



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Judgement on behalf of the Republic of Latvia Riga, 30 January 2012 Case No. 2011-09-01

The Constitutional Court of the Republic of Latvia composed of the Chairperson of the Court Hearing Gunārs Kūtris, Justices Kaspars Balodis, Aija Branta, Kristīne Krūma and Sanita Osipova,

having regard to the constitutional complaint submitted by a European Company (*Societas Europaea, SE*) BTA,

in accordance with Article 85 of the Satversme of the Republic of Latvia and Para 1 of Section 16, Para 11 of Section 17 (1) and Section 28¹ of the Constitutional Court Law,

on 3 January 2012 reviewed in written procedure the case

“On Compliance of Section 9(4) of the Road Traffic Law with Article 91 and Article 105 of the Satvermse of the Republic of Latvia.”

The Facts

1. The Saeima of the Republic of Latvia (hereinafter – the Saeima) On 1 October 1997 adopted the Road Traffic Law, which entered into force on 4 November 1997. With the law of 19 February 2009 “Amendments to the Road Traffic Law”, which entered into force on 18 March 2009, third, fourth, fifth and sixth indents were added to Section 9 of the Road Traffic Law.

Section 9(4) of the Road Traffic Law provides: “It is prohibited to drive an automobile, which is permanently registered in a foreign state, in the road traffic in the territory of Latvia, except the cases referred to in Paragraph five of this Section, for a person who is a citizen or non-citizen of Latvia, as well as for a person who has

received a registration certificate, a permanent residence certificate or residence permit issued in Latvia” (hereinafter – the contested norm).

Section 9(5) of the Road Traffic Law defines the exemptions, when the persons referred to Section 9 (4) of this Law, are permitted to drive an automobile, which is permanently registered in a foreign state:

“1) a person is driving the automobile, which is leased (rented) by a person carrying out entrepreneurial activities registered in a foreign state who is dealing with automobile leasing (renting) and the driver of the vehicle attests it with a lease (rent) contract of the vehicle and a vehicle registration licence issued in a foreign state where the grantor (leaseholder) of the vehicle is indicated as the owner (holder, possessor) of the vehicle;

2) a person is driving the automobile in the presence of the owner (holder, possessor) of the vehicle or an authorised person thereof who is not the person referred to in Paragraph four of this Section;

3) a person is engaged abroad in paid employment or is studying, or carrying out entrepreneurial activities as an individual merchant or self-employed person;

4) a person is the owner (participant) or official of such right-holder registered in a foreign state, which is carrying out entrepreneurial activities;

5) a person holds an elected office in a decision-making body of a local government of another European Union Member State;

6) a permit (registration certificate) for residence in foreign states has been issued to the person;

7) the automobile is driven by a person who is his or her spouse, the first degree relative (including adoptee or adopter) or the second degree relative of such owner (holder, possessor) of the automobile who may drive the referred to vehicle in the territory of Latvia in accordance with the provisions of this Section.”

With the law of 13 May 2010 “Amendments to the Road Traffic Law”, which entered into force on 16 June 2010, Para 3 of Section 9(5), is expressed in the following wording: “a person is engaged abroad in paid employment or is studying in an institution of education or company which is located abroad, or is carrying out entrepreneurial activities an individual merchant or self-employed person;”.

The Saeima added Para 8 to the enumeration of the abovementioned exemptions with the law of 9 June 2011 “Amendments to the Road Traffic Law”, which entered into force on 13 July 2011, providing: “in a case, which is not referred to in Para 1, 2, 3, 4, 5, 6 or 7 of this part, but not longer than for five days, counting as of the day, when the person in compliance with the Cabinet of Ministers

Regulation referred to in the sixth part of this Section has received the permission to participate in road traffic, and not more often than twice per calendar year (hereinafter – Amendments to the Road Traffic Law of 9 June 2011).

2. The Applicant – **SE BTA** (hereinafter – the Applicant) – holds that the contested norm is incompatible with Article 91 and Article 105 of the Satversme of the Republic of Latvia (hereinafter– Satversme), as the restrictions to the fundamental rights are disproportional. Likewise, the Amendments to the Road Traffic Law of 9 June 2011 do not eliminate the incompatibility of the restrictions to fundamental rights set out in this norm with the Satversme.

2.1. The Applicant is a European Company, registered in the Republic of Latvia, which operates in the field of insurance. The employees of the Applicant and its branch offices perform their duties in several countries. The Applicant’s motor vehicles are used in cross-border movements.

Because of the prohibition included in the contested norm the Applicant cannot give its cars, registered abroad, for performing their employment duties to those employees, who are residents of Latvia and are not employed abroad. Thus, the Applicant cannot organise its commercial activities in an optimum way, since the contested norm prohibits free use of its property – the cars registered abroad – according to its own considerations. The owners have the right to hold, use and gain all possible benefits from its property and to transfer it to other persons with or without remuneration.

Prior to the adoption of the contested norm the Applicant had transferred the cars that it owned for use to employees, irrespectively of the state of registration. The Applicant notes that the consequences of violating the contested norm are that the employees are punished in accordance with Section 149²⁵ of the Latvian Administrative Violations Code. In such cases the Applicant covers the expenses that the employees incur by paying the administrative fine.

2.2. The contested norm had several objectives. Firstly, to eliminate non-payment of fines for administrative violations in road traffic and facilitate observance of road traffic rules. Secondly, ensure collection of taxes and other payments for using motor vehicles within the territory of the Republic of Latvia. However, the requirement to undergo roadworthiness test in Latvia and to pay for it cannot be considered a legitimate aim. Institutions of public administration and private law subjects, to whom the fulfilment of public administration functions have been delegated, do not operate with the purpose of making profit. The Applicant admits

that the contested norm might have the legitimate aim to ensure that the owners of road vehicles do not evade paying taxes in the Republic of Latvia.

2.3. The restriction to the fundamental rights defined by the contested norm is disproportional; moreover, it is impossible to reach the legitimate aim with the measure chosen by the legislator.

The Applicant holds that there are no obstacles to impose administrative sanctions upon persons, who drive or own motor vehicles registered abroad. The contested norm does not facilitate application of administrative sanctions or collection of fines from foreigners or an owner of a vehicle registered abroad.

The legitimate aim of the contested norm can be reached by other means, less restrictive to personal rights. For example, the legislator could have established the duty of all Latvia's inhabitants, who are driving a car registered abroad in the territory of Latvia, to obtain a permit to drive it and to pay all respective taxes, without limiting the number of those cases, when the permit is to be obtained. In such a case the liability for an administrative violation could be applied to the guilty person who has received the permit to drive the car registered abroad in the territory of Latvia. The legislator could have established the duty of persons to pay a tax or a fee of a certain amount for using Latvia's roads upon entering the territory of Latvia. However, the Saeima had not assessed the abovementioned possibilities or other alternatives in legal regulation.

The drivers, who move within the territory of Latvia with cars that are permanently registered abroad, already pay for using Latvia's road infrastructure. For example, upon purchasing petrol, people pay excise tax.

2.4. All those owners and users of vehicles, who permanently use their road vehicles in the territory of the Republic of Latvia are in similar and comparable circumstances. The contested norm is applied equally to persons, who use the cars that are permanently registered abroad in the road traffic in Latvia temporarily, and to persons, who use such cars permanently.

The Applicant's employees need to use the cars registered abroad temporarily. Hence, the Applicant is in a different situation compared to those persons, who permanently use vehicles that their own in the territory of the Republic of Latvia. The application of the contested norm has led to a situation, when persons, who are in essentially different circumstances, are, unfoundedly, treated equally.

The equal treatment of the said persons has no legitimate purpose and cannot be reasonably substantiated. The Applicant holds that one of the possible solutions could

be establishing an obligation of the car owner to register the car in Latvia, if it is used in the territory of Latvia permanently or more than a concrete number of times annually. The legislator could have allowed any person to drive a car registered abroad in Latvia, if the person could prove that this vehicle is not permanently used in road traffic in Latvia.

The presumption included in Para 2 of Section 14(2) of the law “On Taxes and Fees” could serve as the criterion, whether the person is permanently using a vehicle registered abroad within the territory of Latvia. I.e., in tax law a person is considered a resident, if the person is present in the Republic of Latvia for 183 days or longer during any 12 months period. The Applicant holds that the aforementioned presumption could solve the concrete situation in a similar way.

3. The institution, which adopted the contested norm, – **the Saeima** – notes that the contested norm complies with Article 91 and Article 105 of the Satversme.

3.1. The contested norm does not directly establish restrictions to Article 105 of the Satversme. Such a restriction follows from the fact that the contested norm limits the possibilities of a group of persons closely linked to Latvia to drive permanently in Latvia vehicles registered abroad.

The contested norm has the legitimate aim to ensure observance of road traffic rules, collection of taxes and fines from persons, who are closely connected to Latvia and use its public infrastructure, as well as to ensure that the technical requirements set for vehicles are complied with. The contested norm indirectly allows more efficient collection of taxes and fees and ensures equal treatment of persons using automobiles. Thus, the contested norm has the legitimate aim to protect public welfare and other persons’ rights.

3.2. Vehicles registered abroad might not comply with the technical requirements established in Latvia. This might pose threats to lives, health and property of persons. The contested norm facilitates registration of vehicles in Latvia and creates other socially positive preconditions, for example, facilitates detection of car theft. Thus, the contested norm is appropriate for reaching its legitimate aim.

It is impossible to reach the legitimate aim as effectively by using the alternative means indicated by the Applicant. Allowing the inhabitants of Latvia to use extensively vehicles registered abroad, would demand massive use of state resources for control. The Saeima notes that many options, how to make the regulation more flexible, were considered, while elaborating the contested norm. It is addressed to citizens, non-citizens and foreigners residing in Latvia. The contested

norm does not apply to those foreigners, who are present in the territory of Latvia temporarily.

3.3. The exemptions included in Section 9 (5) of Road Traffic Law were defined, taking into consideration those situations, in which the prohibition included in the contested norm would be obviously unreasonable. The Amendments to Road Traffic Law of 9 June 2011 have made the enumeration of exemptions even more open, envisaging to persons the possibility to participate in the road traffic in the territory of Latvia in exceptional situations and urgent cases. Thus, there are no less restrictive means for reaching the legitimate aim.

The contested norm does not impose significant administrative burden upon persons and allows observing the interests of society. Stricter control of road traffic increases the safety of traffic and decreases threats to people's lives, health and property. Thus, the public benefits are greater than the restrictions applied to an individual.

4. The summoned person – **the Ministry of Justice** – notes that the compliance of the contested norm with Article 91 and Article 105 of the Satversme is an issue to be examined.

The contested norm has the purpose to ensure that the automobile, which is permanently used in road traffic within the territory of Latvia, is registered in Latvia. If Latvia were to allow road transport vehicles registered abroad to participate permanently in road traffic, the State would not receive the payment of taxes and fees stipulated in regulatory enactments for registration of vehicles and using road infrastructure, likewise, the safety of road traffic would be threatened. The contested norm was elaborated with the aim to prevent the situation, when automobiles are registered abroad, for different reasons.

The Ministry of Justice holds that the restriction to move around permanently in Latvia in an automobile registered abroad might be necessary, however, it should be proportional.

The Ministry of Justice had objected to the wording of the contested norm, as it prohibits a person to drive an automobile registered abroad. It would be more correct to impose a duty upon a person to re-register the automobile, if it is permanently used in road traffic in Latvia. The prohibition established by the contested norm has been defined too broadly.

The Ministry of Justice holds that the legal regulation should be aimed at the duty to register the vehicle, not a prohibition to drive a vehicle, since this prohibitions

restricts excessively many ordinary situations and the negative consequences may not affect the guilty person. However, the assessment of the aforementioned alternative option had led to the conclusion that it would be impossible to implement the obligation to register in practice.

The contested norm does not collide with the norms of the European Union (hereinafter – the EU) on free movement of services, workers and entrepreneurship, since other states have similar regulation.

Section 9 (5) of the Road Traffic Law enumerates many exemptions, however, persons must conduct administrative procedures in advance, which cannot be done in urgent and unexpected cases. The Ministry of Justice holds that the term set Section 9(8) of the Road Traffic Road is appropriate, but also notes that it cannot assess the suitability of the term.

5. The summoned person – **the Ministry of Transport** – notes that the contested norm complies with Article 91 and Article 105 of the Satversme.

The EU member states have no uniform requirements as regards the use of vehicles. The requirements set by states as regard taxes, penal policy, as well as roadworthiness tests may differ. A situation, when automobiles registered in other countries are regularly used in Latvia, is inadmissible. Their technical roadworthiness is not tested in Latvia, but in Latvia the roadworthiness test must be taken at least once annually. Likewise, it is impossible to collect fines, if a violation is recorded by technical equipment. I.e., it is impossible to make the owner or holder of a vehicle registered abroad liable for violation in the territory of Latvia, if such have been recorded by technical equipment. Analogous situation may occur, if fines have been applied for violating stopping and parking rules.

The legitimate aim of the contested norm is road traffic safety. The restriction set out in the contested norm applies only to inhabitants of Latvia, not foreigners. In order to allow a vehicle registered abroad to participate in road traffic, a permit must be obtained from the state stock company Road Traffic Safety Directorate (hereinafter – CSDD). This restriction has reasonable and objective grounds.

Section 9 (5) of the Road Traffic Road provides exhaustive list of exemptions. The legislator has provided in Para 8 of Section 9(5) that a person can receive a permission to participate in road traffic with a vehicle registered abroad twice per year, without special substantiation. The contested norm does not restrict the right of Latvia's inhabitants to acquire a vehicle permanently registered abroad. By fulfilling

the obligation to register the vehicle as provided by law, the person can use the vehicle that he or she owns without restrictions.

6. The summoned person – **the Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) – notes that the contested norm complies with Article 91 and Article 105 of the Satversme.

The Ombudsman notes that the contested norm has been adopted in proper procedure and is sufficiently clearly worded. Its legitimate aim is public welfare, which includes public safety, safeguarding of human health and life, as well as promoting payment of taxes.

The Ombudsman notes that already before the contested norm was adopted it was difficult to apply administrative punishment to persons driving vehicles registered abroad or to the owners of such vehicles. In accordance with Section 43⁶ (5) of the Road Traffic Law, administrative liability is applied to the holder or owner of the vehicle, which may not be the same person, who was driving the vehicle when a violation was recorded. If the vehicle is registered abroad, Latvian officials are unable to obtain information on it, since Latvia's databases do not contain it. There is no legal basis of EU scope for requiring and transmitting such information. Neither have the states regulated these issues through reciprocal agreements.

The Ombudsman holds that the prohibition included in the contested norm is appropriate for reaching the legitimate aim. The legislator has covered all typical situations with the contested norm and the exemptions.

The Applicant's opinion cannot be upheld, contending that the contested norm unfoundedly allows equal legal treatment of persons, who are in different circumstances. The contested norm in interconnection with Section 9(5) of the Road Traffic Law differentiates situations, since it envisages the possibility to participate temporarily in road traffic within the territory of Latvia with a vehicle, which is permanently registered abroad.

The Findings

7. The Applicant notes that its fundamental right to own property, enshrined in Article 105 of the Satversme, has been infringed upon. The Applicant holds that the contested norm prohibits it from using its property in a way it deems necessary to conduct business activities, and also, contrary to the fundamental rights enshrined in Article 91 of the Satversme, places it in an unequal situation.

Even though the application contains a request to assess the compatibility of the contested norm with the whole Article 105 of the Satversme, as to the merit only the compliance of the contested norm with the first and the third sentence of the Article is contested, i.e.: “Everyone has the right to own property. [...]Property rights may be restricted only in accordance with the law.” The grounds of the constitutional claim do not pertain to expropriation or using property contrary to the interests of the public.

Hence, only the compliance of the contested norm with the first and the third sentence of Article 105 of the Satversme has to be examined.

8. The Constitutional Court will, first of all, establish whether the contested norm sets out restrictions to the fundamental rights enshrined in Article 105 of the Satversme.

8.1. It is noted in the application that the concept “property” included in Article 105 of the Satversme contains the Applicant’s right to use automobiles owned by it for conducting business activities in a way it deems necessary (*see: Case Materials, pp. 6 – 8*).

The Constitutional Court has recognised that Article 105 of the Satversme envisages both unhindered exercise of the right to own property and the right of the state to restrict the use of property in public interests (*see: Judgement of 20 May 2002 by the Constitutional Court in Case No. 2002-01-03, the Findings*).

Pursuant to Section 927 of the Civil Law ownership is the full right of control over property, i.e., the right to possess and use it, obtain all possible benefit from it and, in accordance with prescribed procedure, claim its return from any third person by way of an ownership action. In accordance with Section 929 of the Civil Law the subject matter of ownership may be anything that is not specifically withdrawn from general circulation by law. The ownership right regulated by the Civil Law is part of the content of fundamental rights set out in Article 105 of the Satversme (*see: Grūtups A., Kalniņš E. Civillikuma komentāri. Trešā daļa. Lietu tiesības. Īpašums. Otrais papildinātais izdevums. – Rīga: Tiesu namu aģentūra, 2002, 15. lpp.*).

An automobile is a movable property that can be circulated, and its owner has the right to use it. It follows from the documents attached to the application that the Applicant, inter alia, owns automobiles registered in Lithuania (*see Case Materials, pp. 21 – 34*).

Thus, the Applicant's right to use the automobiles it owns is part of the contents of the fundamental rights defined by Article 105 of the Satversme.

8.2. The prohibition included in the contested norm has three pre-conditions: 1) a person drives the automobile in the territory of Latvia; 2) the automobile is permanently registered abroad; 3) the automobile is driven by a citizen or a non-citizen of Latvia, or a person, who has received registrations certificate, a permanent residence certificate or a residence permit issued in Latvia. The restriction to the Applicant's fundamental right defined in Article 105 of the Satversme exists, if all the abovementioned pre-conditions are met.

At the same time the Legislator has provided in Section 9(5) of the Road Traffic Law the exemptions, when the persons referred to in the contested norm are allowed to drive an automobile registered abroad in the territory of Latvia.

8.3. The Application and the annexed documents allow concluding that the Applicant is a European Company registered in the Republic of Latvia with branch offices in several EU states. The Applicant has registered under its name a significant number of vehicles in these states. The Applicant has thirty-five automobiles registered in Lithuania, which are to be recognised as its property (*see Case Materials pp. 21 – 42*). Thus, the Applicant owns automobiles permanently registered abroad, which it frequently uses in road traffic in Latvia.

The Applicant notes that the contested norm prohibits it to select freely the employees, who would be allowed to drive in the territory of Latvia the Applicant's property – an automobile, which is permanently registered abroad. I.e., the Applicant cannot give to its employees belonging to the range of persons defined by the contested norm, an automobile permanently registered abroad for use in road traffic in Latvia (*see Case Materials, p.4.*) In view of the fact that Article 105 of the Satversme envisages unrestricted exercise of the right to own property, inter alia, the right to use freely movable property owned by it, the contested norms prohibits the Applicant to use freely its property in the way it deems necessary. If the restriction set out by the contested norm were violated, the Applicant would have to reckon with potential negative consequences, for example, the obligation to pay the administrative fine.

Para 8 of Section 9(5) of the Road Traffic Law envisages that persons are allowed to participate temporarily in road traffic in Latvia with an automobile permanently registered in Latvia. The opinion of the Saeima that the exemption fully ensures that the Applicant's interests are respected (*see Case Materials, p. 87*) cannot

be upheld, since it follows from the information provided in the application that the Applicant's employees need to use automobiles owned by it regularly. Thus, the exemption defined by Para 8 of Section 9(5) of the Road Traffic Law does not fully prevent restriction of the Applicant's right to own property.

The contested norm restricts the Applicant's fundamental rights defined in Article 105 of the Satversme.

9. To assess the constitutionality of the restriction to fundamental rights defined in Article 105 of the Satversme, it must be established, whether it has been defined by law, whether it has been defined with legitimate aim and whether it complies with the principle of proportionality (*see, for example, Judgement of 8 June 2007 by the Constitutional Court in Case No. 2007-01-01, Para 22*).

10. The restriction that the contested norm contains has been laid down by law. The case holds no materials causing doubt whether the contested norm was adopted and promulgated in due procedure.

Thus, the restriction to the right to own property has been laid down by law.

11. Any restriction to fundamental rights should be founded upon circumstances and arguments concerning its necessity, i.e., whether the restriction has been introduced because of significant interest – legitimate aim (*see, for example, Judgement of 22 December 2005 by the Constitutional Court in Case No. 2005-19-01, Para 9*).

The contested provision was included in the draft law "Amendments to the Road Traffic Law" during the third reading, proposed by the responsible committee – Economic, Agricultural, Environment and Regional Policy Committee. The Saeima notes that the contested norm is necessary for safeguarding public welfare and other person's rights (*see Case Materials, p.84*). The Applicant does not doubt that the contested norm has this legitimate aim (*see Case Materials, pp. 8 – 9*).

The Constitutional Court in its case law has recognised that the State has the obligation to establish an effective system for tax collections in the interests of public welfare. The State has the right to define the duty to pay taxes, and this duty as such does not infringe upon a person's fundamental rights (*see Judgement of 3 April 2008 by the Constitutional Court in Case No. 2007-23-01, Para 7*). Likewise, the Saeima in its written reply notes that the contested norm allows more effective collection of taxes and duties established in Latvia (*see Case Materials, p.84*). The prohibition included in the contested norm promotes the use of automobiles registered in Latvia

in road traffic in the territory of Latvia. Thus, the contested norm facilitates payment of duties for vehicles used in road traffic in the territory of Latvia.

Section 2(1) of the Road Traffic Law provides that the purpose of this law is to prescribe the organisational and legal basis for road traffic procedures and road traffic safety in Latvia, in order to protect human life and health, the environment, as well as property owned by natural and legal persons. It can be upheld that the contested norm facilitates collection of administrative fines and compliance with the technical requirements set for vehicles.

The contested norm has the legitimate aim to protect public welfare and other persons' rights.

12. To assess the proportionality of restrictions to the fundamental rights, it must be established: 1) whether the selected means are appropriate for reaching the legitimate aim; 2) whether means, less restrictive (mitigating) to persons' human rights, do not exist; 3) whether the benefit to society exceeds the damage inflicted upon an individual's rights and lawful interests (*see, for example, Judgement of 30 March 2011 by the Constitutional Court in Case No. 2010-60-01, Para 23*).

13. CSDD notes that a person has no obligation to pay duties for a vehicle, which is permanently registered abroad, and to conduct the roadworthiness test of such a vehicle in Latvia, and that it is difficult to collect fines for road traffic violations (*see Case Materials, p.144*).

Pursuant to the regulation of the Law on the Vehicle Operation Tax and Company Car Tax CSDD ensures the collection of the vehicle, including automobiles, operation tax for the state budget. The payer of the vehicle operation tax is the person who has, in his or her ownership, holding or possession a taxable registered vehicle or to be registered taxable vehicle. This tax is paid for each vehicle, owned, held or possessed by the merchant, for the months, when it is owned or held by the merchant.

Thus, the vehicle operation tax is a fixed period payment into the state budget for a vehicle, which is registered in Latvia. Section 3 of the Law on Automobile and Motor-Bike Tax provides that all legal and natural persons, who have automobiles registered under their name in Latvia, shall pay into the state budget the calculated automobile tax prior its registrations with CSDD.

The Applicant notes that the contested norm refers to persons, who are driving in the territory of Latvia cars, which are permanently registered abroad, and pay for

the use of Latvian road infrastructure, since they buy petrol and pay the excise tax (*see Case Materials, p.13*). Even though the vehicle operation tax, the company automobile tax and the excise tax are paid into the state budget, the purposes of these taxes are incomparable. The excise tax cannot substitute the payment of annual vehicle operation tax, which is an important source of state budget revenue.

It can be upheld that the collection of administrative fines for road traffic violations, if the vehicle is registered abroad, is linked with objective difficulties. The Applicant also agrees that, in point of fact, it is difficult to collect the administrative fine from an owner of a vehicle registered abroad (*see Case Materials, pp. 9 – 11*). The contested norm, ensuring the use of vehicles registered in Latvia in road traffic, facilitates collection of administrative fines.

The aim of the national roadworthiness test of vehicles is to ensure that vehicles that comply with the technical requirements are used in road traffic. The Ministry of Transport holds that automobiles, which are permanently registered abroad and are used by the persons referred to in the contested norm, should not participate in the road traffic in Latvia, since their technical condition is not tested in Latvia (*see Case Materials, p. 138*). It might pose a threat to traffic safety. The Directive of the European Parliament and Council on Roadworthiness Tests for Motor Vehicles and their Trailers 2009/40/EC is binding to the EU member states. Latvia's legal regulation requires more frequent roadworthiness tests than the minimum prescribed by the Directive. Moreover, Latvia is bordering with countries that are not EU member states, and extensive use of automobiles registered in these countries in the road traffic in the territory of Latvia could decrease the safety of road traffic. This leads to the conclusion that the contested norm promotes the use of vehicles complying with technical requirements in road traffic.

The contested norm is appropriate for reaching the legitimate aim.

14. The Constitutional Court has repeatedly recognised in its judgements that it does not have to assess to what extent the alternative measures would be a more appropriate solution in the given situation (*see, for example, Judgement of 8 March 2006 by the Constitutional Court in Case No. 2005-16-01, Para 15.8, and Judgement of 13 February 2009 in Case No. 2008-34-01, Para 22*). However, the Constitutional Court has the jurisdiction to verify, if in restricting the fundamental rights of a person, due assessment has been conducted, whether alternative measures, less infringing upon the fundamental rights defined in the Satversme, are available.

The application refers to a number of alternative solutions, which, as the Applicant holds, the legislator could have employed to reach the legitimate aim of the contested norm.

First of all the Applicant notes that the legislator could have allowed the inhabitants of Latvia to use in road traffic automobiles registered abroad, at the same time defining their duty to receive a permission to drive them and to pay appropriate taxes. In fact, the Applicant proposes prescribing in the Road Traffic Road that only vehicles that are permanently registered in the Republic of Latvia are allowed to participate in road traffic, irrespectively of the persons using them – the persons referred to in the contested norm or foreigners.

However, this solution would not allow reaching the legitimate purpose of the contested norm in the same quality, as it would not promote road traffic safety. Vehicles, which have not undergone roadworthiness test in Latvia, could be permanently used in Latvia. Moreover, a legal mechanism providing incentives to register automobiles in Latvia would be lacking.

The Applicant also holds that the legislator could have defined a duty to persons to pay a tax or duty in certain amount for using Latvia roads upon entering with an automobile the territory of Latvia. However, taxes or duties for using roads are not an appropriate measure for reaching the aims of the contested provision. The introduction of such a hypothetical tax would not protect the participants of road traffic against the use of automobiles, registered abroad and incompatible with the technical requirements, and would not replace the vehicle taxes defined in legal regulation.

Thus, it is impossible to reach the legitimate aim of the contested norm in the same quality, using the alternative measures that are offered.

15. The Applicant holds that the contested norm restricts its rights to conduct business activities more than the society benefits from the existence of this norm (*see Case Materials, pp. 9 – 12*). Article 105 of the Satversme grants to the legislator the right to define the general public needs, in the interest of which the exercise of the right to own property can be restricted. It is the duty of the Constitutional Court, in examining a constitutional complaint, to examine, whether the legislator has not set disproportional restrictions to persons' rights to enjoy the right to own property, enshrined in the Satversme.

The contested norm does not envisage a general prohibition to the Applicant to use the automobiles registered abroad, which it owns, in Latvia. On the contrary, it

contains a reference to the exemptions, defined in Section 9 (5) of the Road Traffic Law. The persons referred to in the contested norm in these cases of exemption can use an automobile, which is permanently registered abroad, in road traffic within the territory of Latvia.

The Applicant describes itself as a leading insurance company, currently providing insurance services in seven EU member states. Its business activities are ensured by the Applicant's employees – residents of Latvia and employees of foreign branch offices. Considering the aforementioned, the Applicant, using the resources at its disposal, can abide by the restriction prescribed by the contested norm.

The public benefit ensured by the contested norm exceeds the restriction to the Applicant's right to own property. Thus, the contested norm complies with Article 105 of the Satversme.

16. Article 91 of the Satversme provides: "All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind." It follows from the constitutional complaint that only the compliance of the contested norm with the first sentence of Article 91 of the Satversme, which guarantees the equality of all persons before law, is to be examined, as the case contains no dispute concerning the compliance of the contested norm with the prohibition of discrimination.

17. The principle of equality included in the first sentence of Article 91 of the Satversme prohibits state institutions to adopt norms, which allow differential treatment of persons, who are in similar and according to definite criteria comparable circumstances without reasonable grounds. Simultaneously the principle of equality allows and even demands differential treatment of persons, who are in different circumstances, and also allows differential treatment of persons, who are in similar circumstances, in the presence of objective and reasonable grounds for it (*see, for example, Judgement of 3 April 2001 by the Constitutional Court in Case No. 2000-07-0409, The Findings, Para 1, and Judgement of 29 December 2008 in Case No. 2008-37-03, Para 7*). Differential treatment has no objective and reasonable grounds, if it lacks a legitimate aim and if the relation between the chosen means and the set aims is not proportional (*see Judgement of 23 December 2002 by the Constitutional Court in Case No. 2002-15-01, The Findings, Para 3*).

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

1) whether and which persons (groups of persons) are in similar and according to definite criteria comparable circumstances;

2) whether the contested norm envisages similar or differential treatment of these persons;

3) whether this treatment has objective and reasonable grounds, i.e., whether it has a legitimate aim and whether the principle of proportionality has been complied with (*see, for example, Judgement of 2 February 2010 by the Constitutional Court in Case No. 2009-46-01, Para 7*).

19. The Constitutional Court must, first of all, identify, which persons are in similar and according to definite criteria comparable circumstances.

The Applicant has noted in its constitutional complaint that all owners and users of vehicles, who permanently use their vehicles in road traffic within the territory of Latvia, are in similar and comparable circumstances. The Applicant holds that the contested norm equally applies to persons, who use vehicles registered abroad in the Republic of Latvia temporarily, and the persons, who use such vehicles permanently (*see Case Materials, pp. 17 – 18*).

Thus, the Applicant has defined the groups of comparable persons, depending upon the period of time, during which the vehicle participates in road traffic in the territory of Latvia.

Pursuant to Section 9 (1) of the Road Traffic Law, in the territory of Latvia in road traffic it is allowed to use registered vehicles, the design and technical condition of which comply with the requirements of mandatory applicable standards and norms, in respect of which the vehicle owner's compulsory third party liability insurance of land means transport has been performed and which have been allowed to participate in road traffic.

The contested norm limits the possibility of using in Latvia's road traffic automobiles registered abroad, which are driven by the persons referred to in the contested norm. However, it does not prohibit the use of automobiles registered in Latvia. The contested norm does not differentiate, whether the automobile, which is permanently registered abroad, is used in road traffic in the territory of Latvia permanently or temporarily. Thus, the contested norm uses the place of registration as the criterion for differentiating groups of persons, i.e., registration in Latvia or

abroad. The Applicant's opinion that the contested norm uses the frequency of the automobile's participation in road traffic within the territory of Latvia as the criterion of differentiation is unfounded.

In view of the abovementioned, two groups of persons must be compared in the framework of the case: 1) the persons, who use an automobile, which is permanently registered abroad, in the road traffic in the territory of Latvia; 2) persons, who use an automobile, permanently registered in the Republic of Latvia, in the road traffic in the territory of Latvia. The two abovementioned groups are in similar and comparable circumstances. In both cases the automobiles are used in road traffic by persons, who are citizens or non-citizens of Latvia, as well as by persons, who have received a registration certificate issued in Latvia, a permanent residence certificate or a residence permit.

Thus, the persons, who use an automobile, which is permanently registered abroad, in the road traffic in the territory of Latvia, and the persons, who use in the road traffic in the territory of Latvia an automobile, which is permanently registered in the Republic of Latvia, are in similar and comparable circumstances.

20. The Constitutional Court has to establish, whether treatment of the aforementioned groups of persons prescribed by the contested norm is equal or differential. Therefore it must be assessed, whether the law has equal or differential regulation of the legal relationships between persons, who own automobiles that are permanently registered abroad or in the Republic of Latvia.

The contested norm prohibits the aforementioned persons to use an automobile, permanently registered abroad, in the road traffic within the territory of Latvia. The prohibition does not apply to persons, who comply with the features defined in the contested norm and are using an automobile registered in Latvia in the road traffic in the territory of Latvia,

Even though the contested norm contains a reference to Section 9(5) of the Road Traffic Law, which lists the cases when a person is allowed to use an automobile, which is permanently registered abroad, in the road traffic in Latvia, these exemptions do not revoke the general prohibition included in the contested norm.

The contested norm envisages differential treatment of the two comparable groups of persons.

21. In order to determine, whether the differential treatment has objective and reasonable grounds, it must be established, whether it has a legitimate aim and whether the principle of proportionality has been complied with.

22. The Constitutional Court already established in Para 11 of this Judgement that the contested norm has the legitimate aim to protect other persons' rights and public welfare. Para 15 of the Judgement, in its turn, recognizes that the prohibition to drive an automobile, which is permanently registered abroad, in road traffic in the territory of Latvia, set out in the contested norm is proportional. These findings are applicable also to the assessment of the compliance of the contested norm with the first sentence of Article 91 of the Satversme.

23. Section 9(5) of the Road Traffic Law envisages eight cases, when the use of an automobile permanently registered abroad in the road traffic in the territory of Latvia is admissible. The content of these cases reveal that they are exemptions.

On 9 June 2011 the legislator added Para 8 to the enumeration of exemptions included in Section 9(5) of the Road Traffic Law. It provides the possibility to the person referred to in the contested norm, to drive an automobile, which is permanently registered abroad, no more frequently than two times per calendar year and no longer than for five days, counting as of the day when the person has received the permit according to the procedure established by the Cabinet of Ministers. Thus, the respective persons are allowed to use the automobiles they own temporarily. According to the information provided by CSDD, similar regulation, which allows even less exemptions, is in force in Denmark and Finland (*see Case Materials, p. 144*).

The Ministry of Transport holds that the enumeration of exemptions is adequate (*see Case Materials, p.141*). The Saeima, in its turn, draws attention to the fact that these exemptions have been established, taking into consideration those situations, in which the prohibition would be obviously unreasonable (*see Case Materials, p. 87*).

The conclusion can be made that the legislator through Section 9(5) of the Road Traffic Law has significantly decreased the number of cases, when differential treatment of persons, who are driving automobiles within the territory of Latvia, is allowed.

24. In accordance with Section 9(6) of the Road Traffic Law the persons referred to in the contested norm have to obtain a permit from CSDD, according to

the procedure established by the Cabinet of Ministers, allowing them in the exemption cases defined in it to use an automobile, which is permanently registered abroad, in the road traffic in the territory of Latvia. The procedure for obtaining the permit is established by the Cabinet Regulation of 24 November 2009 No. 1341 (“Procedure for granting and annulling permits to participate in the road traffic with an automobile, which is permanently registered abroad “ (hereinafter – Regulation No. 1341).

The permit is granted for a fixed term, depending, inter alia, which of the cases referred to in Section 9 (5) of the Road Traffic Law has caused the person to approach CSDD for receiving the permit. Regulation No. 1341 establishes the procedure and terms for applying for the permit. I.e., the owner of the automobile or a person authorised by him can request the permit online on the home page of CSDD or personally at any office of the Directorate. The permit can be extended.

According to the information provided by the Ministry and CSDD, in 2010 1753 drivers received the permit to use an automobile, which is permanently registered abroad, within the territory of Latvia. In 2011 such permits were granted to 1412 drivers. Both institutions note that this procedure has justified its aims (*see Case Materials, pp. 138 -144*). Thus, the persons referred to in the contested norm have the possibility to obtain a permit in accordance with the procedure established by Regulation No. 1341 to use an automobile, which is permanently registered abroad, in the road traffic in the territory of Latvia for a certain period of time.

25. The Constitutional Court has established that the use of an automobile, which is registered in another EU member state, in the road traffic of another member state, was examined by the Court of Justice of the European Union in its Judgement of 15 September 2005 in Case No. C-464/02 “Commission of the European Communities versus Kingdom of Denmark” (*see: <http://curia.europa.eu/juris/showPdf.jsf?jsessionid=9ea7d0f130dee8fae5b664eb4d5b9883fc0355877638.e34KaxiLc3eQc40LaxqMbN4NchuLe0?text=&docid=59735&pageIndex=0&doclang=lv&mode=doc&dir=&occ=first&part=1&cid=1001193>*). However, the actual circumstances of the case are not identical with the Applicant’s situation, moreover, the legislator has included considerations noted in it in Para 3 of Section 9(5) of the Road Traffic Law. Thus, the persons referred to in the contested norm can drive an automobile, which is permanently registered abroad, in the territory of Latvia, if they have paid employment or study abroad, or conduct business activities as individual merchants or are self-employed. Hence, the

conclusions made by the Court of Justice of the European Union are not applicable to the case under review by the Constitutional Court.

The European Commission, in its turn, is currently discussing the requirements set by the member states to register the vehicle in the state, in which it is permanently used in road traffic. The European Commission has established that the member states lack uniform approach to this issue. The differences between the member states create difficulties to companies that have vehicles owned by them registered in one member state, but used in another. Thus, the requirements set for the registration of vehicles must be simplified and harmonised (*see Press Release of 3 March 2011 by the European Commission. "Commission wants to ease car registration for citizens across EU"*):

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/252>).

It can be concluded that easing the use of an automobile registered in a EU state in the road traffic of another member state is, first and foremost, an issue of harmonising member state laws.

The differential treatment of groups of persons established by the contested norm has objective and reasonable grounds, and it does not violate the principle of equality included in Article 91 of the Satversme.

The Substantive Part

Under Sections 30 – 32 of the Constitutional Court Law, the Constitutional Court

h o l d s :

to recognise Section 9(4) of the Road Traffic Law as compliant with Article 91 and Article 105 of the Satversme of the Republic of Latvia.

The Judgement is final and not subject to appeal.

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

The Presiding Judge

G. Kūtris