THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

J U D G E M E N T

ON BEHALF OF THE REPUBLIC OF LATVIA

Riga, 3 February 2012

In Case No. 2011-11-01

The Constitutional Court of the Republic of Latvia, composed of the Chairman of the Court hearing Gunārs Kūtris, Justices Kaspars Balodis, Aija Branta, Kristīne Krūma, Uldis Ķinis un Sanita Osipova,

Having regard to the application by the deputies of the 10th Saeima, submitted by Ainārs Šlesers, Edgars Zalāns, Sergejs Dolgopolovs, Ivans Ribakovs, Artūrs Rubiks, Ņikita Ņikiforovs, Valērijs Kravcovs, Aleksejs Burunovs, Jānis Tutins, Vladimirs Nikonovs, Aleksejs Holostovs, Dmitrijs Rodionovs, Imants Jānis Bekešs, Andris Šķēle, Māris Kučinskis, Guntis Ulmanis, Juris Silovs, Nikolajs Kabanovs, Valentīns Grigorjevs and Igors Meļņikovs (hereinafter – the Applicant),

With the participation of the Applicant's authorised representative Eduards Ikvilds and

the authorised representative of the institution, which adopted the contested legal act, – the Saeima of the Republic of Latvia – Gunārs Kusiņš,

and court secretary Arnis Žugans,

according to Article 85 of the Satversme [Constitution] of the Republic of Latvia, Paragraph 1 of Section 16, Paragraph 3 of the first part of Section 17 of the Constitutional Court Law,

on 4 January 2012 in Riga examined in an open sitting the case

"The Conformity of the subprogram 23.00.00 of the Law "On the State Budget for 2011" with Article 1 of the Satversme of the Republic of Latvia."

The Constitutional Court has established

1. On 20 December 2010 the Saeima of the Republic of Latvia (hereinafter – the Saeima) adopted the Law "On the State Budget for 2011". The Law entered into force on 1 January 2011, and subprogram 23.00.00 of its Annex 4 "Itemised List of State Basic Budget Revenue and Expenditure according to Programs and Subprograms" provided that the resources to be allocated for covering the expenditure of the State Road Fund was 80 75 980 LVL (hereinafter – the contested subprogram).

2. The Applicant **– twenty deputies of the 10th Saeima** – holds the opinion that the contested subprogram does not conform to Article 1 of the Satversme of the Republic of Latvia (hereinafter – the Satversme). The legislator has set the amount of resources to be allocated for funding roads in the fourth part of Section 12 of the Law "On Roads". I.e., the provision sets out that the annual funding allocated for the State Road Fund program should not be less than the planned state budget revenue from the annual vehicle duty and no less than 80 percent of the planned state budget revenue from excise duty levied upon oil products, and also no less than the budget allocation of the previous year. The commentaries to the Law "On the State Budget for 2011" allow concluding that in 2011 the revenue from the excise tax levied upon oil products was planned in the amount of approximately 220 200 000 LVL. However, the amount allocated for the contested subprogram was only 80 481 980 LVL.

The contested subprogram allegedly violates the principles of legal certainty and the rule of law, which follow from Article 1 of the Satversme. The principle of legal certainty is said to be applicable to the case under review as the entrepreneurs, who participate in public procurement in connection with road repairs and construction, since 1 January 2007 had had the grounds to rely upon the amount of funding stipulated in Paragraph 2 of the Transitional Provisions of the Law "On Roads", but since 1 January 2010 – the amount of funding set out in the fourth part of Section 12 of the aforementioned Law. The legislator, failing to envisage mitigating transition to the new procedure and amount for funding new roads, had had no right to refuse to fulfil the duties assumed in connection with the aforementioned Section. Moreover, drivers, purchasing oil products and paying the excise tax, had also developed legal certainty. This group of persons could be certain that the beneficial consequences – road quality – would be ensured at least on the previous level.

The principle of legal certainty should be also understood in the way that the provisions of the law are binding also for the legislator itself, and that the legislator has no right not to abide by the legal regulation it has adopted. The second part of Article

111 of the Rules of Procedure of the Saeima stipulates that if, upon passing a draft law, contradictions arise between this law and the laws already in force, the Saeima shall rule that the new law or its separate parts take effect simultaneously with the amendments to the laws already in force. However, the actions of the Saeima, by adopting the contested subprogram, allegedly have led to the situation when two conflicting laws are simultaneously in force. This is said to be a proof of the legislator's legal nihilism.

The passing of the Law "On the State Budget for 2011" allegedly violated also Article 60 of the Satversme, which sets out the duty of the President of the State to proclaim laws passed by the *Saeima* not earlier than the tenth day and not later than the twenty-first day after the law has been adopted. The aforementioned Law was adopted on 20 December 2010; thus, the legislator had no right to provide that it should come into force on 1 January 2011.

During the court sitting the Applicant's representative, furthermore, pointed out that at the moment of examining the case – 4 January 2012 – the previous budgetary year had already ended and that even if the contested subprogram were recognised as incompatible with Article 1 of the Satversme, it would no longer be possible to use the resources that were not allocated for road infrastructure and no material consequences would set in. Thus, the meaning of the case was to obtain at least belated justice.

Since the restoration of state independence the allocation of financial resources for state road infrastructure had been connected with payments made by the users of this infrastructure. This had ensured clear and stable development of the transport sector, as well as strategic planning.

Latvia, by not ensuring appropriate quality of its road infrastructure, was said to threaten also one the fundamental freedoms of the European Union – the free movement of persons. The actions of the state of Latvia are said to be even discriminatory towards other countries, which are able to ensure and to maintain transport infrastructure of adequate quality within their territories.

Simultaneously, the Applicant's representative admitted that when deciding on the amount of funding for road maintenance it is impossible to distance oneself from "the real fiscal situation both in the state of Latvia and in the surrounding markets". The lack of financial resources, inevitably, hinders the meeting of commitments assumed by many states. However, the practice, when simultaneously the expenditure for roads is decreased, but the excise tax levied on oil products increases, was said to be unacceptable.

Answering the Court's questions, it was admitted that in case the Saeima, when adopting the Law "On the State Budget for 2010" had amended the fourth part of Section 12 in the Law "On Roads", the procedure for adopting the state budget would

have been complied with, the collisions would not have arisen and there would have been no grounds to submit, at least, this kind of application.

3. The institution that had passed the contested legal act, – the Saeima – does not agree to the Applicant's arguments and requests the Constitutional Court to recognise the contested subprogram to be in conformity with Article 1 of the Satversme. The contested subprogram had been adopted in accordance with the proper procedure and envisages funding for the State Road Fund. The application, in its turn, most probably is based upon the wish to review the legal regulation for financing the State Road Fund, not upon doubts regarding the conformity with the principle of legal certainty.

Initially the special budget – the State Road Fund – had been established to fund the maintenance, reconstruction and construction of state roads. However, in practice the existence of such a budget revealed several drawbacks, because the "earmarking" of revenue for a concrete purpose decreased the clarity of the financial flow and validity of expenditure. Moreover, the method of defining utilisation of budget revenue for separate sectors in legal acts has been recognised as being an inflexible method. Defining its utilisation in the framework of the state budget is much more efficient.

Open and stable fiscal policy is said to be one of the most significant government tools and basic principles for promoting economic development. Exceedingly large share of state special budget and "earmarking" state budget revenue decreases the government's possibilities to regroup financial resources flexibly in conformity with priority measures. A uniform allocation of budgetary resources to priority sectors is considered to be good practice in budget formation. By including special budgets in the programs of the basic budget, leaving only social insurance as the special budget, greater flexibility of the state budget is achieved.

Because of the aforementioned reasons and also abiding by the recommendations provided by the World Bank and the International Monetary Fund, a decision was taken in 2003 to renounce special budgets, retaining only the special budget of state social insurance. Likewise, 20 October 2003 amendments to the law "On Roads" envisaged that the management, maintenance, designing and renovation of state roads is ensured by resources allocated to the program of the State Road Fund from the basic state budget.

Amendments of 20 October 2005 to the law "On Roads" stipulate that starting with 1 January 2007 till 1 January 2010 the funding allocated to the program of the State Road Fund in the current year may not be smaller than the planned budget revenue from the annual duty of vehicles and smaller than a concrete part (in percent) of the

planned state budget revenue from the excise tax levied upon oil products. But starting with 2010 the funding allocated to the program of the State Road Fund in the current year should not be smaller than the planned state budget revenue form the annual vehicle duty and not smaller than 80 percent of the planned state budget revenue from the aforementioned tax, and not smaller than the allocation in the previous budgetary year.

In adopting the state budget for 2007 and 2008, the regulation of the aforementioned law "On Roads", as well as the estimated revenues from the excise tax levied upon oil products had been taken into account. However, after the economic recession set in and the sate had to borrow financial resources from international financial institutions, it was necessary to adapt the provisions of the law "On Roads" to more recent and special laws, as well as legal provisions with higher legal force. The law on the annual state budget, envisaged by Article 66 of the Constitutions, was said to be both more special and recent law.

Thus, in the case under review, the Applicant, in fact, is requesting to evaluate the mutual conformity of the law "On the State Budget for 2011" and the law "On Roads". The reference to Article 1 of the Satversme is made only because it contains the principle of the rule of law, which does not exclude the use of the conflict of law provisions to ensure correct application of the contested provision.

The scope of state budget subprogram and the allocation of resources is said to be an issue of political efficiency. The scope of the subprogram cannot be verified by the Constitutional Court, especially under conditions when the funding for the State Road Fund has been set in the amount of 80 million LVL. Moreover, no legal provision creates legal certainty in private persons regarding the amount of the State Road Fund in a concrete year. The legislator, in its turn, is entitled to freely set the amount of resources needed by the Fund every year.

The contested subprogram had envisaged deviations from the fourth part of Section 12 of the law "On Roads". Therefore, the Cabinet of Ministers, upon submitting the package of 2011 budget draft laws, had to include in it also appropriate amendments to the law "On Roads". However, the Cabinet of Ministers did not submit such a draft law to the Saeima. Likewise, the Cabinet of Ministers did not offer to introduce appropriate amendments to the law "On Roads" also after the law "On the State Budget for 2011" was adopted. Thus, the Saeima could assume, that the Cabinet of Ministers in this specific case had opted for this kind of solution.

Moreover, in the case under review the Constitutional Court should interpret the concept "law" used in Paragraph 1 of Section 16 of the Constitutional Court Law, deciding, whether the Constitutional Court can verify the conformity of any law with

the Satversme in its formal meaning, or only the conformity of a law with the Satversme, which is simultaneously a law in a substantive sense.

In addition, during the court hearing the representative of the Saeima indicated that the state budget had a dual nature. It contains both legal provisions and also sections, which, "as to their appearance", are administrative orders. The Constitutional Court, in its turn, by continuing to examine the case on its merits, has already decided the issue, whether it is authorised to verify the legality of separate state budget subprograms.

The understanding of the fourth part of Section 12 of the law "On Roads" can differ, just as the guidelines for drafting the state budget. The Cabinet of Ministers, upon submitting the draft state budget law for 2011 should have included appropriate amendments in it, because, " as we can conclude from the position taken by the Cabinet of Ministers, the provision can be understood differently". If different possibilities for interpreting a legal provision exist, then it is advisable to amend the respective legal provision. At the same time the Saeima considers that it did not have a mandatory duty to introduce amendments to the fourth part of Section 12 of the law "On Roads". The fact that the aforementioned provision was not amended does not make the contested subprogram void.

4. The invited person – the Budget and Finance (Taxation) Committee of the Saeima (hereinafter – the Committee) – points out that in accordance with the Satversme it is the duty of the Cabinet of Ministers to draft and the duty of the Saeima – to adopt a state budget conforming with the economic and social reality, envisaging efficient and economically substantiated utilisation of state budget resources. The Cabinet of Ministers uses the draft laws included in the package of the state budget draft laws not only to forecast state income and expenditure, but also to amend the laws that are in force in accordance with the state budget possibilities and the priorities in the Cabinet of Ministers activities.

The state budget is a uniform documents, and the Cabinet of Ministers is responsible for balancing the demands of public institutions, as well as for feasibility and effectiveness of budget implementation. Drafting of the state budget is solely a field of competence of the Cabinet of Ministers, but the Saeima examines and adopts it according to the legislation procedure. The Saeima does not have the right to include in the package of the state budget draft laws a single new draft law; it can only exclude a draft law from it. The Committee emphasizes that the scope and allocation of the state budget subprogram and is an issue of political efficacy. The Saeima has the right to freely decide on the scope of resources for subprograms, as it deems necessary.

The conformity of the subprogram with the fourth part of Section 12 of the law "On Roads" was not evaluated by the Committee, since assessment of the mutual conformity of the draft law and draft laws that are linked to it does not fall within the Committee's competence. The said legal provision does not determine the state budget directly, but only sets out guidelines on the allocation and scope of financing. The Cabinet of Ministers did not submit amendments to the law "On Roads" as part of package of the state budget draft laws. Likewise, following the adoption of the law "On the State Budget for 2011", the Cabinet of Ministers did not propose introducing amendments to the aforementioned law.

The Cabinet of Ministers had envisaged definite funding for the implementation of the contested subprogram, based upon the financial resources available in the state budget. The Committee had agreed to this amount of resources, and the Saeima had decided accordingly under conditions of economic crisis. Thus, the fourth part of Section 12 of the law "On Roads" is applicable to the contested subprogram within the scope of envisaged funding.

During the court hearing **the authorised representative of the Committee – Jānis Reirs, the chairperson of the Budget and Finances (Taxation) Committee of the Saeima** – pointed out that it was not the duty of the Committee to assess conflicts of laws. If such contradictions become apparent, for example, if invited experts point them out, they are assessed. Even though the time for debating the draft state budget law for 2011 was short, the Committee examined all submitted proposals. No proposals had been submitted with regard to the contested subprogram.

The aforementioned draft budget law was elaborated in close cooperation with international creditors. Budget consolidation in the amount of 250 million LVL had been necessary. Thus, it had been impossible to change the amount of financial resources envisaged for the State Road Fund as defined in the fourth part of Section 12 of the law "On Roads". Moreover, the Committee had perceived this provision as "rather an objective for future planning and allocation of these percentages." The Committee trusts the Cabinet of Ministers and the Ministry of Finance as the institutions, which draft the budget, and these then should also assume responsibility for the draft state budget.

5. The invited person – the Cabinet of Ministers – points out that the fourth part of Section 12 of the law "On Roads" does not directly determine the state budget, but only sets out guidelines with regard to the allocation and amount of funding to be envisaged in it. Moreover, the first sentence of this provision sets out that the state budget resources for the State Road Fund program are allocated in accordance with the

state budget law for the current year. Thus, the issue of the fourth part of Section 12 of the law "On Roads" was not examined at the sitting of the Cabinet of Ministers, and neither had the Minister for Transport proposed to examine this issue as a case for the Cabinet of Ministers.

It follows from the protocol decisions of the Cabinet of Ministers of 2009, 2010 and 2011 on the procedure for elaborating the draft state budget that the Ministry of Transport was not obliged to submit amendments to the fourth part of Section 12 of the law "On Roads", since, in accordance with the previous decisions, additional reduction of the state budget expenditure, necessary under the conditions of crisis, had been ensured.

The law on the state budget for current year is a special law vis-à-vis any legal act regulating the principles of a particular sector or policy. It can be concluded from the aforementioned that the expenditure, which follows from other legal acts, should conform with the expenditure envisaged in the state budget, to the extent the current annual state budget does not restrict the implementation of the said provisions.

The Cabinet of Ministers emphasizes that the contested subprogram does not infringe upon the rights of private persons, since they are not the addressees of this subprogram. Private persons could not develop legal certainty regarding allocation of concrete resources to the State Road Fund, since their amount is linked with the state budget revenues planned for the current year in the state budget law. The state budget revenue, in its turn, is variable.

During the court hearing **the authorised representative of the Cabinet of Ministers – Mārtiņš Brencis, the director of the Department of Legal Acts at the Ministry of Finance** – admitted that the Cabinet of Ministers, during the period of drafting the state budget, used a protocol decision to set tasks for the ministries. The ministries have decisive role in assessing the legal acts of their sector and harmonising them with the state budget. While drafting the state budget for 2011, amendments to the law "On Roads" were reviewed by the Cabinet of Ministers, however, these did not relate to the fourth part of Section 12 of the law.

The amount of expenditure for maintaining state roads is envisaged by the state budget, the priorities and available resources guide its drafting. If the fourth part of Section 12 of the law "On Roads" is interpreted in interconnection with the guidelines for planning the state budget, then it does not conflict with the budget law. Moreover, this provision should be interpreted in interconnection with other legal acts, and it should be assessed as "a target tool for adequate maintenance of all roads in Latvia."

The legal system is improved and clarified not only through amendments to legal acts, but also through interpretation of legal provisions. Thus, the fourth part of

Section 12 of the law "On Roads" can be interpreted in a way that does not call for amendments to it. It should be interpreted as a political promise about the desirable, presented in the form of a law. It defines the desirable amount of financial resources to be allocated for road maintenance.

6. The invited person – the Ministry of Finance – points out that, in view of the economic recession in the state and borrowing of financial resources from international financial institutions, starting already with the period of drafting the budget for 2009, Latvia's government, following the recommendations of international organisations, had to consolidate the state budget considerably. Decisions on cutting expenditure were taken both with regard to the budget of the Ministry of Transport and the budget program "State Road Fund". While preparing the draft law "On the State Budget for 2011", the government also took decisions on consolidation measures, however, the Ministry of Transport did not draft and submit for the package of the draft state budget laws amendments to the law "On Roads". As stipulated in Para 5.7 of the Cabinet of Ministers Regulation No. 242 of 14 May 2003 "The Statute of the Ministry of Transport", the Ministry of Transport organises the management of the network of state roads and supervision of the local governments' roads, but in accordance with Para 6.1. – does it by drafting appropriate legal acts, regulating the sector, and through policy planning documents.

The Law on the Structure of the Cabinet of Ministers stipulates that the Cabinet of Ministers adopts all decisions in a collegial manner. If individual ministers have separate opinion regarding issues under review, it is recorded in the minutes. The protocol decisions of the Cabinet of Ministers do not contain records of a separate opinion expressed by the Ministers for Transport during the drafting of the state budget for 2011 with regard to the amount of funding for the State Road Fund. Thus, the Ministry of Transport should have drafted and submitted proposals for amendments to the fourth part of Section 12 of the law "On Roads" for reviewing by the Cabinet of Ministers and the Saeima.

In accordance with Para 4 of the protocol decision (minutes No. 12) of the 28 February 2011 sitting of the Cabinet of Ministers the Ministries had to draft and submit to the Cabinet of Ministers amendments to legal acts to be included in the package of the draft state budget laws by 18 March. However, also during this procedure the Ministry of Transport did not draft amendments to the fourth part of Section 12 of the law "On Roads", even though the funding envisaged by the state budget did not comply with the aforementioned legal provision.

If the financial resources in a stare are very limited, then channelling concrete resources of the state budget for one sector endanger the government's possibilities to balance out all development and security needs of the state. If, unforeseeably, the taxation plan was not met, it would create a deficit in the earmarked budget, and then it would be impossible to ensure the planned functions and a decision on allocating additional resources from the state basic budget would have to be taken. Thus, from the perspective of the methodology for drafting the budget, the practice of channelling a specific part of state budget revenue for specific public expenditure should not be supported.

During the court hearing **the authorised representative of the Ministry of Finance – Ilonda Stepanova, the Director of the Budget Department at the Ministry of Finance** – pointed out that the aim of the fiscal policy over the last three years has been decreasing fiscal deficit and ensuring the financial stability of the state. During this period the financial resources were decreased not only for road maintenance, but also for other important sectors.

In addition to approximately 80.6 million LVL allocated from the state budget for road maintenance, in 2011 funding in the amount of approximately 180.4 million LVL from the European Union resources was planned for road construction. Out of these approximately 123.3 million LVL have been spent.

The Ministry of Finance has always been of the opinion that the law, which is being implemented with regard to utilisation of the state budget resources, is the law on state budget. If the state budget law envisages certain appropriation of financial resources, then these resources can be spent only within the amount set out by this appropriation, even if another law provides otherwise.

7. The invited person – the Ministry of Transport – points out that it initiated the amendments to the law "On Roads" of 20 October 2005, which linked the resources to be allocated to the State Road Fund program in the fourth part of Section 12 of the law with the planned revenue from excise tax levied upon oil products. These amendments had been necessary, since the amount of financial resources available for state and local government road maintenance did not cover even the minimum necessary expenditure, and thus the volume of unperformed, but legally necessary work was increasing with every year

The regulation set out in the fourth part of Section 12 of the law "On Roads" is one of the possibilities to create a clear and stable mid-term planning term budget funding, allowing to plan the necessary works in the road network for a period of at least three years. Mid-term planning is a safeguard of business stability, i.e., a safeguard

for the returns of investments made into means of production, fixed assets and labour force.

While the state budget for 2011 was drafted, the opinion of the Ministry of Transport regarding the conformity of the contested subprogram with the provisions of the law "On Roads" was not requested. Only the target ceiling for budget expenditure had been set for the Ministry, which did not comply with the requirements of the aforementioned law. The Ministry of Transport, being aware of the financial situation that had arisen in the state, had not insisted that the conformity of the contested subprogram with the law "On Roads" were insured.

The Ministry of Transport does not agree to the opinion expressed in the Saeima's written answer that the special budget – the State Road Fund – did not justify the expectations. During the period when this budget existed, it had been a stable and predictable source of revenue for funding the network of state and local government roads. This type of budget also motivates the taxpayers – the users of roads, since a clear connection exists between the payment made by the user of the road network and the work done to improve the network of state and local government roads.

Likewise, one cannot agree to the Saeima's opinion that the fluctuation of tax revenue in the special budget impacts the implementation of functions. Quite the opposite – the existence, independence, stability and predictability of the special budget is an important pre-condition for the maintenance of the network of state and local government roads. The State Road Fund had been a special state budget, thus the balance of resources at the end of the year was transferred to the next fiscal year, so it had been possible to level out these fluctuations in the coming fiscal periods.

The Ministry of Transport emphasizes that the drafting of fiscal budget should not be based upon annual political decisions. It is a short-term planning, leaving the road sector uncertain about the availability of necessary resources in the future. A planning of at least two-year period is needed to perform significant road repair works.

During the court hearing **the authorised representative of the Ministry of Transport – Liene Priedīte-Kancēviča, the Director of the Legal Department at the Ministry of Transport** – pointed out that the aim of the fourth part of Section 12 of the law "On Roads" had been to ensure the growth and stability of the funding necessary for road maintenance in order to perform mid-term planning. This was the reason why the Ministry considered this provision to be good and that it should not be amended.

Annually approximately 310 million LVL are needed to maintain the state roads. In 2007 and 2008 the funding of the road sector significantly increased, thus the quality of the roads also improved. However, since 2009, in view of the economic situation in

the state, the amount of funding allocated for roads was significantly decreased. However, the Ministry hopes that these cuts in funding will be short-term.

Currently the Ministry of Transport interprets the fourth part of Section 12 of the law "On Roads" as a planning principle. If this regulation were excluded from the law, it would be very difficult to reinstate it into the law later.

When answering the question put by the Court, it was admitted that the fourth part of Section 12 of the law "On Roads" couldn't create legal certainty in private persons, as it is created only by a concluded public procurement contract. The Ministry of Transport complied with the requirements set in the protocol decisions of the Cabinet of Ministers as regards other legal acts. However, amendments to the fourth part of Section 12 of the law "On Roads" were not drafted, as it was construed as a principle.

8. The authorised representative of the invited person – the Ministry of Justice – Laila Medina, Deputy State-Secretary on Legal policy Issues at the Ministry of Justice – pointed out during the court hearing that she in general agreed with the opinion provided by the Saeima and the Cabinet of Ministers.

In addition to that it was admitted that the sentences of the fourth part of Section 12 of the law "On Roads" should be evaluated as a whole, without isolating only the second sentence. Moreover, there were no grounds to assess this provision in isolation from all those provisions that define the procedure for drafting the state budget. The Ministry of Justice holds the opinion that the state budget law is the most important law, which defines the amount of resources to be allocated for the road sector.

The law "On Roads" aims to define principles for ensuring long-term road development. The second part of Section 1 of the law On Budget and Financial Management, in its turn, sets out that the aim of annual budget to define and substantiate the resources needed for meeting those obligations of the state that are defined in legal acts. Moreover, in drafting the state budget, the aim to ensure general legal balance should be taken into consideration. The assessment of theses aims in their interconnection shows that the law on state budget is the one that allocates funding for implementation of concrete functions of the state. If all these legal acts are viewed in their interconnectedness, then the principle of the rule of law is not infringed.

It would be correct to predict the amount of funding needed by every sector on the basis of reasonably predictable and available financial resources. However, the principle of fiscal responsibility should also be complied with and the Saeima should be allowed to respond to the concrete actual conditions, for example, economic recession, by allocating additional resources to one sector or decreasing the resources for another sector. One should agree to the opinion of the Ministry of Finance that the most

efficient solution would be not to define the resources needed by a sector in special laws, but let the Saeima decide on their amount within the limits of its discretion.

The Constitutional Court has Concluded

9. With the coming into force of the law "On the State Budget for 20102" the law "On the State Budget for 2011" has become invalid. Thus, the contested subprogram, which was an element in the Annex 4 to the law "On the State Budget for 2011" ahs also become invalid.

Paragraph 2 of the first part of Section 29 in the Constitutional Court Law envisages that the judicial proceedings may be terminated before the pronouncement of the judgement at the decision of the Constitutional Court, if the contested legal provision or legal act has ceased to be in force. The aforementioned provision should be interpreted in the view of the fact that it is aimed at ensuring the economy of legal proceedings at the Constitutional Court, so that the Court would not have to make a judgement in cases, in which the dispute no longer exists *(see, for example, the Judgement of 12 February 2008 by the Constitutional Court in Case No. 2007-15-01, Para 4)*. If the dispute no longer exists, the legal proceedings at the Constitutional Court become meaningless.

However, the fact the contested provision has ceased to be in force as such not always serves as the reason for terminating the proceedings. The law defines the right of the Constitutional Court to terminate the court proceedings, but not an obligation to do so. The Constitutional Court has to evaluate *ex officio*, whether any considerations exist that reveal the need to continue the judicial proceedings *(see, for example, the Judgement of 11 January 2011 by the Constitutional Court in the case No. 2010-40-03, Para 6, and the Judgement of 27 January 2011 in the Case No. 2010-22-01, Para 8).*

The law on state budget is in force for a limited period of time – a year. The Constitutional Court has already recognised that the law on state budget is a special law, its validity is limited in time with the concrete fiscal year *[see, the Judgement of 10 June 1998 by the Constitutional Court in the case No. 04-03(98) Concluding Part]*. Considering the time limits set in the Constitutional Court Law for performing certain procedural activities, for example, examining the application, receiving the written answer, preparing the case and setting the court hearing, there is a sufficiently large possibility that the Court will be able to examine the issue of the legality of the state budget only *post factum*, i.e., after the respective law on the state budget has ceased to be in force.

Likewise, since 1 January 2012 a new wording of the fourth part of Section 12 of the law "On Roads" is in force. The Applicant, in its turn, considered the disregarding of the aforementioned provision during the period, when it was in force in its former wording, as a an evidence of violation of the principle of the rule of law and legal certainty in the adoption of the law "On the State Budget for 2011". Namely, it is declared that the constitutional institutions – the Cabinet of Ministers and the Saeima – in their activities, drafting and adopting the law "On the State Budget for 2011", have violated Article 1 of the Satversme.

Prior the adoption of the amendments the fourth part of Section 12 of the law "On Roads" stipulated that "the state budget resources for the program of the State Road Fund are allocated in accordance with the state budget for the current year. The funding allocated for the program of the State Road Fund in the current year may not be less than the planned state budget revenue from the annual vehicle duty and less than 80 percent of the planned state budget revenue from excise duty levied upon oil products, and also no less than the budget allocation of the previous year."

The Constitutional Court has recognises that it has the task to ensure, according to its jurisdiction, the existence of such system of law, which would, to the extent possible, prevent regulation incompatible with the Satversme or other legal provisions (acts) with higher legal force, as well as to provide assessment on constitutionally important issues (*see, the Judgement of 7 April 2009 by the Constitutional Court in the case No. 2008-35-01, Para 11.2)*.

Thus, the scope of the Constitutional Court jurisdiction in the case under review, in view of the Applicant's request, may not exceed the assessment of whether the procedure for adopting the state budget complied with the principles of law that follow from Article 1 of the Satversme, taking into consideration the wording of the fourth part of Article 12 of the law "On Roads", which was in force up to 1 January 2012.

The Constitutional Court decision can have a significant role in ensuring the principle of the rule of law in drafting, elaboration and adoption of the state budget in the future. Thus, the Constitutional Court has the duty to provide its assessment of this constitutionally important issue.

There are no grounds for terminating the judicial proceedings in the case under review, since it is necessary to assess the compliance of the contested subprogram with Article 1 of the Satversme.

10. Part one of Article 66 of the Satversme provides that "before the commencement of each financial year, the Saeima shall approve the state revenue and expenditure budget, the draft of which shall be submitted by the Cabinet of Ministers." This

provision defines the procedure according to which the legislator deals with the state budget and financial issues, in interaction with the executive power. The Constitutional Court has recognized that the budget is a tool for implementing state policy and that solely the legislator can take decisions concerning the state budget (*see the Judgment of 18 January 2010 by the Constitutional Court in the case No. 2009-11-01, Para 8.1.)*.

The adoption of the law on the state budget is an important function of the Saeima, which it fulfils as an institution directly responsible to the people of Latvia. Compared with other constitutional institutions involved in the drafting and adoption of the budget, the Saeima has the most important role from the point of view of constitutional law, in fulfilling this constitutional task. This decisive role of the Saeima, inter alia, is founded also upon the condition that it has the task to control the fulfilment of the budget, which, in its turn, is the government's task. Thus, the Saeima's right in the budget process is one of the most important tools that the Saeima uses to implement parliamentary control over the government's actions. Other institutions have the right to adopt decisions pertaining to the state budget only in cases envisaged by the Satversme or if the Saeima has granted a permission for adopting such decisions and if the basic principles of a democratic state are abided by.

The legal definition of the state budget is provided in Section1 of the law On Budget and Financial Management. Its first part sets out: "A budget is a means for the implementation of State policy through financial methods. The budget is the foundation for government financial activities and management." The second part of this Section provides: "The purpose of a budget is to determine and substantiate the means required for the government, other State authorities and self-governments to fulfil such State duties the financing of which is determined by legislative acts, ensuring that within the period for which such funds are provided expenditures are covered by corresponding revenue. In formulating budgets, the necessity of ensuring an overall economic balance shall be taken into account." The aforementioned law first and foremost regulates the procedure for elaborating, adoption and fulfillment of the budget. Thus, the regulation incluced in the law, expands and specifies the contents of Article 66 of the Satversme.

The Constitutional Court has recognised that budget is the economic plan for the state, which, on the basis of laws that are in force, estimates the state revenue and expenditure for the financial year. It defines and substantiates the resources necessary for meeting the state's obligations in such a way, that during the period, for which these resources are intended, the expenditure is covered by appropriate revenue. All state institutions and establishments are linked with the state budget *[see the Judgement of 27 November 1998 by the Constitutional Court in Case No. 01-05(98, Para 1 of the Concluding Part, and the Judgement of 25 November 2010 in Case No. 2010-06-01, Para 12]*.

The budget is approved by the Saeima; however, the draft budget is formulated and submitted to it by the Cabinet of Ministers. Initially, the draft budget parts are elaborated by departments, and the main task of the Cabinet of Ministers is to unite and harmonise the budgets of individual departments, as well as to balance the state expenditure balance with the state revenue budget *(see: Dišlers K. Latvijas valsts varas orgāni un viņu funkcijas. Rīga: Tieslietu Ministrijas Vēstneša izdevums, 1925, 81., 121. lpp.)*. However, as to its form the budget is a law, and its adoption fall within the jurisdiction of the legislative institution *(see: Mucenieks P. Budžeta tiesības. Tieslietu Ministrijas Vēstnesis, 1923, Nr. 9/10, 116., 119. lpp.)*.

The Latvian Senate Department of Administrative Cases has likewise recognised that the Saeima, in accordance with Article 66 of the Satversme, every year decides on the state budget, examines and approves the reports and accounts concerning the fulfilment of the budget submitted by the Cabinet of Ministers. These activities of the Saeima are of purely economic and political, not directly legislative nature. When determining the revenue and expenditure of the state, allocating resources for some purposes and refusing them for other, the Saeima most obviously manages the state politics, state economic and governance actions *[see: Latvijas Senāta spriedumi (1918 – 1940). 3. sējums. Senāta administratīvā departamenta spriedumi, 1926 – 1930. Rīga: Latvijas Republikas Augstākā tiesa, Senatora Augusta Lēbera fonds, 1997, faksimilizdevums, 54. lpp.]*.

The objectives of the state are reflected in the budget as expenditure that must be covered by appropriate revenue. Thus, the scope and content of the state budget reflects the general state politics. At the same time, the limited revenue defines the discretion of the government and the Saeima in deciding on the usage of the state financial resources. Since the state budget is based upon the revenue and expenditure estimates, the constitutional institutions have the discretion, when taking decisions concerning concrete budgetary items, to harmonise them with the general state politics and the already adopted legal acts.

In addition to the distribution of the state financial resources to separate items, the state budget law regulates also such issues, which in the respective fiscal year, have been recognised as important for meeting the budget. I.e., legal provisions are used to regulate issues, which are important for implementing the state budget and for managing the fiscal resources of the state. Thus, in view of the purpose and meaning of the state budget institution, it reflects the usage of the financial resources within a concrete time period – a plan of state revenue and expenditure.

Thus, the state budget as the economic plan of the state must be recognised as an external legal act, adopted in accordance with the legislative procedure. The

contested subprogram, in its turn, must be considered to be a part of the state budget expenditure plan, which reflects the state financial possibilities, expressed in sums of money, with regard to covering the planned expenditure of the State Road Fund.

11. The Saeima holds the opinion that in this case the Constitutional Court should interpret the concept "law" used in Para 1 of Section 16 of the Constitutional Court Law and thus establish, whether the Constitutional Court may examine the constitutional compliance of such an act, which is a law only in a formal meaning. The Saeima considers that the Constitutional Court has the right to examine the constitutional compliance of only such legal provision, which is a law also in the substantive meaning.

Thus, the Saeima questions the jurisdiction of the Constitutional Court to examine the compliance of the contested subprogram with the requirements of legal provision of a higher legal force.

11.1. The Constitutional Court has recognised that one of the main principles of a democratic state is the principle of the division of power, from which, in its turn, the control of the judicial power over the legislator and the executive power follows *[see the Judgement of 9 July 1999 by the Constitutional Court in Case No. 04-03(99, Para 1 of the Concluding Part]*. The judicial power in general and the Constitutional Court as part of it has to ensure as complete as possible control over the other branches of power. A state when an institution is outside control is incompatible with the Satversme *(see the Judgement of 22 February 2002 by the Constitutional Court in the case No. 2001-06-03, Para 1, 2 and 4 of the Concluding Part).*

In compliance with Article 85 of the Satversme and Para 1 of Section 16 of the Constitutional Court Law, the Constitutional Court examines cases on compliance of laws with the Satversme. When interpreting the term "law" in this context, it must be taken into consideration, that the legislator's aim in setting up the Constitutional Court, first and foremost, was to create and effective mechanism for protecting the priority of constitutional provisions *(see the Judgement of 7 April 2009 by the Constitutional Court in the case No. 2008-35-01, Para 10.4.).* The Constitutional Court has the task to solve in a legally binding way disputes concerning the conformity of a legal act of lower legal force with the legal provisions of higher legal force The dispute is resolved both in the case of the contested act is recognised as being incompatible and in the case if the contested legal act is recognised as being compatible with the legal provision of higher legal force (*see the Judgement of 22 February 2002 by the Constitutional Court in Case No. 2001-06-03, Para 2.2., Concluding Part).*

A law is legal act adopted in accordance with the procedure set out in the Satversme. This definition of the law contains the substantive and formal concept of the law. The legislator, in its turn, may adopt acts, which could be recognised as law only in the formal sense. If the interpretation of the term "law" used in Para 1 of Section 16 of the Constitutional Court Law offered by the Saeima were accepted, then part of the legislator's activities, performed in the legislative process, would remain without any kind of control executed by the judicial power. I.e., the interpretation offered by the Saeima would not only threaten the safeguarding of the constitutionally important overall priority of the constitutional provisions, but would also lead to ungrounded narrowing of the jurisdiction of the Constitutional Court, which in some cases would deny persons the possibility to protect their fundamental rights defined in the Satversme.

Moreover, the Constitutional Court has already examined a case contesting the compliance of a budget subprogram with the Satversme *(see the Decision of 17 February 2010 by the Constitutional Court on terminating the judicial proceedings in Case No. 2009-42-0103)*. In the aforementioned case the Saeima pointed out that the concrete state budget subprogram did not infringe upon the applicant's fundamental rights, but did not contest the verification of the legality of the concrete state budget subprogram by the Constitutional Court.

The task of the judicial power, including the Constitutional Court, is to ensure that in the administration of justice compliance with constitutional provisions, laws and other legal acts is guaranteed, as well as human rights and freedoms are protected *(see the Judgement of 18 October 2007 by the Constitutional Court in Case No. 2007-03-01, Para 26).*

11.2. The Saeima points out that the scope of the budget subprogram and allocation of resources is an issue of political efficacy, which cannot as to its merits be verified by the Constitutional Court. However, the Applicant during the court hearing requested reassessment of the amount of state budget resources set for the contested subprogram, indicated, that these were insufficient for maintaining the state roads. Similarly it was requested to verify whether the adoption of the contested subprogram was legal, i.e., whether the procedure was appropriate, whether the procedural order set for adopting such decisions was not infringed and whether the requirements of the Rules of Procedure of the Saeima were complied with.

The limits of the jurisdiction of the Constitutional Court are defined by the Constitutional Court Law, and it does not grant to the Constitutional Court the right to assess the political efficacy of the actions taken by other constitutional institutions of state power (*see the Judgement of 11 November 2005 by the Constitutional Court in the*

case No.2005-08-01, Para 9, and the decision of 10 May 2007 in the Case No. 2007-10-0102, Para 10). The Court has the right to examine the case only to the extent arguments of law (legal) are applicable to it, separating these from legal policy arguments. The issues regarding which sufficiently strict legal standards have not been set for deciding on them, but the conclusions to be made predominantly depend upon political efficacy, must be decided by democratically legitimised, political bodies of the state, first of all – the legislator *(see the Decision of 20 January 2009 by the Constitutional Court on terminating the judicial proceedings in the Case No. 2008-08-0306, Para 12).*

The Constitutional Court recognises as substantiated the Saeima's opinion that the funding allocated for the contested subprogram is an issue of political decision and that its amount cannot be verified by the Constitutional Court. The Constitutional Court cannot reassess the actions taken by the Cabinet of Ministers or the Saeima regarding the drafting or adoption of the budget, which is based upon economic assessment or prognosis regarding economic issues of the state. To the extent that the issues pertaining to the state budget do not violate the principle of the division of power, for example, by barring a constitutional institution from fulfilling its tasks or functions set in the Satversme, the Cabinet of Ministers and the Saeima enjoy discretion in making prognosis and taking decisions in this field.

The Constitutional Court has also recognised that the concepts of law and politics are closely connected in the Satversme, since in a state, where the rule of law exists, politics cannot be totally free from the law, and the constitutional requirements are also binding to the legislator and the executive power. Thus, the Satversme ensures that the requirement regarding the legality of actions to be taken is binding to all branches of power and that the state power is not abused (*see the Judgement of 16 December 2005 by the Constitutional Court in the case No. 2005-12-0103, Para 17).* The state institutions have discretion to the extent it is not limited by the Satversme (*see the Judgement of 22 February 2002 by the Constitutional Court in the case No.2001-06-03, Para 4 and 5 of the Concluding Part).* The Satversme sets concrete procedural requirements for all decisions pertaining to important issues in the life of the state and society, thus ensuring that decisions are taken in accordance with requirements of a democratic and law governed state.

Simultaneously the Constitutional Court points out that compliance with the procedural preconditions regulated by the Satversme and the Rules of Procedure of the Saeima is an important condition ensuring that the legislator has complied with the limits of discretion, i.e., that the adopted acts are legal. One of the most important preconditions for the validity of any act is compliance with the procedure set for its

adoption. The Constitutional Court, in its turn, has the task to eliminate the existence of illegal acts in the legal system, thus promoting alignment of the legal system *[see the Decision of 5 April 2000 by the Constitutional Court on terminating the judicial proceedings in the Case No. 04-06(99)]*.

Chapter III of the Law on Budget and Financial Management sets out the procedure for drafting the state budget – preparing, submitting, and adoption. The Rules of Procedure of the Saeima, in its turn, envisages a number of special provisions for examining the state budget. Compliance with the aforementioned requirements is a precondition that makes the adoption of the state budget as a whole and of its separate parts legal.

Thus, the Constitutional Court has the right to assess, whether the constitutional institutions have abided by the principles of legal certainty and the rule of law in the procedure of drafting and adopting the state budget.

12. It follows from the written information provided by the parties to the Case, as well as from the references made during the court hearing, that opinions differ, whether the state budget law and its part – the contested subprogram – should have been considered a more recent and special legal provision compared to the fourth part of Section 12 of the law "On Roads". I.e., the Saeima and the invited persons are of the opinion that since 2009 the fourth part of Section 12 of the law "On Roads" should be applied, taking into consideration the provisions set in a more recent and special legal provision – the respective subprogram of the state budget law. Moreover, the fourth part of Section 12 of the law "On Roads" should be considered as guidelines for elaborating the sate budget and not a legal provision, setting a concrete task to the state institutions to comply with it while drafting the budget.

The Applicant's representative, in his turn, pointed out that the fourth part of Section 12 of the law "On Roads" should have been complied with when adopting the state budget law, and that its provisions could not have been amended with the contested subprogram.

The legislator has the right both to amend laws and to adopt new laws, containing more recent and special provisions vis-à-vis other legal provisions that are already in force. The legislator, under the changing social, economic and political conditions, needs this discretion to use legal provisions to regulate various legal situations in a way appropriate to the social reality.

Simultaneously, the legislator, complying with, inter alia, the principle of the rule of law, has the obligation to ensure internal consistency and harmony of the legal system. It means that such legal provisions, which are no longer necessary for

regulating legal relationships, should be excluded from the legal system as much as possible. Moreover, during the Constitutional Court sitting of 13 November 1998 in the Case No. 01-05(98) the Saeima representative admitted that amendments to one law couldn't amend another law *[see Transcript of the Constitutional Court sitting of 13 November 1998 in the Case No. 01-05(98), case materials, Volume 1, p. 98]*. Thus, it is the legislator's task to avoid, to the extent possible, the simultaneous existence of such legal provisions that can cause reasonable doubts about their mutual compliance and consistence.

Assessing the arguments provided by the Saeima regarding the relationship of a general and special legal provision between the law "On Roads" and the contested subprogram, the Constitutional Court points out: if a respective sector is regulated by general legal provisions, then, when drafting the special legal provisions for this sector, these have to be harmonised with the general legal provisions. Special legal provisions should not regulate those legal issues, which are already regulated by the general legal provisions and the regulation of which is not amended *(see: Krūmiņa V., Skujiņa V. Normatīvo aktu izstrādes rokasgrāmata. Rīga: Valsts kanceleja, 2002, 16. lpp.)*.

The Constitutional Court cannot admit as being substantiated the reference made by the Saeima that a conflict of law can be identified between the contested subprogram and the fourth part of Section 12 of the law "On Roads". I.e., one cannot agree that in accordance with the generally recognised methods for solving conflicts of law the contested subprogram should be considered to be a special and more recent provisions vis-à-vis the fourth part of Section 12 of the law "On Roads" as a more general and older legal provision.

The theory of law recognises that a situation, when the actual content of a concrete real life case is partially or fully covered by at least two legal provisions, the legal content of which partially coincide and if the application of one conflicting legal provision excludes the application of the second legal provision is a conflict of law *(see: Neimanis J. Ievads tiesībās. Rīga: zv. adv. J. Neimanis, 2004, 163. lpp.)*. Thus, to apply the solution of the conflict offered by the Saeima, first it must be established, whether, indeed, a conflict of the concrete legal provisions can be established.

The fourth part of Section 12 of the law "On Roads" envisaged certain content requirements regarding the elaboration of the contested subprogram. I.e., this provision was a precondition for determining the amount of funding to be included in the contested subprogram. The invited persons during the court sitting also understood the fourth part of Section 12 of the law "On Roads" in exactly this context, admitting, that it had been a guideline or a general principle, which served as the basis for setting the

budget for the State Road Fund. Thus, it can be concluded that the concrete legal provisions regulate different subjects: the fourth part of Section 12 of the law "On Roads" contained regulation that the funding of the State Road Fund could not be smaller than the planned state budget revenue from the annual vehicle duty and not less than 80 percent of the planned state budget revenue from the excise tax levied upon oil products, and also not less than the allocation of the previous year. However, the contested subprogram defined concrete funding to be allocated for the state roads in 2011.

Moreover, accepting the arguments provided by the Saeima might lead to a situation when the provisions of other laws would be intentionally ignored in adopting the state budget law.

Thus, the conflict of law, pointed out by the Saeima, is only illusory and the concrete case cannot be solved by applying the relationship of speciality and temporality of the legal provisions.

13. The Constitutional Court must asses further on in its Judgement, whether the fact that the contested subprogram allocated smaller funding to the State Road Fund compared to the one set out in the fourth part of Section 12 of the law "On Roads" complied with the principles of legal certainty and the rule of law.

The Applicant points out that the contested subprogram violates legal certainty, which separate groups of private persons have developed on the basis of the fourth part of Section 12 of the law "On Roads". Entrepreneurs participating in public procurement in the field of road construction and maintenance and drivers, who purchase oil products and pay the excise tax, are to be considered as these private persons.

The Applicant considers that the incompatibility of the financial resources allocated in the contested subprogram with the fourth part of Section 12 of the law "On Roads" causes an infringement of the legal certainty principle. I.e., the legislator's action by defining considerably smaller funding for the State Road Fund than the amount that had to be set in accordance with the fourth part of Section 12 of the law "On Roads" caused an infringement of the principle of legal certainty.

The Constitutional Court has repeatedly recognised in its rulings that the main objective of the legal certainty principle is to protect a person's rights in those cases when amendments to the legal regulation lead or might lead to the worsening of the legal status of private persons. The aforementioned principle, inter alia, demands protection of the certainty that the person has developed regarding safeguarding or exercising the rights granted to it. It includes, for example, the obligation of the sate to meet the commitments it has assumed vis-à-vis persons (*see, for example, the*

Judgement of 8 November 2006 by the Constitutional Court in the case No. 2006-04-01, Para 21, and the Judgment of 26 November 2009 in the Case No. 2009-08-01, Para 23).

Thus, it must be, first of all, established, whether the fourth part of Section 12 of the law "On Roads" granted to any private persons any concretely identifiable rights.

In order for a legal provision to create subjective rights for a person or a group of persons, this legal provision should be directly targeted at granting concretely identifiable rights to concrete persons. The Constitutional Court agrees to the Saeima's opinion that the contested subprogram, basically, addresses the institution, which elaborates the budget – the Cabinet of Ministers, as well as the one that approves it – the Saeima, and it contains indications to the public law subjects regarding the preparation, drafting and adoption of the budget.

The fourth part of Section 12 of the law "On Roads" does not create certainty for entrepreneurs, who have already participated or only will participate in the procurement procedure, regarding receipt of concrete amount of financial resources. Likewise, they may not have developed legal certainty regarding the setting of concrete amount of funding in the budget subprogram. The sole precondition for developing such certainty could be a concluded public procurement contract.

One can agree that granting of larger state budget funding for the maintenance, design, reconstruction and management of the roads could increase the scope and number of public procurement tenders, in which entrepreneurs could participate and, in case they won the tender, the rights to conclude a procurement contract. However, entrepreneurs have no subjective right to demand from the public administration either organising such procurement procedures, or performance of concrete works or setting concrete remuneration. The Constitutional Court has recognised that a private person has no defendable fundamental right to possible future profit from participation in the procurement procedure (*see the Judgement of 3 November 2011 by the Constitutional Court in the case No. 2011-05-01, Para 15.2.)*. During the court sitting the Applicant's representative also admitted that the Law on Public Procurement allows terminating a concluded procurement contract, if the commissioning party has no more resources available in its budget for fulfilling this contract (*see Transcript of the Constitutional Court sitting of 4 January 2012, case file Vol. 1., p. 127).*

Furthermore – the fourth part of Section 12 of the law "On Roads" did not create certainty in drivers, who were purchasing oil products, that a certain amount of state budget resources would be channelled directly for state road maintenance. Undoubtedly, with the increase of the amount of oil products sold, the state budget revenue from the excise tax would also increase in proportion to it. At the same time, the legislator has the right, to the extent the Satversme or international commitments of

the state do not envisage otherwise, to decide, which expenditure is priority for the state and society and channel the revenue gained from the taxes paid for these tasks. The legislator's obligation to use concrete tax revenue for covering the expenditure only in certain sectors does not follow from the Satversme.

The fourth part of Section 12 of the law "On Roads" did not create legal certainty in private persons, and consequently the contested subprogram did not violate the principle of legal certainty.

14. In determining, whether by adopting the contested subprogram the principle of the rule of law was complied with, the content of the fourth part of Section 12 of the law "On Roads" plays a decisive role. The information provided by the parties to the Case during the court sitting allows concluding that opinions on the content of the aforementioned provision significantly differ. I.e., the Saeima and the invited persons consider that the provision only sets out guidelines for drafting the budget and should be interpreted in interconnection with other laws – first of all with the Law on Budget and Financial Management *(see the Transcript of the Constitutional Court sitting of 4 January 2012, Case file, Vol. 1, pp. 135, 144, 153, 155 and 161)*. However, the Applicant's representative holds the opinion that the provision defined an amount of resources for the State Road Fund, which could be determined with sufficient clarity (*see the Transcript of the Constitutional Court sitting of 4 January 2012, Case file, Vol. 1, pp. 123 and 125).*

14.1. Already initially Section 112 of the law "On Roads" regulated the procedure for maintaining, reconstruction and construction of state roads, providing that the maintenance, reconstruction and construction of state roads is funded from the state resources. But starting with 4 November 1997 the first part of Section 13 of this law provided establishing a special budget – "The State Road Fund" – established for funding the aforementioned expenditure.

The law of 30 October 2003 "Amendments to the Law "On Roads"" introduced significant amendments to the law "On Roads". I.e., the regulation on the State Road Fund as a special budget was excluded from the law. Section 12 of the law was also expressed in a different wording, its fourth part provided that "The state budget resources for the State Road Fun program shall be allocated in conformity with the annual state budget law. The funding allocated for the State Road Fund program may not be smaller than that of the previous budgetary year."

The annotation to the draft law points out that in compliance with the decision taken by the Government on abolishing special state budgets the state and local government roads will be funded by the resources allocated to the State Road Fund

program from the basic state budget and that this amount may not be less than in the previous year. In accordance with the new regulation resources from the state basic budget will be used for state and local government road management, maintenance, design, renovation, reconstruction and construction *(see Annotation to the draft law "Amendments to the Law "On Roads"", the draft law submitted on 30 September 2003, registration No. 438)*.

Thus, the purpose of the fourth part of Section 12 of the law "On Roads" was to provide that in the future the funding for state roads would be set in the state budget law and the financial resources of the state basic budget would be its source.

After the law of 20 October 2005 "Amendments to the Law "On Roads"" came into force, the essence of the first sentence of the fourth part of Section 12 was not changed, but preconditions for elaborating the state budget with regard to the amount of funding to be allocated for the State Road Fund were included in the second sentence. In conformity with the second sentence of the respective provision, the funding allocated to the State Road Fund program, first, could not be smaller than the financial resources allocated in the previous budgetary year. Secondly, it could not be smaller than the planned state budget revenue from the annual road vehicle duty and no less than 80 percent of the planned revenue from excise tax levied on oil products. The annotation to the draft law allows concluding that the purpose of the provision was to increase the amount of resources needed for the regular maintenance and renovation of state roads. The annotation, inter alia, points out that, when drafting the state budget for the current year, the amount of resources to be allocated for funding roads, defined in the law "On Roads", should be complied with *(see Annotation to the draft law "Amendments to the Law "On Roads", the draft law submitted on 30 September 2005, registration No. 1379)*.

The grammatical interpretation of the provision proves that the level of specifying the legal relationship was sufficiently high, that the amount of financial resources to be allocated was defined accurately in percent and the mutual complementariness of the regulation included in both sentences of the provision. Neither any arguments were provided during the court hearing, proving that at the time when the fourth part of Section 12 of the law "On Roads" was adopted the legislator had had the purpose to regard this provision as only a guideline for budget formulation.

Thus, the Constitutional Court cannot admit that this provision was understandable as only a guideline or a principle for drafting the state budget law. It can be considered a guideline only to the extent it did not envisage a concrete sum of money that should be allocated to the State Road Fund every year in the state budget law. At the same time, it envisaged sufficiently precise conditions for creating the state budget

subprogram “The State Road Fund”, which were in force and had to be complied with in the process of drafting the state budget.

14.2. A similar degree of specification was found also in Paragraph 2 of the Transitional Provisions of the law “On Roads”, which set out the procedure for applying the fourth part of Section 12 of the law till 1 January 2010. This paragraph provided that during the period from 1 January 2007 till 1 January 2010 the funding allocated for the State Road Fund program in the current year may not be less than the planned state budget revenue from the annual vehicle duty and no less than the following share of the planned state budget revenue from excise tax on oil products: 1) in 2007 – 65 percent; 2) in 2008 – 70 percent; 3) in 2009 – 75 percent.

The application of the historical interpretation of the provision and the assessment of the actions of constitutional institutions in this regard allows concluding that the amount of resources for covering the expenditure of the State Road Fund defined in the law “On the State Budget for 2007” also was based upon the provisions of Paragraph 2 in the Transitional Provisions of the law “On Roads”. Thus, the budget of 2007 allocated to the State Road Fund 189 825 950 LVL to cover its expenditure. This funding sufficiently precisely corresponded to the sum, made up by all planned state budget revenue from the annual road vehicle duty and 65 percent of the panned state budget revenue from the excise tax levied on oil products. In 2008 the state budget allocation to the State Road Fund was, respectively, 236 736 100 LVL for covering its expenditure. These resources also corresponded sufficiently precisely to the sum, made up by all planned state budget revenue from the annual road vehicle duty and 70 percent of the planned state budget revenue from excise duty levied on oil products.

Since 1 July 2009, when the law “Amendments to the Law “On the State Budget for 2009”, the funding defined for the subprogram “The State Road Fund” no longer complied with the requirements of Paragraph 2 in Transitional Provisions” of the law “On Roads”. The funding set for the subprogram “The State Road Fund” in the law “On the State Budget for 2010” and the law “On the State Budget for 2011 no longer complied with the requirements of the fourth part of Section 12 of the law “On Roads”.

The fourth part of Section 12 of the law “On Roads” is a legal provision, which determined the financial resources necessary for the State Road Fund in the state budget law.

15. Paragraph 2 of the second part of Article 114 of the Rules of Procedure of the Saeima set out that the Saeima adopts the draft state budget and amendments to the state budget in two readings. Appropriate procedure must be complied with in adopting the law on the state budget for the current year, just like when adopting any other law.

At the same time the special procedure defined for preparing and examining the state budget law must be complied with *(see the Judgement of 25 November 2010 by the Constitutional Court in the case No. 2010-06-01, Para 12).*

Thus, it must be established, whether in the adoption of the contested subprogram, the procedure for formulating the state budget set out in legal acts was complied with and whether the public institutions, involved in budget formulation, were obliged to prevent the conflict between the contested subprogram and the fourth part of Section 12 of the law "On Roads".

15.1. The first part of Article 66 of the Satversme provides that the Cabinet of Ministers is obliged to submit the draft state budget to the Saeima. This obligation is not restricted to the submission of a document with certain content to the Saeima. The first part of Article 66 of the Satversme provides that the Cabinet of Ministers must submit to the Saeima an estimate of state revenue and expenditure calculations – the draft state budget. Moreover, it follows from the second part of the aforementioned Article that the draft budget must, to the extent possible, correspond to the actual economic situation.

The Cabinet of Ministers, as the highest institution of the executive power, oversees all matters of the state, consequently, also takes care of economic issues. It is the Cabinet of Ministers, who is responsible for the formulation of the draft state budget, because the concept "draft", used in the first part of Article 66 of the Satversme, means a calculation of revenue and expenditure, elaborated in detail. Thus, the obligation to prepare and submit to the Saeima the draft state project means that the Cabinet of Ministers must submit to the Saeima all the necessary proposals regarding the ways the state is going to gain sufficient revenue for covering the necessary expenditure.

It follows from Sections 16-20 of the Law on Budget and Financial Management that a number of officials and institutions cooperate in the elaboration of the draft budget law – the Minister for Finance, the Ministry of Finance and other ministries, central state institutions and the Cabinet of Ministers. In the preparation of the draft law until its submission to the Saeima the law assigns a role of special importance to the Cabinet of Ministers.

Thus, the Cabinet of Ministers, as a collegial institution, is responsible for the validity of the draft budget law submitted to the Saeima and its compliance with the laws that are in force. If separate ministries hold diverging opinions on the state budget as to its validity, in view of the interpretation of an essential legal provision, then the Cabinet of Ministers has the obligation to settle this dispute *ex officio*. If the Cabinet of Ministers itself has doubts about the interpretation of an important legal provision from

the point of view of the validity of a certain aspect of the budget, then the draft state budget law, which is submitted to the Saeima, should point out the need to consider amending such a provision. This conclusion, inter alia, is substantiated by the obligation of the Cabinet of Ministers, to comply with the procedural preconditions regarding the submission of the draft state budget law to the Saeima, including in it the necessary draft laws needed for budget approval *(see the Judgement of 19 December 2011 by the Constitutional Court in the case No. 2011-03-01, Para 18, and the letter of the President of the State of 29 December 2011 No. 274 to the Prime Minister, accessible from: http://www.president.lv/images/modules/items/PDF/vestule-mp-29122011.pdf, accessed on 11 January 2012).*

15.2. The Constitutional Court has repeatedly recognised that in 2009 rapid decline in the economic situation of the state started (*see, for example, the Judgement of 21 December 2009 by the Constitutional Court in the case No. 2009-43-01, Para 27.1. and the Judgement of 1 December 2010 in the Case No. 2010-21-01, Para 21.1.).* Thus, an objective necessity arose for the state institutions to review significantly the methodology for formulating the budget within a short period of time and to elaborate a balanced budget, envisaging decrease of resources in conformity with the actual possibilities to cover the planned expenditure. This, in its turn, meant that the legislator had the duty to introduce amendments to those legal acts, which envisaged the necessary funding for covering concrete expenditure, to ensure compliance with the principle of the rule of law. However, this did not release the Cabinet of Ministers from the obligation to, first of all, prevent conflicts between the laws that were in force and the draft state budget law.

The information held in the case file confirms that several protocol decisions of the Cabinet of Ministers sittings – Para 3. § 7 of the minutes No. 28 of 30 April 2009 sitting, Para 4. § 9 of the minutes No. 70 of 16 October 2009 sitting and Para 1. § of the minutes No. 12 of 28 February 2011 sitting (hereinafter also – Protocol Decisions) set out the obligation of the ministries to elaborate amendments to the legal acts pertaining to decreasing the state expenditure. Simultaneously, it must be concluded that the invited persons held significantly diverging opinions regarding the obligations of the Ministry of Transport that followed from the Protocol Decisions.

The Ministry of Finance in its written opinion points out that in accordance with the minutes No.12 of the sitting of 28 February 2011 the ministries by 18 March 2011 had to draft and submit to the Cabinet of Ministers amendments to the legal acts to be included in the package of the draft state budget laws. "The Ministry of Finance did not draft amendments to the wording of the fourth part of Section 12 of the law "On Roads", even though the funding envisaged in the state budget did not comply with the

provision of the aforementioned law (*case materials, Vol. 1, p. 53*). The Cabinet of Ministers, in its turn, indicates that the obligation of the Ministry of Transport to submit amendments to the fourth part of Section 12 of the law "On Roads" did not follow from the Protocol Decisions *(see case file, Vol. 1, p. 84)*.

During the court hearing all the invited persons agreed that the Protocol Decisions did not envisage concrete obligation of the Ministry of Transport to submit amendments to the fourth part of Section 12 of the law "On Roads". I.e., this provision should have been amended because of legal clarity, however, at the same time it had also been possible to interpret it in a way allowing the funding allocated in the state budget law did not comply with the one envisaged by the law. The representative of the Ministry of Transport also pointed out that the provision was not amended in order "not to destroy the uniform system for funding in general the network of state and local government roads, developed over many years." The fourth part of Section 12 of the law "On Roads" had been in force "all the time [..] if we would remove it, later on it would be very difficult to get it back into this law" (*Transcript of the Constitutional Court sitting of 4 January 2012, case materials, Volume 1, pp. 144 and 146)*.

15.3. It is not the task of the Constitutional Court to control the way some Ministries fulfil the tasks set by the Cabinet of Ministers. However, it establishes that opinions expressed by the invited persons in writing are contradictory and this creates doubts about the true obligations of the Ministry of Transport, which followed from the Protocol Decisions. For example, Para 57. § 13 of the minutes No. 62 of 1 November 2011 sitting of the Cabinet of Ministers entrusts the Ministries with the task to amend laws in order to prevent incompatibility with the draft law "On the State Budget for 2012". The wording of this task was identical with the task included in the Protocol Decisions. The Ministry of Transport, referred to the task set in the minutes of 1 November 2011 sitting of the Cabinet of Ministers to substantiate the need to draft amendments to the law "On Roads" to prevent its conflict with the draft state budget law (*see the annotation to the draft law "Amendment to the Law "On Roads", the draft law submitted on 2 December 2011, Registration No. 129/p. 11)*. Thus, tasks that are identical in terms of their content, are understood differently.

Para 2.4.3. of the Cabinet of Ministers Regulation No. 300 of 7 April 2009 "The Rules of Procedure of the Cabinet of Ministers" provides that the Cabinet of Ministers, according to its jurisdiction – examines the draft of an internal legal act – a protocol decision of the Cabinet of Ministers sitting. Thus, the provisions included in the protocol decision, being provisions of an internal legal act of the Cabinet of Ministers, are binding only to the institutions of public administration. The Cabinet of Ministers passes its decisions in a collegial manner; the minutes record only individual opinion of

the ministers, if such is expressed. The protocol decisions adopted during the preparation of the draft state budget for 2009, 2010 and 2011 do not contain an indication that the Minister for Transport had had a dissenting opinion on the amount of funding for the State Road Fund.

Thus, the position of the Ministry of Transport regarding the fourth part of Section 12 of the law "On Roads" since 2009 can be described as follows – this provision should be considered as being only a general guideline, which can be interpreted flexibly, in case the state budget resources were decreased. The Cabinet of Ministers, in its turn, throughout these years, by preparing the packages of draft state budget laws, without including in them amendments to the fourth part of Section 12 of the law "On Roads", accepted this interpretation by the Ministry. Neither was the responsible Saeima committee informed about the need to amend the fourth part of Section 12 of the law "On Roads".

15.4. The necessity to introduce amendments to the fourth part of Section 12 of the law "On Roads" to a certain extent is confirmed by the statements made by the representatives of the invited persons – the Ministry of Transport and the Cabinet of Ministers – during the court hearing, that from the point of view of legal certainty such amendments would have been advisable (*see Transcript of the Constitutional Court sitting of 4 January 2012, Case File Vol.1., pp. 146 and 161*). Likewise, this necessity follows from the fact pointed out by the representative of the Ministry of Transport, that currently the Ministry of Transport was planning to draft a new provision, which, by envisaging allocation of smaller percentage of resources to the State Road Fund, in fact, would reinstate the regulation of the former fourth part of Section 12 of the law "On Roads" (*see Transcript of the Constitutional Court sitting of 4 January 2012, Case File Vol.1, p. 146*).

Moreover, the annotation to the draft law "Amendments to the Law "On Roads"", prepared by the Ministry of Transport and submitted to the Saeima in December 2011, points out repeatedly that "the funding envisaged in the fourth part of Section 12 of the law "On Roads" does not comply with the provisions of the draft law "On the State Budget for 2012" (*annotation to the draft law "Amendments to the Law "On Roads", the draft law submitted on 2 December 2011, registration No. 129/ p.11).* The Cabinet of Ministers intended to introduce by this draft law such regulation in Section 18 of the Transitional Provisions of the law "On Roads", envisaging restrictions to application of the fourth part of Section 12 and would provide that "in 2012 the state budget resources for the State Road Fund program are envisaged in conformity with the law "On the State Budget for 2012"". However, the Saeima opted for another solution and amended the fourth part of Section 12 of the law "On Roads", providing that:

"Unless the annual state budget law envisages otherwise, the funding allocated for the State Road Fund program in the current year may not be less than the planned state budget revenue from the vehicle tax and no less that 80 percent of the planned state budget revenue from excise tax levied on oil products, nor smaller than the allocation of the previous budget year."

The Constitutional Court concludes that the Ministry of Transport and the Cabinet of Ministers, interpreting the fourth part of Section 12 of the law "On Roads", did not, however, amend it in such a way that, by allocating resources in appropriate amount would comply with a legal provision that was in force. Thus, the Cabinet of Ministers, in fact, has failed to ensure compliance with the fourth part of Section 12 of the law "On Roads" since 2009. The Satversme imposes the greatest responsibility for the quality of the prepared draft project upon the Cabinet of Ministers as a collegial institution, inter alia, for the rule of law, and at the same time grants to the Saeima control over compliance with the laws adopted by the Saeima.

Thus, the Cabinet of Ministers, due to the lack of action by the Ministry of Transport, allowed that already since 2009 the funding for the State Road Fund envisaged in the state budget laws was not aligned with the provisions of the fourth part of Section 12 of the law "On Roads".

16. The first part of Section 21 of the law On Budget and Financial Management provides that the Cabinet of Ministers by 1 October of the respective year submits to the Saeima the draft state budget for the current year (a package of the draft budget laws) for the next fiscal year year, proposals on amendments to laws, so that they would comply with budget requests, and explanations of the draft budget law for the current year (packages of draft budget laws). Para 8 of the second part of Section 21, in its turn, envisages that the explanations of the draft state budget law (package of the draft budget laws) contain proposals concerning such amendments that should be introduced into laws, which are not included in the draft state budget law (package of the draft budget laws), so that these laws would comply with the budget request.

These provisions are, first and foremost, applicable to the scope of the Cabinet's obligations in the procedure of drafting the state budget. The second part of Section 111 of the Saeima Rules of Procedure stipulates: "If, upon passing a draft law, contradictions arise between this law and the laws already in force, the Saeima shall rule that the new law or its separate parts take effect simultaneously with the amendments to the laws already in force." This provision is applicable to the Saeima and envisages its duty to prevent passing of mutually contradictory laws.

The principle of the rule of law provides that the laws and rights are binding to all institutions of public administration, including the legislator itself. In a democratic republic the Parliament must comply with the Satversme and other laws, including the ones adopted by the Parliament itself *[see the Judgement of 1 October 1999 by the Constitutional Court in the case No. 03-05(99, Para 1 of the Concluding part]*.

16.1. The Cabinet of Ministers submitted the draft law "On the State Budget for 2011" and the accompanying package of draft laws to the Saeima only on 7 December 2010. This action of the Cabinet of Ministers did not comply with the first part of Section 21 of the law On Budget and Financial Management, but complied with the third part of Section 21.

The term set by the aforementioned provision – 1 October – fills with content the wording used in Article 66 of the Satversme "annually, before the commencement of each financial year", as it allows the Saeima to fulfill its constitutional duty envisaged in Article 66 of the Satversme in a timely, considerate and responsible manner. Considering the fact that the state budget law has to regulate the economy of the state within a concrete period (financial year), the terms for elaborating the budget set in the law ensure that it is possible for the Saeima to fulfill its duty qualitatively. The elaboration of the state budget is closely connected with the planning of financial resources, therefore the terms set for the budget procedure serve the purpose of timely adoption of the budget – prior to the commencement of the financial year. The legislator, by regulating the term of budget elaboration, ensures stability in the state, since the estimates of the state economic development and the necessary amendments to the legal acts are timely known. The setting of the term in the law grants to the Saeima enough time for the evaluation of the draft state budget (package of draft budget laws), and it can be done in due time and qualitatively.

The complicated economic situation of the state in the recent years, undoubtedly, made it more difficult for the Cabinet of Ministers and the Saeima to fulfil its functions defined in the law within the set terms. However, the actions of a state constitutional institution, which for several years is incompatible with the law, cannot be deemed to be acceptable. The duty to comply with legal provisions and reliance upon legal regulation equally applies both to the inhabitants and the constitutional institutions of the state.

During the last six years the draft state budget laws were repeatedly submitted to the Saeima breaching the term set in the first part of Section 21 of the Law on Budget and Financial Management – 1 October. Thus, the Constitutional Court draws the attention of the Cabinet of Ministers to the obligation set out in the first part of Section 21 of the Law on Budget and Financial Management to submit the draft budget law to the Saeima within the set term.

16.2. The Committee of the Saeima has pointed out in its written explanation that the drafting of the state budget is solely the competence of the Cabinet of Ministers and that the Saeima, in its turn, only evaluates and adopts it.

Both the Saeima and the Cabinet of Ministers has its own, exclusive competence in definite stages of the procedure for adopting the state budget. After the draft state budget law has been submitted to the Saeima, its task is to provide its assessment on the state politics implemented by the Cabinet of Ministers. In issues pertaining to the state budget the Saeima's rights are not limited by the duty to formally approve the draft submitted by the Cabinet of Ministers. The purpose of the procedure of examining the draft law in the Saeima is, inter alia, also to ensure the legality of this draft. Undoubtedly, the actions of the Cabinet of Ministers in the extraordinary economic situation as regards its duty to submit the draft state budget law to the Saeima timely, may impact the Saeima's ability to perform comprehensive assessment of this draft.

If the Saeima does not object to the late submission of the draft state budget law, it becomes co-responsible for possible incomplete assessment of this draft. However, in such cases, the Cabinet of Ministers is even more responsible, since it has its disposal the whole apparatus of public administration with its knowledge and experience regarding the prognosis of the state revenue and expenditure. If under such conditions the Saeima does not receive complete information, for example, regarding the necessary amendments to the law, in order to harmonise them with the draft state budget, the Cabinet of Ministers is primary responsible for it.

Thus, it is possible to establish that in the process of adopting the law "On the State Budget for 2011" the cooperation between the Cabinet of Ministers and the Saeima was insufficient for ensuring the principle of the rule of law.

17. The Constitutional Court, having established that the funding envisaged for the contested subprogram was not sufficient for meeting the requirements of the fourth part of Section 12 of the law "On Roads", must assess, where the breach in the procedure for adopting the state budget has created such legal consequences, which make the contested subprogram incompatible with Article 1 of the Satversme. I.e., not all cases, when due to insufficient cooperation between the legislator and the executive power legal provisions are not implemented, because of its consequences should be recognised as being incompatible with Article 1 of the Satversme.

In order to recognise an act invalid because of the breach of the procedure for drafting and adopting the state budget, there should be reasonable doubts, whether, if the procedure had been complied with, the Saeima might have decided differently *[compare the Judgement of 13 July 1998 by the Constitutional Court in the case No. 03-*

04(98), Para 3 of the Concluding Part and the Substantive Part]. The grounds for recognising a legal act invalid could be a material violation of procedural rules, arising from intentional or arbitrary disregard of the legal requirements, or a breach, which created significant threat to the interests of the state or society. In assessing these issues, the totality of the facts of each case must be considered.

17.1. The Constitutional Court points out that in the adoption of the law "On the State Budget for 2011", formal regulations on the debating, examining or coming into force of a draft law have not been breached, to extent these do not pertain to the submission of the draft state budget law in the Saeima.

The Committee examined the draft law "On the State Budget for 2011" and the accompanying package of draft laws at December 2011 sitting. The opinion submitted by the Committee indicates that the Committee sittings, during which the draft laws accompanying the state budget or their amendments were examined, were open and that information on the venue and the agenda of the sittings was accessible on the Committee Internet webpage. The sittings were open for participation not only to the representatives of the government, responsible ministries, parties who had submitted proposals, parliamentary secretaries of the ministries, but also to social partners and non-governmental organisation representatives (*see Case File, Vol. 1., p. 91*).

None of the Saeima deputies, members of the Committee, nor any other person, who participated in the Committee sittings, drew attention to the possible incompatibility of the contested draft subprogram to the fourth part of Section 12 of the law "On Roads".

At the court hearing the Saeima representative underlined that neither had the Legal Bureau of the Saeima pointed out this conflict, considering that the fourth part of Section 12 of the law "On Roads" should be interpreted only as a guideline. Therefore there had been no grounds to apply the second part of Section 111 of the Saeima Rules of Procedure (*see Transcript of the Constitutional Court sitting of 4 January 2012, Case File Vol. 1, p. 136*).

The draft law "On the State Budget for 2011" and the accompanying draft laws were examined by the Saeima in the first reading on 9 December 2010. The draft law, in accordance with Article 75 of the Satversme, was recognised to be urgent, 69 deputies of the Saeima voting "for" it.

At the extraordinary sitting of the Saeima of 9 December 2010, during which the draft law "On the State Budget for 2011" was examined, none of the deputies, who participated in the debates, pointed out the possible incompatibility of the contested subprogram, included in the draft state budget law, with the fourth part of Section 12 of

the law “On Roads”. 69 deputies voted for the adoption of this draft law in the first reading.

The draft law “On the State Budget for 2011” and the package of accompanying documents was examined in the second reading on 16 and 20 December 2010. During the Saeima sitting of 20 December 2010 deputy Ainārs Šlesers was the only one, who drew attention to the fact that the law “On Roads” was not complied with, because the funding envisaged in the draft state budget law for state road maintenance was 160 million LVL less than envisaged by the law “On Roads” (*see the Transcript of the Extraordinary Sitting of the 10th Saeima of the Republic of Latvia on 20 December 2010, accessible from: http://www.saeima.lv/lv/transcripts/view/36, accessed on 25 January 2012).*

However, no proposal on amendments to the contested draft program was submitted. 54 deputies of the Saeima voted for the adoption of the draft law “On the State Budget for 2011” in the second reading. The President of the State pronounced the law “On the State Budget for 2011” on 30 December 2010, and it came into force on 1 January 2011.

Thus, the Constitutional Court concludes that the formal procedure for adopting the state budget law was complied with.

17.2. In the case under examination the Cabinet of Ministers did not provide to the Saeima sufficient information about the incompatibility of the contested subprogram, included in the draft state budget law with the law. The Cabinet of Ministers and the Ministry of Transport founded such action upon the interpretation of the fourth part of Section 12 of the law “On Roads”. The representatives of the Saeima and also of the invited persons at the court hearing emphasised that the responsible institutions did not intentionally disregard the provisions of the fourth part of Section 12 of the law “On Roads” and did not arbitrarily decrease the amount of resources allocated for the contested subprogram.

The representatives of the Cabinet of Ministers and other invited persons at the court hearing pointed out that the decrease of the funding for the contested subprogram basically was linked with the economic situation in the state and the need to limit state budget expenditure. Thus, the deviation from the funding envisaged for the State Road Fund by the law “On Roads” was considered to be an appropriate solution under the concrete economic conditions for stabilising the financial situation in the state. The invited persons and the Saeima saw the current economic hardships as such that the state would be able to overcome within a comparatively short period of time, and thus did not propose introducing amendments to the law “On Roads”.

The Constitutional Court points out that Article 66 of the Satversme does not prohibit the legislator to decrease funding for fulfilment of a state's duty. However, in such a case substantiated reasons for decreasing the previously estimated necessary funding in the economic situation of the state are needed. The Constitutional Court has already concluded that the legislator acted under the conditions of economic recession and interpreted the fourth part of Section 12 of the law "On Roads" as a guideline, not a precondition for drafting the state budget.

17.3. The amendments to the fourth part of Section 12 of the law "On Roads" adopted in 15 December 2011 testify that that the Cabinet of Ministers and the Saeima have eliminated the existing conflict. The disclaimer included in the fourth part of Section 12 of the law "On Roads" "unless the annual state budget law provides otherwise" now grants legal significance only to the allocation for the State Road Fund made in the state budget. If the procedure for elaboration and adoption of the draft stage budget set in the legal acts had been complied with previously, the legal consequences would have been the same as now: the fourth part of Section 12 of the law "On Roads" would have been amended and the funding for the State Road Fund envisaged in the contested subprogram – decreased. The state budget law is used to allocate financial resources for implementing the functions set by the state, and the task of the state budget law is to envisage balanced use of financial resources to ensure, to the extent possible, public welfare. Even though the contested subprogram did not comply with the fourth part of Section 12 of the law "On Roads", under conditions of economic recession it helped to achieve a balanced state budget and thus conformed to the interests of general balancing of the budget.

Thus, the Constitutional Court concludes that of the procedure for adopting the state budget had been fully complied with, the adopted regulation, nevertheless, would have been identical to the one currently in force.

17.4. To assess, whether significant threat to the interests of society or the state was caused, it must be established, which interests, by adopting the contested subprogram, could have been infringed in the concrete case.

The Constitutional Court has recognised that the safeguarding of fundamental rights is an important issue of public life and that the legislator is obliged to ensure it (*see the Judgement of 20 December 2010 by the Constitutional Court in the case No. 2010-44-01, Para 11)*. Thus, significant harm to the public interests might arise if the disregard of procedural regulations had caused restrictions to the fundamental rights.

In the case under review the Constitutional Court already recognised that, in contrast to the statements made by the Applicant, the contested subprogram did not

infringe private persons' legal certainty (*see Para 13 of this Judgement*). Even more – the Constitutional Court has no grounds to consider that the disregard of procedural rules identified in this case had infringed the fundamental rights of persons enshrined in the Satversme.

Significant threat to the interests of the state, however, might arise also in case, if the disregard of procedural rules in the process of elaborating the state budget would lead, for example, to violation of the principle of the division of power, denying a constitutional institution possibilities to fulfil effectively its tasks or functions set out in the Satversme. I.e., the status of constitutional institutions defined in the Satversme is closely connected with the need to ensure effective implementation of the functions entrusted to them (*see the Judgement of 14 March 2011 by the Constitutional Court in the case No. 2010-51-01, Para 11.1.).*

In the case under review the Constitutional Court has no grounds to consider that the inconformity of the contested subprogram with the fourth part of Section 12 of the law "On Roads" would have denied a constitutional institution the possibility to fulfil its tasks and functions set out in the Satversme.

Nevertheless, the Constitutional Court draws the attention of the Cabinet of Ministers and of the Saeima that in the elaboration of the state budget law the existing legal provisions, as well as international financial commitments, which define respective financial allocations, should be interpreted with utmost care to avoid endangering the interests of the state. This, inter alia, includes the duty of the Saeima to avoid mutually conflict laws and ensure harmonisation of legal acts. If doubts arise regarding the amount of financial resources to be allocated, then the constitutional institutions shall interpret the financial commitments set out in legal acts in conformity with their purpose and meaning.

Thus, the Constitutional Court has no grounds to recognise that that the actions of the constitutional institutions had led to significant threat to the interests of the state or society.

17.5. The duty of the constitutional institutions to ensure formulation and adoption of a sustainable state budget follows from Article 66 of the Satversme. I.e., when deciding on the state budget, long-term balance between the economic possibilities of the state and the wellbeing of the whole society should be ensured. The conclusions made in the Judgement on the established facts of the case testify that the financial resources envisaged in the contested subprogram *per se* do not create incompatibility with Article 1 of the Satversme, since the utilisation of the state financial resources must correlate with the amount of resources at the disposal of the state.

At the time when the contested subprogram was drafted Latvia's economic situation was so complicated that the state could not fund the maintenance of roads in the amount envisaged in the law "On Roads". Even if the constitutional institutions had followed the rules on the funding of the State Road Fund, included in the law "On Roads", they would have had to conclude that the state did not have sufficient financial resources to cover the expenditure.

In the case under review it can be concluded that the constitutional institutions did not arbitrarily violate the procedural rules for adopting the contested subprogram. The funding allocated for the contested subprogram shows that in the concrete situation the balance between the economic possibilities of the state and the need to ensure public welfare was complied with. Likewise, the amount of funding envisaged for the State Road Fund in the contested subprogram did not create significant threat to the interests of the state or society.

Thus, the contested subprogram complies with Article 1 of the Satversme.

The Substantive part

On the basis of Sections 30 – 32 of the Constitutional Court Law, the Constitutional Court

holds :

to declare the subprogram 23.00.00 of the Annex 4 to the Law "On the State Budget for 2011" "Itemised List of State Basic Budget Revenue and Expenditure according to Programs and Subprograms" compatible with Article 1 of the Satversme of the Republic of Latvia.

The Judgement is final and not subject to appeal.

The Judgement comes into force on the day of its pronouncement.

The Judgement was pronounced in Riga on 3 February 2012.

President of the Constitutional Court G.Kūtris.