



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, 19 June 2010

Case No. 2010-02-01

The Constitutional Court of the Republic of Latvia, composed of the Chairman of the Court hearing Gunārs Kūtris, Justices Kaspars Balodis, Juris Jelāgins, Kristīne Krūma and Viktors Skudra,

having regard to a constitutional complaint of Limited Liability Company “Industriālais termināls”,

according to Article 85 of the Satversme (Constitution) of the Republic of Latvia, Article 16 1st indent, Article 17 (1), 11th indent, and Article 19.² and Article 28.¹ of the Constitutional Court Law,

on 21 May 2010 in writing examined the case

“On Compliance of Section 16 (10) of the Law on Taxes and Fees with Article 1 and Article 105 of the Satversme of the Republic of Latvia”.

The Facts

1. As on 1 January 2002, Section 7 of Chapter 16 “Rights of Tax Payers” of the Law on Taxes and Fees provided that tax payers have the right to “receive overpaid tax amounts in accordance with the laws for the particular tax”.

1.1. On 28 February 2003, the Saeima adopted the law “Amendments to the Law “On Taxes and Fees””. It envisages supplementing the Section 16 of the Law “On Taxes and Fees” with Paragraph 10 in the following wording:

“It is allowed to request the repayment of overpaid amounts of tax within a period of three years after the payment time period specified by law for the particular tax”.

On 12 March 2003, the above mentioned law was proclaimed in the official journal “Latvijas Vēstnesis”, and it came into effect on 1 July 2003.

1.2. On 26 October 2006, the Saeima adopted the Law “Amendments to the Law “On Taxes and Fees”” that supplemented Section 16 (10) of the Law “On Taxes and Fees” with the words “or to forward the sum for covering current tax payments” following the word “repayment of overpaid amounts of tax”.

Consequently, when submitting the application and reviewing the particular case, the following wording of Section 16 (10) of the Law “On Taxes and Fees” (hereinafter – the Contested Norm) is in force:

“Tax payers have the right [...] to request repayment of overpaid tax amounts or to forward the sum for covering current tax payments within a period of three years after the payment time period specified by law for the particular tax.”

2. **Limited Liability Company “Industriālais termināls”** (hereinafter – the Applicant) holds that the Contested Norm restricts its fundamental right to own property established in Article 105 of the Satversme of the Republic of Latvia (hereinafter – the Satversme); it neither complies with the principle of proportionality and that of legal certainty and legitimate expectations enshrined in Article 1 of the Satversme because,

pursuant to the Contested Norm, the Applicant was denied refund of overpaid value added tax (hereinafter – VAT).

2.1. On 18 March 2005, the Applicant asked the State Revenue Service [*Valsts ieņēmumu dienests*] (hereinafter – the SRS) to refund overpaid amount of the VAT at the amount of 134 036.07 lats accumulated in the period from 1 January 2002 to 1 March 2005. On 1 April 2005, the SRS Riga Regional Department decided to refund the overpaid VAT at the amount of 63 770.24 lats; however, it refused to refund the amount accumulated before 1 March 2002. The decision was contested; however, the SRS left it unchanged.

The Applicant addressed the Administrative District Court [*Administratīva rajona tiesa*] by submitting an application on refund of overpaid VAT amounts at full extent. In the application, it has been indicated among the rest that the Contested Norm does not apply to the Applicant because it requested refund of overpaid tax amounts accumulated before coming into force of the above mentioned norm. By decision of 2 July 2007, the Administrative Regional Court satisfied the application; however, the SRS submitted an appeal.

By decision of 4 September 2008, the Regional Administrative Court rejected the application. The Court substantiated it, among the rest, by the fact that the Contested Norm regulates legal relations formed at the moment when the taxpayer requested refund of overpaid tax amounts. As to norms regulating public law, the principle that they are applicable as from the date of their coming into force shall be applicable thereto.

The Applicant has also addressed the Administrative Case Department of the Senate of the Supreme Court [*Augstākās tiesas Senāta Administratīvo lietu departaments*] (hereinafter – the Senate) by submitting a cassation by indicating therein, amongst the rest, that interpretation presented by the Regional Administrative Court does not comply with Article 105 of the Satversme; it neither complies with conclusions made by the Court of Justice of the European Union (CJ) in its judgment in the case C-62/00 (*see: Judgment of the CJ in the case Marks and Spencer plc and Commissioners of Customs and Excise, judgment of 11 July 2002, No. C-62/00*).

In the judgment of 28 May 2009 in the case SKA-108/2009, the Senate agreed with the opinion of the applicant that, in the particular case, the right to own property has

been restricted. According to the Senate, however, the particular legal norm has a legitimate aim (to ensure effective control of tax circulation); moreover, the rights of a natural person have not been restricted in a non-proportional manner. By referring to the above mentioned judgment of the CJ, the Senate concluded that, in the above mentioned case, it was necessary to investigate whether a transitional period has been established to pass to a new regulatory framework and whether it was of sufficient duration for taxpayers to be able to request the remaining sum of overpaid tax amounts not yet refunded. The Senate concluded that the period from adoption of the Contested Norm, i.e. 12 March 2003, to its coming into force, i.e. 1 July 2003 (hereinafter – the period of coming into force of the Contested Norm), has been sufficient for a taxpayer to request the remaining sum of overpaid tax amounts not yet refunded. The Senate left the decision of 4 September 2008 of the Regional Administrative Court unchanged, whilst it rejected the cassation of the Applicant.

2.2. It has been emphasized in the application to the Constitutional Court that the Contested Norm has, in fact, permitted the State to take possession of property of the Applicant, namely, the overpaid VAT amounts.

The Applicant indicates that the Saeima has established, in the Contested Norm, a considerable restriction to the rights of a taxpayer, whilst it has failed to prescribe transitional provisions or a transitional period to pass from the old regulatory framework to the new one. According to the Applicant, the period before coming into force of the Contested Norm has been established with the purpose to technically manage to introduce planned amendments into the Law. In the light of the principle of legitimate expectations, it cannot be regarded as a proper transitional period for passing to a new regulation.

However, even if the above mentioned period could be regarded as a transitional period, it is too short and does not comply with the principle of legitimate expectations and that of proportionality enshrined in the Satversme, as well as the principles of VAT neutrality and effectiveness that follow from legal acts of the European Community. It has been stated in the application that the Contested Norm does not comply with the understanding of the above mentioned principles established in the case-law of the JC and the House of Lords of the United Kingdom (*see: Judgment of the CH in the cases Commission of the European Communities v. Italian Republic, judgment of 25 October*

2001, No. C-78/00; Grundig Italiana SpA and Ministero delle Finanze, judgment of 24 September 2002, No. C-255/00; Judgment of the Appeal Committee of the House of Lords of the United Kingdom in the case Fleming (t/a Bosycraft) v. Her Majesty's Revenue and Customs].

By referring to the conclusions made in the case-law of the Constitutional Court, the Senate and the European Court of Human Rights (hereinafter – the ECHR) (*see: Judgment of 4 February 2009 by the Constitutional Court in the case No. 2008-12-01, Para 8, Judgment of 28 May 2009 in the case No. 2008-47-01, Para 7; Judgment of the ECHR in the case Bulves AD v. Bulgaria, judgment of 22 January 2009, application No. 3991/03, and Judgment of 18 June 2009 by the Senate in the case No. SKA 257/2009, Para 9*), as well as having analysed the right to receive refund of the overpaid VAT amounts that follow from the VAT system, the Applicant maintains that the right to request refund of overpaid pretax regarded as property right in the light of Article 1 of Protocol No. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the ECPHRFF) and Article 105 of the Satversme.

The Applicant admits that the right to own property can be restricted if the restriction complies with criteria established. The restriction of fundamental rights established in the Contested Norm has been established by Law, it may have a legitimate objective; however, the restriction is not proportional.

2.3. After having got acquainted with case materials, the Applicant has emphasized in its opinion that it does not contest constitutionality of the lapse of the term of three years as such. The main issue is about the following: whether the term of 110 days as from the moment of publishing of the respective law up to the date of its coming into effect can be regarded as reasonable, i.e. is it sufficient for tax payers to be able to understand that their right to request refund of overpaid tax amounts have now been restricted in time, as well as to timely exercise their rights when submitting necessary documents to the SRS.

The Applicant has no objections to the opinion that the procedure for requesting overpaid tax amounts as such is not simple. However, this is of little importance if tax payers cannot understand that the respective amendments to the law also apply to such

overpaid tax amounts that were accumulated also before coming into force of the amendments.

The Applicant indicates that that it deals with development of real property. In this field of business activities, failure of businessman to timely request overpaid VAT amounts is “a frequent phenomenon” due to the specific character of the field, rather than because developers of real estate are not honest and careful persons. Construction and sale or lease of real estate is a time-consuming process, where undertakings purchase many products and services (elaboration of construction plans, preparation of construction sites, purchase of construction materials, etc.); however they do not perform any VAT imposable transactions (sale of finished buildings). In the result of it, these enterprises accumulate large overpaid VAT amounts. Consequently, before the Senate adopted the 2009 decision in the case SKA 62/2009, the SRS has failed to correctly interpret the term “overpaid VAT amounts” and perceived is as the difference between he estimated VTA and the pretax to be deducted. Consequently, even if real estate developers, who have accumulated large amounts of pretax due to the specific character of their activities but they have not performed any VAT imposable transactions, would submit an application regarding refund of overpaid tax amounts in 2003, it is rather likely that their claim would be rejected.

3. The institution that adopted the contested act, the **Saeima** does not share the viewpoint of the Applicant and asks the Court to recognize the Contested Norm as compliant with article 1 and 105 of the Satversme.

It follows from the reply of the Saeima that the Contested Norm does include a restriction of the property right; however it complies with the established criteria, namely, the restriction has been established by law, it has a legitimate objective, and it complies with the principle of proportionality.

The Saeima holds that the Contested Norm has eliminated a substantial legal flaw, namely, previously the terms for submitting a request to refund overpaid tax amounts and control of these actions were not coordinated before adoption of the Contested Norm. Although, after coming into force of the Contested Norm, normative acts did not prohibit the tax administration to execute audit for a period exceeding three

years after the term established in the law for a particular tax, they still did not provide any right to calculate additional tax and impose a fine for the period exceeding three years. This has resulted in a situation when the tax administration had to refund overpaid tax amounts even in the case if a taxpayer had increased it without reason.

By referring to the case-law of the CJ, the Saeima indicates that the possibility to request refund of overpaid VAT amounts without it being subject to limitation period would contradict the principle of legal certainty (*see: Judgment of 21 January 2010 by the CJ in the Case No. C-472/08 Alstom Power Hydro v. Valsts ieņēmumu dienests, Para 15 and 16*).

By referring to judgments of the Constitutional Court in the case No. 2004-03-01 and 2005-12-0103, the Saeima indicates that the principle of legitimate expectations does not give a person any reason to count on invariability of legal procedures and does not guarantee constant *status quo*. It only ensures a lenient transition to a new regulatory framework and protection within the period established by the legislator.

According to the Saeima, transitional period in the case under review is the period before coming into force of the Contested Norm. By referring to Para 10 of the judgment of 28 May 2009 by the Senate in the case No. SKA-108/2009, the Saeima suggests that such transitional period is of sufficient duration for a tax payer to be able to exercise his or her right to request refund of overpaid tax amounts. Tax amounts to be disbursed from the State budget are established already during drafting a declaration for a taxation period. Moreover, before preparing annual report, data on all overpaid tax amounts and debts are coordinated with the tax administration. Taking into account the fact that a tax payer has information at his or her disposal regarding overpaid tax amounts and assuming that he or she acts as an honest and careful person, it is rather unlikely that overpaid tax amounts are not requested for an extended period of time.

The Saeima indicates that requesting overpaid tax amounts is a simple administrative procedure. It does not require a businessman to perform any extraordinary and complicated actions. During the period before coming into force of the Contested Norm, the tax administration received by 21 percent more requests per month to refund overpaid tax amounts if compared with the period prior to it. This fact indirectly proves

that tax payers were informed on the established time period and have taken advantage of it.

The Saeima holds that the Contested Norm permitted tax payers to exercise their right to receive refund overpaid tax amounts, and it complies with the principle of legitimate expectations.

The Constitutional Court establishes:

4. The Applicant holds that the Contested Norm does not comply with the right to own property established in Article 105 of the Satversme and legal principles enshrined in Article 1 of the Satversme.

Article 1 of the Satversme provides that Latvia is an independent democratic republic. It has been established in the case-law of the Constitutional Court that the duty of the State to observe basic principles of a law-governed State, including that of legitimate expectations, follows from the notion of a democratic republic included in the above mentioned Article (*see, e.g.: Judgment of 10 June 1998 by the Constitutional Court in the case No. 04-03(98), concluding part*) and that of legal certainty (*see: Judgment of 25 October 2004 by the Constitutional Court in the case No. 2004-03-01, Para 8*).

Law has established the content of each above mentioned principle (*see: Iljanova D. Vispārējo tiesību principu nozīme un piemērošana. Rīga, Ratio iuris, 2005, pp. 87*) and has recognized that, as to their content, the principles are related (*see: Jarinovska K. Informācijas atklātība kā cilvēka pamatbrīvība, Jurista Vārds, 8 December 2009, No. 49*), as well as both these principles were equated – the principle of legal certainty and legitimate expectations (*see: http://www.laweuropa.com/Latvian/index.php?d=topluluk&mod=AB_lt_Topluluk_5_2*).

The Constitutional Court has indicated that “the principle of legal certainty charges the state with the responsibility of ensuring stability and legal exactitude as well observation of the principle of legitimate trust, so as to facilitate loyalty of an individual to the state and the law” (*see: Judgment of 25 October 2004 by the Constitutional Court*

in the case No. 2004-03-01, Para 8). Consequently, the principle of legal certainty is, in fact included in the principle of legitimate expectations in the broadest sense of the latter.

The principle of legitimate expectations establishes that state institutions in their activities have to be consistent with regard to the passed normative acts, they have to observe the legitimate trust, which might arise to persons in accordance with the specific legal norm (*see: Judgment of 19 March 2002 by the Constitutional Court in the case No. 2001-12-01, Para 3.2 of the concluding part*). However, the principle of legitimate expectations does not exclude the right of the State to amend the effective regulation. When amending legal regulation, however, the State has the duty to take into account the rights, in preservation and implementation of which people trusted. The principle of legal security requires that the State, when amending normative regulation, would observe a reasonable balance between trust of persons and the interests that should be ensured by amending regulatory framework (*see: Judgment of 15 March 2010 by the Constitutional Court in the case No. 2009-44-01, Para 15*).

When assessing compliance of any legal norm with legal principles that follow from the fundamental constitutional values included in Article 1 of the Satversme, it is necessary to take into account the fact that manifestation of these principles in different fields of law may differ. The nature of the contested norm, *inter alia*, also its connection with other norms of the Satversme and their place in the system of fundamental rights, inevitably influence the scope of the control, realized by the Constitutional Court. Namely, the legislator may have relatively broad or restricted freedom of action; however, the Constitutional Court must assess whether the extent of freedom of action used by the Saeima complies with the extent of it established in the Satversme (*see: Judgment of 8 November 2006 by the Constitutional Court in the case No. 2006-04-01, Para 15.2 and 15.3*).

Consequently, compliance of the Contested Norm in the case under review with Article 1 of the Satversme shall be assessed in conjunction with Article 105 of the Satversme.

5. Article 105 of the Satversme provides: “Everyone has the right to own property. Property shall not be used contrary to the interests of the public. Property rights

may be restricted only in accordance with law. Expropriation of property for public purposes shall be allowed only in exceptional cases on the basis of a specific law and in return for fair compensation.”

5.1. It has been concluded in the case-law of the Constitutional Court that, when establishing the content of the norms on human rights include in the Satversme, the Court has the duty to take into account the interpretation applied to the respective international norms on human rights. Consequently, Article 105 of the Satversme shall be interpreted in conjunction with Article 1 of Protocol No. 1 of the ECHR (*see, e.g.: Judgment of 20 May 2002 by the Constitutional Court in the case No. 2002-01-03, concluding part and Judgment of 26 April 2007 in the case No. 2006-38-03, Para10*).

Article 1 of Protocol No. 1 of the ECPHRFF provides:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

The Constitutional Court has already concluded that the European Court of Human Rights, when interpreting the rights fixed in Article 1 of the Protocol No. 1 of the Convention, has concluded that the above Article includes three separate norms: first of all, the first sentence of Article 1 envisages the right to peaceful enjoyment of his possessions, secondly, the second sentence determines prohibition and provisions for deprivation of the possessions, but the second part of the Article acknowledges that the state experiences the right of controlling the use of property in accordance with the general interest. When interpreting Article 105 of the Satversme in conjunction with the above mentioned norm of the European Convention on Human Rights, the Constitutional Court has concluded that also Article 105 of the Satversme determines both the right to enjoyment of the property and the right of the state to restrict the property rights (*see:*

Judgment of 20 May 2002 by the Constitutional Court in the case No. 2002-01-03, concluding part).

5.2. The ECHR has concluded in its case-law that the notion “possessions” in the light of Article 1 of Protocol No. 1 of the European Convention on Human Rights has a constant meaning. “Possessions” may be “an existing possession” or resources, including claims, in regard to which an applicant can substantiate having at least legitimate expectations of obtaining effective enjoyment of property right. The ECHR has also conclude that a company's right to claim a deduction of the input VAT amounted to at least a “legitimate expectation” of obtaining effective enjoyment of a property right amounting to a “possession” within the meaning of the first sentence of Article 1 of Protocol No. 1 (*see: Judgment of the ECHR in the case Bulves AD v. Bulgaria, judgment of 22 January 2009, application No. 3991/03, paras. 54-57*).

The Constitutional Court has concluded that Article 105 of the Satversme provides an exhaustive guarantee of property right, and it is not limited only to the right to own property. “Property right” means all kinds of property right that a legitimate person can exercise in favour of himself or herself and that he or she can exercise according to his or her will, for example, ownership (in the meaning of Section 927 of the Civil Law); legal lien, the right of use; copy right, right to inventions and trademarks; the rights that follow from shares (and securities); liability law claims based on an agreement or a delict; concession rights, the right to perform business activities (based on a licence), etc (*see: Judgment of 20 April 2010 by the Constitutional Court on termination of proceedings in the case No. 2009-100-03, Para 8.3*).

The liability to pay taxes always means restriction of property rights (*see: Judgment of 11 April 2007 by the Constitutional Court in the case No. 2006-28-01, Para 19.1, and Judgment of 8 June 2007 in the case No. 2007-01-01, Para 19*).

The Senate has indicated the following: “If there are no objective doubt regarding validity of tax amounts and overpayment, namely, if no audit has been performed or no criminal case has been initiated, or if the above two procedures resulted in failure to establish validity of tax amounts and overpayment, overpaid tax amounts shall be regarded as property of a tax payer that shall be given back to the tax payer or

transferred as compensation for his or her tax debts if any” (*see: Judgment of 18 June 2009 by the Senate in the case No. SKA-257/2009, Para 9*).

The Contested Norm does restrict the right of a person to receive refund of overpaid VAT amounts in case if a certain term has passed. The Constitutional Court shares the viewpoint of the case participants that **the Contested Norm does restrict the fundamental right to own property established in Article 105 of the Satversme.**

6. It has been established in the case-law of the Constitutional Court that the right to own property in a democratic and law-governed State are not absolute. The right to own property can be restricted; however, it should be assessed whether the restriction is reasonable, namely, whether: 1) it has been established by law; 2) it has a legitimate objective; 3) it is proportional (*see, e.g.: Judgment of 20 May 2002 by the Constitutional Court in the case No. 2002-01-03, concluding part*).

Therefore the Constitutional Court will investigate whether the restriction established in the Contested Norm complies with the above mentioned criteria.

7. Case materials contain no evidence that the Contested Norm would not have been adopted and proclaimed according to proper procedure. Consequently, the contested restriction has been established by law.

8. Circumstances and arguments why it is needed shall be the basis for any restriction of fundamental rights, namely, the restriction is determined because of significant interests – the legitimate aim (*see: Judgment of 22 December 2005 by the Constitutional Court in the case no. 2005-19-01, Para 9*).

The Saeima indicated that it was the SRS that suggested including the Contested Norm into the Law “On Taxes and Fees”. In the letter of 24 January 2003 No. 15.10.1/1856, the SRS submitted the respective suggestion to the Ministry of Finance (*see: case materials, Vol. 1, pp. 73*).

The draft law “Amendments to the Law “On Taxes and Fees” was submitted to the Saeima by the Cabinet of Ministers. Although the suggestion to supplement Section

16 of the Law “On Taxes and Fees” by Para 10 was included in the draft law, it was not reflected in the annotation to it. It was indicated in the annotation that in relation to protection of the rights of a person “the Law does not restrict the rights of a person” (*see: http://www.saeima.lv/saeima8/lasa?dd=LP0174_0*).

However, the fact that annotation to the draft law contains no reference to the restriction of the fundamental rights and the aim of it does not mean that the respective restriction of the fundamental rights has no legitimate aim.

The Saeima indicates that the regulatory framework of the Contested Norm is aimed at ensuring objective and equal verification of overpaid tax amounts regarding all tax payers, as well as at coordinating terms, within which it is allowed to submit a request to refund overpaid tax amounts, and those, within which tax administration can execute control activities.

After adhesion to the European union, the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment (hereinafter – the Sixth Directive) has become binding on Latvia in the field of VAT. In the order for reference, the *Augstākās tiesas Senāts* [Senate of the Supreme Court] states that, where the SRS examines applications for refunds of overpaid VAT, it is entitled to undertake inquiries. However, in such a situation, it must comply with the period of three years laid down in Article 23(1) of the Law on Taxes and Fees. In the absence of a limitation period for the right for taxable persons to apply for a refund of excess VAT corresponding to the period during which the SRS is entitled to adopt an amended assessment to tax following its inspection, it would have to consider the applications in every case. In those circumstances, the national legislation could be abused by a person liable to pay tax, where that person applies for a refund of overpaid VAT relating to a period in respect of which the SRS can no longer undertake an inquiry (*see: Judgment of 21 January 2010 of the CJ in the case No. C-472/08 Alstom Power Hydro pret Valsts ieņēmumu dienestu*).

The Constitutional Court has already concluded that legal regulation of tax laws as such would not be sufficient if no effective system of violation prevention would exist (*see: judgment of 3 April 2008 by the Constitutional Court in the case No. 2007-23-01, Para 11*).

The legitimate objective of the contested provision is not timely collection of the tax and ensuring efficient functioning of the court *per se*, but rather protection of interests of the society, i.e. protection of other human rights and social welfare (*see: Judgment of 11 April 2007 by the Constitutional Court in the case No. 2006-28-01, Para 17*).

It has been established in the case-law of the CJ that the application of Community legislation cannot be extended to cover abusive practices by economic operators, that is to say transactions carried out not in the context of normal commercial operations, but solely for the purpose of wrongfully obtaining advantages provided for by Community law. That principle of prohibiting abusive practices also applies to the sphere of VAT. Preventing possible tax evasion, avoidance and abuse is an objective recognised and encouraged by the Sixth Directive (*see: Judgment of 21 February 2006 by the CJ in the case C-255/02 Halifax, Para 69 – 71*). “The Sixth Directive precludes any right of a taxable person to deduct input VAT where the transactions from which that right derives constitute an abusive practice” (*see: Judgment of 21 February 2006 by the CJ in the case C-223/03 University of Huddersfield, Para 52*).

The CJ has also concluded that the possibility of making an application for the refund of excess VAT without any temporal limit would be contrary to the principle of legal certainty, which requires the tax position of the taxable person, having regard to his rights and obligations vis-à-vis the tax authority, not to be open to challenge indefinitely (*see: judgment of 8 May 2008 by the CJ in the joined cases C-95/07 and C-96/07 Ecotrade, Para 44, and Judgment of 21 January 2010 in the case No. C-472/08 Alstom Power Hydro v. Valsts ieņēmumu dienestu, Para 16*).

Consequently, on the other hand, the Contested Norm ensures effective control performed by tax administration, or only those sums, in regard to which taxes are indeed overpaid, are requested to be refunded. On the other hand, the Contested Norm is incorporated in the common regulatory framework that ensures legal stability of relations between tax payers and the tax administration, as well as the fact that situation of a tax payer in relation to his or her rights and duties in front of the tax administration cannot be challenged.

Consequently, the Constitutional Court agrees with the viewpoint of the Saeima, namely, that **the contested restriction does have a legitimate aim, which is protection of rights of other persons and welfare of the society.**

9. The Constitutional Court has concluded that, having established legitimate aim, it is necessary to evaluate whether the legal norm, adopted by the legislator, complies with the proportionality principle. First of all, if the means, used by the legislator are suitable for achieving the legitimate objective; secondly, if it is not possible to attain the objective by other means, which would less limit the rights and legal interests of an individual; thirdly, if the benefit, obtained by the society, is greater than the loss incurred to the rights and lawful interests of an individual. If, after evaluating the legal norm, it is acknowledged that it does not comply with even one of the above criteria, then it shall be considered as not being in conformity with the principle of proportionality and illegitimate (*see: Judgment of 19 March 2002 by the Constitutional Court in the case No. 2001-12-01, Para 3.1 of the concluding part*).

9.1. The restriction established in the Contested Norm ensures a possibility for the tax administration to perform periodical control of compliance of VAT payment amounts with legal norms and prevents ungrounded refund of overpaid tax.

The measures selected by the legislator are appropriate for reaching of the legitimate aim.

9.2. “When assessing whether the legitimate aim may be reached in a more lenient way, the Constitutional Court takes into consideration that a more lenient means are not any means, but only such by which the aim may be reached in the same quality” (*see: Judgment of 13 May 2005 by the Constitutional Court in the case No. 2004-18-0106, Para 19*).

Case materials contain no evidence of any alternative measures that would ensure reaching of the legitimate aim at the same quality.

9.3. The Constitutional Court has drawn attention to conclusions made by constitutional courts of other countries and the ECHR, namely, that the State shall enjoy freedom of action in the field of tax administration (*see: Judgment of 3 April 2008 by the*

Constitutional Court in the case No. 2007-23-01, Para 8). It means that the Legislator is entitled at own discretion, observing the principle of proportionality, to establish the procedure and terms of tax assessment, withholding, and payment, as well as the rights, responsibilities, and liability of the tax payers and the tax administration (*see: Judgment of 11 April 2007 by the Constitutional Court in the case No. 2006-28-01, Para 19.1*).

In the case under review, the system of VAT payment and administration as such is not being contested. In the frameworks of this system, overpayment occurs also in cases when a tax payer works carefully. A similar situation exists not only in Latvia but also in other Member States of the European Union.

In order to assess consequences of the regulatory framework of the Contested Norm in relation to person having accumulated VAT overpayments, it is necessary to take into account liabilities of Latvia as a Member State of the EU. Consequently, the Contested Norm shall be interpreted in conjunction with requirements of the EU legal acts, including the Sixth Directive.

Article 18 of the Sixth Directive establishes provisions regulating exercise of the right to deduct. Paragraph 4 of this Article provides the following: “Where for a given tax period the amount of authorized deductions exceeds the amount of tax due, the Member States may either make a refund or carry the excess forward to the following period according to conditions which they shall determine.”

Pursuant to the case-law of the CJ, the right to deduct established in the Sixth Directive “is an indispensable part of the VAT mechanism and, in fact, it cannot be restricted” (*see: Judgment of 8 May 2008 by the Constitutional Court in the joined cases C-95/07 and C-96/07 Ecotrade, Para 39*).

Provisions regulating refund of overpaid tax amounts should give a tax payer the possibility to recover the overpaid tax amounts in a due manner and at full amount. An accepted refund method must not cause any financial risk to the tax payer (*see: Judgment of 25 October 2001 by the CJ in the case No. C-78/00 Commission v. Italy, Para 32 – 34*).

It also follows from the case-law of the CJ that the right to deduct is so fundamental that no time-limit can ever be placed on its exercise in relation to all taxes imposed on products and services obtained. In fact, the right to deduct to be exercised in

the same tax period in which it arose. However, deduction can be made in relation to a tax payer also in the case if he or she has failed to exercise his or her rights in the period in which they arose. In this case the Member States have established certain provisions in relation to the right to deduct. The Member States can establish that the right to deduct shall be exercised in the period in which it arose, or in an extended period of time observing certain provisions and procedure established in legal regulatory framework of the State (*see: Judgment of 8 May 2008 by the CJ in the joined cases C-95/07 un C-96/07 Ecotrade, Para 40 – 43*).

As to the question of a “reasonable” term, the CJ has concluded that the period of two years per se cannot make exercise of the right to deduct completely impossible or too complicated because pursuant to Article 18 (2) of the Sixth directive, Member States may require that, as regards taxable persons, the right to deduct shall be exercised only at the time of the supply (*see: Judgment of 8 May 2008 by the CJ in the joined cases C-95/07 un C-96/07 Ecotrade, Para 48*). The CJ came to the same conclusion in relation to the limitation period of three years established in a particular contested norm by indicating that “the period is, in principle, such as to permit any normally attentive taxable person validly to assert his rights derived from European Union law” (*see: Judgment of 21 January 2010 by the CJ in the case No. C-472/08 Alstom Power Hydro pret Valsts ieņēmumu dienestu, Para 21*).

Consequently, the CJ has concluded that Article 18 (4) of the Sixth Directive is to be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, which lays down a limitation period of three years in which to make an application for the refund of excess value added tax collected by, though not due to, the tax authority” (*see: Judgment of 21 January 2010 by the CJ in the case No. C-472/08 Alstom Power Hydro v. Valsts ieņēmumu dienestu, the ruling part*).

When interpreting norms of the Latvian laws on taxes in accordance with the requirements of the Sixth Directive, the Latvian tax administration is committed to ensure that a tax payer could exercise his or her right to deduct in the same period of occurring of VAT overpayment. Since it is in the interests of a tax payer to earlier request refund of overpaid tax amounts, the provision to request the paid VAT pretax within the period of three years cannot be regarded as an undue burden.

If the State has formed legal system compliant with the EU law, wherein the limitation period of three years does not prohibit a tax payer to request refund of overpaid VAT amounts according to a proper procedure, then this term constitutes no undue burden for a person to recover its property, and it shall not be regarded a non-proportional restriction of the right to property.

After coming into force of the Contested Norm, each tax payer has counted on the fact that he or she has to prepare requests regarding refund of overpaid VAT amounts within three years in accordance with planned works.

Section 12 (11) of the Law “On Value Added Tax (wording of 31 January 2008) provides that the State Revenue Service “shall refund the amount of the over-paid tax to the taxable person within 30 days after receipt of a substantiated application and documents attesting to transactions.

The benefit gained by the society after reaching of the aims of the Contested Norm is greater than the restriction established in the Contested Norm in relation to tax payers who have accumulated overpaid VAT amounts after coming into force of the Norm.

Consequently, the Contested Norm, insofar as it applies to overpaid tax amounts accumulated after coming into force of it, i.e. 1 July 2003, does comply with the principle of proportionality and therefore with Article 104 of the Satversme.

9.4. However, the Applicant does not contest the limitation period of three years as such. The Applicant challenges the fact that the Contested Norm was applied to overpaid VAT amounts accumulated before coming into effect of the Norm, this being done without providing any transitional period. It follows from the application that the Applicant has relied on interpretation of Section 12 (11) of the Law “On Value Added Tax” that was valid before coming into force of the Contested Norm. According to this interpretation, a person had the right to request refund of pretax for an indefinite period of time after payment of pretax; however, no sooner after a VAT-imposable transaction is performed. The Applicant counted on the fact that it would be able to request refund of pretax only after it would have performed a VAT-imposable transaction; therefore the Applicant planned its economic activities so that the period between payment of pretax

and execution of a VAT-imposable transaction (sale of the product) could exceed the period of three years. The Contested Norm, however, has disabled refund of pretax after expiry of the above mentioned term. On the one hand, interpretation of the above mentioned norm established by the SRS did not provide any possibility for the Applicant to receive refund of overpaid pretax within the term of three years after payment of it if no VAT-imposable transaction has been performed during this period. On the other hand, the Contested Norm prohibits the Applicant to request refund of the paid pretax after having executed a VAT-imposable transaction.

In this light, proportionality of restriction established in the Contested Norm shall generally be interpreted in conjunction with the principle of legitimate expectations. The Constitutional Court has already concluded that the aim of principles that follow from Article 1 of the Satversme is to ensure that legal norms are correctly applied and that their application, as well as the result of their application complies with the requirements of a law-governed state. Neither Article 1 of the Satversme, nor Article 105 denies the right of the legislator to make amendments to the existing legal regulation, which complies with the Satversme. However, in a democratic and law-governed state the principle of legitimate trust requires to envisage considerate transition to the new regulation, when introducing amendments. When assessing whether the principle of legitimate trust has been violated, one shall ascertain: 1) whether the submitters of the claim had the right to trust that the legal regulation would not be changed; 2) whether such a trust was reasonable and well-grounded; and 3) whether the legislator, when deviating from the previous legal regulation, had envisaged a considerate transition to the new regulation (*see: Judgment of 16 December 2005 by the Constitutional Court in the case No. 2005-12-0103, Para 24*).

9.4.1. It is necessary to take into account the fact that, when adopting the Contested Norm, the legislator introduced no amendments to Section 16 (7) of the Law “On Taxes and Fees” that established the right of a tax payer “to receive overpaid tax amounts in accordance with the laws for the particular tax”. Section 12 (11) of the Law “On Value Added Tax” established meanwhile that the SRS shall have the duty to pay to a taxable person “the amount of overpaid tax (the difference between the estimated VTA and the pretax to be deducted)”.

It follows from the case-law of administrative courts that the SRS has interpreted this norm in a way that overpaid tax is the difference between the estimated tax and the pretax to be deducted, and, if no tax is indicated (calculated) in the VAT declaration for a particular period, then a tax payer accumulates no tax overpayment even in the case if the pretax to be deducted is indicated in the declaration in relation to taxable transactions (*see, e.g.: Judgment of 30 June 2009 by the Senate in the case No. SKA-62/2009, Para 4.2; Judgment of 22 December 2009 by the Administrative District Court in the case No. 42472208, and judgment of 22 April 2010 in the case No. A42562408*). Such practice of the SRS was recognized as incorrect by the Regional Administrative Court and the Senate. In one of the above mentioned cases, the Applicant had submitted several VAT declaration in the period from June 2002 to June 2005, where it has also indicated the amount of pretax. None of the above mentioned declarations included data on VAT payment; therefore the SRS rejected the request to refund pretax. The Administrative District court also rejected the application regarding refund of overpaid VAT amounts (*see: Judgment of 30 June 2009 by the Senate in the case No. SKA-62/2009*).

According to the Regional Administrative Court, the fact that the calculated tax constitutes 0.00 lats (no VAT-imposable transactions have been executed) does not automatically mean that a taxable person has not created a new VAT-imposable product or service. Otherwise, none of building companies performing construction works for more than three years could request refund of overpaid tax amounts, since it can be requested only for the period of the past three years. If production of a product requires more than three years, the producer could neither apply for the refund of overpaid amounts. Therefore, of great importance is the fact that a person creates new VAT-imposable products and services. The legislator does not require the new product already been sold when submitting a request regarding refund of overpaid tax amounts (*see: Judgment of 3 July 2008 by the Regional Administrative Court in the case No. A42471305*). According to the Senate, the Regional Administrative Court has provided a correct interpretation of the right to be refunded overpaid tax amounts (*see: Judgment of 30 June 2009 by the Senate in the case No. SKA-62/2009*).

Consequently, interpretation of Section 12 (11) of the Law “On Value Added Tax” that permits requesting refund of overpaid VAT amounts even in case if no VAT-imposable transaction has been executed has been established in the case-law only in

2008 – 2009. When establishing such interpretation, the courts based themselves on liabilities of Latvia as a Member State of the EU, as well as on the above mentioned norm in conjunction with the Contested Norm. The Saeima has not substantiated why Section 12 (11) of the Law “On Value Added Tax” had the same interpretation before the Contested Norm was adopted.

The above mentioned norm is not contested in the case under review; therefore the Constitutional Court is not obligated to assess interpretation of this norm. There is no doubt that the Applicant had the opportunity to immediately request refund of pretax and to appeal against the refusal by the SRS according to former procedure for appealing against administrative acts. However, the opinion of the Saeima that submission of a request regarding refund of overpaid VAT amounts “did not require a businessman to perform any extraordinary and complicated actions” cannot be agreed with (*case materials, Vol. 1, pp. 78*).

The principle of legitimate expectations also establishes that, in a democratic State, a person may rely on lawfulness of activities performed by State administration institutions, including the trust in the fact that the tax administration knows how to correctly interpret laws. The duty of the Saeima is to ensure clear formulation of legal norms for them to be interpreted in a correct way. When the Contested Norm was adopted, the Applicant was conferred the right to rely on the fact that it will be able to request refund of overpaid VAT amounts after having executed VAT-imposable transactions.

Consequently, the Saeima had to establish a proper transitional period if it wanted to amend the particular regulatory framework.

9.4.2. When assessing criteria that should be established for the respective transitional period, the case participants and the Senate refer to the judgment of the CJ in the case No. Nr. C-62/00, wherein issues related with reduction of the VAT refund period were examined (*see: Judgment of CJ in the case Marks and Spenser plc and Commissioner of Customs and Excise, judgment of 11 July 2002, No. C-62/00*).

The Contested Norm has been adopted at the time when Latvia was not yet a Member State of the EU; however, when interpreting the fundamental rights established in the Satversme in accordance with constitutional legal values of Europe, the

Constitutional Court has already referred to EU documents, requirements of the EU binding on Latvia as a candidate Member State of the EU, as well as case-law of the CJ (see, e.g.: *Judgment of 20 May 2003 by the Constitutional Court in the case No. 2002-21-01, Para 1 of the concluding part, and judgment of 18 December 2003 in the case No. 2003-12-01, Para 10*).

By referring to case-law of the CJ (see: *Judgment of the CJ in the case Marks and Spenser plc and Commissioner of Customs and Excise, judgment of 11 July 2002, No. C-62/00*), the Senate has justly indicated that legal regulation reducing the term for refund of overpaid tax amounts, should not only have a legitimate aim but it also has to envisage a proper transitional period for persons to be able to submit request to refund overpaid tax amounts, which they did not have the right to submit pursuant to previously effective legal regulatory framework. This period must not be too short; otherwise it would have a backward impact on the right of a person to receive refund of overpaid tax amounts.

It does not follow from draft law elaboration materials that the Cabinet of Ministers of the Saeima would have considered establishment of a transitional period for the Contested Norm (see: http://www.saeima.lv/saeima8/lasa?dd=LP0174_0).

According to the Applicant, the period between 28 February 2003 when the Saeima adopted the Law “Amendments to the Law “On Taxes and Fees”” and the date of coming into force of this law, i.e. 1 July 2003 has been established with a purpose to technically introduce amendments established in the above mentioned law. This cannot be regarded as a transitional period in the light of the principle of legitimate expectations.

The Saeima and the Senate indicate that the Law “Amendments to the Law “On Taxes and Fees”” did not come into force on the fourteenth day after its proclamation, as it is usually; it came into effect three months later. According to the Saeima and the Senate, the period before coming into force of the Contested Norm can be regarded as a transitional period from the old regulatory framework to the new one, the latter restricting the rights of tax payers at a greater extent.

The Constitutional Court has already concluded that, when deciding what norms to include in what law, the legislator enjoys a broad freedom of action (see: *Judgment on termination of legal proceedings of 16 April 2008 by the Constitutional Court in the case*

No. 2007-21-01, Para 17). As to questions related with the legislation method in the frameworks of one particular law, the Saeima also enjoys a broad freedom of action.

Requirements regarding establishment of the date of coming into effect of a law and its interaction with the effective regulatory framework are established in Section 111 of the Saeima Rules of Procedure. It establishes the following:

“(1) In case of necessity, the procedure of application of a law can be established as transitional period, as well as the government and local governments shall be commissioned necessary tasks to ensure operation of a law.

(2) If there arise contradictions regarding effective laws when adopting a draft law, the Saeima shall establish that a new law or certain parts thereof would come into force along with amendments to effective laws.”

Consequently, the Saeima Rules of Procedure contains no requirement to regulate all issues related with the procedure of application of a law and its incorporation in the effective regulatory framework only by establishing transitional provisions to the law.

However, it should be taken into account that a transitional provision that *expressis verbis* establishes that a law is applicable to previously established legal regulations draws attention of the respective persons to changes in their rights, permits a person to timely realize their legal status, and prevents all misunderstandings.

The Applicant refers to case-law of the House of Lords of the United Kingdom (*see: Judgment of the Appeal Committee of the House of Lords of the United Kingdom in the case Fleming (t/a Bosycraft) v. Her Majesty's Revenue and Customs*). It follows from the above mentioned case-law that, under such circumstances, the legislator had to make a special announcement on the content of a norm.

The issue regarding the efforts to be applied and time required for tax payers to realize their rights that follow from the new regulatory framework serves as one of the aspects that should be taken into account when assessing whether the time period established for the transition to the new regulatory framework complies with the principle of legitimate expectations and restricts the property right of a person in a proportional manner.

The Constitutional Council [*Conseil Constitutionnel*] of France has indicated that a law of a very complicated character that is difficult to be perceived by an average person does not comply with constitutional norms in the field of tax (*see: Summary of the judgment of 29 December 2005 of the Constitutional Council of France in the case No. 2005-530, <http://www.codices.coe.int>*).

Section 9 of the Law “On the Procedure of Proclaiming, Publishing, Coming into Effect and Validity of the Laws and Other Acts Adopted by the Saeima, the State President and the Cabinet of Ministers” provides: “Normative acts shall not have retroactive force, unless otherwise established by law.” The Applicant holds that, pursuant to this norm, it had the right to rely on the fact that the previous regulation on the possibility to request refund of overpaid tax amounts during an unlimited period of time would not be amended and that the above mentioned norm could also be applicable in the case under review.

It cannot be denied that, in a democratic and law-governed State, cases when the law is granted with a retroactive force shall be regarded as an exception. The regulatory framework in the field of taxes is characterized by special requirements, which is manifested, among the rest, by a separate classification granted to this issue in the when registering in the constitutional case-law data base of the Constitutional Case-Law Documentation Centre of the Council of Europe’s Venice Commission (*see: <http://www.codices.coe.int>*). However, this does not mean that, in the field of taxes, a law cannot be granted a retroactive force in separate cases.

For instance, the Constitutional Court [*Tribunal Constitucional*] of Spain has concluded that the Constitution does not prohibit any fiscal incomes with a retroactive force. However, this does not mean that such measures are permissible in all cases; it is necessary to take into account other constitutional principles that protect legitimate expectations of persons that no unexpected amendments into legal norms would be introduced (*see: Summary of the judgment of 18 May 2009 by the Constitutional Court of Spain in the case No. 116/2009, <http://www.codices.coe.int>*).

In its judgment on amendment of national legal acts with retroactive effect and observance of the principle of legitimate expectations, the EJ has also indicated in its judgement that the principle of legitimate expectations does not preclude Member States

to confer a law a retroactive force as an exception and with a view to eliminate widespread application of such financial combinations that are performed in order to avoid VAT payment and that are combated against by means of introducing amendments to the law. Such granting of retroactive force is possible, unless entrepreneurs who perform economic activities established by law have been warned on adoption of such law and its retroactive effect in a way that permits them to understand impact of the amendments on activities performed by them (*see: Judgment of 26 April 2005 by the CJ in the case No. C-376/02 Stichting "Goed Wonen", Para 45*).

In the case under review, the problem has mainly arisen because the Applicant could not timely understand that the Contested Norm is applicable to such overpaid VAT amounts accumulated before coming into force of the Contested Norm and that it has the right to request refund of pretext also before executing a VAT-imposable transaction.

The Regional Administrative Court has concluded in the administrative case of the Applicant that the Contested Norm "regulates legal relations that were formed at the moment when the tax payer requested refund of overpaid tax amounts. As to norms regulating public law, the applicable principle establishes that these shall be applicable as from the date of coming into force of them". The Supreme Court did not object to this opinion. It is not the jurisdiction of the Constitutional Court to reassess what norm should be applied in the case under review.

However, the Administrative District Court made an opposite conclusions in the administrative case of the Applicant, namely, that the Contested Norm does not have a retroactive effect and the Law "On the Procedure of Proclaiming, Publishing, Coming into Effect and Validity of the Laws and Other Acts Adopted by the Saeima, the State President and the Cabinet of Ministers" is applicable.

Consequently, it is possible to conclude that, in the Contested Norm, the legislator has established clear enough regulatory framework on the transitional period for a tax payer to be able to understand his or her rights and to exercise them.

The Senate and the Saeima assess the transitional period based on an ideal type situation by taking into account only the fact whether the established time period was sufficient for submitting of respective documents to the SRS. For instance, the Senate indicates, that, pursuant to the Law "On Accounting" and Cabinet of Ministers

provisions, a tax payer shall have the duty to execute regular accounting. This means that a tax payer must have data at his or her disposal regarding his or her overpaid tax mounts. According to the Senate, the period of coming into force of the Contested Norm was sufficient for a tax payer to be able to submit a request on refund of overpaid tax amounts not yet requested. The Saeima maintains that if a tax payer would have acted as an honest and careful person, it is rather unlikely that overpaid tax amounts are not requested for an extended period of time.

When the Saeima adopted the Contested Norm, it had to take into consideration the actual situation. The time that was established as a transitional period had to be of sufficient duration for a person not only to technically prepare a particular document but also to elaborate legal substantiation of his or her rights.

Since the transitional period in relation to the Contested Norm was not clearly established in Transitional provisions of the Law, whilst the SRS stuck to the established principle that refund of overpaid VAT amounts could not be requested prior to execution of a VAT-imposable transaction, the requirement that each tax payer must get aware of consequences of the Contested Norm and to prepare respective documents during the period before coming into force of the Contested Norm cannot be regarded as a lenient transition from the old regulatory framework to the new one.

In the case under review, the Contested Norm could cause negative consequences to those tax payers who had not executed, due to the specific character of their economic activities, any VAT-imposable transactions in the period when pretax was paid and who, taking into account practice of the SRS and counting on the fact that this practice is lawful, considered that the right to request refund of pretax only after a VAT-imposable transaction is executed. If a person has understood the Contested Norm in a way that the norm does not have a retroactive effect and it does not prohibit a person to request refund of previously paid pretax as soon as a tax payer executes a VAT-imposable transaction, then it is possible that an honest tax payer is denied refund of pretax based on the Contested Norm. In this case, a tax payer might incur negative consequences in the form of refusal by the tax administration to refund considerable pretax amounts.

The benefit gained by the society from reaching of the aims of the Contested Norm in the long term is not greater than the restriction established by the Contested

Norm in relation to certain tax payers who have accumulated VAT overpayments before coming into effect of the Contested Norm and who considered, in accordance with the previous practice of the SRS, that the refund cannot be requested. When establishing a new regulation, the Saeima either had to clearly establish in Transitional Provisions that the norm shall also be applicable to already existing legal relations formed on the basis of previously paid pretax, or had to establish long enough transitional period for tax payers to be able to deduct their rights based on findings in law and case-law. Such situation when negative consequences would be caused to honest tax payers due to incorrect but constant interpretation of a legal norm, which in this case is Section 12 (11) of the Law “On Taxes and Fees”, established by the SRS, would be at variance with the principle of legitimate expectations.

Consequently, the Contested Norm, insofar as it applies to tax overpayments accumulated before coming into effect of this norm, namely, on 1 July 2003, does not comply with the principle of legal expectations and that of proportionality and therefore it does not comply with Article 1 and Article 105 of the Satversme.

10. Pursuant to Article 32 (3) of the Constitutional Court Law, a legal norm (act) that the Constitutional Court has declared as non-compliant with the norm of a higher legal force, shall be regarded as not in effect from the day of publication of the Constitutional Court judgment, if the Constitutional Court has not determined otherwise

Pursuant to Article 31 (11) of the Constitutional Court Law, if the Constitutional Court has judged that this norm (act) does not comply with the norm of a higher legal force, the Court judgment shall indicate the moment with which it shall cease to be in force. In the case under review, the Applicant has asked to recognize the Contested Norm as null and void as from the date of adopting it.

Determining the exact moment from which the Contested Norm loses validity, the Constitutional Court, on the basis of its previous practice, would consider whether the invalidation of the Contested Norm with retrospective effect is required for the protection of fundamental rights of the Applicant and whether there are any considerations due to which the Contested Norm would have to be invalidated with retrospective effect only in

relation to the Applicant (*see: Judgment of 21 December 2009 by the Constitutional Court in the case No. 2009-43-01, Para 34*).

Recognition of the Contested Norm as null and void in relation to the Applicant is the only way to protect its fundamental rights.

However, it must be taken into account that a considerable time has passed since coming into effect of the Contested Norm, and not it exceeds the permitted term for requesting refund of overpaid tax amount twofold. It is no more possible, without restricting the rights of other persons, to restore the possibility to submit a request to refund overpaid tax amounts to all persons who have accumulated tax overpayments before coming into force of the Contested Norm but who has failed to exercise his or her rights in accordance with the procedure established in the Administrative Procedure Law.

The Constitutional Court has already concluded in its case-law that, when recognizing any legal norm as compliant with the Satversme, however, establishing that certain aspects of it in relation to particular persons do not comply with the Satversme, the Constitutional Court may recognize such norm as null and void in relation to the applicant (*see: Judgment of 16 June 2006 by the Constitutional Court in the case No. 2005-13-0106, concluding part*).

The Constitutional Court

Based on Article 30 – 32 of the Constitutional Court Law,

h o l d s :

1. Section 16 (10) of the Law “On Taxes and Fees” insofar as it applies to tax overpayments accumulated before coming into force of this law, i.e. 1 July 2003, does not comply with Article 1 and Article 105 of the Satversme of the Republic of Latvia.

2. Section 16 (10) of the Law “On Taxes and Fees” insofar as it applies to tax overpayments of the Applicant, Limited Liability Company “Industriālais termināls” accumulated before coming into force of this law, does not comply with Article 1 and Article 105 of the Satversme of the Republic of Latvia and is declared as null and void as from the date of adoption of it.

The Judgment is final and not subject to appeal.

The Judgment shall come into force on the date of publishing it.

Presiding Judge

G. Kūtris

Translated by Egija Labanovska, translator of the Constitutional Court.