), the first sentence of Article 128 (2) (12), and Article 132 (1) (6) of the Civil Procedure Law, insofar as they contain an obligation to indicate in the statement of claim the declared place of residence of the defendant, with Article 96 of the Republic of Latvia".

The case assessed the obligation to indicate in the statement of claim the defendant's declared place of residence.

The case was initiated on the basis of an application by the Supreme Court. In the case it was adjudicating the Supreme Court had to examine whether the Office of Citizenship and Migration Affairs should be obliged to provide information on the personal data of a number of natural persons. The applicant in an administrative case allegedly needs these data to submit a claim on compensation of damages to a court of general jurisdiction. The Supreme Court considers that this procedure violates the right to inviolability of private life of the probable defendant in a civil case. Allegedly, the Office of Citizenship and Migration Affairs has very limited possibilities to verify whether the person requesting the information is genuinely interested in submitting a claim to a court and whether the person is not acting in bad faith.

First, the Constitutional Court established that the contested norms of the Civil Procedure Law envisaged:
1) a general principle of civil procedure that the court's jurisdiction has to be determined in accordance with the defendant's place of residence; 2) the obligation to indicate in the statement of claim the defendant's dec-

lared address; 3) the legal consequences of the failure to perform this obligation, namely, that the judge refuses to accept the statement of claim if the court does not have jurisdiction over the case. The Court found that these norms had to be examined as a joint legal regulation.

Second, the Constitutional Court took into consideration the fact that in the administrative case information that had been requested pertained to public persons– former and the incumbent members of the Cabinet of Ministers. The Court, however, chose to examine the effect of the contested norms on all persons. In accordance with the principle of the procedural equality in the framework of civil proceedings that falls within the concept of a fair trial, there are no grounds for establishing a differential treatment of public persons and other possible defendants who are in comparable circumstances.

Third, the Constitutional Court held that the contested norms permitted the identification of the probable defendant in a civil case and facilitated the allocation of civil cases according to the territorial jurisdiction. Thus, a person's right to submit a civil law claim to the court with appropriate jurisdiction is ensured, as well it is made easier for the defendant to exercise his procedural rights, because the court which is closer to his place of residence has the jurisdiction. The Court also underscored that the brining of civil claim had always been linked to the need to use a certain amount of information about the defendant, because neither the claim nor the legal proceedings were conceivable without his involvement.

Fourth, the Constitutional Court noted that when addressing a court, a person had to either provide information about the probable defendant's declared place of residence that was known to him (if an incorrect address is indicated, the court may indicate the correct address of the defendant's place of residence and the court to which the claim should be brought) or to submit an appropriately reasoned application to the Office of Citizenship and Migration Affairs (in certain cases by annexing to it a court's decision confirming that a person has addressed a court and that the defendant's address is needed to initiate legal proceedings). The legislator has envisaged both administrative and criminal liability for unlawful processing of personal data.

Fifth, the Constitutional Court found that the contested norms envisaged the disclosure of the possible defendant's data to a limited extent and only to the person who had duly substantiated the request of these data and to whom liability was envisaged in the case if he processed the respective personal data unlawfully. If the data related to the possible defendant's place of residence were not processed, then the essence of the access to a court for the purpose of protecting one's right in civil proceedings would be denied. Having examined the aforementioned consequences, the Court ruled that the restriction on a person's fundamental rights established in the contested norms was proportionate and complied with Article 96 of the *Satversme*.

Finally, the Constitutional Court added that as the result of the rapid development of information technologies the courts' possibilities to access various databases had significantly expanded; however, the substance of the regulation included in the contested norms with respect to a court's role in civil proceedings had not changed for a certain period of time. Thus, as the result of the development of technologies, the court system, and the legal relationships between members of society, legal regulation that once complied with norms of higher legal force, could become out-dated and, eventually, even violate a person's fundamental rights.

The plaintiff's obligation to identify the defendant by indicating, *inter alia*, the address of the possible defendant and to bring claim to the court that has the jurisdiction over hearing the respective dispute, is indissolubly linked to the essence of civil proceedings.

2.7. DECISIONS ON TERMINATING THE PROCEEDINGS

During the reporting period the Constitutional Court adopted four decisions on terminating the proceedings – in the cases no. 2017-13-01, no. 2017-19-01, no. 2017-20-0103, and no. 2018-01-01. In the case no. 2017-19-01, the decision on terminating the proceedings was adopted on the basis of Article 29 (1) (2) of the Constitutional Court Law, since the contested norm had become void. In the case no. 2017-13-01 and the case no. 2018-01-01 the proceedings were terminated on the basis of Article 29 (1) (5) of the Constitution Court Law, since judgments regarding the same subject of claim had been pronounced in other cases. In the case no. 2017-20-0103, in turn, the decision on terminating the proceedings was adopted on the basis of Article 29 (1) (6) of the Constitutional Court Law, since continuing the proceedings in the case was impossible.

The rulings of previous years show that, predominantly, the proceedings are terminated because the contested norm has become void or because judgments regarding the same subject of claim have been pronounced in another case. The decisions adopted during the reporting period on terminating the proceedings in the cases no. 2017-13-01, no. 2017-19-01, and no. 2018-01-01, in general, follow this trend. However, the decision adopted last year in the case no. 2017-20-0103[13] differs significantly, as it includes an extensive examination of whether an economic operator's right to receive an industrial security certificate and the right to appeal against the refusal to issue the aforementioned certificate fall within the scope of fundamental rights defined in the *Satversme*.

Case no. 2017-13-01

Decision [in Latvian]
Press release [in English]

On 24 January 2018 the Constitutional Court decided to terminate the proceedings in the case no. 2017-13-01 "On the compliance of Article 4 (9) and Article 61 (1) of the "Law on Remuneration of Officials and Employees of State and Local Government Authorities" with Articles 83 and 107 of the *Satversme* of the Republic of Latvia".

The case was initiated on the basis of an application by the Prosecutor General. It was requested in the application to examine the compatibility with Articles 83 and 107 of the *Satversme* of the norms that determined the monthly salary of a district (city) court judge. The Prosecutor General considered that the contested norms determined monthly salaries to district (district) court judges that were incompatible with the requirements that followed from Articles 83 and 107 of the *Satversme*. Hence, also the prosecutors' monthly salaries which were linked to the monthly salary of district (city) court judges were said to be incompatible with the guarantees for the prosecutors' independence.

The Constitutional Court found that the compliance of the contested norms with Articles 83 and 107 of the *Satversme* had already been reviewed in the case no. 2016-31-01. By the judgment in the case no. 2016-31-01 the Court had recognised the norms of the Law on Remuneration of Officials and Employees of State and Local Government Authorities that had been contested in the Prosecutor General's application to be incompatible with Articles 83 and 107 of the *Satversme* and void as of 1 January 2019.

The Court indicated, referring to its-case law, that in Latvia the prosecutor's office was an institution of judicial power and prosecutors were officials of the judicial power; however, prosecutors did not administer justice. The primary function of the Prosecutor's Office was to ensure a person's right to a fair trial, included in the first sentence of Article 92 of the *Satversme*, during pre-trial criminal proceedings, as well as supervising lawfulness within the limits of their competence granted by law. The linking of the monthly salary of prosecutors to the monthly salary of a judge of a district (city) court means that the legislator had chosen to establish such financial security for prosecutor that as to its amount and content had been equalled to judges' fi-

13 A more extensive assessment of the decision to terminate the proceedings in the case no. 2017-20-0103 is included in the section "Fundamental rights" of the report.

nancial security. To perform the functions of the prosecutor's office, the prosecutor's independence should be guaranteed; however, the prosecutors' independence in substance is not identical to the judges' independence guaranteed by Article 83 of the *Satversme*.

The Constitutional Court underscored that the Prosecutor General had not requested the Constitutional Court to recognise as being incompatible with the *Satversme* the linking of a prosecutor's monthly salary to the monthly salary of a district (city) court judge that was provided for by one of the contested norms; likewise, he had not provided legal arguments due to which the Constitutional Court should examine separately the impact of the contested norms on the monthly salary of prosecutors, for example, in connection with the guarantees of independence typical to prosecutors. Moreover, the application had been submitted to the Constitutional Court before the judgment was adopted in the case no. 2016-31-01 and before amendments to the Law on Remuneration of Officials and Employees of State and Local Government Authorities entered into force, which established a different procedure for calculating the monthly salaries of judges and prosecutors in 2018. Thus, the Constitutional Court found that the subject of application in the case under review was identical to the one with respect to which a judgment had already been adopted in the case no. 2016-31-01.

Hence, the proceedings in the case no. 2017-13-01 were terminated pursuant to Article 29 (1) (5) of the Constitutional Court Law.

Case no. 2017-19-01

Decision [in Latvian]
Press release [in English]

On 20 June 2018 the Constitutional Court decided to terminate the proceedings in the case no. 2017-19-01 "On the compliance of Article 50^{21} (5) of the Sentence Execution Code of Latvia, insofar as it applies to a decision to refuse to mitigate the regime for serving a sentence, with the first sentence of Article 92 of the *Satversme* of the Republic of Latvia".

The case was initiated on the basis of an application of the Supreme Court. It was requested in the application to examine whether the regulation that provided no appeal against a decision by the evaluation committee of an institution for deprivation of liberty by which the convicted person was refused to have his regime for serving a sentence mitigated complied with Article 92 of the *Satversme*.

First, the Constitutional Court found that, following the initiation of the case, the *Saeima* had amended Article 50^{21} of the Sentence Execution Law of Latvia. Namely, the convicted persons had been granted the right to appeal against the decision by the evaluation committee to the Head of the Prisons Administration, and to appeal against the decision by the Head of the Prisons Administration to a court, as well as to appeal against the respective judgment by the first-instance court in the cassation procedure. Thus, the contested norm, essentially, had become void.

It was also examined in the decision, whether circumstances were not present that, nevertheless, required to continue the proceedings in the case under review. The Constitutional Court noted that in examining a case initiated on the basis of an application by a court, the probable impact of its judgment on the respective administrative case always had to be examined. Therefore, in such instances the fact that in order to resolve the administrative case the contested norms should be declared void as of a certain date in the past could be indicative of the need to continue the proceedings. Likewise, the need to declare the contested norm void as of a certain past date to protect the fundamental rights of persons who had begun to protect these fundamental rights by using general legal remedies could be indicative of the need to continue the proceedings.

Administrative court proceedings in Latvia and also in other countries of the continental Europa are characterised by the principle of applying substantive le-

gal norms that requires the court, when assessing the legality of an unfavourable administrative act, to apply those norms of substantive law that were in force at the time when this administrative act was issued. Whereas in examining an application requesting the issuing of a favourable administrative act, the court applies those norms of substantive law that are in force at the time when hearing of the case on its merits is completed, unless other legal norms provide otherwise. This principle is revealed in the second sentence of Article 250 (2) and Article 254 (1) of the Administrative Procedure Law.

Pursuant to this principle, the administrative court when examining whether the respective decisions by the Prisons Administration are subject to appeal will have to apply the norms of the Sentence Execution Code of Latvia that are in force at the time of examining the particular case. Hence, to resolve the administrative cases that have already been initiated and in which previously the contested norm had to be applied, there is no need to declare the contested norm to be void as of a certain past date. Therefore the Constitutional Court found that there were no circumstances present that required continuing the proceedings.

Consequently, the proceedings in the case no. 2017-19-01 were terminated on the basis of Article 29 (1) (2) of the Constitutional Court Law.

Case no. 2017-20-0103

Decision [in Latvian]

Press release [in English]

On 23 May 2018 the Constitutional Court decided to terminate the proceedings in the case no. 2017-20-0103 "On the compliance of the sixth and the eighth sentence of Article 7 (5) of the law "On Official Secrets" with Article 92 of the *Satversme* of the Republic of Latvia and on the compliance of the second sentence of para. 12 of the Cabinet Regulation of 23 May 2006 no. 412 "Procedure of Applying for, Granting, Registering, Using, Changing the Category of or Annulment of an Industrial Security Certificate" with Article 105 of the *Satversme* of the Republic of Latvia".

The case had been initiated on the basis of applications submitted by a number of economic operators. The applicants requested the Court to examine: first, whether the regulation of the law that denied the possibility of lodging an appeal against a decision by the Prosecutor General by which the issuing of an industrial security certificate was refused complied with Article 92 of the *Satversme*. Second, whether the Regulation of the Cabinet Regulation that denied the economic operator the right to re-apply for an industrial security certificate before five years had expired following the refusal to issue this certificate complied with Article 105 of the *Satversme*.

The *Saeima* in its written reply requested termination of the proceedings regarding the compliance of the contested norms with Article 92 of the *Satversme*, since

these norms had been expressed in new wording and would become void. The Constitutional Court dismissed this request, since the case had been initiated on the basis of a constitutional complaint and continuing of the proceedings in the case could be necessary to ensure the protection of the applicants' fundamental rights which, possibly, had been infringed on. The Court held that the fact that the contested norms could become void in the future could not be regarded as sufficient grounds for terminating the proceedings because, thus, a possible infringement on the applicants' fundamental rights could remain unrectified.

In establishing whether the contested legal norms complied with Article 92 of the *Satversme*, the Constitutional Court first assessed whether they applied to those rights and lawful interests of the applicants, the protection of which at a fair trial was envisaged by Article 92 of the *Satversme*.

The Court underscored that the law "On Official Secrets" did not regulate economic activities in a particular field and did not establish special rights of economic operators that would be linked to using an object of official secrets or of classified information, and, thus, did not envisage an economic operator's subjective right to expect access to objects of official secrets.

Receiving an industrial security certificate is the only way in which an economic operator who is already engaged in commercial activities may obtain a permit to conduct them also in a field in which the official secrets, the classified information of foreign countries or international organisations and bodies thereof has to be used. Upon receiving an industrial security certificate, an economic operator who wants to bid for a certain range of state procurement gains an advantage for participation in classified procurement procedures. The state sets elevated security requirements for economic operators in these procurements; the economic operator, however, may acquire the right to work in objects linked to the official secrets. However, even after receiving an industrial security certificate a person has the right to engage in commercial activities in objects linked to the official secrets only if it concludes a contract with the procurer of the contract. In this case, the person has no legal grounds to expect that it will be able to exercise the right granted by the industrial security certificate for an unlimited time.

The possession of an industrial security certificate is not a mandatory requirement that an economic operator has to comply with in order to engage in commercial activities in the chosen field, and the right to receive an industrial security certificate does not fall within the scope of the right to property. Therefore the contested norms of the law do not restrict the applicants' fundamental rights established in Article 105 of the *Satversme*. If follows from these findings that neither does the contested norm of the Cabinet Regulation restrict the applicants' fundamental rights envisaged in the first and the third sentence of Article 105 of the *Satversme*. Therefore the proceedings in the case are not to be continued.

Hence, the proceedings in the case no. 2017-20-0103 were terminated on the basis of Article 29 (1) (6) of the Constitutional Court Law.

Case no. 2018-01-01

Decision [in Latvian]
Press release [in English]

On 25 April 2018 the Constitutional Court at a preparatory meeting decided to terminate the proceedings in the case no. 2018-01-01 "On the compliance of Article 289^{20} (7) of the Administrative Violations Code of Latvia with the first sentence of Article 92 of the *Satversme* of the Republic of Latvia".

The case no. 2018-01-01 was joined with the case no. 2018-05-01. Both cases had been initiated on the basis of constitutional complaints. It was requested in the complaints to declare Article 289^{20} (7) of the Code, insofar as it did not set oblige the court to include in the decision to refuse the initiation of appeal proceedings in a case of administrative violations the reasoning for this decision, to be incompatible with the first sentence of Article 92 of the *Satversme*.

In its decision the Constitutional Court found that the compliance of the contested norm with Article 92 of the *Satversme* already had been examined in the judgment in the case no. 2017-16-01. The subject of the claim was identical to that with respect to which a judgment already had been pronounced in the case no. 2017-16-01.
The Constitutional Court underscored that the applicants in the case no. 2018-01-01 had applied to the Constitutional Court on 12 December 2017 and on 5 January 2018, i.e., before the judgment in the case no. 2017-16-01 entered into force. In this judgment Article 289^{20} (7) of the Code, insofar as it did not set oblige the court to include in the decision to refuse the initiation of appeal proceedings in a case of administrative violations the reasoning for this decision, with respect to persons who had submitted complaints to the Constitutional Court in order to protect their fundamental rights before this judgment entered into force was recognised as void as of the moment when the fundamental rights of the submitters of the constitutional complaint were violated. Thus, in its judgment in the case no. 2017-16-01 the Constitutional Court had already decided on the matter regarding the validity of the contested norm also with respect to both applicants in the case no. 2018-01-01.

Hence, the proceedings in the case no. 2018-01-01 were terminated on the basis of Article 29 (1) (5) of the Constitutional Court Law.

2.8. DECISIONS OF PANELS

During the period from 1 January 2018 to 8 December 2018 182 applications regarding initiation of a case were transferred to panels of the Constitutional Court and 23 cases were initiated. Compared to the previous year, in 2018 the number of initiated cases has decreased.[14] It can be explained, first of all, by the fact that the number of submitted applications has slightly decreased in 2018.[15] Secondly, in 2017 many more similar cases[16] were initiated that dealt with an identical or a similar legal issue, with respect to which a case had been initiated previously.

Also in 2018, similarly to previous years, the trend was observed that some applicants referred to in Article 17 (1) of the Constitutional Court Law e.g., the President, the *Saeima*, the Cabinet of Ministers, and the Council of the State Audit Office did not submit applications to the Constitutional Court. Likewise, in 2018, no applications were received from the Council for the Judiciary, a court while adjudicating a criminal case, or a judge of the Land Registry Department, while registering real estate and corroborating the related title in the Land Registry. The number of applications submitted by the Ombudsman has also decreased.[17]

As usual, the majority of the received applications were constitutional complaints. From 1 January 2018 to 9 December 2018 168 constitutional complaints were submitted to the Constitutional Court, amounting to more than 92 percent of all the applications received by the Court. Private persons in their constitutional complaints most frequently have indicated possible violations of the equality principle included in Article 91 of the *Satversme*, as well as alleged violations of the right to a fair trial, included in Article 92 of the *Satversme*, and the right to property, guaranteed in Article 105 of the *Satversme*. A number of fundamental rights included in Chapter VIII of the *Satversme* have not been referred to at all by the applicants. For instance, in 2018, no request was made in any application to examine the compliance of legal norms with Article 94 of the *Satversme* – the right to liberty and personal inviolability, the second sentence of Article 98 – the prohibition to extradite a citizen of Latvia to a foreign country, Article 103 – the right to peaceful meetings, street processions, and pickets, as well as Article 108 – the right to a collective labour agreement, the right to strike, and the right to freedom of trade union.

The most frequently contested norms are the ones of the Civil Procedure Law – in 28 applications, of the Administrative Violations Code of Latvia – in 15 applications, and of the Criminal Procedure Law – in 12 applications. Although various norms of the Civil Procedure Law have been contested in 28 applications and various norms of the Criminal Procedure Law – in 12 applications, no cases has been initiated with respect to any of these applications. Most often the respective decisions on refusal to initiate a case have been based on Article 18 (1) (4) of the Constitutional Court Law – the application does not comprise legal reasoning – , or Article 20 (6) of this law – the legal reasoning included in the application is obviously insufficient for upholding the claim. This can be explained by the fact that the Court has developed extensive case-law in this field and has already provided its opinion on numerous legally important matters regarding these procedures. For instance, the Court has adopted 31 judgments[18] in which it examined the constitutionality of 42 norms of the Civil Procedure Law.

Article 20 (7) of the Constitutional Court Law provides that the decision on initiating a case or the refusal to initiate a case must be adopted within one month

14 From 1 January 2017 to 9 December 2017, 32 cases were initiated at the Constitutional Court.

15 Within a comparable period in 2017, 202 applications were submitted.

16 The case no. 2017-05-01, the case no. 2017-06-01, the case no 2017-22-01, the case no. 2017-24-01, the case no. 2017-26-01, the case no. 2017-27-01, the case no. 2017-29-01, the case no. 2017-31-01,and the case no. 2017-34-01.

17 In 2017 the Ombudsman submitted four applications but in 2018 – one application.

18 Including the judgment in the case no. 2001-17-0106, in which the constitutionality of a norm of the Civil Procedure Code was examined.

after receiving the application. In complicated cases, the Constitutional Court may extend this term up to two months. In 2018 the Constitutional Court's Panels have adopted eight decisions[19] on extending the term for examining the application. In five cases the applications had been submitted by private persons but in the others – the Prosecutor General, twenty members of the *Saeima*, and a municipal council.

In these decisions, the panel concluded that the submitted application pertained to a complex legal issue and, thus, an in-depth analysis of its legal reasoning was required. Whereas in one decision that was adopted in examining an application submitted by a municipal council, the panel noted: in this particular case, to decide on initiating the case or the refusal to initiate a case on the basis of the submitted application, the actual facts of the situation in connection with meeting the requirements set in Article 49 of the law "On Local Governments" had to be clarified.[20] Due to this, information and documents received from state institutions had to be analysed. In three of the eight cases referred to above, following the in-depth analysis and receipt of additional information, a decision to initiate a case was made.[21]

Article 20 (7^1) of the Constitutional Court Law provides: if the panel decides to refuse initiation of a case and a judge who is a member of the panel votes against this decision of the panel; moreover, if he has reasoned objections, the examination of the application and the decision-taking is transferred to a preparatory meeting sitting in full composition of the Court. Since the coming into force of this norm on 1 January 2010, the Constitutional Court had decided in a preparatory meeting on six applications: in three instances a decision to initiating a case was made[22] and in three cases – a decision on refusal to initiate a case.[23] Also in 2018 two applications[24] were transferred for examination at a preparatory meeting sitting in full composition of the Court. At the preparatory meeting a decision to not initiate a case with respect to one application was taken,[25] whereas with respect to the second application a case was initiated.[26]

The Constitutional Court Law does not prevent the applicant to submit an application repeatedly if the Constitutional Court's panel has decided to refuse ini-

19 For example, in 2017, the Constitutional Court's panels adopted two decisions on extending the term for examining an application, whereas in 2016 – 10 decisions of this kind.

20 Decision of 24 January 2018 by the 3rd panel of the Constitutional Court on Extending the Term for Examining the Application no. 207/2017.

21 Decision of 14 February 2018 by the 3rd panel of the Constitutional Court on Initiating a Case with Respect to the Application no. 207/2017, decision of 25 July 2018 by the 2nd panel on Initiating a Case with Respect to the Application no. 94/2018, decision of 14 November 2018 of a preparatory meeting on Initiating a Case with Respect to the Application no. 150/2018.

22 Decision of 12 April 2011 by the Preparatory Meeting of the Constitutional Court on Initiating a Case with Respect to the application no. 42/2011, decision of 20 October 2014 by the Preparatory Meeting on Initiating a Case with Respect to the Application no. 164/2014, and the decision of 4 January 2017 by the Preparatory Meeting on Initiating a Case with Respect to the Application no. 263/2016.

23 Decision of 13 January 2010 by the Preparatory Meeting of the Constitutional Court on Refusal to Initiate a Case with Respect to the Application no. 513/2009, decision of 26 June 2015 by the Preparatory Meeting on Refusal to Initiate a Case with Respect to the Application no. 78/2015, and decision of 29 June 2017 by the Preparatory Meeting on Refusal to Initiate a Case with Respect to the Application no. 83/2017.

24 Application on Initiating a Case No. 62/2018, and Application on Initiating a Case No. 150/2018.

25 Decision of 5 June 2018 by the Preparatory Meeting of the Constitutional Court on Refusal to Initiate a Case with Respect to the Application no. 62/2018.

26 Decision of 14 November 2018 by the Preparatory Meeting on Initiating a Case with Respect to the Application no. 150/2018.

tiation of a case with respect to the initially submitted application. In such cases, the applicant may eliminate the deficiencies indicated by the panel. Annually, on average 20-30 applications are submitted repeatedly. A number of times cases have been initiated with respect to such repeated complaints.[27] In 2018 28 constitutional complaints were submitted repeatedly. With regard to three of such complaints[28] the panels have decided to initiate a case.[29] It is important to submit a constitutional complaint early, as in such a case, even if the decision to refuse initiation of a case is taken, a person has the possibility to eliminate the deficiencies identified by the panel and to submit a repeated constitutional complaint that fully meets the requirements of the law.

The Constitutional Court also continues the practice initiated in the previous years to publish a sample of those decisions which examine the most important and relevant issues regarding the interpretation of the Constitutional Court Law, in the section of the homepage "Decisions by the Panels on Refusal to Initiate a Case".[30] In 2018, 74 anonymized[31] decisions were published in this section of the homepage which help to better understand the application of the Constitutional Court Law and make it easier to prepare an application that meets the requirements of the law.

Likewise, the Constitutional Court has prepared **recommendations [in Latvian]** and a form for preparing a constitutional complaint. The purpose of the recommendations is to help those persons who have decided to submit a constitutional complaint. Last year, the form was used in approximately 20 constitutional complaints that were submitted, and in one instance a case was initiated on the basis of a constitutional complaint prepared this way.

Decisions on initiating cases

The following legal issues have been examined in the initiated cases. Cessation of the obligation to pay an additional real estate tax rate for agricultural land that is not farmed. Benefit to compensate the transportation costs to a person with a disability caused by a mental health disorder. Lease payment for using a gravesite, established by a municipal government. Expenditure incurred due to placing property seized in a case of administrative violation in storage. Criminal liability for violating the rules on the circulation of strategically important goods. Publication of the remuneration of employees of state and municipal governments' institutions on the Internet. Transition to education in the official language. Availability of the Latvian construction standards in the official language. Remuneration of public officials for overtime work. Disbursement of remuneration to the guardian of a child residing abroad for performing his duties. Restrictions on the term of employment contract for persons elected to an academic position. Production of electricity and the determination of its price. Prohibition by the municipal government to set up gambling halls in the historic centre of Riga. Accessibility of information on vehicles and their drivers held in the national register. Entitlement of a municipal government to establish environmental protection requirements for cargo operations within the territory of a port. Right of a sentenced person to use a portative computer at an institution for deprivation of liberty. A minister's entitlement to suspend a decision by a municipal government by which the catering costs at a specialised pre-school educational institution are defined.

In 2018, cases were most frequently initiated with respect to the right to property established in Article 105 of the *Satversme* – six cases, the right to a fair trial included in Article 92 of the *Satversme* – four cases, as well as the equality principle and the principle of prohibition of discrimination included in Article 91 of the *Satversme*. Three cases were initiated with respect to the right to education established in Article 112 of the *Satversme*.[32]

Majority of the decisions on initiating a case do not extensively assess the form and content of the application because if the application meets all requirements defined in the Constitutional Court Law such a review is not required. However, in some cases the panel may follow the principle that all doubts must be interpreted in favour of initiating the case and leave the final decision on disputable procedural issues for the Court's ruling. The panel acted in this way, for example, when deciding to initiate the case no. 2018-07-05.[33] In examining the application by a municipal council regarding the revoking of an order of a minister authorised by the Cabinet of Ministers, the panel had doubts whether the municipal council had complied with the procedure for submitting an application to the Constitutional Court established in Article 49 (2) of the law "On Local Governments". The panel found that the norm should be

27 *Inter alia*, the case no. 2016-18-01, the case no. 2016-19-01, the case no. 2016-25-01, the case no. 2016-27-01, the case no. 2016-29-01, the case no. 2017-05-01, the case no. 2017-06-01, the case no. 2017-09-01, the case no. 2017-16-01, and the case no. 2017-21-01.

28 Application on Initiating a Case no. 206/2017, Application on Initiating a Case no. 122/2018, and Application on Initiating a case No. 126/2018.

29 The case no. 2018-02-01, the case no. 2018-18-01, and the case no. 2018-19-03.

30 Whereas all the panels' decisions on initiating cases are published on the homepage of the Constitutional Court, section "Ierosinātās un izskatītās lietas" [Initiated and Adjudicated Cases]

31 The panels' decisions regarding applications that have been submitted by courts and the subjects of abstract review, e.g., the Prosecutor General or members of the *Saeima*, are not anonymized. Only those decisions of the panels that pertain to applications submitted by private persons are anonymized.

32 The previous case-law of the Constitutional Court includes only one judgment, in the case no. 2010-57-03, in which the compliance of a contested norm with Article 112 of the *Satversme* was examined.

33 Application on Initiation of a Case no. 207/2017.

grammatically interpreted to mean that the matter of revoking the respective binding regulation or another regulatory enactment or separate paragraphs thereof should be examined at a council meeting that had been convened within two weeks following the receipt of the minister's order. However, the municipality had not examined this matter within the aforementioned period of two weeks. At the same time, the application provided the legal reasoning for the opinion that the procedure for submitting an application to the Constitutional Court had been complied with. Due to this reason, the panel concluded that that the legal reasoning referred to above had to be assessed in the course of preparing and hearing the case, and, finding the that application complied with other requirements set in Article 18 of the Constitutional Court Law, decided to initiate the case no. 2018-07-05.

The Constitutional Court's panel when examining an application establishes *ex officio* whether the claim included in the application has not been already adjudicated. To assess whether the application has not been submitted with respect to an already adjudicated claim, it must be established whether: 1) the claim has been formally adjudicated; 2) the claim has changed on its merits; 3) new important circumstances exist due to which the claim cannot be considered as having been adjudicated.[34] This assessment is included more and more often in panel decisions, since the Constitutional Court, during 22 years of its existence, already has adopted 311 judgments and 99 rulings on terminating the proceedings, in which it has provided assessment of many legal matters of constitutional relevance.

For example, in deciding on the initiation of the case no. 2018-16-03, the panel noted that in the judgment in the case no. 2015-05-03 the compliance of para. 100 of the Cabinet Regulation of 16 March 2010 no. 262 "Regulations Regarding the Production of Electricity Using Renewable Energy Sources and the procedures for the Determination of the Price" with Article 64 of the *Satversme* had already been reviewed. Whereas in the application to be examined the compliance of other norms of the respective Cabinet Regulation with legal norms of higher legal force was contested. Hence, the panel concluded that the claim included in the application under examination to review the compliance of a number of norms of this Regulation – the last sentence of para. 638, paras. 106, 107, 113, 114, and para. 2 of Annex 10 – with Article 64 of the *Satversme* could not be considered as having already been adjudicated.[35]

In 2018 five cases[36] were initiated at the Constitutional Court where the presentation of the facts of the case and the legal reasoning were similar to cases already initiated by the Court. In such cases in the decisions on initiating a case, due to the procedural economy, it is indicated that it is not necessary to repeatedly summon the institution which has adopted the contested act to submit a written reply on the facts of the case and the legal reasoning.

When deciding on the initiation of a case, the Constitutional Court's panel decides also on other applicant's requests which are not directly linked to the constitutionality of the contested norms. For example, in 2017 several submitters of constitutional complaints had requested suspension of the enforcement of a court ruling. Whereas in 2018 none of the submitters of constitutional complaints on the basis of which cases were initiated at the Court had expressed this request.

In the application, on the basis of which the case no. 2018-11-01[37] was initiated, the submitters of the constitutional complaint had requested a closed hearing of the case and, if possible, – in the written procedure. The panel left this applicant's request unexamined[38] and indicated that pursuant to Article 22 (7) of the Constitutional Court Law the case had to be prepared for hearing no longer than within five months but, as regards particularly complex cases, the said term could be extended for no more than two months. In accordance with Article 27 (3) of the Constitutional Court Law, the decision on examining a case at a closed hearing is adopted by the Constitutional Court. Whereas pursuant to Article 22 (10) of the Law, the Court decides on examining a case in the written procedure, the time and place of the court hearing, as well as other matters related to examining the case at a court hearing at a preparatory meeting after the case has been submitted for examination; i.e., after the preparation of the case has been completed. Hence, deciding on the applicant's request did not fall within the jurisdiction of the Constitutional Court's panel and had to be decided at a preparatory meeting after the case has been transferred for hearing.

In the application on the basis of which the case no. 2018-12-01[39] was initiated 20 members of the *Saeima* requested to hear the case earlier than according to the usual order of examination, in view of its impacton children's rights and interests. The panel left also this applicant's request unexamined,[40] pointing out that in accordance with Article 22 (10) of the Constitutional Court Law the time for hearing a case is set at the preparatory meeting of the Constitutional Court after the case has been prepared and transferred for hearing. Hence, the examination of this request did not fall wit-

34 See, for example, the judgment of the Constitutional Court of 29 April 2016 in the case no. 2015-19-01, paras. 10.1.–10.5.

35 Decision of 9 August 2018 by the 1st panel of the Constitutional Court on Initiating a Case with Respect to the Application no. 108/2018.

36 The case no. 2018-01-01, the case no. 2018-02-01, the case no. 2018-03-01, the case no. 2018-05-01, and the case no. 2018-20-01.

37 Application on Initiating a Case no. 89/2018.

38 Decision of 29 June 2018 by the 3rd Panel of Constitutional Court on Initiating a Case with Respect to the Application no. 89/2018.

39 Application on Initiating a Case no. 94/2018.

40 Decision of 25 July 2018 by the 2nd Panel of the Constitutional on Initiating a Case with Respect to the Application no. 94/2018.

hin the competence of the Constitutional Court's panel. Whereas in the application on the basis of which the case no. 2018-23-03[41] was initiated the submitter of the constitutional complaint requested a temporary measure – ordering the Prisons Administration to allow the submitter of the constitutional complaint to use his portative computer at a place of imprisonment. The panel noted that in the case of a constitutional complaint the legislator has envisaged only one temporary measure – suspension of the enforcement of a court's ruling. Hence, the applicant's request was left unexamined since deciding on it did not fall within the Constitutional Court's jurisdiction.[42]

The Constitutional Court has repeatedly examined the legality of local spatial planning and detailed planning[43] – dozens of rulings have been adopted regarding these matters. Majority of cases have been initiated on the basis of constitutional complaints submitted by private persons. However, in 2018 the Court for the first time initiated a case regarding the constitutionality of a legal norm included in a spatial plan on the basis of an application submitted by a court.[44]

The panel noted in its decision that the contested norm had been included in a binding regulation of the local government, which was part of the spatial plan for the historic centre of Riga and its protective zone.[45] This regulation had been adopted at the time when the Spatial Development Planning Law had been in force and according to the procedure established therein. Article 193 (2) of the Constitutional Court Law provides that an application regarding a spatial plan of a local government can be submitted to the Court within six months after the respective binding regulation has entered into force. Article 193 (3), in turn, provides that the term of six months is not applicable to the cases where a court which examines an administrative case submits an application to the Constitutional Court.

Panels' decisions reveal, *inter alia*, that prior to submitting an application the applicant should verify whether the application comprises legal reasoning regarding the incompatibility of each contested norm with each legal norm of higher legal force referred to in the application. In 2018 the applicants several times had requested examination of the compliance of the contested norm with several legal norms of higher legal force; however, the panel decided to initiate a case only with respect to one of them.[46] As regards the other part, either the legal reasoning was not provided at all or was obviously insufficient for upholding the claim.

41 Application on Initiating a Case no. 150/2018.

42 Decision of 14 November 2018 by the Preparatory Meeting of the Constitutional Court on Initiating a Case with Respect to the Application no. 150/2018.

43 The Constitutional Court had the jurisdiction over the legality of a detailed plan until the moment when in accordance with the Spatial Development Planning Law the detailed plan was approved by a general administrative act.

44 Application on Initiating a Case no. 109/2018.

45 Decision of 9 August 2018 by the 1st Panel of the Constitutional Court on Initiating a Case with Respect to the Application no. 109/2018.

46 See, for example, Decision of 9 August 2018 by the 1st Panel of the Constitutional Court to Refuse Initiation of a Case with Respect to the Application no. 108/2018; Decision of 25 July 2018 by the 2nd Panel on Initiating a Case with Respect to the Application no. 97/2018; Decision of 25 July 2018 by the 2nd Panel on Initiating a Case with Respect to the Application no. 94/2018.

The request included in a number of applications[47] to examine the compliance of the contested norms with more than twenty legal norms of higher legal force – both those of *Satversme* and of various international documents that protect human rights can be viewed negatively. Such sizeable requests usually make it difficult to identify those norms which the applicant really regards as being decisive for the protection of his fundamental rights and for deciding the particular matter.

Compliance with the principle of subsidiarity is another requirement set for the constitutional complaint. This principle, basically, means that the constitutional complaint is mainly an additional mechanism for protecting fundamental rights. If the fundamental rights are infringed by an act of applying the law, the person should use all general legal remedies that gives the possibility to appeal against the act of applying the law through which the legal norm has infringed on a person's fundamental rights. The purpose of this principle is to achieve that a court, when examining a case on its merits, first of all would use the methods of applying the law that it has at its disposal to reach an outcome that complies with the *Satversme*.[48] In 2018 only two cases[49] were initiated where a person had exhausted all general legal remedies before turning to the Constitutional Court. In all other cases,[50] however, the person had not turned to a higher institution, a court of general jurisdiction or an administrative court with the purpose of protecting his rights. In these cases, the applicant was able to substantiate convincingly that the infringement on his fundamental rights followed directly from a legal norm and therefore he did not have at this disposal general legal remedies to protect his infringed fundamental rights.

Decisions on refusal to initiate a case

From 1 January 2018 to 9 December 2018 the panels of the Constitutional Court have adopted 147 decisions on refusal to initiate a case.[51] The basis for adopting such decisions is Article 20 (5) and (6) of the Constitutional Court Law. These norms define a number of situations in which the panels may refuse to initiate a case.

The Constitutional Court's jurisdiction over a case

Article 20 (5) (1) of the Constitutional Court Law provides that the Court shall refuse to initiate a case if the Constitutional Court has no jurisdiction over the case. In 2018, panels adopted 11 decisions on refusal to initiate a case on the basis of this norm.

The Court's jurisdiction is defined by the *Satversme* and the Constitutional Court Law. This jurisdiction is exhaustively defined in Article 16 of this law. This means that a claim which is not regulated by Article 16 of the Constitutional Court Law cannot be included in an application to the Court. In 2018 the panels have found the following claims to fall outside the Court's jurisdiction: 1) the request to review the compliance of the contested norm with the Universal Declaration of Human Rights;[52] 2) the request to impose an obligation on the Prisons Administration to refund the payments received for the services it has provided for a charge and the request to impose an obligation on the Corruption Prevention and Combatting Bureau and the Prosecutor General to initiate an investigation, as well as make the officials who were linked to causing losses to convicts liable;[53] 3) the request to recognise an interpretation of Article 101 (6) of the Labour Law to be incompatible with Article 102 of the *Satversme* and the request to declare the termination by an employer to being void as of the moment it was issued and to disburse to the applicant the average remuneration for the whole period of forced absence form work;[54] 4) the request to recognise a court's judgment or decision as being void and incompatible with the *Satversme*;[55] 5) the request to examine a contradiction between legal norms of equal legal force;[56] 6) the request to examine the compliance with the *Satversme* of an international agreement that Latvia has not concluded.[57]

47 Application on Initiating a Case no. 79/2018, and Application on Initiating a Case no. 94/2018.

48 See, for example, the judgment of the Constitutional Court of 26 April 2007 in the case no. 2006-38-03, para. 8.1, and the judgment of 19 October 201 in the case no. 2010-71-01, para. 14.

49 The case no. 2018-10-0106, and Application on Initiating a Case no. 74/2018; the case no. 2018-23-03 and Application on Initiating a Case no. 150/2018.

50 These instances do not encompass application no. 204/2017 on the initiation of the case no. 2008-01-01 and application no. 6/2018 on the initiation of the case no. 2018-05-01 when private persons contested the constitutionality of legal norms that had been applied by the court of last instance.

51 From 1 January 2017 to 9 December 2017 the Constitutional Court's Panels adopted 156 decisions on refusal to initiate a case, whereas in 2016 – 192 decisions on refusal to initiate a case.

52 Decision of 5 July 2018 by the 2nd Panel of the Constitutional Court on Refusal to Initiate a Case with Respect to the Application no. 93/2018.

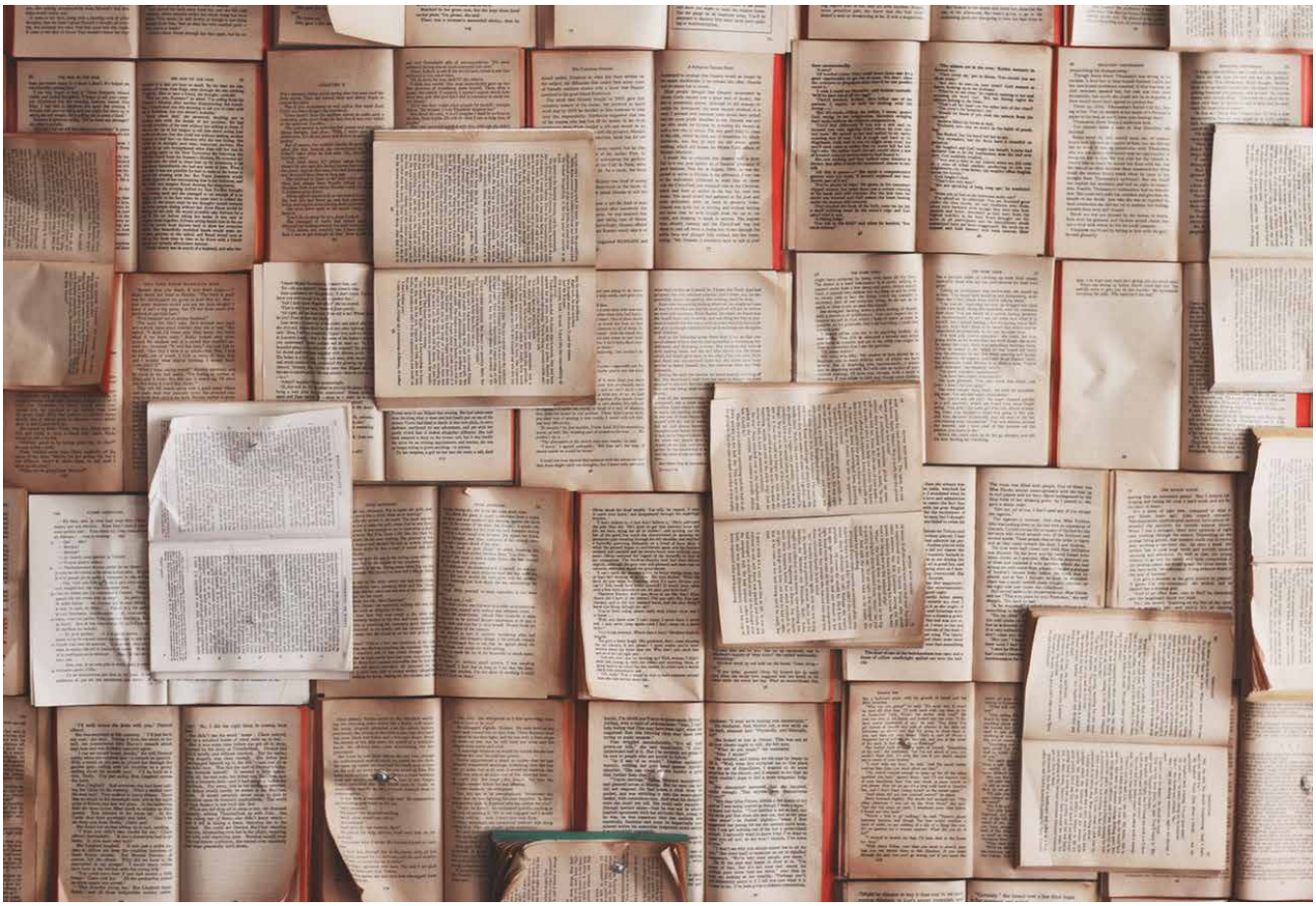
53 Decision of 26 July 2018 by the 2nd Panel of the Constitutional Court on Refusal to Initiate a Case with Respect to the Application no. 104/2018.

54 Decision of 26 February 2018 by the 2nd Panel of the Constitutional Court on Refusal to Initiate a Case with Respect to the Application no. 15/2018.

55 Decision of 11 May 2018 by the 3rd Panel of the Constitutional Court on Refusal to Initiate a Case with Respect to the Application no. 61/2018, and Decision of 21 May 2018 by the 2nd Panel of the Constitutional Court on Refusal to Initiate a Case with Respect to the Application no. 64/2018.

56 Decision of 20 June 2018 by the 2nd Panel of the Constitutional Court on Refusal to Initiate a Case with Respect to the Application no. 80/2018.

57 Decision of 3 December 2018 by the 1st Panel of the Constitutional Court on Refusal to Initiate a Case with Respect to the Application



The applicant is not entitled to submit an application

Article 20 (5) (2) of the Constitutional Court Law provides that the Constitutional Court may refuse to initiate a case if the applicant is not entitled to submit an application. In 2018 this norm was not applied in any of the panel decisions. The panels, thus far, have applied Article 20 (5) (2) of the Constitutional Court Law only in rare exceptional cases where a private person had contested in a constitutional complaint, for example, the constitutionality of a legal act which is not referred to in Article 17(1) of the Constitutional Court Law. Previously the Constitutional Court's panels have deemed the orders of the Cabinet of Ministers to be such legal acts.[58]

Incompatibility of the application with the requirements of the Constitutional Court Law

Article 20 (5) (3) of the Constitutional Court Law provides that the Constitutional Court may refuse to initiate a case if the application does not meet the requirements of Article 18 or Article 19 to 19[3] of this law. Article 20 (5) (3) of the Constitutional Court Law is the most frequently provision in the panels' decisions on refusal to initiate a case. It comprises a number of situations, for example, when the application has been submitted as *actio popularis*, the infringement on a person's fundamental rights has not been substantiated in the application, prior to turning to the Constitutional Court the applicant has not exhausted all the legal remedies available to him, the submitter of the constitutional complaint has exceeded the term of six months for submitting the application, the application does not include legal reasoning.

The Constitutional Court has repeatedly recognised: to differentiate between the cases when a person submits a constitutional complaint with the aim of protecting his rights from the cases where a person does it for the benefit of all, for example, to protect the rights of other persons or to attain other aims, it is not enough that it is established that a person belongs to a group to which the legal norm applies. The person must provide a credible substantiation of the fact that the adverse consequences caused by the legal norm infringe upon his fundamental rights.[59] By referring to this finding, a panel of the Constitutional Court has concluded, for example, that the circumstance indicated in the application that the contested act only generally applies to the applicant cannot be deemed to be the legal substantiation of the infringement on fundamental rights. If the

no. 164/2018.

58 For example, Decision of 24 January 2014 by the 1st Panel of the Constitutional Court on Refusal to Initiate a Case with Respect to the Application no. 2/2014, and Decision of 9 August 2017 by the 1st Panel on Refusal to Initiate a Case with Respect to the Application no. 123/2017.

59 For example, the judgment of the Constitutional Court of 10 May 2013 in the case no. 2012-16-01, para. 22.1.

applicant has not substantiated the causal relationship between the contested act and the alleged infringement on his fundamental rights then it should be considered that the person has turned to the Constitutional Court with a complaint for general good or *actio popularis*, rather than to protect his fundamental rights.[60]

The obligation of the submitter of the constitutional complaint to substantiate that the contested norms infringe on his fundamental rights defined in the *Satversme* follows from Article 19^2 (1), Article 19^2 (6) (1) and Article 18 (1) (4) of the Constitutional Court Law. Pursuant to the Constitutional Court Law, an infringement on a person's fundamental rights can be established if: first, the particular fundamental rights have been established in the *Satversme*; i.e., the contested norm falls within the scope of the particular fundamental rights; second, it is exactly the contested norm that infringes on the person's fundamental rights established in the *Satversme*.[61] If the application does not comprise this substantiation then it is incompatible with the requirements defined in Article 19^2 (1), Article 19^2 (6) (1) and Article 18 (1) (4) of the Constitutional Court Law.[62]

Panels apply the norms referred to above also in those cases where the submitter of the constitutional complaint contests the interpretation and application of a norm, rather than its constitutionality.[63] Also when the constitutional complaint comprises a request to examine compliance of a legal norm with a norm of an international agreement and does not indicate which fundamental rights established in the *Satversme* have been infringed upon, the panel, by referring to Article 19^2 (1), Article 19^2 (6) (1) and Article 18 (1) (4) of the Constitutional Court Law decides on refusal to initiate a case.[64]

Article 19^2 (2) of the Constitutional Court Law provides that a constitutional complaint may be submitted only if all the possibilities to protect the infringed rights by general legal remedies have been exhausted – a complaint to a higher standing institution or official, as well as a complaint or a statement of claim to a court of general jurisdiction – or if the person does not have such possibilities. This norm envisages the obligation of the person submitting a constitutional complaint to exhaust all general legal remedies available to him before turning to the Constitutional Court. In 2018 the panels adopted 16 decisions on refusal to initiate a case on the basis of Article 19^2 (2) of the Constitutional Court Law.

Article 19^2 (6) (2) and Article 19^2 (7) (2) of the Constitutional Court Law define the obligation of the submitter of the constitutional complaint to substantiate that there are no general legal remedies or to annex to the complaint documents that prove the exhaustion of such remedies, if they exist. Thus, in examining the compliance of a constitutional complaint with the requirements of the Constitutional Court Law, the panel verifies whether, in the particular case, there are some general legal remedies available to the person. To verify whether a person has exhausted all possibilities to protect the infringed rights by general legal remedies the panel may *ex officio* obtain information from, for instance, the Courts Information System.[65]

For example, the submitter of the application no. 129/2018 indicated that she had exhausted all the available general legal remedies. She had turned to a first-instance court, requesting the termination of the proceedings in the particular case. The panel, in turn, concluded that it followed from the application and the annexed documents that the civil case in which the applicant was the defendant, had not been adjudicated yet. The minutes of the hearing of the court of general jurisdiction showed that the court had decided to dismiss the applicant's request regarding the termination of the proceedings, in view of the procedural stage of the case. The court had noted that this matter could be decided on also in the deliberations room after the case had been heard on its merits. Thus, the court of first instance had not yet adopted the final ruling on its jurisdiction over the particular dispute; neither had it decided on the possible application of the contested norm. However, even if the court were to adopt such a ruling, the applicant would have the right to appeal against it. Moreover, the panel underscored, in particular, that an unfavourable court ruling even in a similar case *per se* did not mean that general legal remedies were not available to the person or that these were ineffective.[66] Hence, the panel concluded that the application did not meet the requirements defined in Article 19^2 (2) of the Constitutional Court Law.

Article 19^2 (4) of the Constitutional Court Law provides that a constitutional complaint may be submitted within six months following the entry into force of the

60 Decision of 22 January 2018 by the 4th Panel of the Constitutional Court on Refusal to Initiate a Case with Respect to the Application no. 1/2018.

61 Decision of the Constitutional Court of 23 November 2016 to terminate the proceedings in the case no. 2016-02-01, para. 5.

62 For example, Decision of 10 October 2018 by the 4th Panel of the Constitutional Court on Refusal to Initiate a Case with Respect to the Application no. 143/2018.

63 For example, Decision of 9 August 2018 by the 1st Panel of the Constitutional Court on Refusal to Initiate a Case with Respect to the Application no. 114/2018.

64 For example, Decision of 9 August 2018 by the 1st Panel of the Constitutional Court on Refusal to Initiate a Case with Respect to the Application no. 111/2018.

65 Decision of 23 August 2018 by the1st Panel of the Constitutional Court on Refusal to Initiate a Case with Respect to the Application no. 119/2018.

66 Decision of 19 September 2018 by the 3rd Panel of the Constitutional Court on Refusal to Initiate a Case with Respect to the Application no. 129/2018.

ruling by the last institution. If the fundamental rights established in the *Satversme* cannot be defended by general legal remedies, the constitutional complaint may be submitted to the Constitutional Court within six months following the moment when the infringement on fundamental rights occurred. In 2018 the panels adopted eight decisions on refusal to initiate a case on the basis of Article 19^2 (4) of the Constitutional Court Law.

Pursuant to the case-law of the Constitutional Court, a person has the right to submit an application to the Constitutional Court by providing appropriate reasoning and evidence that proves that during the last six months prior to submitting the application objective changes in the legal or actual circumstances could be identified due to which the person had started to feel the infringement that followed from the particular legal norm exactly during the last six months.[67]

In deciding on the application no. 76/2018, the panel held that this finding was applicable only to such circumstances because of which the contested norms started having effect on a person, rather than circumstances when it became more difficult for a person to endure the already existing infringement on fundamental rights. The moment at which the infringement on a person's fundamental rights occurred depends on the particular factual and legal situation. A person's fundamental rights are infringed on at the moment when the contested norm affects him. The infringement can occur by means of an act of applying the contested norm or it can follow directly from the contested norm. An infringement on the fundamental rights established in the first sentence of Article 91 of the *Satversme* occurs at the moment when the differential treatment envisaged in the contested norm becomes apparent – when, because of the contested norm, the person finds himself in a legal or factual situation that differs from that of a person (a group of persons) who is in a similar and according to certain criteria comparable situation and to which a different legal regulation is applicable.[68]

Article 18 (1) (4) of the Constitutional Court Law provides that legal reasoning must be included in the application to the Constitutional Court. The panels of the Constitutional Court have repeatedly noted that sufficient legal reasoning, within the meaning of the Constitutional Court Law, is deemed to be such legal argumentation that substantiates the incompatibility of each contested norm with each legal norm of higher legal force referred to in the application.

When drafting the legal reasoning regarding the incompatibility of a legal norm with a particular norm of fundamental rights, it is recommended to familiarise oneself with the Constitutional Court's case-law with respect to the content of the respective fundamental right as well as the criteria for examining the constitutionality of the restriction on this fundamental right. For example, if a person is of the opinion that the contested norm places disproportional restrictions on the fundamental rights included in the first sentence of Article 92 of the *Satversme*, then it must indicated in the application whether the respective restriction on fundamental rights has been established by law, whether this restriction has a legitimate aim and whether the restriction is commensurate with the legitimate aim. As regards the proportionality of the restriction on fundamental rights, the applicant should indicate, first, whether the chosen measures are appropriate for reaching the legitimate aim, i.e., whether the legitimate aim can be attained by the chosen measure; second, whether this action is necessary or whether the legitimate aim could be reached by measures that are less restrictive on fundamental rights; third, whether the restriction is appropriate or whether the benefit gained by society outweighs the damage inflicted on a person's rights.[69] For instance, retelling of the content of the legal norms, presentation of the actual facts of the case, a person's subjective view on the content of the norm of the *Satversme* or a summary of the Constitutional Court's findings are not deemed to be a legal reasoning of an application.[70]

In some cases a panel has recognised that the application is incompatible also with the requirements set out in Article 18 (3) of the Constitutional Court Law which provides that the application must be signed by the applicant. For example, in deciding on the application no. 78/2018 the panel noted: if the application is signed on behalf of the person by his authorised representative, this authorisation should be drawn up in a way that would allow the Constitutional Court to verify that the authorised person, indeed, has the right to act on the person's behalf. Since instead of an excerpt or a true copy of a notarial deed, issued and certified by a sworn notary, a copy of an excerpt had been annexed to the submitted application, the panel concluded that the application did not meet the requirements of Article 18 (3) of the Constitutional Court Law.[71]

Res judicata

Article 20 (5) (4) of the Constitutional Court Law provides that the Constitutional Court may refuse to ini-

67 Judgment of the Constitutional Court of 27 June 2013 in the case no. 2012-22-0103, para. 12.3.

68 Decision of 5 June 2018 by the 2nd Panel of the Constitutional Court on Refusal to Initiate a Case with Respect to the Application no. 76/2018.

69 For example, Decision of 2 October 2018 by the 2nd Panel of the Constitutional Court on Refusal to Initiate a Case with Respect to the Application no. 137/2018.

70 For example, Decision of 5 July 2018 by the 2nd Panel of the Constitutional Court on Refusal to Initiate a Case with Respect to the Application no. 95/2018, and Decision of 9 August 2018 by the 1st Panel on Refusal to Initiate a Case with Respect to the Application no. 112/2018.

71 Decision of 1 June 2018 by the 4th Panel of the Constitutional Court on Refusal to Initiate a Case with Respect to the Application no. 78/2018

tiate a case if the application has been submitted with respect to res judicata or an already adjudicated claim. In deciding whether the particular matter is "*res judicata*" both the resolutive part of the respective judgment and the findings made in the judgment must be taken into account.[72] In 2018 the panels adopted 10 decisions on refusal to initiate a case on the basis of the respective norm. In most cases, the panels applied Article 20 (5) (4) of the Constitutional Court Law when deciding on applications[73] which were submitted with respect to a claim identical to the one that had already been adjudicated in the judgment in the case no. 2017-16-01.

In its rulings so far the Constitutional Court has interpreted and applied Article 20 (5) (4) of the Constitutional Court Law when it has been requested to examine the constitutionality of legal norms the compliance of which with the *Satversme* had already been examined in a previous judgment. An important interpretation of this norm was given in the decision on the refusal to initiate a case on the basis of the application no. 152/2018.[74]

The application was submitted by a person with regard to whose constitutional complaint the Constitutional Court had adopted the judgment in the case no. 2017-07-01. In this judgment the Constitutional Court declared the contested norm void, also with respect to the applicant, from a particular future date – 1 June 2018. Whereas in the repeated application the applicant requested the Court to declare the aforementioned norm void as of the moment when the infringement on his fundamental rights occurred, i.e., as of the date when, on the basis of the contested norm, legal employment relationship with him had been terminated.

With respect to this request, the panel first noted: upon recognising a legal norm (act) as being incompatible with a legal norm (act) of higher legal force, pursuant to Article 31 (11) of the Constitutional Court Law, the Constitutional Court had to define the date as of which the contested regulation would become void. Article 32 (3) of this Law, in turn, provides that a legal norm which has been recognised by the Constitutional Court as being incompatible with a legal norm of higher legal force is to be deemed to become void as of the date when the judgment of the Constitutional Court is published, unless the Constitutional Court has provided otherwise. The legislator has included in these norms a general presumption regarding the moment as of which the contested norm becomes void, i.e., it is the date when the Constitutional Court's judgment is pub-

72 For example, the judgment of the Constitutional Court of 15 June 2006 in the case no. 2005-13-0106, para. 10, and the judgment of 29 April 2016 in the case no. 2015-19-01, para. 10.

73 Application on Initiating a Case no. 23/2018, Application on Initiating a Case no. 24/2018, Application on Initiating a Case no. 26/2018, Application on Initiating a Case no. 27/2018, Application on Initiating a Case no. 40/2018 and Application on Initiating a Case no. 67/2018.

74 Decision of 11 October 2018 by the 4th Panel of the Constitutional Court on Refusal to Initiate a Case with Respect to the Application no. 152/2018.

lished. Also, the Constitutional Court has the right to recognise the contested norm void as of another date; however, it must justify its opinion.[75]

Circumstances due to which the contested norm should have been recognised void as of a past date were not indicated in the application in the case no. 2017-07-01. In its judgment in the case no. 2017-07-01 the Constitutional Court also found *ex officio* that in deciding on the moment of which the contested norm becomes void not only the applicant's rights and interests but also those of other persons should be taken into consideration. Moreover, the Court underscored, in particular, that the legislator needed a reasonable period of time for adopting a new regulation.[76] Therefore, in accordance with Article 31 (11) and Article 32 (3) of the Constitutional Court Law, the Constitutional Court in its judgment in the case no. 2017-07-01 declared the contested norm void as of 1 July 2018.

The date from which the contested legal norm (act) becomes void is one of the indispensable elements of the Constitutional Court's ruling. Hence, *res judicata*, within the meaning of Article 20 (5) (4) of the Constitutional Court Law, applies not only to the Constitutional Court's findings regarding the constitutionality of the legal norm under review but also to any date from which the contested norm has been recognised as being incompatible with a legal norm of higher legal force. Hence, the panel held that application no. 152/2018 had been submitted with regard to an already adjudicated claim.

Amendments to the legal reasoning or presentation of the facts of the case

Article 20 (5) (5) of the Constitutional Court Law grants to a panel of the Constitutional Court the right to refuse initiation of a case if the legal reasoning or the presentation of the facts of the case included in the application has not substantially changed, compared with a previous application decided by a panel has decided. In 2018 the panels adopted 17 decisions on refusal to initiate a case on the basis of this norm.

Article 20 (5) (5) of the Constitutional Court is based on the principle of procedural economy and alleviates the panels' work concerning repeated applications by granting them the right, in the case of repeated submission of the same application, to examine, first of all, whether the legal reasoning and the presentation of the facts of the case have substantially changed.

Not all deficiencies identified by a panel may be eliminated by submitting a repeated application. For example, if the panel has found that the time-limit for submitting an application has been exceeded this mistake cannot be rectified, since the Constitutional Court Law does not provide for the possibility to renew the time-limit for submitting an application.[77] Also in submitting a repeated application it must be taken into consideration that changes in the presentation or the structure of the arguments indicated in the application, expansion thereof or increasing the volume *per se* cannot be regarded as something that substantially changes the content of the legal reasoning included in

75 For example, the judgment of the Constitutional Court of 21 December 2009 in the case no. 2009-43-01, para. 34, and the judgment of 28 November 2014 in the case no. 2014-09-01, para. 21.

76 Judgment of the Constitutional Court of 24 November 2017 in the case no. 2017-07-01, para. 20.

77 Decision of 23 August 2018 by the 1st Panel of the Constitutional Court on Refusal to Initiate a Case with Respect to the Application no. 125/2018.

the application.[78] Likewise, adding to the application a formal note regarding an alleged incompatibility of the contested norm with a legal norm of a higher legal force cannot be considered as a substantial change to the legal reasoning or presentation of the facts of the case. Similarly, it is not sufficient to improve the legal reasoning by only adding to it some findings from the rulings of the Constitutional Court, the European Court of Human Rights or the Court of Justice of the European Union.[79]

The legal reasoning is manifestly insufficient for upholding the claim

Pursuant to Article 20 (6) of the Constitutional Court Law, the panel has the right to refuse to initiate a case if the legal reasoning provided in the constitutional complaint is manifestly insufficient to uphold the claim. In 2018 panels adopted 15 decisions on refusal to initiate a case on the basis of this norm.

Article 20 (6) of the Constitutional Court Law applies only to cases where a constitutional complaint is submitted to the Constitutional Court. If the panel has applied this norm, then at least in some part the complaint has met the other requirements of the Constitutional Court Law. Predominantly panels refuse to initiate cases on the grounds of this norm when the contested norm pertains to issues similar to those that have already been examined in the Constitutional Court's case-law. Namely, this happens in cases when, after examining a particular application and referring to the corresponding findings in the Constitutional Court's case-law the panel has ascertained that the claim included in the constitutional complaint to recognise a legal norm incompatible with a legal norm of higher legal force will most probably not be upheld. For example, the submitter of the application no. 48/2018 requested to declare Article 82 (6) of the Civil Procedure Law as incompatible with Article 92 of the *Satversme* because this norm denied him the right to freely choose his representative at the cassation instance court and this restriction lacked a legitimate aim. In its decision the panel referred to the Constitutional Court's case-law regarding this matter and concluded that legal reasoning was not provided in the application as to why, in view of the findings expressed by the Constitutional Court regarding restrictions on representation at the cassation instance court, the restriction included in the contested norm lacked a legitimate aim. Hence, the legal reasoning of the application was deemed to be manifestly insufficient for upholding the claim.[80]

Other requests made by the applicant

Other matters also have been decided on in the decisions by the Constitutional Court's panels on refusal to initiate a case. For example, it was requested in the application no. 69/2018 to ensure the protection of the applicant's and her son's private life, as well as to not disclose information about their identity and the data concerning the illness of the applicant's son. The panel satisfied this claim, by deciding that, for the purpose of protecting the right to private life, the data on the applicant's identity had to be anonymized in the decision.[81]

When examining application no. 129/2018 the panel drew the attention of the court of general jurisdiction to the fact that pursuant to Article 19^1 (1) (1) of the Constitutional Court Law a court had to submit an application to the Constitutional Court, if, when examining a civil case in the first instance, it considered that the norm that had to be applied in this case was incompatible with a legal norm of higher legal force. In the particular case, the court had suspended the hearing of a civil case to allow a person to submit an application to the Constitutional Court regarding constitutionality of a norm that was applicable in this civil case. The panel underscored that the constitutional complaint as a subsidiary legal remedy was envisaged in the Constitutional Court Law alongside the institution of a court's application. The legislator had presumed that in cases where the legal norm that was applicable in a civil case infringed on the fundamental rights established in the *Satversme* the court would suspend the proceedings and turn to the Constitutional Court itself. Hence, if a court considers that the legal norm applicable in the case is incompatible with a legal norm of higher legal force, the court itself, rather than the participant in the case, must submit an application to the Constitutional Court.[82]

78 Decision of 8 March 2018 by the 4th Panel of the Constitutional Court on Refusal to Initiate a Case with Respect to the Application no. 19/2018.

79 Decision of 26 July 2018 by the 2nd Panel of the Constitutional Court on Refusal to Initiate a Case with Respect to the Application no. 102/2016.

80 Decision of 26 April 2018 by the 2nd Panel of the Constitutional Court on Refusal to Initiate a Case with Respect to the Application no. 48/2018.

81 Decision of 23 May 2018 by the 3rd Panel of the Constitutional Court on Refusal to Initiate a Case with Respect to the Application no. 69/2018.

82 Decision of 19 September 2018 by the 3rd Panel of the Constitutional Court on Refusal to Initiate a Case with Respect to the Application no. 129/2018.

3 DIALOGUE

The Constitutional Court is developing a dialogue on the national, European and international level. The dialogue serves to hear and to inquire, to inform and to convince, as well as for jointly searching for solutions to problems.

First of all, the Constitutional Court develops a dialogue with the society. In compliance with "The Strategy of Courts' Communication" and "Guidelines on the Communication for the System of Courts", approved by the Council for the Judiciary, the Constitutional Court informs the public about its work. However, the dialogue with the society is considerably more extensive. It comprises, *inter alia*, educating the society about the Latvian legal system, highlighting matters of public relevance, and consolidating the fundamental values of Latvia as a democratic state governed by the rule of law.

The dialogue with state institutions needs to be emphasized alongside the dialogue with society. The Constitutional Court has recognised that its task is not only to resolve disputes regarding the compliance of laws with the *Satversme* but also to provide its assessment of constitutionally important matters. The implementation of the principle of separation of the state power in Latvia can be mentioned as an illustration to this.

Whereas the judicial dialogue in the European legal space comprises the dialogue of the Constitutional Court with both Latvian courts and the constitutional courts of other Member States of the European Union, the Court of Justice of the European Union, and the European Court of Human Rights. This judicial dialogue allows sharing experience with regard to resolving relevant legal issues, just as the international-level dialogue does.

3.1. DIALOGUE WITH THE SOCIETY

Information about the work of the Constitutional Court

The Constitutional Court informs the society about the initiated and adjudicated cases through is press releases. It also provides additional information about applications and cases that have attracted public interest.

To provide a brief but at the same time comprehensive reflection on a ruling that has been adopted, with respect to some cases, the Constitutional Court in cooperation with the creative team of the internet portal Latvijas Vēstnesis prepares also a video commentary. In it a judge explains the substance of the case, legal issues that had been examined by the Court and the main findings, as well as the impact of the ruling on the society. Within the reporting period, four video commentaries [in Latvian] have been made – in the **case no. 2017-12-10** on the procedure for refunding the amount of the overpaid value added tax, in the **case no. 2017-32-05** on the minister's order, which partially suspended the decision by the Salaspils Regional Council on establishing the standing committees of the municipal government, in the **case no. 2017-25-01** on the prohibition to run for election to persons, who after 13 January 1991 had been active in the Communistic Party of Latvia or in other organisations targeting the democratic state order of Latvia, as well as in the **case no. 2018-04-01** on the procedure of cessation of the obligation to pay an additional rate of real estate tax rate for agricultural land that was not farmed.

If a case has been heard in oral proceedings, a press conference is held after the ruling has been pronounced. Usually, the President of the Constitutional Court and the judge rapporteur participate in it. Mass media representatives are invited to the press conference and the recording of the press conference is made available on the Constitutional Court's homepage. Last year two conferences were organised: in the **case no. 2017-17-01** on compulsory lease, and in the **case no. 2017-15-01** – on the remuneration set for medical practitioners for normal extended working hours.

School students

The Constitutional Court educates students by explaining the foundations of the Latvian state, the structure of the legal system, and the importance of the *Satversme* in Latvia as a democratic state governed by the rule of law.

Last year saw the continuation of the tradition established on the 20th anniversary of the Constitutional

Court – judges and staff of the Constitutional Court visited institutions of education to give lectures on the Latvian legal system, the *Satversme*, and the Constitutional Court. Last year, judges and staff of the Constitutional Court visited five educational institutions: the **Daugavpils University**, Iļģuciems Secondary School, Jugla Secondary School of Riga, Riga 3rd Gymnasium, and Viestura Secondary School of Valmiera. This tradition will be continued also in 2019.

The Constitutional Court, in supporting the "**Shadow Day**" organised by the association of business education "*Junior Achievement Latvia*", on 14 February 2018 opened its door to school students. On this day, six students from four schools of Latvia visited the Constitutional Court: from Viestura Secondary School of Valmiera, Gulbene 2nd Secondary School, Secondary School of the Līgatne Region, and Jēkabpils State Gymnasium. "The shadows" could gain an insight into the work of the Constitutional Court and meet judges and the Court's staff to discuss issues related to the choice of profession.

In 2018, the Constitutional Court continued the cooperation with the youth magazine "Ilustrētā Junioriem". To consolidate youngsters' knowledge about the *Satversme*, a crossword puzzle with 32 questions was made. It was published in the September 2018 volume of the magazine "Ilustrētā Junioriem".

The Constitutional Court continued also the cooperation with the creative team of the Latvian Television's youth quiz game "Smart, Even Smarter". 20 questions were prepared for the quiz about the *Satversme*, the state and the judicial power for students of grades 6–12. All questions were video-recorded, and all the judges of the Constitutional Court participated in the filming.

On 15 February 2018 **the final ceremony** of the competition of students' drawings and essays "My *Satversme*" was held to honour the winners of awards and their teachers **[video in Latvian]**. To ensure that the works submitted for the competition could be seen throughout Latvia, the Constitutional Court set up a travelling exhibition and published a booklet including 10 essays and 53 drawings. The exhibition could be viewed at the National Library of Latvia, the Central Library of Preiļi, the Central Library of Limbaži, the Central Library of Latgale, the Central Library of Rēzekne, as well as at the Centre for Competence Development of Zemgale Region. A judge or a staff member of the Constitutional Court always participates at the opening of the exhibition to speak about the *Satversme*.

Since the competition was very successful, the Constitutional Court announced the second **competition** of students' drawings and essays last year. This time the 6graders were invited to submit drawings on the topic "My Fundamental Rights", whereas students of grades 9 and 12 – essays on the topic "The *Satversme* after 100 Years" **[video with English subtitles]**. 82 schools have applied for this competition – 1.5 times more compared with the first competition.

Teachers

At the beginning of April the Constitutional Court, in cooperation with the National Centre for Education, organised **an informative seminar** "Society, State, Law – in the Discourse of Constitutional Values" for teachers of social science subjects, politics and law. Teachers from 30 schools of the Latgale region were invited to the seminar. The aim of the seminar was to foster the teachers' awareness of legal issues. It is planned to hold seminars also in 2019, inviting to participate teachers of social sciences, politics and law from the other regions.

Law students, student organisations and faculty members

Every year the Constitutional Court supports organisations that organise moot courts. In 2018 the future lawyers had the possibility to participate in two final rounds of moot court competitions that were held at the courtroom of the Constitutional Court. On 28 April 2018 for the third successive time **the final round of moot court** organised by the Ombudsman of the Republic of Latvia was held at the Constitutional Court, whereas on 8 December 2018 – **the final round of the XX Kārlis Dišlers Constitutional Moot Court** organised by the European Law Students' Association Latvia (ELSA Latvia) took place there. Judges and staff of the Legal Department of the Constitutional Court were involved in the preparation of the cases for these moot courts, the assessment of the submitted written works judging the oral rounds.

In 2018 the Constitutional Court hosted a number of delegations of local and foreign students **[press release in English]**. During these visits the students were given an insight into the Constitutional Court's jurisdiction and its role in a democratic state governed by the rule of law. The Constitutional Court also was visited by **law professors from Japan** who were provided information on the development of the legal system following the restoration of Latvia's independence. The discussion in particular focused on the general principles of law.

Representatives of the creative industries

In 20108 the Constitutional Court commenced cooperation with the Latvian National Library. A new tradition was put into practice – interdisciplinary discussions between representatives of various sectors about Latvia, the state and society, and the values enshrined in the *Satversme*. Participants of the discussions focus on the fundamental values of Latvia, seeking inspiration in the most brilliant and important works of Latvia literature.

The first discussion about Latvia "When a Cat Cleans Himself on the Threshold…" was held on 31 May at the National Library of Latvia. The discussion was moderated by the Vice-president of the Constitutional Court Sanita Osipova, and the President of the Constitutional

Court Ineta Ziemele, the poet and playwright Māra Zālīte and the scholar of literature Viesturs Vecgrāvis participated in it. The background of the discussion were the autobiographic novels of Māra Zālīte "Five Fingers" and "Birds of Heaven". The discussion invited to think about how we will continue living after crossing the threshold of Latvia's centenary in order to consolidate the will of the society of Latvia to form a state that is democratic, based on the rule of law and belongs to the Westeern cultural space, as well as how we will utilise the underused potential and resources.

The second talk about Latvia – "Daugava" – was held at the National Library of Latvia on 8 December. It was moderated by the President of the Constitutional Court Ineta Ziemele, and among the participants was the scholar of law Egils Levits, the sociologist Dagmāra Beitnere-Le Galla, the historian Barba Ekmane, and the theatre director Reinis Suhanovs. The source of inspiration for the discussion was Rainis' long poem "Daugava" (1919) which reflects the idea of united people and territory of Latvia.

Conferences, discussions, and other events

26.01.2018
Judges and staff of the Constitutional Court participate in the conference "The Impact of Public Opinion upon Judges and the Court System in General".
Press release [in Latvian]
Photo

22.02.2018
Judge of the Constitutional Court Aldis Laviņš reports on the aspects of the independence of the judicial power and issues of communication by the judicial power at the cycle of discussions opened by President of Latvia Raimonds Vējonis "Relevant Issues of the Judicial Power: Opportunities and Challenges" at the Castle of Riga.
Press release [in Latvian]
Video [in Latvian]

26.02.2018
The Vice-president of the Constitutional Court Sanita Osipova and the judge of the Constitutional Court Artūrs Kučs participated at the conference organised by the Research Institute of Legal Studies of the University of Latvia "The Impact of Public Opinion upon Judges and the Court System in General". Sanita Osipova gave a presentation on the manifestations of contemporary information society and its impact on the judicial power, whereas Artūrs Kučs spoke on the limits of judges' criticism in in the case-law of the European Court of Human Rights.
Press release [in Latvian]
Video [in Latvian]

20.04.2018
The President of the Constitutional Court Ineta Ziemele participated at the general meeting of the Latvian sworn attorneys.
Press release [in Latvian]

21.04.2018
The Vice-president of the Constitutional Court Sanita Osipova gave a presentation on ethical violations in the professions belonging to the judicial power and participated in a discussion on the ethics of professions belonging the judicial power.
Press release [in Latvian]
Video [in Latvian]

01.05.2018
The President of the Constitutional Court Ineta Ziemele participated in the laying of flowers at the Brethren Cemetery on the anniversary of convening the Constitutional Assembly.
Photo

04.05.2018
Judges of the Constitutional Court participated in the solemn flower-laying ceremony at the Monument of Freedom in honour of the anniversary of restoring the independence of the Republic of Latvia.
Photo

19.06.2018–20.06.2018
Judges of the Constitutional Court participated in the III World Congress of Latvian Lawyers "State Governed by the Rule of Law – Guarantor of Security", held at the University of Latvia.
Press release [in Latvian]

22.06.2018
The President of the Constitutional Court Ineta Ziemele participated in the graduation ceremony of the bachelor programme of the Faculty of Law, the University of Latvia, "Legal Science".
Press release [in Latvian]
Photo

30.06.2018
The President of the Constitutional Court Ineta Ziemele participated in a discussion on public trust in the judicial power at the conversation festival LAMPA, held in Cēsis.
Photo

21.08.2018
Judges of the Constitutional Court participated in the solemn event on the occasion of the anniversary of de facto restoration of Latvia's independence at the *Saeima*.
Press release [in Latvian]
Photo

21.08.2018
The President of the Constitutional Court Ineta Ziemele participated in the general meeting of the Club of the Members of the Supreme Council and gave a presentation on the legal aspects of the constitutional law of 21 August 1991 "On the Statehood of the Republic of Latvia".

Press release [in Latvian]
Press release [in English]
Photo

07.09.2018
Judges of the Constitutional Court participated in the annual conference of Latvia's judges, dedicated to the centenary of the Latvian court system. Vice-president of the Constitutional Court Sanita Osipova gave a keynote address at the opening of the conference, speaking about the development and consolidation of the Latvian court system from the establishment of the Latvian state until the occupation of Latvia in 1940.
Press release [in Latvian]

08.09.2018
The Vice-president of the Constitutional Court Sanita Osipova participated in a panel discussion "The Values that could Ensure the Sustainable Development of Latvia", held by the Riga Business School and the Riga Metropolitan Roman Catholic Curia.
Press release [in Latvian]
Video [in Latvian]

13.09.2018
The President of the Constitutional Court Ineta Ziemele participated in the conference concluding the project "Election-literacy" – "How to Teach Election-literacy and Policy-literary in Secondary Schools", held by the Ombudsman Juris Jansons. Ineta Ziemele gave a presentation on shaping the conversation in schools about the *Satversme* and the values enshrined in it.
Press release [in Latvian]

14.09.2018
The President of the Constitutional Court Ineta Ziemele and the judge of the Constitutional Court Gunārs Kusiņš participated in the opening of the memorial museum "Auči" of Jānis Čakste, the first President of the Latvian State.
Photo

28.09.2018
The President of the Constitutional Court Ineta Ziemele visited the Jelgava City Council and gave a presentation on the principles included in the *Satversme*.
Press release [in Latvian]
Photo

03.10.2018
Judge of the Constitutional Court Artūrs Kučs participated in the Conference on Dignified Work held by BASTUN (Baltic Sea Trade Union Network) and NFS (Council of Nordic Trade Unions), giving a presentation on the international labour law in the Baltics.
Press release [in Latvian]

19.10.2018
The Vice-president of the Constitutional Court Sanita Osipova participated in the conference of public leaders "Celtspēja" [Lifting Power] and gave a presentation on the idea of the state of Latvia and the reasons why we should feel proud.
Press release [in Latvian]
Press release [in English]
Video [in Latvian]

02.11.2018
The President of the Constitutional Court Ineta Ziemele gave a presentation at the conference of creative industries "Subject: Creativity", focusing on freedom and knowledge which serve as a pre-condition for creating ideas and inspiring the society.
Press release [in Latvian]
Press release [in English]
Video [in Latvian]
Video [in Latvian]
Photo

08.11.2018
The Vice-president of the Constitutional Court Sanita Osipova participated in the annual scientific practical conference of the Turaida Museum Reserve and gave a presentation on the formation of the Latvian court system in the 20th century, following the establishment of the state of Latvia.
Press release [in Latvian]
Photo

18.11.2018
Judges of the Constitutional Court participated in events dedicated to Latvia's centenary.
Photo

23.11.2018
The President of the Constitutional Court participated in the annual conference on topical human rights issues in Latvia, held jointly by the Riga Graduate School of Law and the Ministry of Foreign Affairs.
Press release [in Latvian]

3.2. DIALOGUE WITH PUBLIC INSTITUTIONS

In a democratic state governed by the rule of law a dialogue between state institutions is necessary to promote the function of checks and balances embodied by branches of state power. In this dialogue relevant matters of the constitutional law, topicalities linked to the judicial power, as well as reinforcing the authority of the judicial power and public trust were discussed.

19.01.2018
Judges of the Constitutional Court met with the Speaker of the *Saeima* Ināra Mūrniece at the Constitutional Court.
Press release [in Latvian]
Photo

14.06.2018
Judges of the Constitutional Court met with the Prime Minister Māris Kučinskis at the Constitutional Court.
Press release [in Latvian]
Photo

04.09.2018
The President of the Constitutional Court Ineta Ziemele met with the President of Latvia Raimonds Vējonis at the Castle of Riga.
Press release [in Latvian]
Photo

3.3. JUDICIAL DIALOGUE IN THE EUROPEAN LEGAL SPACE

The European legal space consists of the legal space of the Member States of the European Union which comprises the system of the European Union law and where the European Convention for the Protection of Human Rights and Fundamental Freedoms is directly applicable. Within the European legal space, a dialogue between the Constitutional Court of the Republic of Latvia and other Latvian courts, the constitutional courts of other Member States of the European Union, as well as the Court of Justice of the European Union and the European Court of Human Rights is on-going.

To consolidate the constitutional order of the Latvian state and to facilitate the judicial dialogue in September 2017 the Constitutional Court, in cooperation with the Ministry of Justice and the Courts Administration, announced a competition, inviting judges from courts of general jurisdiction and administrative courts to apply for experience-sharing at the Constitutional Court for a period of six months. As the result of the competition, at the beginning of 2018 Valdis Vazdiķis, a judge of the Riga Regional Court, started to perform the duties of an advisor of the Constitutional Court. The judge had the opportunity to share his experience, to study in depth the legal proceedings before the Constitutional Court, as well as to expand his knowledge on the issues of human rights protection and the principles included in the *Satversme*. In September 2018 the second competition for experience-sharing was announced. This time judge Līga Biksiniece-Martinova from the Administrative District Court will serve as the Court's advisor for six months.

Last year, the judges of the Constitutional Court met with judges of other Latvian courts a number of times – with **the management of the Riga Regional Court** the judges of the Chamber of Civil Cases of the Riga Regional Court, and **the judges of the Zemgale Regional Court**. Several maters of importance for the judicial power were discussed during these meetings, *inter alia*, – the assessment of the constitutionality of legal norms and reinforcing the judicial power as the third branch of the state power within the mechanism of checks and balances of state powers.

At the end of February and the beginning of March judges of the Constitutional Court went on an official visit to Paris, France where they met with the members of the Council of the State of France, judges of the Constitutional Council of France and of the Cassation Court, as well as with the French Minister for Justice Nicole Belloubet. In March, judges of the Constitutional Court visited Tartu, Estonia, for a bilateral meeting with judges of the Estonian Supreme Court. In July, judges of the Constitutional Court went on an official visit to Karlsruhe, Germany, where they met with judges of the Federal Constitutional Court and the Federal Supreme Court of Germany. Whereas in October a delegation of the Slovenian Constitutional Court paid an official visit to the Constitutional Court.

Within the framework of cooperation between courts five employees of the Legal Department of the Constitutional Court had the possibility to go on an experience-sharing visit to the Court of Justice of the European Union. During the visit the staff members of the Constitutional Court met with judges and Court's staff members representing Latvia, as well as gained an insight into the proceedings before the Court of Justice of the European Union and organisation of the Court's work.

26.01.2018
The President of the Constitutional Court Ineta Ziemele participated in the official event to launch the judicial year of the European Court of Human Rights in Strasbourg, France.
Press release [in Latvian]
Press release [in English]

31.01.2018–02.02.2018
Judges' assistants of the Constitutional Court Kristīne Zubkāne and Elīna Kursiša went on an experience-sharing visit to the Court of Justice of the European Union.
Press release [in Latvian]
Photo

28.02.2018–02.03.2018
Judges of the Constitutional Court went on the official

visit in Paris, France where they met members of the Council of State of France, judges of the Constitutional Council and the Cassation Court of France.
Press release [in Latvian]
Press release [in English]
Photo

22.03.2018–23.03.2018
A delegation of the Constitutional Court went on an official visit to the Supreme Court of Estonia, in Tartu, Estonia.
Press release [in Latvian]
Press release [in English]
Photo

16.04.2018
The President of the Constitutional Court Ineta Ziemele met with the President of the Riga Regional Court Daiga Vilsone.
Press release [in Latvian]

14.05.2018
The President of the Constitutional Court Ineta Ziemele met with judges of the Zemgale Regional Court.
Press release [in Latvian]

12.06.2018–15.06.2018
The Vice-president of the Constitutional Court Sanita Osipova participated at the preparatory meeting for XVIII Congress of the Conference of European Constitutional Court in Prague, Czechia.
Press release [in Latvian]
Press release [in English]
Photo

02.07.2018–04.07.2018
Judges of the Constitutional Court went on an official visit to Karlsruhe in Germany, where they met with judges of the Federal Constitutional Court and the Federal Supreme Court of Germany.
Press release [in Latvian]
Press release [in Latvian]
Press release [in Latvian]
Press release [in English]
Press release [in English]
Press release [in English]
Photo
Photo

07.09.2018
Judges of the Constitutional Court participated in the Conference of Latvia's Judges. The President of the Constitutional Court Ineta Ziemele called upon the family of judges to strive towards the ideal judge, whereas the Vice-president of the Constitutional Court Sanita Osipova gave a presentation on the history of development of an independent judicial power in Latvia.
Press release [in Latvian]

03.10.2018–05.10.2018
A delegation of the Slovenian Constitutional Court visited the Constitutional Court in the framework of bilateral cooperation.
Press release [in Latvian]
Press release [in Latvian]
Press release [in English]
Press release [in English]

22.10.2018
Judges of the Constitutional Court met with judges of the Chamber of Civil Cases of the Riga Regional Court.
Press release [in Latvian]

05.11.2018–08.11.2018
Advisor of the Constitutional Court Gatis Bārdiņš, as well as judges' assistants Elīna Semeņuka and Baiba Bakmane went on an experience-sharing visit to the Court of Justice of the European Union.
Press release [in Latvian]
Press release [in English]
Photo

29.11.2018–30.11.2018
The President of the Constitutional Court Ineta Ziemele paid an official visit to the Court of Justice of the European Union where she met with the President of the Court Koen Lenaerts, judges Egils Levits, Ingrīda Labucka and Inga Reine, as well as the legal advisors to these judges and employees of the Court.
Press release [in Latvian]
Press release [in English]

3.4. INTERNATIONAL COOPERATION

In 2018 the President of the Constitutional Court Ineta Ziemele continued an active cooperation with the foreign plenipotentiaries in Latvia. Among other questions, relevant issues of constitutional law in the respective countries and matters that were related to the strengthening of the constitutional identity and promoting the awareness of constitutional values in the society were discussed in the framework of this cooperation. The Constitutional Court was visited by the Ambassador of the United States of America to Latvia Nancy Bikoff Pettit, the Ambassador Extraordinary and Plenipotentiary of Armenia to Latvia Tigran Mkrtchyan, the Ambassador Extraordinary and Plenipotentiary of the Kingdom of the Netherlands to the Republic of Latvia Govert Jan Cornelis Bijl de Vroe, the Ambassador of the Republic of Moldova to Latvia Eugen Revenco, and the Ambassador of the Republic of Italy to the Republic of Latvia Sebastiano Fulci.

The judicial dialogue on the international level, in turn, was promoted by the international conference organised by the Constitutional Court "The Role of Constitutional Courts in the Globalised World of the 21st Century" which was held in May and was the major international event in the field of law dedicated to Latvia's centenary. The conference gathered representatives of constitutional jurisdictions from 25 countries, including Italy, France, Germany, and Spain. Representatives from the Court of Justice of the European Union and the European Court of Human Rights also were among the guests.

15.01.2018
The Chairman of the Parliament of Georgia Irakli Kobakhidze and the delegation led by him visited the Constitutional Court.
Press release [in Latvian]
Press release [in English]
Photo.

01.02.2018
The President of the Constitutional Court Ineta Ziemele gave a lecture on the European future and the role of constitutional courts at the Humboldt University of Berlin, Germany.
Press release [in Latvian]
Press release [in English]
Video [in English]
Photo

02.03.2018
As part of the official visit to France judges of the Constitutional Court, together with the Ambassador of Latvia to France Imants Lieģis, met with the Minister for Justice of France Nicole Belloubet.
Press release [in Latvian]
Press release [in English]
Photo
Photo

19.03.2018
The Constitutional Court was visited by the Ambassador of the United States of America to Latvia Nancy Bikoff Pettit.
Press release [in Latvian]
Press release [in English]

11.04.2018–14.04.2018
The Vice-president of the Constitutional Court Sanita Osipova participated at an international seminar and examined the criteria for assessing the independence of the judicial power at the Utrecht University, the Netherlands.
Press release [in Latvian]
Press release [in English]

13.04.2018
The President of the Constitutional Court Ineta Ziemele served on the jury of the Professor Monroe Edwin Price Media Law Moot Court.
Press release [in Latvian]
Press release [in English]

16.05.2018–17.05.2018
Judge of the Constitutional Court Aldis Laviņš participated in the Third Congress of the Association of Constitutional Courts of the Countries of the Baltic and Black Sea Regions in Tbilisi, Georgia.
Press release [in Latvian]
Press release [in English]

24.05.2018–25.05.2018
The Constitutional Court organised an international conference "The Role of Constitutional Courts in the Globalised World of the 21st Century".
Press release [in Latvian]
Press release [in Latvian]
Press release [in Latvian]
Press release [in English]
Press release [in English]
Press release [in English]
Video [in English]
Video [in English]
Photo
Photo

21.06.2018
A delegation from the People's Republic of China visited the Constitutional Court.
Press release [in Latvian]
Press release [in English]
Photo

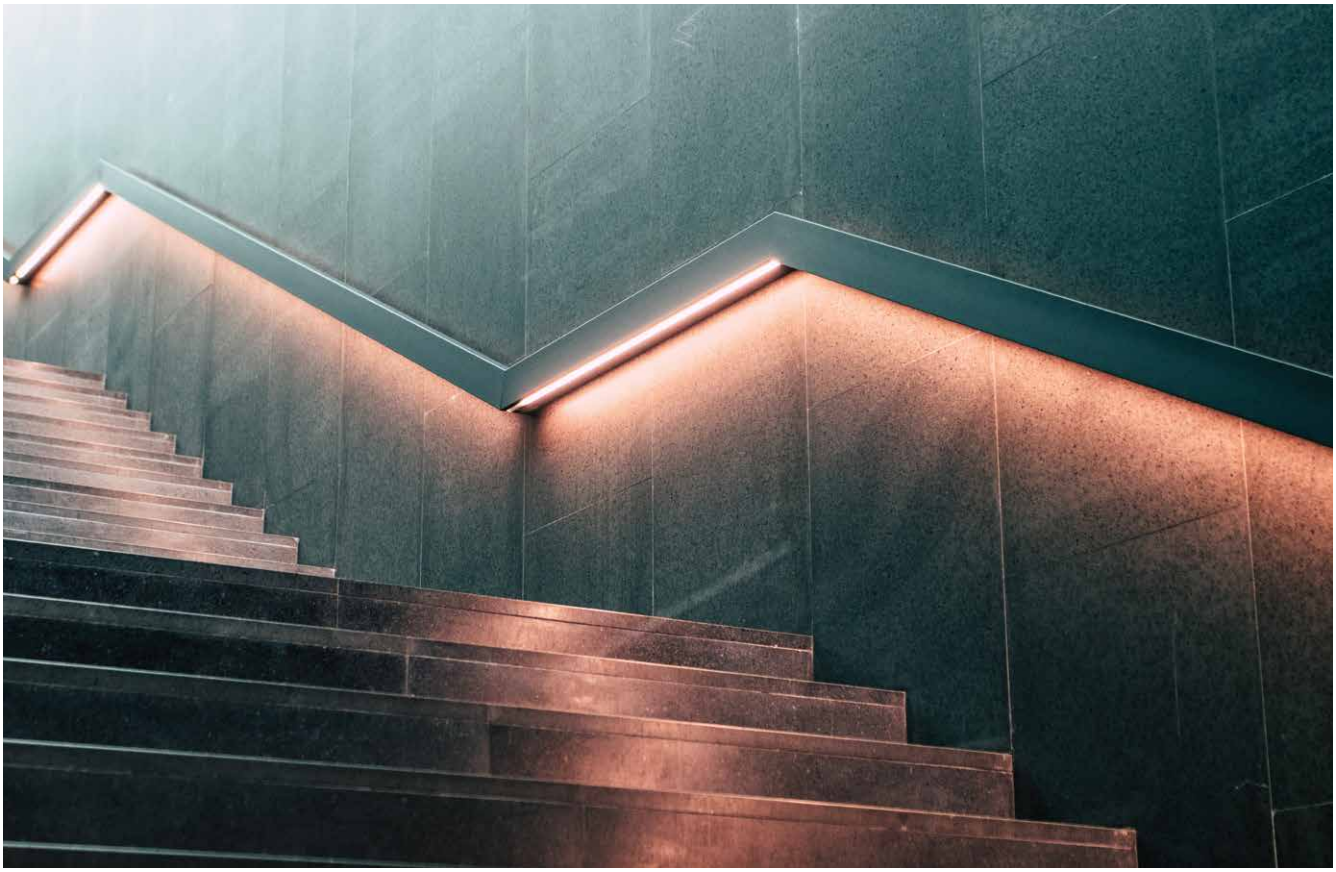
05.07.2018–06.07.2018
The President of the Constitutional Court Ineta Ziemele participated in the solemn meeting of the International Law Commission of the United Nations on the occasion of the Commission's 70th anniversary in Geneva, Switzerland and gave a presentation on the significance of the Commission's functions in the development of international law.
Press release [in Latvian]
Press release [in English]
Photo

06.07.2018
The Vice-president of the Constitutional Court Sanita Osipova participated at a high-level discussion on equal access to justice organised by the Organisation of Economic Cooperation and Development (OECD), the Courts Administration, and the Ministry of Justice.
Press release [in Latvian]
Press release [in English]
Video

11.07.2018
The President of the Constitutional Court Ineta Ziemele visited the Supreme Court of the People's Republic of China.
Press release [in Latvian]
Press release [in English]
Photo

12.07.2018–13.07.2018
The Vice-president of the Constitutional Court Sanita Osipova participated at an international conference in honour of the 25th anniversary of the Constitutional Court of Andorra where she gave a presentation on the financial security of judges in the context of the principle of separation of powers.
Press release [in Latvian]
Press release [in English]

02.08.2018–05.08.2018
The Justice of the Constitutional Court Gunārs Kusiņš participated at an international conference dedicated to the 30th anniversary of the Constitutional Court of



the Republic of Korea in Seoul, South Korea.
Press release [in Latvian]
Press release [in English]

28.08.2018–30.08.2018
The President of the Constitutional Court Ineta Ziemele participated at an international conference dedicated to Kazakhstan's Day of Constitution in Astana, Kazakhstan. A meeting with the President of Kazakhstan Nursultan Nazarbayev was held in the framework of the conference.
Press release [in Latvian]
Press release [in Latvian]
Press release [in English]
Press release [in English]
Photo
Photo
Photo

05.09.2018–07.09.2018
The President of the Constitutional Court Ineta Ziemele and judges of the Constitutional Court Daiga Rezevska and Artūrs Kučs participated in the annual conference of the European Law Institute, held in Riga, Latvia.

21.09.2018
The Ambassador Extraordinary and Plenipotentiary of Armenia to Latvia Tigran Mkrtchyan visited the Constitutional Court.
Press release [in Latvian]
Press release [in English]
Photo

22.10.2018
The Ambassador Extraordinary and Plenipotentiary of the Kingdom of the Netherlands to the Republic of Latvia Govert Jan Cornelis Bijl de Vroe visited the Constitutional Court.
Press release [in Latvian]
Press release [in English]

24.10.2018–26.10.2018
Judge of the Constitutional Court Aldis Laviņš participated in the festive conference dedicated to the 9th anniversary of the Constitutional Court of Kosovo, held in Pristina, Kosovo.
Press release [in Latvian]
Press release [in English]

26.10.2018
The Ambassador of the Republic of Moldova to Latvia Eugen Revenco visited the Constitutional Court.
Press release [in Latvian]
Press release [in English]
Photo

25.11.2018–28.11.2018
Judge of the Constitutional Court Artūrs Kučs participated in the seminar held by the Academy of European Law (ERA) "Hate Speech and the Limits to Freedom of Expression in Social Media" in Trier, Germany.

03.12.2018
The Ambassador of the Republic of Italy to the Republic of Latvia Sebastiano Fulci visited the Constitutional Court.
Press release [in Latvian]
Press release [in English]

3.5. PUBLICATIONS

This section comprises the publications by the judges and staff members of the Constitutional Court in 2018 – books and individual articles in books, articles in periodicals, as well as interviews and speeches. At the end of the section some findings from these publications are provided regarding such topics as the society, state, law, court and legal proceedings.

JUDGES OF THE CONSTITUTIONAL COURT

INETA ZIEMELE

BOOKS:

Ziemele I. Vēlējuma vārdi grāmatai. [Dedication for the book] Grām.: Tieslietu ministrijas juristi Latvijas simtgadei: tiesībpolitikas aktuālie jautājumi. Rīga: Tiesu namu aģentūra, 2018, 8.–10. lpp.

Ziemele I. European Consensus and International Law. In: van Aken A., Motoc I. (Eds.) The European Convention on Human Rights and General International Law. Oxford: Oxford University, 2018, pp. 23–40.

Ziemele I. Foreword. In: Selected Case-Law of the Constitutional Court of the Republic of Latvia: 1996–2017. Riga: Constitutional Court of the Republic of Latvia, 2018, pp. 11–22.

Ziemele I. Role of Constitutional Courts in Upholding and Applying Constitutional Principles. In: XVIIth Congress of the Conference of European Constitutional Courts. Batumi: Constitutional Court of Georgia, 2018, pp. 50–58.

Spale A., Jurcēna L., Ziemele I. Latvia: The State of Liberal Democracy. In: Albert R., Landau D., Faraguna P. et. al. (Eds.) 2017 Global Review of Constitutional Law. I-CONnect-Clough Center for the Study of Constitutional Democracy at Boston College, 2018, pp. 172–176.

PERIODICALS:

Ziemele I. Baltu nepieradinātās dvēseles. [Untamed souls of the Balts] Jurista Vārds, 07.08.2018., Nr. 32, 35. lpp.

Ziemele I. Konstitucionālās tiesas kā slūžas globalizētajā pasaulē. [Constitutional courts as the lock-gates in the globalised world] Jurista Vārds, 13.11.2018., Nr. 46, 8.–12. lpp.

Ziemele I. Valsts pēctecība un pilsonības un bezvalstniecības jautājumi. [The succession of states and the issues of citizenship and statelessness] Jurista Vārds, 08.05.2017., Nr. 19, 27.–38. lpp.

INTERVIEWS:

Arājs K., Ukenābele I. Vēl neesam līmenī, kur tiesu vara ir līdzsvarā ar abām pārējām varām. Intervija ar Inetu Ziemeli. [We are not yet at the level where the judicial power is in balance with the two other powers. An interview with Ineta Ziemele.] LETA, 26.09.2018. Available: http://www.leta.lv/

Avotiņš V. Tiesu varai ir jālīdzsvaro likumdevēja un izpildvara. Intervija ar I. Ziemeli. [The judicial power must balance the legislative and the executive power. An interview with I. Ziemele] Neatkarīgā Rīta Avīze Latvijai, 22.11.2018., Nr. 225, 6.–7. lpp.

Dārziņa L. Mediķiem atcels ierobežojumus virsstundu apmaksai. Intervija ar I. Ziemeli un S. Osipovu. [The restrictions to remuneration of medical practitioners for overtime work will be revoked. An interview with I. Ziemele and S. Osipova]. LVportals.lv, 15.05.2018. Available: https://lvportals.lv/

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Society

Again, we are standing on a certain threshold – not only on the threshold of the next centenary of Latvia but also on the threshold (or cross-roads) of the development of mankind. And, to move forward, we need ideas. Ideas that could later be formulated in law and implemented in practice.[83]

The rule of law and an independent judicial power are the centre of the values of contemporary Latvia. There are not many nations in the world that could be proud of exactly such achievements as we have had in consolidating a democratic state governed by the rule of law. We should be proud of these achievements.[84]

The rule of law is an essential element that characterises the particular society. This element is the one that should be consolidated in the culture of our society, and only then we shall have a genuinely cultured society.[85]

Experience is our wealth. My nation has the experience of living, within the time-span of one generation, in democracy, authoritarianism, totalitarianism, and then of regaining democracy.[86]

At present, we can speak of prosperity and stability of a certain degree which can be retained only by moving ahead, namely, by ensuring the same pace of development and ever-increasing evolution in quality. However, we can speak about raising this level only if we are ready to find internal incentives and resources for serious and intensive work, as well as for searching for and applying innovative solutions.[87]

State

In his long poem "Daugava", Rainis has revealed the formation of the will of the Sovereign will and its historical development.

The state of Latvia was created when it was proclaimed on 18 November 2018 by the Basic Norm: "Latvia is an independent democratic republic." This is an act of the will of the Sovereign, and Rainis depicts it in his poem, at the same time also identifying the general principles of law that are derived from the Basic Norm.

Where has Rainis, in his poem "Daugava", revealed the will of the Sovereign, revealing the Basic Norm of Latvia and the overarching principles?

"One tongue, one soul, one land is ours." (Latvia as a nation state. The principle of territorial unity.)

"Land, land, what is this land? The land – that is the state." (Latvia is independent.)

"The nations will say the final word when they take the power themselves." (Latvia is democratic. The principle of people's self-determination.)

In the introduction Rainis wrote: "And the Sun has always been good to me, and the Sun has heard my plea: Latvia is!" These are the first two words in the Basic Norm of Latvia and also in Article 1 of the *Satversme*. "Latvia is" – it is an imperative legal norm – Latvia must be! Latvia must be an independent, democratic, national and social state governed by the rule of law.[88]

We have a fantastic state order – a democratic state governed by the rule of law. However, the state is a car that requires the skills to drive it.[89]

A human being is born equal in his rights and dignity. The state is a mechanism for ensuring human dignity.

83 Ziemele I. Speech at the III World Congress of Latvian Lawyers on 19 June 2018 in Riga. Available: www.satv.tiesa.gov.lv/

84 Tieslietu nozares simtgades svinību pasākumi. Justīcijas balles goda patronese Ineta Ziemele. [The festive events of the centenary of the judicial branch. The honorary patron of the Justice Ball I. Ziemele] Jurista Vārds, 13.11.2018., Nr. 46, 7. lpp.

85 Lūse-Kreicberga L. Vējā. Starp izaicinājumiem un pārdzīvojumiem. Intervija ar Inetu Ziemeli. [In the wind between challenges and experiences. An interview with I. Ziemele], Una, 2018. gada oktobris, 45. lpp.

86Osipova S. Runa Ekonomiskās sadarbības un attīstības organizācijas, Tiesu administrācijas un Tieslietu ministrijas rīkotajā diskusijā par vienlīdzīgu pieeju tiesiskumam Rīgā 2018. gada 6. jūlijā [Speech at the discussion on equal access to justice organised by the Organisation of Economic Cooperation and Development (OECD), the Courts Administration and the Ministry of Justice on 6 July 2018 in Riga]. Available: www.satv.tiesa.gov.lv/

87 Ziemele I. Vēlējuma vārdi grāmatai [Dedication for the book]. Grām.: Tieslietu ministrijas juristi Latvijas simtgadei: tiesībpolitikas aktuālie jautājumi. Rīga: Tiesu namu aģentūra, 2018, 8. lpp.

88 Rezevska D. Par Suverēna gribas veidošanos un Suverēna gribas aktu – Pamatnormu. Fragments no viedokļa *Satversme*s tiesas un Latvijas Nacionālās bibliotēkas rīkotajā sarunā par Latviju "Daugava" Rīgā 2018. gada 8. decembrī [On the formation of the will of the Sovereign and the act of the will of the Sovereign – the Basic Norm. An excerpt from the opinion expressed at the discussion about Latvia "Daugava" organised by the Constitutional Court and the National Library of Latvia on 8 December 2018]. Available: www.satv.tiesa.gov.lv/

89 Osipova S. Latvijas valsts ideja – kāpēc mums būt lepniem? [The Idea of the state of Latvia – why we should be proud]. Speech at the conference of public leaders "Celtspēja" in Liepāja, 19 October 2018. Available: www.satv.tiesa.gov.lv/

This mechanism is characterised by a special relationship of checks and balances between the branches of power. If this balance is distorted, then the human dignity is not fully guaranteed in the state.[90]

What is the separation of powers? It is not politicians squabbling over the seats in the Parliament or offices in the government but a constitutional principle the purpose of which is to guarantee the freedoms of each person and to protect them from the arbitrariness of the state.[91]

When working within the system of the state power, be it a court or a municipality, we all believe that we are the centre of the world. However, there are very many important formations within this mechanism of power, and it is exactly their interaction that ensures the national development.[92]

Within the mechanism for the functioning of democracy, each deputy is extremely important. The better a deputy is able to function, the better each resident feels.[93]

Law

Since the legal system is evidently becoming more complicated, the legislator and the other branches of state power that are involved in the legislative procedure should already start considering how to regulate these complicated processes as clearly and understandably as possible. Thus, a reverse process is also needed – decreasing the production of regulating norms; the process of legislation should become easier to understand, and the clarity of the norms should improve.[94]

Laws may not be written for the present moment or for a particular circle of persons, they must be written for the society as a whole, moreover, for the long-term.[95]

No legal norm is carved in stone, it lives alongside the society.[96]

Time and again, when rereading our favourite books, we always find in them something that was not noticed when reading it for the first time, or something that was understood differently. The same can be said about laws. Why? Because when reading any text (also the text of a law), we can read only the words, the true idea remains concealed behind the text.[97]

With the consolidation of international community, the universal or global law is reinforced which is horizontal, manifestly plural, and decentralised.[98]

After so many decades of development of the international and the European law, it is striking how little, on the one hand, the international is taken into consideration on the national level, and, on the other hand, how little sensitivity there is on the European and the international level for the national.[99]

The future of the legal and political thought should move away from discourse of the superiority of the legal system and should fit into the framework of the global or universal legal system which is shaped, on equal grounds, by the national and international legal systems.[100]

The European courts should understand that there are limits to the principles that determine the openness to the international law, direct applicability, direct effect, as well as priority and supremacy, and that the name of these limits is the paradox of sovereignty. The future path is shaping a new conception of the discourse and retreating from the demands of competing authorities, assuming that all legal systems constitute the universal legal order.[101]

90 Ziemele I. Runa Latvijas tiesnešu konferencē Rīgā 2018. gada 7. septembrī [Speech at the conference of Latvia's judges on 7 September 2018 in Riga]. Available: www.satv.tiesa.gov.lv/

91 Osipova S. Runa Turaidas muzejrezervāta gadskārtējā konferencē Turaidā 2018. gada 8. novembrī [Speech at the Annual Conference of Turaida Museum Reserve on 8 November 2018]. Available: www.satv.tiesa.gov.lv/

92 Grūtups G. Pašvaldības ir izcils cilvēka tiesību un interešu īstenošanas mehānisms. Intervija ar I. Ziemeli [Municipal governments are an outstanding tool for implementing human rights and interests. An interview with I. Ziemele]. ZZ.lv, 05.10.2018. Available: http://www.zz.lv/

93 Grūtups G. Pašvaldības ir izcils cilvēka tiesību un interešu īstenošanas mehānisms. Intervija ar I. Ziemeli [Municipal governments are an outstanding tool for implementing human rights and interests. An interview with I. Ziemele]. ZZ.lv, 05.10.2018. Available: http://www.zz.lv/

94 Ščerbinskis G. Svarīgi, ko *Satversme*s tiesa pasaka arī starp rindiņām. Intervija ar Inetu Ziemeli [What the Constitutional Court says between the lines is also important. An interview with I. Ziemele]. LV portāls, 2018. gada 21. februāris. Available: https://lvportals.lv/

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Court

Recently, more often discussions are heard that the state and the society expect courts to provide services – fast, effective, cheap and of high quality – like a cobbler. A court is not rendering of services. A court is the restoration of justice.[102]

An ideal judge should be in the centre of Latvia as a self-respecting developed state – a judge who is in constant dialogue with colleagues in Europe and the legal science, a judge who is independent and courageous.[103] Since the restoration of Latvia's independence, we have placed emphasis on the need to reinforce the independence of judges. That is correct. However, we have not yet risen to the next level in the development of a democratic society, a level that would ensure that the judicial power is in balance with the other two powers. That would be an incentive for new strong candidates to join the judicial power and for demanding accountability of a different level from the judicial power. This would take also the quality to the next level.[104]

A court's independence is not a court's arbitrariness. The independence of the court is a tool in the court's hands for guaranteeing justice to society.[105]
There were times when the court was not telling what it was doing and why… This was linked to the classical understanding of the principle of courts' independence. New times have come. The role and function of the Constitutional Court of Latvia and other constitutional courts, as well as the European courts is broader and is not limited only to the adjudication of cases. They have to tell why rulings of one kind or another are adopted.[106]

Legal proceedings

Legal proceedings are a movement from chaos to order, from injustice to justice.[107]

The legal proceedings that take place in a court palace, remains a sacral process – only on behalf of the people. The God is no longer present; however, we work in a palace – the shrine of justice.[108]

In modern courtrooms, the judge has been left alone with his own authority. The judge has to fill the whole courtroom with the authority, creating trust in the court and respect for it. He has to conduct a court hearing in a way that convinces society that justice is born here.[109]

People want to trust their courts and their state. Trust in courts is one of the most essential features of the joint existence and actions of a contemporary society.[110]

After drafting the theses for the judgment, the judge must first ask himself – what legal consequences will my judgment cause and will these comply with justice. If the answer is positive the judge may prepare the judgment for signing; however, if the answer is negative the outcome of interpretation of the applicable legal norm and the legal assessment of the established facts of the case must be re-examined.[111]

Jurista Vārds, 13.11.2018., Nr. 46, 12. lpp.

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