



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT

on Behalf of the Republic of Latvia

in Riga on 17 February 2023

in Case. 2022-05-01

The Constitutional Court, comprised of: chairperson of the court hearing Aldis Laviņš, Justices Irēna Kucina, Gunārs Kusiņš, Jānis Neimanis, Artūrs Kučs, and Anita Rodiņa,

Having regard to an application, submitted by merchant IMEX PROVIDER LTD, registered in the British Virgin Islands,

on the basis of Article 85 of the *Satversme* of the Republic of Latvia and Para 1 of Section 16, Para 11 of Section 17 (1), as well as Section 19² and Section 28¹ of the Constitutional Court Law,

at the court hearing of 17 January 2023, reviewed in written proceedings the case

“On Compliance of Section 43 (4) of the Civil Procedure Law with the First Sentence of Article 92 of the *Satversme* of the Republic of Latvia.”

The Facts

1. On 14 October 1998, the *Saeima* adopted the Civil Procedure Law, which entered into force on 1 March 1999. Section 43 (4) of this law provided that a court or a judge, in view of the material situation of a natural person, had the right to exempt the person partly or fully from the payment of court expenses into the State

income, as well as postpone the adjudged payment of court expenses into the State income, or divide the respective payment into instalments.

By the law of 31 October 2002 “Amendments to the Civil Procedure Law”, Section 43 (4) of the Civil Procedure Law was expressed in new wording, providing that a court or a judge, upon consideration of the material situation of a natural person, exempted him or her partly or fully from the payment of court expenses in the State income, as well as postponed the adjudged payment of court expenses in the State income, or divided the payment thereof into instalments (hereafter also – the contested provision). Subsequently, the contested provision has not been amended and is in force in this wording.

2. The applicant –merchant IMEX PROVIDER LTD, registered in the British Virgin Islands (hereafter – the Applicant) – holds that the contested provision, insofar it does not envisage the possibility to exempt a legal person governed by private law from paying the court expenses, as being incompatible with the first sentence of Article 92 of the *Satversme* of the Republic of Latvia (hereafter – the *Satversme*).

It follows from the application and the documents annexed to it that the Applicant had turned to a court of general jurisdiction, submitting a claim for compensation of damages inflicted upon by the State of Latvia, which had allowed a violation of provisions of the European Union law. At the same time, the Applicant had requested to be partly exempt from the payment of the State fee, by determining the amount of the State fee in the amount of EUR 30 or any other commensurate amount. The judge of the first instance court had applied the contested provision and dismissed the said request, instructing the Applicant to pay the State fee in full amount, i.e., to pay in addition to EUR 30 that had already been paid the State fee in the amount of EUR 176 839.33. The Applicant, being unable to pay the State fee in the defined amount, had decreased the amount of the claim and paid the State fee in a smaller amount – compatible with the decreased claim.

It is noted in the application: the contested provision does not envisage that a legal person governed by private law, experiencing financial difficulties, could

be exempt from the obligation to pay the State fee for submitting the statement of claim, and thus, the Applicant's right to access to court, included in Article 92 of the *Satversme*, has been restricted. Moreover, in the Applicant's particular situation, the amount of the State fee had been so large that the Applicant, due to confiscation of property and lack of financial resources, had been unable to pay it.

The Applicant, referring to the judicature of the Constitutional Court and the European Court of Human Rights, noted that the State should establish regulation and, if necessary, envisage financial and organisational resources to ensure access to court to all persons, thus, also to a legal person. In certain instances, the State has the obligation to establish regulation that facilitates access to court. The practical and effective nature of the right to access to court may be deprived by excessive expenses of the proceedings, with respect to which a person's financial possibilities are not taken into consideration. Moreover, prohibition to grant exemption from paying court expenses to a group of persons might be incompatible with Para 1 of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter – the Convention).

The principle of the European Union law that Member States must ensure effective legal remedies for the protection of a person's rights that follow from the European Union law has been enshrined in Article 47 of the Charter of Fundamental Rights of the European Union (hereafter – the Charter). The principle of effective legal remedies, defined in Article 47 of the Charter, should be interpreted to mean that also legal persons may refer to it and that the assistance, which has been granted by applying this principle, may include, in particular, exemption from advance payment of litigation costs.

The contested provision had been adopted and promulgated in the procedure established in the *Satversme* and the Rules of Procedure of the *Saeima*, and also has been worded with sufficient clarity, allowing a person to understand the content of the rights and obligations following from it and foresee the consequences of application thereof. Thus, the restriction on fundamental rights, included in this provision, has been established by law. However, it should be taken

into account that more than twenty years have passed since the adoption of the contested provision. Pursuant to the principle of good legislation, the *Saeima* is said to have the obligation to review periodically the valid regulation to identify its shortcomings and, if necessary, amend it. The Applicant does not have at its disposal information that the *Saeima* had examined the compliance of the contested provision with the first sentence of Article 92 of the *Satversme*, Article 6 of the Convention, and Article 47 of the Charter.

In general, court expenses, including the State fee, has been established with the aim of decreasing the possibility for submitting unfounded statements of claim, as well as to cover, partly, the maintenance costs of courts. However, it should be taken into account that the aim of the contested provision is to ensure access to court also to such plaintiffs who, due to their financial status, are unable to pay the court expenses, in particular, the State fee for submitting the statement of claim. In guaranteeing the right to access to court, the State should ensure that access to court is ensured in compliance with the equality principle. It might be difficult or even impossible, due to their material conditions, to pay the State fee not only for natural but also for legal persons. Hence, all persons – both natural and legal – who due to their material conditions are objectively unable to cover the court expenses should be provided equal protection. Allegedly, the Applicant is unable to discern a legitimate aim for restricting access to court to all legal persons without exception.

Proportionality in determining State fees is said to be the balance needed to ensure to persons the right to a fair trial and, at the same time, deter them from submitting to court such claims that are insignificant or, on their merits, are only seemingly valid. Assuming that the legitimate aim of the contested provision is preventing submission of unfounded applications, the Applicant holds that the contested provision allows reaching this aim only in a very small part of cases. Instances when persons intentionally turn to court without grounds are said to be rare. In the majority of cases, the contested provision is said to restrict or even deny access to court to such persons who validly wish to exercise their right to bring a claim. By denying plaintiffs access to court in such cases, the State does not gain

the income for covering partly the costs of maintaining courts. Therefore, the contested provision is said to be unsuitable for reaching both the aim of preventing submission of unfounded applications to a court and the aim of covering partly the costs of maintaining courts.

Moreover, it is alleged that there are other, alternative measures for reaching the legitimate aim of the restriction on fundamental rights, included in the contested provision. The legislator could add to the contested norm the provision that a court or a judge, having considered the material circumstances of the respective person, could exempt, fully or partly, from paying court expenses not only natural but also legal persons. Allegedly, the criteria that should be taken into account in assessing whether a particular legal person could be exempt from paying the State fee could be derived both from the judicature of the European Court of Human Rights and the judicature of the Court of Justice of the European Union.

The benefit brought to society by the restriction, included in the contested provision, is said to not outweigh the damage inflicted upon a person. Pursuant to the Civil Procedure Law, in the case where the plaintiff has been exempted from paying court expenses and the claim is satisfied, the court expenses to be paid into the State income are adjudicated, proportionally to the satisfied part of the claim, to the defendant. Thus, it is alleged that court expenses fulfil the function of covering the costs of maintaining courts also if the plaintiff has been exempted from payment. The State might lose income from the State fee only in the case where a legal person has brought a claim that has to be dismissed in full; however, with respect to such cases, it is possible to include in the law such regulation that would envisage assessing the *prima facie* validity of the claim, as well as such regulation that would envisage, in the case of dismissing the claim, collecting the unpaid State fee in favour of the State.

It should be taken into account that, in the particular case, the State fee that the Applicant had to pay for submitting the statement of claim had been calculated in the amount of EUR 176 839.33. The Applicant is unable to pay the fee in this amount and, hence, it had been denied access to court in full. Moreover, such

amount of the State fee is said to be so large that the majority of legal persons, *inter alia*, companies that operate successfully, would be unable to pay it.

Hence, the Applicant holds that the State has failed to fulfil its positive obligation to protect all persons – both natural and legal – and adopt such legal provisions that would ensure access to court to all persons.

In the opinion, submitted after the Applicant had familiarised itself with the materials in the case, the Applicant points out: there are no grounds to consider that the same conclusions that had been made in the Constitutional Court's judgement of 23 February 2022 in case No. 2021-22-01 "On Compliance of the Second Sentence of Section 444¹ (3) of the Civil Procedure Law (in the Wording that was in Force from 1 March 2018 until 19 April 2021) with the First Sentence of Article 92 the *Satversme* of the Republic of Latvia " (hereafter also – case No. 2021-22-01) with respect to exempting a legal person governed by private law from paying a security deposit should not be drawn with respect to exempting such a person from paying the State fee.

3. The institution, which issued the contested act, – the *Saeima* – notes that the contested provision is compatible with the first sentence of Article 92 of the *Satversme*.

The first sentence of Article 92 of the *Satversme*, allegedly, includes the legislator's obligation to take the necessary measures to ensure access to court also to a person who, due to objective reasons, is unable to cover the costs related to legal proceedings.

The legislator has included in the provisions of the Civil Procedure Law, as well as in the special provisions of other laws several legal grounds for exempting, in accordance with law, parties in the case from paying court expenses and, thus, also the State fee. For the most part, the grounds, defined in these provisions, are such that, essentially, are applicable only to a natural person. However, Para 10 of Section 43 (1) of the Civil Procedure Law envisages a case where, due to objective reasons, a legal person governed by private law is exempt, on the basis of law, from paying the State fee. Namely, an administrator of insolvency proceedings is

exempt from this payment in actions brought for the benefit of such persons for whom insolvency proceedings had been declared, if these persons are a participant or victim of the relevant legal transaction or wrongful act in relation to which an action has been brought. Hence, the legislator had established legal regulation for exempting a person from the obligation to pay the State fee.

It is alleged that the case law shows that natural persons who have low but regular income and who have been granted the status of a low-income person or a family are exempt fully from paying court expenses into the State income. Whereas such natural persons who have not been granted the respective status but who have at least small regular income are not exempt fully from paying the court expenses and they have to pay court expenses in proportion to their material capacities. Hence, the legal regulation, defined by the legislator, is said to ensure access to court to all natural persons, *inter alia*, by taking into account their material circumstances. Whereas a legal person governed by private law is exempt from the duty to pay the State fee, on the basis of law, only after insolvency proceedings of this person have been declared in the procedure defined in the Insolvency Law. Thus, the currently valid legal regulation is said to ensure that the material circumstances of a legal person, which has been objectively established by declaring insolvency proceedings, may be the reason for exempting from the obligation to pay the State fee.

It has been recognised in the judicature of the Court of Justice of the European Union that with respect to granting legal assistance to legal persons a common principle that would be supported by all Member States does not exist. However, in those Member States that allow granting of legal assistance to legal persons, the practice to distinguish between legal persons whose aim is gaining of profit from legal persons who do not have this aim is said to be widespread. This is the reason why also the legislator has established different regulation with respect to such legal persons as the Applicant whose aim of operations is gaining profit.

Pursuant to Section 1 (2) of the Commercial Law, the purpose of commercial activity is gaining profit. Therefore, a merchant should be able to plan

its cash flow in the long term to be able to cover its litigation costs. If a merchant is unable to continue its business activities it should either become liquidated or look for ways to renew the ability to meet its commitments and participate in civil circulation. Moreover, engaging in commercial activities is a person's own choice, therefore, comparing of a merchant with natural persons who have low but regular income and who have received the status of a low-income person or family, or with natural persons who have not received the said status, although due to their material circumstances they are in a situation similar to that of a low-income person, is said to be inadmissible.

Allegedly, regulatory enactments envisage mechanism for providing assistance to a legal person, experiencing financial difficulties. For example, the legal protection proceedings or insolvency proceedings can be initiated. However, if a debtor does not submit to a court an application regarding the legal protection proceedings or insolvency proceedings, it is not exempt from the payment of court expenses or a deposit. Namely, even a legal person, experiencing financial difficulties, should be able to ensure the necessary financial resources for paying the State fee or the deposit.

The *Saeima* notes that when natural persons have been granted this special social status, the financial possibilities of these persons to pay the State fee have been exhausted. However, the persons who have not been granted the respective status, in cases where a court has doubts regarding their income and financial possibilities, often have to make at least a symbolic payment, which often is quite considerable, compared to the person's monthly income. However, in a case when insolvency proceedings of a legal person have not been initiated and an administrator of insolvency proceedings has not been appointed, it remains to be concluded that the financial possibilities of such a legal person have not been exhausted yet and, accordingly, there are no grounds for exempting such a legal person from the duty to pay the State fee.

It is contended that the obligation, established in the first sentence of Article 92 of the *Satversme*, does not mean that the legislator should set out such regulation, pursuant to which, whenever a legal person governed by private law

claims that it is experiencing financial difficulties and, therefore, is unable to pay the State fee should be exempt from this payment. Such regulation would be unable to reach the purpose of the State fee, would not ensure effective functioning of courts and thus, also such effective protection of a person's rights, as envisaged in the *Satversme*. When a court examines obviously unfounded applications, substantive resources of the State are spent; moreover, judges and court staff are said to spend lots of time for examining these and drawing up the case files in compliance with statutory requirements. Using the time and other resources of the court for examining unfounded complaints and assessing the material circumstances of a legal person even in the absence of certain indications of insolvency, in accordance with criteria that are not typical of the Latvian legal system, to decide on the matter of the possible exemption, full or partial, of this legal person from paying the State fee is said to be disproportional and incompatible with the principle of procedural economy. This could also hinder the examination of the private law dispute on its merits. A situation where the court could examine the valid complaints of other persons sooner and, thus, protect the rights of these persons more effectively would be more in tune with society's interests.

Allegedly, the legislator has established appropriate legal regulation that ensures access to court to all persons, *inter alia*, also a legal person governed by private law.

4. The summoned person – the Ministry of Justice – notes that the findings, expressed in the Constitutional Court's judgement of 23 February 2022 in case No. 2021-22-01, could be attributed also to the contested provision.

By this judgement of the Constitutional Court, the second sentence of Section 444¹ (3) of the Civil Procedure Law, in the wording that was in force from 1 March 2018 until 19 April 2021, and the second sentence of Section 43¹ (2) of the Civil Procedure Law, insofar these provisions did not envisage the right of a legal person governed by private law to ask the court to decide on exempting it from the obligation to pay a security deposit for submitting an ancillary complaint,

were recognised as being incompatible with the first sentence of Article 92 of the *Satversme*. The findings, expressed in the judgement in case No. 2021-22-01, could be attributed also to the provision contested in the present case, which, similarly to the case of security deposit, does not envisage the right of a legal person governed by private law to request the court to decide on exempting it from paying court expenses. The findings expressed in the judgement in case No. 2021-22-01, in general, show that the law should provide for the possibility for a legal person to request a court to decide on exempting it from paying court expenses. However, at the same time, this should not mean that the legislator should envisage such regulation, pursuant to which a legal person governed by private law, as soon as it claims being in financial difficulties and, therefore, unable to pay court expenses, should be immediately exempted from it.

5. The summoned person – the Ombudsman – holds that the contested provision is incompatible with the first sentence of Article 92 of the *Satversme*.

The contested norm, allegedly, restricts a person's right, included in Article 92 of the *Satversme*, to a fair trial; however, the restriction on fundamental rights had been established by law, adopted in due procedure.

Substantially, a State fee is the most suitable means for reducing submission of unfounded complaints, encouraging litigants to assess more carefully the need for legal proceedings. Moreover, legal persons have been indirectly imposed the obligation to plan their commercial activities responsibly and the use of financial resources in way that would allow them to cover their litigation costs. Thus, the restriction on fundamental rights has a legitimate aim and the measures, chosen by the legislator, in general are suitable for reaching this aim.

However, taking into account the Constitutional Court's jurisdiction, it can be concluded that the contested provision is incompatible with Article 92 of the *Satversme*. In the Constitutional Court's case No. 2021-22-01, the issue related to the right of legal persons governed by private law to request exemption from paying the security deposit for submitting an ancillary complain was examined, and the findings, included in the respective judgement, should be applied also in

the present case. This is said to be of particular importance in view of the fact that, often, the amount of a security deposit is smaller than the amount of the State fee. The Constitutional Court has pointed out in case No. 2021-22-01: a situation where a person is denied access to court only because it lacks financial resources for paying the security deposit is inadmissible. In a case where a legal person is unable to pay the State fee, in turn, such consequences would set in almost in all cases, therefore the Constitutional Court's findings, expressed in its judgment in case No. 2021-22-01, should be all the more applicable to the provision contested in the present case. It should also be taken into account that legal persons governed by private law may be different – both such that are profit-making by their nature and such that are not.

The Ombudsman subscribes to the statement made in the Constitutional Court's judgement in case No. 2021-22-01 that a legal person governed by private law should be able to plan its financial resources in a way to be able to cover its expenses; however, regarding the matter of exercising the right to a fair trial, there are no objective grounds for the assumption that all legal persons governed by private law should be able to provide the financial resources needed for paying the security deposit for submitting an ancillary complaint. An assumption like this could cause a situation, inadmissible in a democratic state governed by the rule of law, where a person does not have the possibility to exercise its right to a fair trial because it lacks the financial resources necessary to make this payment.

Although a legal person governed by private law may be exempted from paying the State fee if, in accordance with the Insolvency Law, the insolvency proceedings of this person have been declared, this regulation is said to be too narrow and unable to cover a number of cases when a legal person governed by private law might be unable to pay the State fee. Thus, also a legal person governed by private law should be ensured the possibility to request a court to decide on exempting it from paying the State fee.

6. The summoned person – the Representative of Latvia before International Human Rights Organisations – points to the judicature of the

European Court of Human Rights, which might be relevant in examining the compliance of the contested provision with the first sentence of Article 92 of the *Satversme*.

The right to access to court, guaranteed in Para 1 of Article 6 of the Convention, is said not to be absolute, and the State enjoys considerable discretion, in determining the cases when and the scope in which to restrict this right; however, the respective restrictions must be determined by law, aimed at reaching the legitimate purpose and proportionate. Moreover, restrictions on persons' right to access to court may not be such as to deprive, essentially, a person of the right to exercise its right to a fair trial effectively.

The requirement to make any payment before submitting a claim to a court should be considered as a restriction on a person's right to access to court. Pursuant to the judicature of the European Court of Human Rights, in verifying whether, in the particular situation, the restriction on fundamental rights is proportional there are several important criteria: the amount of the required sum; the stage of legal proceedings and the moment when this payment must be made, as well as impact upon the proceedings in general; substantiation for the need of the payment; a person's possibilities to pay this amount and the possibilities to request easements or exemptions from this obligation to make such a payment, as well as other considerations that depend on each particular situation.

It has been recognised in the judicature of both the European Court of Human Rights and the Constitutional Court that the principles that pertain to the right to access to court and the procedural safeguards related to this right are equally applicable to both natural and legal persons. I.e., there are no grounds for excluding legal persons from the scope of procedural safeguards. Moreover, it has been recognised already that regulation, which, in general, does not allow any person or a group of persons to request exemption from paying court expenses, *inter alia*, payment of the State fee, *per se* might be incompatible with Article 92 of the *Satversme* and Para 1 of Article 6 of the Convention.

In the present case, the findings made in the Constitutional Court's previous judicature regarding the right of a legal person governed by private law to request

exemption from payment of the security deposit for submitting an ancillary complaint are said to be important.

7. The summoned person – Dr. iur. Daina Ose, docent at the Faculty of Law, the University of Latvia, guided by the actual circumstances of the present case, points out that the legal person governed by private law has exercised its right to turn to court un submitted a claim regarding collection of losses inflicted in the amount, in which it is able to pay the State fee for the possible amount of losses. This means that the right to access to court of a legal person governed by private law has not been substantially denied but could be restricted by the possible amount of financial resources, planned in due time, which the respective legal person is able to channel for legal proceedings that arise or may arise as the result of actions taken by governing bodies of the legal person or their failure to act, as well as decisions made by them.

In difference to other proceedings in court, in civil proceedings, implementation of certain procedural actions, *inter alia*, the possibility of submitting or not submitting a claim to court, determining the subject of the claim, the grounds and the claim are said to be expression of a person's free will. The choice of instruments, which a person, as a party in the case, can select within the dispositive and adversary principles, is said to be quite extensive. Thus, for example, the Civil Procedure Law allows the plaintiff to change the grounds of the claim or subject of the claim or increases the amount of claim in writing before examination of the case on its merits has commenced Increasing the amount of claim later allows the plaintiff to pay the State fee for this part of the claim later. The obligation to pay the State fee, which has been established by law, for a person who wants to turn to court for the protection of their civil rights, which have been infringed upon or contested, or their lawful interests *per se* is not contrary to the right, included in the first sentence of Article 92 of the *Satversme*.

Currently, the possibility for a legal person governed by private law to be exempt from paying court expenses has been defined in Para 10 of Section 43 (1) of the Civil Procedure Law, i.e., in the case of this person's insolvency if the

insolvency administrator submits a claim to a court on behalf of the insolvent legal person. In such cases, the material circumstances of the legal person have been reviewed within the framework of certain procedure and it complies with signs of insolvency. Thus, a court or a judge cannot develop doubts regarding the legal person's ability to make certain payments in other legal proceedings.

Allegedly, there is no uniform understanding among the Member States of the European Union regarding exemption of a legal person governed by private law from paying the full amount of court expenses or a certain part of it due to the material circumstances of this person. Whether the possibility to request exemption from paying court expenses should be ensured to legal persons is said to be a matter of law policy, which, in a situation where such right would be granted to a broad circle of persons, might have an impact upon the State budget. Whereas the inclusion of certain criteria for assessing the material circumstances of a legal person governed by private law is said not to be expedient, in view of the diversity of possible situations. Similarly to the way, in which the material circumstances of a natural person are assessed, also the ability or inability of a legal person governed by private law to pay court expenses should be determined by examining the individual circumstances, evidence and substantiation submitted by the particular legal person.

Exempting certain legal persons, whose aim is protection of public or collective interests instead of gaining profit, from paying court expenses in cases where the respective legal person meets certain criteria would comply with the regulation of Section 43 (1) of the Civil Procedure Law. However, these assessment criteria should be linked to the aim set for the activities of the respective legal person rather than to its material circumstances.

8. The summoned person – sworn advocate *Mg. iur.* Māris Melķis – holds that the contested provision is incompatible with the first sentence of Article 92 of the *Satversme*.

The present case is said to be similar to case No. 2021-22-01, therefore, first and foremost, it would be useful to specify to limits of the claim under

consideration, I.e., it should be specified whether the conclusions made in the present case will be attributed to the right to request exemption from paying those State fees, which have been calculated in accordance with the rules set out in Para 1 of Section 34 (1) of the Civil Procedure Law or will they be attributed, in equal extent, to all State fees, irrespectively of the part of Section 34 of the Civil Procedure Law, on the basis of which they have been calculated. It is said to be important because, substantially, five different mechanisms for calculating the State fees for various categories of cases as well as different amounts of the State fees have been envisaged in Section 34 of the Civil Procedure Law. Likewise, it should be taken into account that the contested provision regulates not only exemption from the State fee but also exemption from paying other kinds of court expenses into the State income, as well as defines the right of a natural person not only to request exemption from paying court expenses but also postpone the adjudged payment of court expenses into the State income or to divide this payment into instalments.

It is important to define the criteria that courts should take into account when deciding on exempting legal persons governed by private law from paying the State fee. Moreover, in defining these criteria, several basic rules should be adhered to. Firstly, those legal persons governed by private law, which have not been established with the aim of gaining profit and are not subject to the legal regulation of the Commercial Law, should be separated. Courts should be granted greater discretion in deciding on exempting these person from paying the State fee. Whereas with respect to legal persons of private law – merchants, the criteria should be set in a way to avoid making too extensive exceptions from the solvency presumption and causing contradictions with the purposes of the currently valid regulation on insolvency. Not only the material circumstances of the legal person but, simultaneously, also the causes leading to insufficient financial resources, should be assessed. Whereas, in assessing the causes of insufficient financial resources, differentiation should be made between causes related to: 1) general situation in the market, e.g., currently inflation is relevant, and 2) poor planning of commercial activities by the merchant itself, which has led to insufficiency of

financial resources, which is in no way related to the legal proceedings, in which exemption from the payment of the State fee is requested. I.e. the causal relations of the dispute to be examined in the legal proceedings, in connection with which exemption from paying the State fee is requested, with insufficiency of financial resources should be assessed as the main criterion.

Alongside establishing criteria, Subparagraph “f” of Para 1 of Section 34 (1) of the Civil Procedure Law should also be reviewed, insofar, by applying the mechanism for calculating the State fee, included in this provision, disproportionately large State fee may be calculated, which even merchants that operate successfully would be unable to pay. No grounds can be discerned as to why the maximum amount of the fee has not been defined in Subparagraph f” of Para 1 of Section 34 (1) of the Civil Procedure Law.

9. The summoned person – sworn advocate *Mg. iur.* Gunvaldis Davidovičs – holds that the contested provision is incompatible with the first sentence of Article 92 of the *Satversme*.

Although the State fee and the security deposit are two different institutions, their differences are not that substantial to impact general conclusions on access to court of a legal person governed by private law that does not have sufficient financial resources for making the respective payment. Therefore, the arguments expressed in the Constitutional Court’s judgement of 23 February 2022 in case No. 2021-22-01 should be taken into account and are fully attributable also to the basic matter in the present case.

The State fee and the security deposit are two separate institutions because the mechanism of applying thereof differ; however, the purpose for which the payment of the State fee or the security deposit has been introduced are said to be similar and overlapping. Ensuring functionality of the court system, as well as deterring persons from submitting unfounded statements of claim have been recognised as the legitimate aim for introducing the State fee for submitting the statement of claim. Moreover, the amount of foreseeable litigation costs may cause

also indirect effect, i.e., encourage the debtor to meet the commitments voluntarily, thus, preventing the need to exercise the right to turn to court.

In analysing the common and different features of the State fee and the security deposit, it should be noted that, usually, the security deposit is paid in those cases where the party in the case requests re-examination of a respective ruling by a court, except a judgment by the first instance court, or, in other words, establishing a probable judicial error. Whereas the payment of the State fee, most often, is linked to establishing the civil law liability of the respective party of the dispute; i.e., a situation where the respective party in the dispute has failed to meet its commitments or fulfil its duties voluntarily and, thus, has given grounds to the other party for initiating legal proceedings.

In terms of the obligation to pay the State fee and the security deposit, the procedural stage, in which the party in the case must make the respective payment, also should be taken into account. The Civil Procedure Law envisages payment of the security deposit in cases where the legal proceedings already have been initiated, i.e., when the respective party in the case already exercises the fundamental right established in the *Satversme*, i.e., the right to access to court. If a legal person governed by private law, experiencing financial difficulties, is unable to pay the security deposit, defined in the Civil Procedure Law, then its possibilities to resolve its financial difficulties are said to be very limited, in view of the comparatively short period of time, within which the respective procedural document, for which the security deposit must be paid, has to be submitted. Therefore the State should take the necessary measures to ensure access to court also to such legal person governed by private law, which, due to objective reasons, is unable to make the payments related to the legal proceedings.

The assessment of the State fee, which has been defined in the Civil Procedure Law for submitting the statement of claim to a court, is slightly different. It should be taken into account that the claim *per se* is asset, having its own value, which is usually reflected in the balance sheet of the particular legal person and which, accordingly, may enter civil circulation. Thus, bringing a claim in court is not the only measure, which can be used by a legal person governed by private

law, which is experiencing financial difficulties, to exercise its right, defined in the third sentence of Article 92 of the *Satversme*, to commensurate compensation where its rights have been violated without basis. Likewise, the terms set for submitting a statement of claim to a court are usually not as short as are the ones for submitting an ancillary complaint, a cassation complaint or another respective procedural document, for which a security deposit must be paid. Usually, bringing of a claim is linked to the limitation period for exercising subjective rights or is done within the framework of a preclusive term. Accordingly, in this case, a legal person governed by private law has considerably more time for attracting the necessary financial resources.

Full or partial exemption of a legal person governed by private law from paying the State fee would mean that society as a whole would undertake to cover the respective expenses. In general, it can be concluded that society should not finance the commercial activities of individual subjects but should participate in protecting the rights and interests of such legal persons governed by private law, which serve important public purposes. If the legal person governed by private law is a merchant that is profit-making by nature then the setting of the respective exemption could be examined also in terms of free and fair competition and state aid, i.e., by analysing the treatment of other market participants in comparable situations. It should be taken into account that transfer of claim into private law circulation – through ceding the claim or through pledge – could be possible. Likewise, the obligation of a legal person governed by private law, which is experiencing financial difficulties, to pay the State fee might be linked not only to the limitation period or preclusive term for bringing the claim but also to other terms defined in the Civil Procedure Law. For example, in providing security for a claim, in particular, if the claim has to be secured before bringing the claim, or the case of submitting an appellate complaint, the solution regarding full or partial exemption from making the payments, established by the State, needs to be instantaneous. Thus, in some cases, the contested provision may restrict the right to access to court of a legal person governed by private law.

Pursuant to the judicature of the European Court of Human Rights, such regulation, which does not allow at all a person to request exemption from paying the State fee or other similar payments, *per se* might be incompatible with Para 1 of Article 6 of the Convention. Although the State does not have the obligation to ensure to a legal person governed by private law exemption from paying the State fee, the fact that a legal person governed by private law does not have the right at all to request the court to decide on exempting it from paying the State fee is to be considered as a restriction on the right to access to court.

The Findings

10. The Applicant requests the Constitutional Court to assess whether the contested provision, insofar it does envisage exempting legal persons governed by private law from court expenses, is compatible with the first sentence of Article 92 of the *Satversme*.

10.1. The contested provision provides that a court or a judge, upon consideration of the material situation of a natural person, exempts the person partly or fully from the payment of court expenses in the State income, as well as postpones the adjudged payment or divides it into instalments.

Thus, the contested provision pertains to court expenses, which, pursuant to Section 33 (2) of the Civil Procedure Law, comprise both the State fee and expenses related to hearing the case – amounts that have to be paid to witnesses and experts, expenses related to interviewing witnesses or conducting on-site inspections; expenses related to searching the defendant or a witness; expenses related to the enforcement of the court’s judgement; preparing writs of summons and other court documents, delivery, issuing, translation thereof; expenses related to return of written evidence; expenses related to preparing and issuing the text of the announcement; expenses related to securing the claim or to temporary protection. Moreover, the contested provision pertains to different stages in civil proceedings. For example, pursuant to the first and the fourth part of Section 34 of the Civil Procedure Law, the State fee must be paid for each statement of claim –

the original claim or counterclaim, application of a third person with a separate claim for the subject-matter of the dispute, submitted in a procedure already commenced, application in a case of special forms of procedure, appellate complaint, as well as other applications, envisaged in this Section, that are submitted to the court.

In reviewing a case that has been initiated on the basis of a constitutional complaint, the Constitutional Court, on the one hand, must take into consideration the requirements set out in the Constitutional Court Law and examine the situation, insofar as it is necessary for protecting the fundamental rights of the submitter of the constitutional complaint, but, on the other hand, it must comply with the principle of legal equality and examine the situation of all those persons who are in similar and comparable circumstances with the submitter of the constitutional complaint. If the legal provision, which is contested in the constitutional complaint, pertains to a broad set of different situations, the Constitutional Court must specify the extent to which it will review the contested provision (*see, for example, Judgement by the Constitutional Court of 17 December 2020 in Case No. 2020-18-01, Para 13*). It is related to the fact that the principle of a state governed by the rule of law requires the Constitutional Court, in accordance with its jurisdiction, to ensure the existence of such legal system, where the presence of legal regulation that is incompatible with the *Satversme* or other superior legal norms would be prevented as completely as possible (*see Judgement by the Constitutional Court of 24 November 2017 in Case No. 2017-07-01, Para 12.2.*).

Hence, in the present case, the scope, in which the constitutionality of the contested provision should be reviewed, must be specified.

10.2. It follows from both the text of the contested provision and the practice of applying this provision that it envisages the possibility to exempt fully or partly from payment of court expenses a natural person if such circumstances are established that prove that this person is incapable of paying the court expenses due to their material circumstances. The same applies also to a judge's decision, included in the contested provision, to postpone the payment of the adjudged court expenses or divide these in instalments. A legal person governed by private law,

however, is not a subject referred to in this provision. Namely, a legal person governed by private law does not have the right to request exemption from paying court expenses in the State income, or to postpone the payment of adjudged court expenses or divide them into instalments (*see Rīgas apgabaltiesas 2020. gada pētījuma „Personu atbrīvošana no tiesas izdevumu un drošības naudas samaksas valsts ienākumos civillietās” 20. un 21. lp.*).

Thus, the legislator has envisaged that only a natural person, if such circumstances are established that prove that this person, due to their material circumstances, is unable to pay court expenses, may be exempted by a court's decision fully or partly from paying court expenses into the State income, as well as the payment of court expenses, adjudged to them, may be postponed or divided into instalments. Neither the contested provision nor other provisions of the Civil Procedure Law envisage the right of a legal person governed by private law to request the court, by considering, *inter alia*, the material circumstances of this person, to exempt it fully or partly from paying the court expenses into the State income or to postpone or divide into instalments the payment of adjudged court expenses into the State income.

The Constitutional Court has found that when a case has been initiated on the basis of a constitutional complaint the actual facts of the case, in which the contested provision has infringed upon the applicant's fundamental rights, should be seen as being of essential importance (*see, for example, Judgement by the Constitutional Court of 25 October 2011 in Case No. 2011-01-01, Para 12*).

It follows from the materials in the case that the contested provision had been applied to the Applicant – a legal person governed by private law – in a situation where it had requested the court to exempt it partly from paying the State fee for submitting the statement of claim. The first instance court had dismissed this request, concluding that the Applicant was a legal person governed by private law and the contested provision did not envisage exempting a legal person governed by private law from paying the State fee for submitting the statement of claim. Therefore, the court recognised that the Applicant had to pay the State fee for bringing the respective claim in accordance with Subparagraph “f” of Para 1 of

Section 34 (1) of the Civil Procedure Law (*see, Case Materials, Vol. 1, pp. 152 – 154*).

Thus, considering the arguments referred to in the application and other materials in the case, it can be concluded that the basic matter in the case is whether a legal provision, which does not envisage the right of a legal person governed by private law to request a court to decide on exempting it fully or partly from the obligation to pay the State fee for submitting the statement of claim, complies with the first sentence of Article 92 of the *Satversme*.

In specifying the scope, in which the constitutionality of the contested provision must be reviewed, it also should be taken into account that, pursuant to Section 34 of the Civil Procedure Law, different mechanisms of calculating the State fees and amounts thereof have been defined for different categories of civil cases. However, irrespectively of these differences, which may influence a person's capability of paying the State fee, in terms of legal effects, the contested provision is equally applicable to submitters of statements of claim. I.e., also in other cases, the contested provision does not envisage the right of a legal person governed by private law the right to request the court to decide on its full or partial exemption from the obligation to pay the State fee for submitting the statement of claim. In assessing the constitutionality of the contested provision, regardless of the amount of the State fee and the applied mechanism for calculating thereof, comprehensive and objective review of the case is ensured, as well as procedural economy and existence of such legal system where, as completely and comprehensively as possible, regulation, which is incompatible with the *Satversme* or other superior legal provisions, is eliminated (*compare, see Judgement by the Constitutional Court of 6 April 2021 in Case No Nr. 2020-31-01, Para 12.2.*). Moreover, the *Saeima*, in its written response, has not examined the constitutionality of the contested provision, depending on the applied mechanism for calculating the State fee (*see Case Materials, Vol. 2, pp. 10 – 17*). Neither have the summoned persons noted that different conclusions regarding the compatibility of the contested provision with the first sentence of Article 92 of the *Satversme*

could be drawn, depending on the amount of the required State fee and the mechanism for calculating it.

Hence, the Constitutional Court will review the compliance of the contested provision with the first sentence of Article 92 of the *Satversme*, insofar it does not envisage for a legal person governed by private law the right to request a court to decide on exempting it from the obligation to pay the State fee for submitting the statement of claim.

11. The first sentence of Article 92 of the *Satversme* provides: “Everyone has the right to defend his or her rights and lawful interests in a fair court.”

The right to a fair trial, included in Article 92 of the *Satversme*, is a general legal principle (*see Judgement by the Constitutional Court of 25 March 2022 in Case No. 2021-25-03, Para 10*). The substance of the right to a fair trial requires that not only a natural person but also a legal person governed by private law should be able to exercise this right (*see Judgement by the Constitutional Court of 23 February 2022 in Case No. 2021-22-01, Para 10.3.*).

Although the first sentence of Article 92 of the *Satversme* does not guarantee to a person the right to have any issue important for them adjudicated in court, the State, however, must ensure effective protection to any person whose rights or lawful interests have been infringed upon (*compare, see Judgement by the Constitutional Court of 23 May 2017 in Case No. 2016-13-01, Para 13*). In a democratic state governed by the rule of law, making the exercising of the right to a fair trial dependent on a person’s financial possibilities is inadmissible (*see Judgement by the Constitutional Court of 23 February 2022 in Case No. 2021-22-01, Para 10*). The legislator’s duty to take the necessary measures to ensure the accessibility of a court also to a person who does not have sufficient financial resources for making certain mandatory payments, related to legal proceedings, follows from the right to a fair trial, for example, by envisaging legal regulation for exempting such persons, fully or partially, from the obligation to make certain payments. The fact that a person does not have, for example, the right to request the court to exempt them fully or partly from making certain mandatory payments,

influences the person's possibilities to exercise their right to a fair trial (*compare, see Judgement by the Constitutional Court of 23 February 2022 in Case No. 2021-22-01, Para 10 and Para 10.3.*).

11.1. The Constitutional Court has repeatedly noted that the first sentence of Article 92 of the *Satversme* should be concretised in conjunction with Article 6 of the Convention and the judicature of the European Court of Human Rights in the application thereof. In concretising the content of the *Satversme*'s provision, a solution that would ensure harmony between the provisions of the *Satversme* and the Convention should be sought (*see, for example, Judgement by the Constitutional Court of 26 March 2020 in Case No. 2019-15-01, Para 10, and Judgement of 23 February 2022 in Case No. 2021-22-01, Para 10.1.*).

The Constitutional Court already has concluded that, pursuant to the judicature of the European Court of Human Rights, in determining the obligation to make payments related to legal proceedings, the capability of every person, including a legal person governed by private law, to make these payments should be taken into account. This means that the State has the obligation to take the necessary measures to ensure access to court also to such legal person governed by private law, which, due to objective reasons, is unable to make the payments relates to legal proceedings (*see Judgement by the Constitutional Court of 23 February 2022 in Case No. 2021-22-01., Para 10.1.*).

In a case that was similar to the present case, the European Court of Human Rights, taking into account the financial difficulties, experienced by the respective legal persons and due to which these legal persons were unable to pay the established State fees, noted that States had the discretion to determine the procedure for calculating the State fee, depending on the total amount of the claim; however, the respective system should be flexible enough to allow the parties – also legal persons governed by private law – to request full or partial exemption from paying the State fee or reduction of the State fee (*see Judgement by the European Court of Human Rights of 3 May 2022 in Case “Nalbant and Others v. Turkey”, Application No. 59914/16, Para 40.*).

11.2. Latvia, being aware of the supremacy of the European Union law, included in the second part of Article 68 of the *Satversme*, and in adopting and applying national legal provisions, must take into consideration legal acts of the European Union that strengthen democracy and the interpretation thereof, consolidated in the judicature of the Court of Justice of the European Union (*compare, see Judgement by the Constitutional Court of 6 March 2019 in Case No. 2018-11-01, Para 16.2.*).

Pursuant to Para 1 of Article 6 of the Treaty on the European Union, the Union recognises the rights, freedoms and principles, set out in the Charter of Fundamental Rights of the European Union, and the Charter has the same legal value as the Treaty on the European Union and the Treaty on the Functioning of the European Union.

The first and the second part of Article 47 of the Charter set out that everyone whose rights and freedoms, guaranteed by the law of the European Union, are violated has the right to an effective remedy, in compliance with the provisions envisaged in this article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Pursuant to the third part of Article 47 of the Charter, legal aid is made available to those who lack sufficient resources, insofar such aid is necessary to ensure effective access to justice.

Effective judicial legal remedies is a general principle of the European Union law, which is based on the common constitutional traditions of the Member States, as well as Article 6 and Article 13 of the Convention. The said principle applies also to Member States when they implement legal acts of the European Union. The Constitutional Court has already concluded that, pursuant to the judicature of the Court of Justice of the European Union, the right to legal aid comprises also exemption from paying the litigation expenses and it may be attributed also to a legal person governed by private law (*see Judgement by the Constitutional Court of 23 February 2022 in Case No. 2021-22-01, Para 10.2.*).

Hence, in the areas to which the European Union law applies, the principle of effective legal remedies, specified in the third part of Article 47 of the Charter, is applicable also to a legal person governed by private law.

11.3. Thus, in accordance with the first sentence of Article 92 of the *Satversme*, the legislator has the obligation to take the necessary measures to ensure access to court to all persons, also a legal person governed by private law with insufficient financial resources for paying the State fee for submitting the statement of claim. If the legislator has not taken measures to ensure access to court to all persons, also a legal person governed by private law with insufficient financial resources, then it has not fulfilled the obligation, included in the first sentence of Article 92 of the *Satversme* properly, i.e., this obligation has not been fulfilled in compliance with general legal principles and other provisions of the *Satversme*.

Thus, the first sentence of Article 92 of the *Satversme* comprises the legislator's obligation to ensure access to court to all persons, also a legal person governed by private law with insufficient financial resources for paying the State fee for submitting the statement of claim.

12. If the first sentence of Article 92 includes the legislator's obligation to take measures that allow exercising the right to a fair trial then the Constitutional Court examines whether the legislator has fulfilled this obligation. Moreover, if this obligation envisages drafting and adoption of regulation with particular content then the Constitutional Court assesses whether the legislator has fulfilled its duty properly (*compare, see Judgement by the Constitutional Court of 7 February 2014 in Case No. 2013-04-01, Para 19.2., and Judgement of 23 February 2022 in Case No. 2021-22-01, Para 11*).

In view of the basic matter in the present case and the content of the legislator's obligation, included in the first sentence of Article 92 of the *Satversme*, the Constitutional Court must establish whether:

1) measures have been taken, i.e., legal regulation for exempting a legal person governed by private law from the obligation to pay the State fee for submitting the statement of claim has been adopted;

2) these measures have been taken properly – in accordance with general legal principles and other provisions of the *Satversme*.

13. To verify whether the legislator has taken measures to fulfil its obligation, included in the first sentence of Article 92 of the *Satversme*, the Constitutional Court must establish, first and foremost, what the civil procedural regulation with respect to the State fee for submitting the statement of claim is like. Within the framework of this assessment, it must be established whether the legislator has introduced regulation for exempting a legal person governed by private law from the obligation to make this payment.

The basic civil procedural rules, which include also provisions on court expenses, are included in the Civil Procedure Law. Pursuant to the Civil Procedure Law, court expenses are the State fee and the office fee (*see Section 33 (2) of the Civil Procedure Law*). Pursuant to Section 34 (1) of the Civil Procedure Law, a State fee must be paid for, *inter alia*, each statement of claim, which is submitted to the court.

The State fee is a mandatory payment into the State income. Generally, court expenses, including the State fee, have been introduced to: 1) compensate partly for the State's expenses required to finance functioning of courts; 2) reimburse court expenses to the party who receives a favourable court ruling; 3) encourage debtors to meet their commitments voluntarily; 4) deter person from bringing unfounded claims or claims for small amounts to courts (*see also: Davidovičs G., Rozenbergs J., Torgāns K. Civilprocesa likuma 33. panta komentārs. Grām.: Torgāns K. (zin. red.) Civilprocesa likuma komentāri. I daļa (1.–28. nodaļa). Otrais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2016, 124. lpp.*).

The legislator has included in the provisions of the Civil Procedure Law, as well as in the special legal provisions of other laws several grounds for exempting

a party in the case, in accordance with law, from paying court expenses and, thus, also the State fee. With respect to a legal person governed by private law, only one instance like this is envisaged when such a person, on the basis of law, is exempt from paying the State fee for submitting the statement of claim. I.e., pursuant to Para 10 of Section 43 (1) of the Civil Procedure Law, and administrator is exempt from this payment in claims brought for the benefit of such persons for whom insolvency proceedings had been declared, if these persons are a participant or victim of the relevant legal transaction or wrongful act in relation to which an action has been brought.

Thus, the legislator has established legal regulation, pursuant to which a legal person governed by private law, on the basis of law, in certain claims has been exempt from the obligation to pay the State fee for submitting the statement of claim if, in accordance with the Insolvency Law, insolvency proceedings of this person have been declared. If a legal person governed by private law lacks financial resources but its insolvency proceedings have not been declared then the exemption, defined in Para 10 of Section 43 (1) of the Civil Procedure Law, does not apply to this person.

Hence, the legislator has established legal regulation for exempting a legal person governed by private law from the obligation to pay the State fee for submitting the statement of claim.

14. To assess whether the measures have been taken properly, i.e., in accordance with general legal principles and other provisions of the *Satversme*, the Constitutional Court must establish whether the legal regulation, adopted by the legislator, ensures access to court also to a legal person governed by private law, which lacks sufficient financial resources for paying the State fee for submitting the statement of claim.

It was concluded already in Para 13 of this judgement that the legal regulation, defined by the legislator, envisages that a legal person governed by private law can be exempt from the obligation of paying the State fee for submitting the statement of claim only in certain instances after the insolvency

proceedings of this person have been declared. Neither the contested provision nor other legal provisions envisage a mechanism that would relieve the obligation of a legal person governed by private law to pay the State fee for submitting the statement of claim. This means that, irrespective of the capability of a legal person governed by private law to pay the State fee for submitting the statement of claim, if its insolvency proceedings have not been declared this legal person governed by private law is obliged to make this payment.

14.1. The *Saeima* notes that the legal regulation currently in force ensures that a legal person's financial difficulties, which have been objectively established by declaring the insolvency proceedings, may be the grounds for exempting the person from the obligation to pay the State fee for submitting the statement of claim. Allegedly, pursuant to Section 1 (2) of the Commercial Law, the purpose of commercial activities is gaining profit. Therefore a merchant should be able to plan its cash flow in the long term in a way that would allow it to cover its expenses, *inter alia*, litigation costs. Moreover, engaging in commercial activities is said to be the person's own choice, therefore comparison of a merchant with natural persons, who in the case law are fully exempt from paying the State fee into the State income only if they have been granted the status of a low-income person or family, is said to be inadmissible (*see Case Materials, Vol. 2, pp. 14 – 17*). Thus, the *Saeima's* statements allow concluding the following: the grounds for not allowing to exempt a legal person governed by private law by a court's decision fully or partly from the obligation to pay the State fee for submitting the statement of claim have been the assumption that every legal person governed by private law, unless its insolvency proceedings have been declared, must plan its cash flow in a way that would allow it cover its own expenses, *inter alia*, litigation costs, i.e., this person should have sufficient financial resources for paying the State fee for submitting the statement of claim.

The European Court of Human Rights has noted that it is not enough to refer to the assumption regarding the solvency of a legal person governed by private law if the capability of the particular person to make the required payment is assessed. Likewise, violation of Article 6 of the Convention has been established in the case

where a national court, refusing to examine a complaint by a legal person governed by private law because the payment, related to legal proceedings, defined in legal provisions, had not been made, had not assessed at all the capability of the respective person to pay the required amount of money because the regulatory enactments of the members state prohibited the court from deciding on exempting a legal person governed by private law from the obligation to make the particular payment (*see Judgement by the European Court of Human Rights of 20 December 2007 in Case “Paykar Yev Haghtanak Ltd v. Armenia”, Application No. 21638/03, Para 49*).

Different types of legal persons governed by private law have been defined in Latvia’s regulatory enactments. For example, pursuant to Section 135 1) of the Commercial Law, the status of a legal person has been granted to a capital company – a limited liability company and a stock company, which, pursuant to Section 1 (2) of the Commercial Law engages in commercial activities with the purpose of gaining profit. At the same time, for example, pursuant to Section 3 of the Associations and Foundations Law, the status of a legal person is granted also to an association, which has been founded to achieve the goal specified in its articles of association, which does not have a profit-making nature, and to a foundation, which has been established to achieve a goal specified by the founder and which, likewise, does not have a profit-making nature. (*see Section 2 of the Associations and Foundations Law*). Whereas pursuant to the Law on Religious Organisations, the status of a legal person is granted to a religious organisation, but in accordance with the Law on Political Parties – to a political party. Moreover, the Civil Procedure Law envisages also the rights of legal person registered abroad to turn to court in the procedure set out in law to defend their violated or contested civil rights or lawful interests.

Thus, within the Latvian legal system, the status of a legal person has been granted to diverse subjects of law – both to such that have been established with the purpose of gaining profit and also to such that exist for other purposes, unrelated to gaining profit. However, also such legal person that has been established for the purpose of making profit, although its insolvency proceedings

have not been declared, may experience financial difficulties, which affect its capability to pay the State fee for submitting the statement of claim. In the present case, also, the Applicant's insolvency proceedings had not been declared, although it experienced financial difficulties due to which it was unable to pay the State fee for submitting the statement of claim. It follows from the materials in the case and information available from the Court Information System that the Applicant, actually, could not pay the entire State fee in the amount of EUR 176 839.33 and, therefore, it had submitted to the first instance court amendments to the statement of claim, resigning from bringing the claim in the largest part thereof (*see Case Materials, Vol. 1, pp. 166 – 167*).

Thus, without assessing the capability of a particular legal person governed by private law to make the required payment, it is impossible to assert that it has sufficient financial resources to pay the State fee for submitting the statement of claim. Although a legal person governed by private law plans its financial resources in order to be able to cover its expenses; in the matter of exercising one's right to a fair trial, however, there are no objective grounds for the assumption that every legal person governed by private law has sufficient financial resources to pay the State fee for submitting the statement of claim. An assumption like this may cause a situation, inadmissible in a democratic state governed by the rule of law, where a person does not have access to court because it lacks the necessary financial resources for making this payment (*compare, see Judgement by the Constitutional Court of 23 February 2022 in Case No. 2021-22-01, Para 13.1.1.*).

14.2. The Constitutional Court already has recognised that the aim of the State fee is not only to ensure effectiveness of the court system, by decreasing the possibility of submitting unfounded statements of claim, but also to partially cover the costs of maintaining courts (*compare, see Judgement by the Constitutional Court of 4 January 2005 in Case No. 2004-16-01, Para 8.2.*). It follows also from Para 2 of Section 1 of the law "On Taxes and Fees", which provides that the State fee is a mandatory payment into the State budget for the activities to be performed by a State authority arising from the functions of the respective authority, and its aim, at the same time, is also to regulate the activities of persons – control,

promote, or restrict. The procedurally regulatory nature of the State fee has been recognised also in the judicature of the European Court of Human Rights (*see, for example, Judgement by the European Court of Human Rights of 19 June 2001 in Case “Kreuz v. Poland”, Application No. 28249/95, Para 59*). It is essential that a person’s turning to court to defend their rights and lawful interests is a person’s choice within the framework of private autonomy. As noted by *Dr. iur.* Daina Ose, in civil proceedings, in difference to other proceedings in court, taking of procedural actions, *inter alia*, submitting or not submitting a claim to court, defining the subject and the grounds of the claim, the claim itself, is based on the expression of a person’s free will and private autonomy (*see Case Materials, Vol. 2, p. 62*).

Thus, the legislator has the right, for the purposes referred to above, to establish a person’s obligation to pay the State fee for submitting the statement of claim, as well as to define its amount and the procedure of calculating thereof. However, in establishing such an obligation for a person, the legislator must comply with the general legal principles and other provisions of the *Satversme*, as well as international and the European Union law (*compare, see Judgement of 23 February 2022 in Case No. 2021-22-01, Para 13.2.*). Thus, the legislator has both certain discretion and also an obligation to establish such legal regulation that would ensure access to court to all persons, also to a legal person governed by private law, which lacks sufficient financial resources for paying the State fee for submitting the statement of claim.

However, the regulation, included in the first sentence of Article 92 of the *Satversme*, does not mean that the legislator should envisage such regulation, pursuant to which a legal person governed by private law should be exempt from this payment as soon as it states that it is experiencing financial difficulties and, thus, is unable to pay the State fee for submitting the statement of claim. Duly established objective conditions, *inter alia*, the material circumstances of the particular person that preclude it from paying the State fee for submitting the statement of claim, could be the grounds for exempting this person in full or partly from the State fee for submitting the statement of claim. For example, several

criteria have been specified in the judicature of the Court of Justice of the European Union, which are taken into account, i.e., these are the subject of the claim, reasonable prospects of the plaintiff to achieve favourable result, the impact of the required payment on the person's right to protect their rights effectively in court. Likewise, the form of the respective legal person governed by private law may be taken into consideration, as well as whether this legal person has or does not have the aim of gaining profit, as well as the financial capabilities of its members and shareholders (*se Judgement by the Court of Justice of the European Union of 22 December 2010 in Case C-279/09 "DEB", Para 61 and 62, as well as Order by the Court of Justice of the European Union of 13 June 2012 in Case C-156/12 "GREP", Para 38 and 44*).

The Constitutional Court draws attention also to the fact that there might be other alternatives for ensuring access to court also to such legal person governed by private law, which has insufficient financial resources to pay the State fee for submitting the statement of claim. Thus, for example, the payment of the State fee for submitting the statement of claim can be postponed or divided into instalments. Thus, the legislator, within the limits of its discretion, has to choose how to ensure access to court also to such legal person governed by private law, which has insufficient financial resources to pay the State fee for submitting the statement of claim.

14.3. Legal regulation established in the Civil Procedure Law does not envisage the right to request full or partial exemption from the State fee to such legal person governed by private law, whose insolvency proceedings have not been declared but who is incapable of making this payment to turn to court for the protection of its rights. Legal regulation does not envisage any other alternatives for ensuring access to court to such legal person governed by private law. Thus, the possibility for such legal person governed by private law to have its rights protected in court has not been ensured. Hence, the legislator has failed to establish legal regulation properly and in accordance with general legal principles and other provisions of the *Satversme* that would ensure access to court to all persons, also

to a legal person governed by private law, which does not have sufficient financial resources to pay the State fee for submitting the statement of claim.

Thus, the contested provision, insofar it does not envisage the right of a legal person governed by private law to request the court to decide on exempting it from the obligation to pay the State fee for submitting the statement of claim, is incompatible with the first sentence of Article 92 of the *Satversme*.

15. Pursuant to Section 32 (3) of the Constitutional Court Law, a legal provision, which has been recognised by the Constitutional Court as being incompatible with a superior legal provision, must be deemed void as of the date when the Constitutional Court's judgement is published, unless the Constitutional Court has provided otherwise. Whereas Para 11 of Section 31 of this law envisages the Constitutional Court's right to indicate in its judgement the date as of which such a provision becomes void.

Exercising the right granted to it in the aforementioned provision, in cases that have been initiated on the basis of constitutional complaint, the Constitutional Court must, to the extent possible, eliminate the infringement on a person's fundamental rights (*see Judgement by the Constitutional Court of 16 December 2005 in Case No. 2005-12-0103, Para 25*). Moreover, the Constitutional Court must also ensure that the situation that might develop after the date when the contested provision becomes void would not cause new infringements on fundamental rights, defined in the *Satversme*, and would not inflict significant harm upon the interests of the State or society (*compare, see Judgement by the Constitutional Court of 19 October 2011 in Case No. 2010-71-01, Para 26, and Judgement of 16 April 2015 in Case No. 2014-13-01, Para 22*). The Constitutional Court Law imposes an obligation upon the Constitutional Court to ensure in social reality, *inter alia*, clarity (*see Judgement by the Constitutional Court of 18 January 2010 in Case No. 2009-11-01, Para 30*).

15.1. Recognising the contested legal provision as being void as of the moment when the infringement on the Applicant's fundamental rights occurred is

the only possibility to protect this person's fundamental rights. Therefore, with respect to the Applicant, the contested provision shall be recognised as being void as of 15 December 2021 when the appellate instance court, on the basis of the contested provision, left unamended the decision by the first instance court, by which the Applicant's request to exempt it partially from the paying the State fee for submitting the statement of claim was dismissed (*see Case Materials, Vol. 1, pp. 160 – 165*).

15.2. The Constitutional Court has recognised that legal security is an important part of the principle of a state governed by the rule of law (*see Judgement by the Constitutional Court of 5 March 2002 in Case No. 2001-10-01, Para 8*). Thus, in deciding on the date as of which the contested provision becomes void, the Constitutional Court must take into consideration that, currently, legal mechanism and criteria that the court should examine, in deciding on full or partial exemption of a legal person governed by private law from paying the State fee for submitting the statement of claim, have not been defined in Latvia's regulatory enactments. For the purpose of legal security, the legislator needs reasonable time for conducting in-depth and complex research in order to draft such legal regulation that would ensure access to court to all legal persons governed by private law. I.e., such in-depth and complex research is needed to ensure that, by defining criteria, in accordance with which a court may decide on relieving the obligation of paying the State fee for a legal person governed by private law, at the same time effective review of civil cases is not decreased and would not, thus, affect other persons' right to a fair trial, included in the first sentence of Article 92 of the *Satversme*, nor the rights, for the protection of which persons have turned to court. Likewise, in fulfilling the obligation, included in the first sentence of Article 92 of the *Satversme*, the legislator must align the envisaged legal provisions with the legal provisions already existing within the legal system, in accordance with the principle of rational legislator.

Substantive part

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

Held:

1. To recognise Section 43 (4) of the Civil Procedure Law, insofar it does not envisage the right of a legal person governed by private law to request the court to decide on exempting it from the obligation to pay the State fee for submitting the statement of claim, as being incompatible with the first sentence of Article 92 of the *Satversme* of the Republic of Latvia and void as of 1 October 2023.

2. With respect to merchant IMEX PROVIDER LTD, registered in the British Virgin Islands, to recognise Section 43 (4) of the Civil Procedure Law, insofar it does not envisage the right of a legal person governed by private law to request the court to decide on exempting it from the obligation to pay the State fee for submitting the statement of claim, as being incompatible with the first sentence of Article 92 of the *Satversme* of the Republic of Latvia and void as of the moment when the infringement on its fundamental rights occurred.

The judgement is final and not subject to appeal.

The judgement enters into force on the date of its publication.

Chairperson of the court hearing

Aldis Laviņš