A. The Rule of Law and Constitutional Justice in the Modern World

Answers from Latvia

I. The Different Concepts of the Rule of Law

1. What are the relevant sources of law (e.g. the Constitution, case-law, etc.) which establish the principle of the rule of law in the legal system of your country?

The Constitutional Court has noted that the Constitution (the *Satversme*) as legal reality comprises various rules, constitutional norms and principles, which have been directly enshrined in the constitutional provisions or have been derived therefrom.[1] The Constitutional Court in its practice has recognised general legal principles as a source of law, by using Article 1 of *the Constitution* and noting that a number of principles of a state governed by the rule of law – also the principle of separation of powers and the principle of rule of law – have been derived from the basic norm of a democratic state governed by the rule of law[2] (*Grundnorm* – in German) and fall within the scope of Article 1 of the Constitution, which provides that Latvia is a democratic independent republic (forms the content of Article 1).[3]
The Introduction (the Preamble) of the Constitution was amended on 19 June 2014 by including an overview of key historical events for the consolidation of the Latvian state, the list of basic principles and values were added to it.[4] The Preamble of the Constitution provides that "Latvia as democratic, socially responsible and national state is based on the rule of law and on respect for human dignity and freedom [..]".

2. How is the principle of the rule of law interpreted in your country? Are there different concepts of the rule of law: formal, substantive or other?

To apply the principle of the rule of law to resolve a particular case, the content of this principle must be established. In difference to written legal norms, the content and true meaning of which is determined through interpretation – by applying methods of interpretation, – establishing the content of a principle (also the principle of the rule of law) requires concretization. I.e., although principles are legal norms, the mechanism of their functional impact differs from that of written legal norms. Therefore the expression of the principle of the rule of law within the structure of a legal norm occurs as the outcome of concretization (the principle is filled with content).

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[1] Rodiņa A., Spale A., Satversmes 85. panta komentārs, *Latvijas Republikas Satversmes komentāri. VI nodaļa. Tiesa. VII nodaļa. Valsts kontrole,* Latvijas Vēstnesis, 2013, 137.lpp.
[2] Decision of 21 October 2016 by the Constitutional Court of the Republic of Latvia in Case No. 2016-03-01, Para 10.
[3] Judgement of 21 January 2002 by the Constitutional Court of the Republic of Latvia in Case No. 2001-09-01; Decision of 21 October 2016 in Case No. 2016-03-01, para 10; Judgment of 20 April 1999 in Case No. 04-01 (99), para 1.2.1.
[4] Grozījums Latvijas Republikas Satversmē, Latvijas Vēstnesis, 8.07.2014., Nr. 131(5191).

Concretization of a principle may be different in different circumstances; however, it is always done within the limits of the principle's fundamental meaning.[5]
In the process of applying the principles of the rule of law (as any other general principle) the skill of deriving it from the basic norm, from other principles of law, to reveal it in the written legal norms or the legal system as whole, as well as of concretising the general legal principle, i.e., to establish its content and scope, is important.[6]
There is a single rule of law concept.

3. Are there specific fields of law in which your Court ensures respect for the rule of law (e.g. criminal law, electoral law, etc.)?

The Constitutional Court ensures respect for the rule of law in all field of law.

4. Is there case-law on the content of the principle of the rule of law? What are the core elements of this principle according to the case-law? Please provide relevant examples from case-law.

The Constitutional Court in its case law has consolidated the finding that general principles of law cannot be ordered in hierarchic sequence and has developed the doctrine of balancing the principles of law,[7] as well as, in examining the content of a particular principle (also the rule of law principle) in a concrete situation, has used as the basis the finding that general principles of law may manifest themselves differently in different fields of law.

Upon establishing the content of any norm, the Constitutional Court assesses it within the framework of a state governed by the rule of law. Thus, rights and principles of law are linked to the rule of law principle. Drawing up a list of elements in the rule of law, grouping them precisely, revealing the content of the rule of law (it is constantly evolving) is complicated. Hence, the overview comprises findings from rulings of the Constitutional Court, which point to important elements in the rule of law principle.

A number of principles of a state governed by the rule of law follow from Article 1 of the Constitution, *inter alia*, the principle of supremacy of law. [..] The general principle of rule of rule of law or supremacy of law provides that the state power is linked to law and that it may act solely within the frameworks established by legal norms. This pertains also to public administration, where it may be called the principle of the rule of law in public administration.[8]
The principle of justice and rule of law requires examining cases in a procedure that would ensure fair and unbiased adjudication and that the outcome of all criminal, civil and administrative proceedings would be fair.[9]

[5] Rezevska D. Vispārējo tiesību principu nozīme un piemērošana. Rīga. 2015., 99.lpp.
[6] *Ibid*., 94.lpp.
[7] Judgement of 15 February 2005 by the Constitutional Court of the Republic of Latvia in Case No. 2004-19-01, Para 7.4.
[8] Judgement of 27 March 2008 by the Constitutional Court of the Republic of Latvia in Case No. 2007-17-05, Para 13.
[9] Judgement of 11 April 2007 by the Constitutional Court of the Republic of Latvia in Case No. 2006-28-01, Para 12.

Rule of law is based upon a fair outcome of legal proceedings, which can be ensured only by an independent judicial power.[10]

The rule of law principle provides that legal acts and law are binding upon all institutions of state power, including the legislator itself. In a democratic republic the Parliament must abide by the Constitution and other laws, *inter alia*, those adopted by the Parliament itself.[11]

The obligation to abide by provisions established in law and to comply with legal regulation is in equal measure applicable both to the inhabitants and the constitutional institutions of the state.[12] Exercising of the state power is based upon the presumption that all state institutions abide by the Constitution and their competence, as well as duly perform their duties.[13]

In a democratic state governed by the rule of law all institutions of sate power are obliged to abide by the provisions and principles of the Constitution. Moreover, all issues pertaining to application of law by state institutions is subjected to review by the judicial power, which guarantees that legal norms are applied in conformity with the Constitution.[14]

Pursuant to the principle of the rule of law, public administration is subjected to legal acts and law.[15]

Exercising of the state power is based upon the presumption that all state institutions abide by the Constitution and their competence, as well as duly perform their duties.[16]

Pursuant to the principle of a state governed by the rule of law, the body applying law is subjected to legal acts and law, therefore it can base its findings solely upon legal reasoning, not that of policy of law. I.e., the body applying law must adjudicate the particular dispute on the basis of legal (law) arguments, separating these from arguments of policy of law.[17]

The Constitutional Court has recognised *expressis verbis* that one of the elements in rule of law is **the principle of legal certainty**, which, *inter alia*, requires that court judgements, which have entered into force, are not contested.[18] **Legal stability** is an essential element of the principle of a state governed by the rule of law. It requires, *inter alia*, not only regulated legal proceedings, but also a conclusion thereof that is legally enduring.[19]

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[10] Judgement of 18 January 2010 by the Constitutional Court of the Republic of Latvia in Case No. 2009-11-01, Para 7.4.

[11] Judgement of 3 February 2012 by the Constitutional Court of the Republic of Latvia in Case No. 2011-11-01, Para 16.

[12] Judgement of 3 February 2012 by the Constitutional Court of the Republic of Latvia in Case No. 2011-11-01, Para 16.1.

[13] Decision of 19 December 2012 by the Constitutional Court of the Republic of Latvia in Case No. 2012-02-01, Para 23.

[14] Decision of 19 December 2012 by the Constitutional Court of the Republic of Latvia in Case No. 2012-03-01, Para 23.

[15] Judgement of 17 January 2008 by the Constitutional Court of the Republic of Latvia in Case No. 2007-11-03, Para 23.2.

[16] Decision of 19 December 2012 by the Constitutional Court of the Republic of Latvia in Case No. 2012-03-01, Para 23.

[17] Decision of 2 March 2015 by the Constitutional Court of the Republic of Latvia in Case No. 2014-16-01, Para 12.

[18] Judgement of 2 June 2008 by the Constitutional Court of the Republic of Latvia in Case No. 2007-22-01, Para 16.3.

[19] Judgement of 5 March 2002 by the Constitutional Court of the Republic of Latvia in Case No. 2001-10-01, Para 8.

As the Constitutional Court has noted, **the principle of legitimate expectations** is recognised by all states governed by the rule of law. This principle provides that state institutions must be consistent in their actions with respect to regulatory acts that are issued, they must take into consideration legal expectations that persons might develop on the basis of a particular legal act.[20] The principle of legitimate expectations also provides that in a democratic state governed by the rule of law a person may expect that institutions of public administration act legally, *inter alia*, that tax administration interprets laws correctly.[21]

The Constitutional Court has linked to the principle of a state governed by the rule of law **the requirement of fairness** (principle of justice). In a democratic state governed by the rule of law the main aim of laws is to ensure justice. Other aims are subordinated to this. A law that imposes disproportional restrictions upon persons' fundamental rights cannot be recognised as being fair.[22]
The legislator, in restoring the legal system of independent Latvia and abiding by the principles of a state governed by the rule of law, was obliged to introduce measures to compensate, to the extent possible, for the damages inflicted by the previous regime and to restore justice. However, the legislator, in selecting means for implementing land reform, had to achieve as fair a balance as possible between the private interests of various members of society.[23]
The principle of a state governed by the rule of law requires a fair outcome of criminal proceedings; i.e., so that persons would not be convicted for such criminal offences that they did not commit and that those persons, who have committed criminal offences, are appropriately convicted.[24]
In a democratic state governed by the rule of law public administration must strive to ensure justice. Formal application of contested norms, ignoring actual circumstances that make the particular case significantly different from other cases, where the legislator has envisaged a certain way of exercising the state power, is inadmissible.[25]
In a democratic state governed by the rule of law public administration must perform the functions entrusted to it by society in an honest, effective and fair manner, its actions must comply with laws.[26]

5. Has the concept of the rule of law changed over time in case-law in your country? If so, please describe these changes referring to examples.

[20] Judgement of 10 June 1998 by the Constitutional Court of the Republic of Latvia in Case No. 04-03(98).
[21] Judgement of 19 June 2010 by the Constitutional Court of the Republic of Latvia in Case No. 2010-02-01, Para 9.4.1.
[22] Judgement of 11 April 2007 by the Constitutional Court of the Republic of Latvia in Case No. 2006-28-01, Para 20.1.
[23] Judgement of 25 March 2003 by the Constitutional Court of the Republic of Latvia in Case No. 2002-12-01, Para 1.
[24] Judgement of 5 March 2002 by the Constitutional Court of the Republic of Latvia in Case No. 2001-10-01, Para 8.
[25] Judgement of 28 February 2007 by the Constitutional Court of the Republic of Latvia in Case No. 2006-41-01, Para 15.
[26] Judgement of 24 March 2000 by the Constitutional Court of the Republic of Latvia in Case No. 04-07 (99), Para 3.

Although legal scholars have facilitated development of principles that are indirectly included in the Constitution, the contribution by the Constitutional Court to applying and explaining general legal principles is invaluable.
No direct references can be found in the case law of the Constitutional Court to changes in the content of any principle; however, not only the theory, but also the case law proves that the principle of the rule of law (as any other general principle) is not closed and frozen, it constantly evolves as the result of interaction between different interpretations of the Constitution, new circumstances and new legal findings.[27]

6. Does international law have an impact on the interpretation of the principle of the rule of law in your country?

Legal system of the Republic of Latvia is characterised by openness to international law. Pursuant to the doctrine of monism, international legal provisions that are binding upon the Republic of Latvia are applied directly in Latvia.[28]
Judgements by the Constitutional Court have played an important role in understanding and interpreting Latvia's practice of applying international law. Scholars of law note that in the early cases of the Constitutional Court international law arguments were not elaborated and, possibly, balanced on the border with political considerations. During the last years, however, the Constitutional Court in two complex cases of principal importance has examined in detail international treaties – in the so-called Case of Latvian-Russian Border Agreement[29] and Lisbon Treaty Case.[30] These judgements by Constitutional Court led to extensive debates among Latvian legal scholars about the place and role of international treaties and international law in general within the Latvian legal system.[31]
In the judgement of 30 August 2000 in the so-called *KGB* Case[32] the Constitutional Court defined the position with regard to interpretation of the Constitution in interconnection with international human rights provisions and the use of findings approbated in the case of law of the European Court of Human Rights in interpreting the provisions of the Constitution. On 15 October 1998 the Saeima[33] added to the Constitution Chapter VIII "Fundamental Human Rights", which entered into force on 8 November 1998. Article 89, included in this Chapter, provides that "the State shall recognise and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding upon Latvia." This Article shows that the legislator's aim had not been to set the provisions of human rights included in the Constitution against the provisions of international human rights, but quite to the contrary – to achieve harmony between these norms. International law and the practice of its application may serve as a means for establishing the content of the

[27] Par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu. Konstitucionālo tiesību komisijas viedoklis un materiāli, Rīga, Latvijas Vēstnesis, 2012. Page 105, Para 224
[28] Constitutional Court of the Republic of Latvia, Separate opinions of the Constitutional Court Justices Sanita Osipova and Ineta Ziemele in Case No. 2015-19-01, Para 5.
[29] Judgement by the Constitutional Court of the Republic of Latvia in Case No. 2007-10-0106
[30] Judgement by the Constitutional Court of the Republic of Latvia in Case No. 2008-35-01
[31] Ieva Bērziņa-Andersone, Agris Repšs, Mārtiņš Paparinskis, ZAB "Sorainen". Analītisks darbs par starptautiskajām līgumtiesībām un šo tiesību mijiedarbību ar Eiropas Savienības un tās dalībvalstu tiesībām, TM 2009/05, Rīga, 2009, 7.lpp.
[32] Judgement by the Constitutional Court of the Republic of Latvia in Case No. 2000-03-01
[33] Parliament of the Republic of Latvia

legal norms and principles (the principle of the rule of law included) defined by the Constitution.[34] Constitutional Court has noted that in cases, where the content of human rights norms that are included in the Constitution is unclear, it should be interpreted, to the extent possible, in accordance with interpretation used in the practice of applying international norms of human rights. This obligation of parties applying law follows both from Article 89 of the Constitution and the principle of openness of the Constitution.[35] Maximum openness of the constitutional law to international law is typical of Latvia, integrating through interpretation progressive developments of international law into the constitutional regulation.[36] However, Constitutional Court has underscored that all states that are members of international treaties must abide by fairness and respect the obligations that follow from the treaty and other sources of international law. A state may not set its national law against the international commitments (law).[37]

With ratification of the Treaty concerning the Accession of the Republic of Latvia to the European Union, the European Union law has become an integral part of the Latvian law. Thus, the legal acts of the European Union and interpretation thereof consolidated in the judicature of the Court of Justice of the European Union must be taken in consideration in applying national regulatory enactments to prevent possible contradictions between the Latvian law and the EU law.[38] However, Constitutional Court has also noted that the legal acts of the European Union must be taken into account, both in applying and interpreting national regulatory enactments and preventing possible contradictions between the Latvian and the EU law, insofar this does not affect the fundamental principles of the Constitution.[39]

II. New challenges to the rule of law

7. Are there major threats to the rule of law at the national level or have there been such threats in your country (e.g. economic crises)?

During the period of overcoming the economic crisis, the Constitutional Court had to review compliance of regulatory enactments with the Constitution, *inter alia*, with the rule of law principle. The Constitutional Court has noted that measures for overcoming crisis and restrictions upon persons' rights related thereto must meet certain criteria. I.e., these must be introduced on the basis of due assessment, abiding by the principles of a state governed by the rule of law.[40] In those case, where due to

[34] Judgement of 7 April 2009 by the Constitutional Court of the Republic of Latvia in Case No. 2008-35-01, Para 13.

[35] Kovaļevska A. Satversmes 89. pants: vai deklaratīva norma Satversmē. Jurista Vārds, 2008. 15. jūlijs, Nr. 26(531).

[36] Levits E. Piezīmes par Satversmes 8. nodaļu – Cilvēka pamattiesības. Cilvēktiesību Žurnāls, 1999, Nr. 9-12, 22. – 25. lpp.

[37] Judgement of 7 July 2004 by the Constitutional Court of the \Republic of Latvia in Case No. 2004-01-06, Para 6 of the Findings.

[38] Judgement of 2 May 2012 by the Constitutional Court of the Republic of Latvia in Case No. 2011-17-03, Para 13.3.

[39] Judgement of 13 June 2014 by the Constitutional Court of the Republic of Latvia in Case No. 2014-02-01, Para 13.

[40] Judgement of 15 April 2010 by the Constitutional Court of the Republic of Latvia in Case No. 2009-88-01, Para 9.

economic recession social guarantees must be decreased, the State must act in compliance with the principle of a state governed by the rule of law.[41]
In one of the cases under review, the Court established that the difficult economic situation in the state undoubtedly made it difficult for the Cabinet and the Parliament to perform their functions with the terms set in law. However, such actions by the constitutional institutions of the State, which have been incompatible with law for a number of years, cannot be recognised as being acceptable. The obligation to abide by legal provisions and comply with legal regulation is in equal measure applicable both to the inhabitants of the state and its constitutional institutions.[42]

8. Have international events and developments had a repercussion on the interpretation of the rule of law in your country (e.g. migration, terrorism)?

No.

9. Has your Court dealt with the collisions between national and international legal norms? Have there been cases of different interpretation of a certain right or freedom by your Court compared to regional / international courts (e.g. the African, Inter-American or European Courts) or international bodies (notably, the UN Human Rights Committee)? Are there related difficulties in implementing decisions of such courts / bodies? What is the essence of these difficulties? Please provide examples

See answer to the Question No. 6.
There have been no problems in the experience of the Constitutional Court until now; however, in this regard it is worth mentioning cases linked to citizenship.

In 2011 the Constitutional Court has assessed differences envisaged in law in calculating old-age pensions for citizens and non-citizens of Latvia.[43] The Constitutional Court referred to the doctrine of state continuity in this judgement and noted that Latvia was not the successor in rights and obligations of the former USS and that the State of Latvia did not have to undertake the commitments of another state to ensure old-age pensions to persons for the period they had worked outside the territory of Latvia. It is noteworthy that that persons in their applications had referred to the Judgement by the Grand Chamber of the European Court of Human Rights "Andrejeva *versus* Latvia", in which one of Judges in the separate opinion noted that the European Court of Human Rights had applied the European Convention for the Protection of Human Rights and Fundamental Freedoms in isolation from international law and the doctrine of state continuity.

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[41] Judgement of 31 March 2010 by the Constitutional Court of the Republic of Latvia in Case No. 2009-76-01, Para 6.2.
[42] Judgement of 3 February 2012 by the Constitutional Court of the Republic of Latvia in Case No. 2011-11-01, Para 16.1.
[43] Judgement of 17 February 2011 by the Constitutional Court of the Republic of Latvia in Case No. 2010-20-0106
Para 1 of Transitional Provisions in the law "On State Pensions" lists periods of work and periods equalled to them accrued in the territory of the USSR, which are held as equivalent to the period of insurance and, thus, influence calculation of the old-age pension. Compared to citizens of Latvia, for non-citizens this circle of periods is narrower, i.e., only the period of studies and political repressions is equalled to the period of insurance. The applicants noted that the different rules regarding calculation of insurance periods for citizens and non-citizens were discriminatory.

In the so-called "Double Citizenship Case"[44] the Constitutional Court concluded that "the doctrine of state continuity comprises also the principle of continuity of citizenship. If the state chooses to be based upon its continuity, then regulation on citizenship should comply with this principle." To establish, whether the continuity doctrine has been complied with, the historical conditions of the origin of the institution of Latvian citizenship are extensively examined, as well as the issue, if and how Latvian citizenship continued *de facto* and *de jure* during the illegal occupation of Latvia.

The principle of citizenship continuity envisages an obligation of the State, to the extent possible, to restore the citizenship right of those, who had it prior to the illegal occupation of the state. However, even in the context of continuity doctrine, the State does not have the obligation to register as citizens all persons, who were citizens of this State before it *de facto* lost its independence, and the descendants of these persons. Moreover, a person himself also has a certain obligation to participate in the process of restoring the citizen's s rights. Whereas no citizen of Latvia, who has acquired citizenship upon birth, has been deprived of the right to register as a citizen, and no time restrictions have been set for its.[45]

The different practice of the Baltic States with respect to dual citizenship is, *inter alia*, discussed in the judgement. In this judgement the Constitutional Court also verified that the contested norms did not fall within the scope of Article 15 of the United Nations Universal Declaration of Human Rights, since the subjects were not stateless persons and they had not been arbitrarily deprived of citizenship, causing a situation of statelessness. Whereas international law does not provide for a person's right to dual citizenship.[46]

III. The Law and the State

10. What is the impact of the case-law of your Court on guaranteeing that state powers act within the constitutional limits of their authority?

Neither the Constitution, nor the Constitutional Court Law *expressis verbis* defines the jurisdiction of the Constitutional Court to resolve conflicts of jurisdiction.[47] However, the judicial power in general and the Constitutional Court as part of it

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[44] Judgement of 13 May 2010 by the Constitutional Court in Case No. 2009-94-01.
In this case the norm of the Citizenship Law, adopted in 1994, that envisaged that citizens of Latvia and their descendants who in the period from 17 June 1940 to 4 May 1990, escaping from the terror of the occupational regime of the USSR and Germany, had left Latvia as refugees or had been deported, and due to these reasons had not been able to return to Latvia and in this period had become naturalised abroad, retained the right to register in the Population Register as citizens of Latvia, and following registration enjoy the rights of the citizen and perform the duties of a citizen in full scope, if the registration occurred prior to 1 July 1995. If these persons registered after 1 July 1995, they had to renounce the citizenship of any other state.
The applicant – the Department of Administrative Cases of the Supreme Court Senate – held that prohibition of dual citizenship could be equalled to deprivation of citizenship.

[45] Ziemele I., Spale A., Jurcēna L. Constitutional Adjudication in Latvia. 2018.

[46] The Constitutional Court examined issues linked to dual citizenship also in the decision of 21 August 2007 on terminating legal proceedings in Case No. 2007-07-01.

[47] As it is, for example, in Germany (Article 93 sec. 1 no. 1 of the Basic Law and §§ 63 et. seq. Of the Federal Constitutional Court Act), Macedonia (Constitution of the Republic of Macedonia, Article 110 lines 4 and 5), etc.

ensure a comprehensive control over the two other branches of state power.[48] In view of the Court's jurisdiction, issues of relationships between the branches of power, constitutional organs and subordinate and autonomous institutions defined in the Constitution can come and have come before the Constitutional Court, especially where the contested norm (act) applies to relationships between these institutions or bodies.
Constitutional Court decisions are binding to all the state bodies.
The execution of the Constitutional Court judgements has never been an issue in Latvia. In the course of twenty years following the establishment of the Constitutional Court, there were only a couple of judgements in regard of which it could be stated that the execution did not proceed in complete accordance with the Court's provisions (the execution was delayed, or the judgement was only executed upon repeated reference).

11. Do the decisions of your Court have binding force on other courts? Do other / ordinary courts follow / respect the case-law of your Court in all cases? Are there conflicts between your Court and other (supreme) courts?

Section 29(2^1) and 32(2) of the Constitutional Court Law provides that interpretation of the legal provision provided by the Constitutional Court in a judgment or in a decision to terminate proceedings is binding on all domestic authorities, including the court, as well as natural and legal persons.
There are no conflicts between the national courts. A constructive dialogue between the Constitutional Court and courts of general jurisdiction manifests itself both in exchange of information between judges and court employees on different issues of law, by using mutual case-law, as well as by courts of general jurisdiction exercising their competence to submit an application to the Constitutional Court.

12. Has your Court developed / contributed to standards for law-making and for the application of law? (e.g. by developing concepts like to independence, impartiality, acting in accordance with the law, non bis in idem, nulla poena sine lege, etc.).

Yes. The Constitutional Court has influenced both the procedure for adopting regulatory enactments, and the content of these acts. Moreover, the Constitutional Court has also a preventive role, because texts of regulatory enactments are amended not solely in order to enforce a respective ruling by the Constitutional Court, but the case-law of the Constitutional Court is also used in drafting and amending regulatory enactments.
Rulings by the Constitutional Court are binding upon bodies applying regulator enactments - both upon institutions and courts. See also answer to Question 11.

For example, in the so-called "judges' salaries cases", the Constitutional Court developed "the doctrine of cooperation" of the branches of state power; and "the obligation to hear" that follows from it is not only a procedural pre-requisite for ensuring the independence of the judicial power, such cooperation also ensures the possibility to reach the most effective solution as to the content, when amendments

[48] Judgement of 22 February 2002 by the Constitutional Court of the Republic of Latvia in Case No. 2001-06-03, Para 1.2 of the Findings.

are introduced into regulation pertaining to the judicial power. This doctrine operates also in the process of preparing and adopting the budget, and the procedural requirements that follow from it must be met.
The doctrine of cooperation, as the Constitutional Court has noted, means that the legislator, prior to adopting a decision on the functioning of courts – both with regard to budgetary issues and other issues related to the performance of court functions[49], must give the possibility to an independent institution that represents the judicial power to express its opinion on issues that influence the work of courts. In the context of separation of power and judicial independence, hearing the opinion of the judicial power means:
(1) the legislator has the right not to uphold the opinion of the judicial power; however, it must be heard and treated with respect and true understanding; and
(2) in case, if this opinion is not taken into account or is taken into account only partially, the legislator has the duty to provide substantiation for its action in the scope that would provide to the court, if it had to examine the compliance of the legislator's actions with the Constitution, all information needed to perform the proportionality test.

In its judgement in the first case of judges salaries[50] the Constitutional Court developed the concept of judicial independence listing the guarantees for the independence of judges: "[t]he independence of judges is connected with a number of such guarantees: guaranteed tenure of the judge (the procedure for appointing or approving judges, the qualification necessary for the appointment, guarantees of irremovability, conditions for promotion and transfer to another position, conditions for suspending and terminating the mandate), the immunity of the judge, financial security (social and material guarantees), the institutional (administrative) independence of a judge and the actual independence of the judiciary from the political influence of the executive power or the legislator."

Rulings by the Constitutional Court comprise a number of important findings, which have contributed to standards for law-making and for the application of law.
Some of these findings pertain to the legislative process:
External legal acts may be issued only in abiding by the Constitution and general principles of law.[51]
In a democratic state, involvement of affected social groups in the procedure of decision making is an important mechanism for facilitating participation of civil society. Hearing the opinion of the respective social groups is particularly advisable in those situations, where the intended regulatory enactments restrict their fundamental rights guaranteed in the Constitution.[52]

[49] The Constitutional Court noted in its judgements, which issues should be recognised as being essential for the functioning of the judicial power and for its independence, leaving the enumeration open; however, noting *expressis verbis* issues regarding "financing, the number of judges, the necessary staff, as well competence requirements, remuneration". It also noted that the principle of separation of power prohibits the executive power from taking decisions on these issues with regard to courts.
[50] Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01.
[51] Judgement of 11 January 2011 by the Constitutional Court of the Republic of Latvia in Case No. 2010-40-03, Para 6.
[52] Judgement of 26 November 2009 by the Constitutional Court of the Republic of Latvia in Case No. 2009-08-01, Para 17.2.

Haste is assessed negatively, in the context of drafting and adopting legal provisions, just like the failure inform society about adoption of such provisions in a due and timely manner.[53]
It is the obligation of the Parliament to ensure that legal norms are worded as clearly as to allow correct interpretation thereof.[54]
In a state governed by the rule of law a situation, where the legislator does not treat risk forecasts expressed by experts with sufficient seriousness and does not implement timely measures for averting the risk, in inadmissible. If risks are not averted in due time, the court system may be weakened to the extent that restoring its normal functioning would demand more time and much larger resources. Moreover, doubts might arise as to whether the state is governed by the rule of law at all.[55]
The legislator, *inter alia*, by abiding with the rule of law principle, has the obligation to ensure that the legal system is internally aligned and harmonised. This means that such legal norms, which are no longer necessary for regulating legal relations, should to the extent possible be removed from legal system. Therefore, it is the task of the legislator to exclude to the extent possible simultaneous existence of such legal norms, the mutual compliance and harmonisation of which my cause valid doubts.[56]

Some of these findings with respect to applying laws:
Application of legal norms in compliance with the Constitution comprises identification of the legal norm to be applied and the use of appropriate methods for construing or interpreting these; assessment of inter-temporal and hierarchic application, use of case-law and doctrine of law, as well as creation of law.[57]
To achieve the most fair and expedient aim by the applicable legal norm, various methods for interpreting legal norms must be used – not only the grammatical, but also historical, systemic, and teleological method.[58]
Specifying legal consequences is an inalienable part of applying the law, and in this stage the body applying law has the obligation to consider all legal consequences and to select those consequences, which reach the aim of law, – justice.[59]
In a democratic state governed by the rule of law, public administration must strive to ensure justice. Formal application of contested norms, ignoring actual circumstances that make the particular case significantly different from other cases, where the legislator has envisaged a certain way of exercising the state power, is inadmissible.[60]
In untypical cases, an institution has the right to deviate from implementing legal consequences. However, such deviation must be substantiated by special, presentable and convincing arguments. One case among such could be proportionality test, if the

[53] Judgement of 21 December 2009 by the Constitutional Court of the Republic of Latvia in Case No. 2009-43-01, Para 26.
[54] Judgement of 19 June 2010 by the Constitutional Court of the Republic of Latvia in Case No. 2010-02-01, Para 9.4.1.
[55] Judgement of 22 June 2010 by the Constitutional Court of the Republic of Latvia in Case No. 2009-111-01, Para 29.3.
[56] Judgement of 3 February 2012 by the Constitutional Court of the Republic of Latvia in Case No. 2011-11-01, Para 12.
[57] Judgement of 2 March 2015 by the Constitutional Court of the Republic of Latvia in Case No. 2014-16-01, Para 13.
[58] Judgement of 13 December 2011 by the Constitutional Court of the Republic of Latvia in Case No. 2011-15-01, Para 7.
[59] Judgement of 28 February 2007 by the Constitutional Court of the Republic of Latvia in Case No. 2006-41-01, Para 14.2.
[60] *Ibid*., Para 15.

mandatory administrative act imposes restrictions upon a person's fundamental rights.[61]
It is the task of the judicial power to ensure that in examining each particular case, constitutional norms, laws and other regulatory enactments are enforced, that the general principles of law are complied with, and that human rights and freedoms are protected. In a state governed by the rule of law courts of general jurisdiction should be recognised as being the most effective mechanism, which can establish, on case-by-case basis, whether a reasonable balance between the rights of a particular person and interests of society has been found.[62]

13. Do you have case-law relating to respect for the rule of law by private actors exercising public functions?

14. Are public officials accountable for their actions, both in law and in practice? Are there problems with the scope of immunity for some officials, e.g. by preventing an effective fight against corruption? Do you have case-law related to the accountability of public officials for their actions?

The Constitution provides for the immunity of some officials.
For example, with respect to members of the Parliament, Article 28, Article 29 and Article 30 provide:
28. Members of the *Saeima* may not be called to account by any judicial, administrative or disciplinary process in connection with their voting or their views as expressed during the execution of their duties. Court proceedings may be brought against members of the *Saeima* if they, albeit in the course of performing parliamentary duties, disseminate:
1) defamatory statements which they know to be false, or
2) defamatory statements about private or family life.
29. Members of the *Saeima* shall not be arrested, nor shall their premises be searched, nor shall their personal liberty be restricted in any way without the consent of the *Saeima*. Members of the *Saeima* may be arrested if apprehended in the act of committing a crime. The Presidium shall be notified within twenty-four hours of the arrest of any member of the *Saeima*; the Presidium shall raise the matter at the next sitting of the *Saeima* for decision as to whether the member shall continue to be held in detention or be released. When the *Saeima* is not in session, pending the opening of a session, the Presidium shall decide whether the member of the *Saeima* shall remain in detention.
30. Without the consent of the *Saeima*, criminal prosecution may not be commenced and administrative fines may not be levied against its members.

The Constitutional Court has noted that the main purpose for establishing the immunity for the members of the Parliament is to protect a member of the Parliament from unfounded influence by other branches of power, which might hinder him in performing his duties.[63]

[61] *Ibid*.
[62] Judgement of 13 October 2010 by the Constitutional Court of the Republic of Latvia in Case No. 2010-09-01, Para 10.
[63] Judgement of 22 February 2002 by the Constitutional Court of the Republic of Latvia in Case No. 2001-06-03, Para 10.

Article 53 and Article 54 of the Constitution provide with respect to the President of the State:
53. Political responsibility for the fulfilment of presidential duties shall not be borne by the President. All orders of the President shall be jointly signed by the Prime Minister or by the appropriate Minister, who shall thereby assume full responsibility for such orders except in the cases specified in Articles forty-eight and fifty-six.
54. The President may be subject to criminal liability if the *Saeima* consents thereto by a majority vote of not less than two-thirds.

Immunity of judges serving in courts of general jurisdiction has been defined in the law "On Judicial power", that of Justices of the Constitutional Court – in the Constitutional Court Law.
Section 13 of the law "On Judicial Power" provides:
(1) A judge has immunity during the time he or she fulfils his or her duties in relation to adjudication in a court.
(2) A criminal matter against a judge may be initiated only by the Prosecutor General of the Republic of Latvia. A judge may not be detained or be subjected to criminal liability without the consent of the *Saeima*. A Supreme Court judge specially authorised for that purpose shall take a decision concerning the detention, forcible conveyance, arrest, or subjection to a search of a judge. If a judge is apprehended in committing a serious or especially serious criminal offence, a decision concerning the forcible conveyance, arrest or subjection to a search is not necessary, but a Supreme Court judge specially authorised and the Prosecutor General shall be informed thereof within a time period of 24 hours.
(4) An administrative sanction may not be applied to a judge and he or she shall not be arrested according to administrative procedures. A judge is subject to disciplinary liability for the committing of administrative violations in accordance with the provisions of Chapter 14 of this Law.
(5) A judge is not financially liable for the damages incurred by a person who participates in a matter, as a result of an unlawful or unfounded judgment of a court. In the cases provided for by law, damages shall be paid by the State.
(6) A person, who considers that a judgment of a court is unlawful or unfounded, may appeal it in accordance with the procedures provided by law, but may not make a claim in court against the judge who has adjudicated the matter.

In view of the special jurisdiction that the Constitutional Court has, i.e., the right to recognise a legislator's will as being incompatible with the Constitution, different guarantees have been defined for judges of the Constitutional Court as regards retaining one's office (the principle of a judge's irremovability),[64] conditions for suspending or terminating the mandate, regulation on judge's immunity (procedural immunity). The decision on suspending a judge's mandate (if the judge temporarily takes an office at an international court or represents the State of Latvia, or in the instance of a disciplinary case), on removing a judge from the office due to his state of health, on dismissing a judge from the office (in cases envisaged by law[65]), on

[64] To guarantee the irremovability of a Constitutional Court judge, the principle has been enshrined in the Constitutional Court Law that all issues that are related to losing the office of the Constitutional Court judge, are decided upon by the Constitutional Court itself, instead of the *Saeima*.
[65] The Constitutional Court Law, Section 10(3) and Section 34.

initiating a disciplinary case[66] and making a judge disciplinary liable is adopted by the Constitutional Court itself.[67]

With respect to the status of a public official, the Constitutional Court has noted that the status of a public official is characterised by a relationship of special trust and loyalty with the State. The provision of special trust and loyalty towards the state is the basis for restrictions linked to the status of a public official, which *per se* are not to be recognised as being disproportional from the perspective of the principle of equality.[68]
The Constitution does not prohibit the legislator from defining, which persons are public officials in the meaning of Law on Preventing Conflict of Interest. However, in defining restrictions, prohibitions and obligations binding upon public officials, it must be assessed, whether a person's fundamental rights are not disproportionally restricted, *inter alia*, rights established in Article 106 of the Constitution.[69]

Findings by the Constitutional Court pertaining to public officials' responsibility:
Qualification requirements set for each vocation comprise the minimum level of education, degree of theoretical knowledge, skills, and responsibility required to perform the basic tasks of this job successfully.[70]
Prosecutors, advocates, and notaries are persons belonging to the system of courts, and each of them in a particular way participates in exercising judicial power. Considering the tasks and responsibility of these vocations, candidates for these offices may be set higher requirements as to the level and type of education.[71]
It is the obligation of the State to establish such remuneration to judges that would comply with a judge's status, functions, and responsibilities. Protection of judges' remuneration is one of the safeguards for judges' independence.[72] A judge's remuneration should be commensurate to the prestige of his profession and the level of his responsibility.[73]

IV. The law and the individual

15. Is there individual access to your Court (direct / indirect) against general acts / individual acts? Please briefly explain the modalities / procedures.

Section 19^2 of the Constitutional Court Law regulates constitutional complaint. The constitutional complaint (application) to the Constitutional Court may be submitted by any person, who considers that his fundamental rights, enshrined in the Constitution, have been violated by a legal norm that is incompatible with a norm of higher legal

[66] This issue is decided by the President, the Vice-president of the Constitutional Court or 3 judges.
[67] The *Saeima* decides with respect to judges of the courts of general jurisdiction and administrative courts.
[68] Judgement of 23 November 2015 by the Constitutional Court of the Republic of Latvia in Case No. 2015-10-01, Para 17.2.
[69] Judgement of 21 Dec ember 2015 by the Constitutional Court of the Republic of Latvia in Case No. 2015-03-01, Para 16.
[70] Judgement of 4 June 2002 by the Constitutional Court of the Republic of Latvia in Case No. 2001-16-01, Para 2.2.
[71] *Ibid*.
[72] Judgement of 18 January 2010 by the Constitutional Court of the Republic of Latvia in Case No. 2009-11-01, Para 8.2.
[73] *Ibid*., Para 9.

force. Any person (natural person, legal person of private law or an association of persons) has the right to submit an application or a constitutional complaint. The Constitutional Court Law permits both a citizen and a non-citizen of the Republic of Latvia, a foreigner and a stateless person to submit such a complaint. Moreover, the legal person of private law (association, religious organisation, company, etc.) is not required to be registered in the Republic of Latvia.

The requirements for admissibility are the following.

First, a person may submit a constitutional complaint only with regard to incompatibility of a legal norm with a legal norm of a higher legal force. A person may not contest administrative acts issued by institutions of public administration or court rulings at the Constitutional Court. Likewise, a person may not request the Constitutional Court to impose an obligation upon the legislator to adopt certain regulation.

Second, a person may contest only such legal norms that infringe upon a person's fundamental rights. A requirement has been set that a person may turn to the Constitutional Court only and solely in cases, where a direct link between an infringement upon this person's rights and the contested legal norm exists. A person may not turn to the Constitutional Court even if he considers that justice should be attained and does it in the name of public interests. The legal norm that is incompatible with a legal norm of higher legal force must arguably infringe upon a person's fundamental right defined in the Constitution.

Third, constitutional complaint is the final legal remedy to defend fundamental human rights. Before turning to the Constitutional Court, the person should try to defend his rights by using general legal remedies. A complaint to a higher institution or official, submitting a complaint or a claims statement to a court of general jurisdiction or an administrative court is considered as being such remedies. If a person has started defending his rights that have been infringed upon by general legal remedies, than he/she should exhaust all these remedies. Thus, if a person has turned to the court and the case has been heard by a first instance court, then in order to submit a constitutional complaint, the case must pass through also the appellate and cassation instance.

A constitutional complaint may be submitted without exhausting general legal remedies, if the hearing would be of a general importance or were significant harm to the applicant may not be prevented by these remedies. However, the person must indicate and substantiate these circumstances in the constitutional complaint.

Fourth, a time limit has been set for submitting a constitutional complaint. A constitutional complaint to the Constitutional Court may be submitted within six months after the ruling by the final competent institution has entered into force. This requirement has been envisaged to facilitate stability of legal relationships and to abide by the principle of legal certainty. This term is sufficient to respond to deficiencies in legislation and change the regal relationships that have been created, decreasing the possible consequences.

Fifth, the following must be indicated in a constitutional complaint: the applicant, the institution or the official, who issued the contested act, facts of the case, legal substantiation of the application, claim to the Constitutional Court. The constitutional complaint, in particular, should substantiate that an infringement of a person's fundamental rights established in the Constitution has occurred and that all general legal remedies have been exhausted or that such do not exist. Explanations and documents that are necessary for establishing the facts, as well as documents proving that all general legal remedies have been used must be appended to the constitutional

complaint. This substantiation must be sufficient for admissibility of a claim. If the substantiation is insufficient, the Panel of the Constitutional Court has the right[74] to declare the application inadmissible.[75]

16. Has your Court developed case-law concerning access to ordinary / lower courts (e.g. preconditions, including, costs, representation by a lawyer, time limits)?

The Constitutional Court has examined various aspects of the right to a fair trial, as well as the proportionality of various restrictions placed upon the right to turn to court. Likewise, the Constitutional Court has also reviewed costs[76], representation by a lawyer[77], time limits.[78]

Some important findings:
The right to a fair trial also means that a person has the right to access to court. If the State has the obligation to establish independent and unbiased courts and the obligation to ensure a number of procedural safeguards, then it is only logical to demand that persons would be ensured access to courts and that they would be able to use these safeguards.[79]
The State's obligation to ensure the right to access to court is manifested, first of all, by the fact that the State must establish a court, where a person might turn for resolution of a dispute, at least in one instance.[80]
To ensure that the system of courts functions effectively, reasonable restrictions may be placed upon access to court. The legislator must ensure that courts are released from examining obviously unfounded applications and must prevent abuse of court resources. However, the legislator must take into consideration that the first sentence in Article 92 of the Constitution requires that in those cases, where a person's rights and lawful interests are affected, at least minimum right to turn to court must be ensured; i.e., the right to have the case examined at least in one instance.[81]
The right to turn to court may be restricted insofar it is not substantially taken away.[82]
Fundamental rights included in the Constitution may not be declarative. Exercise of these rights in practice must be ensured. […] If the law guarantees to a person the possibility to turn to court, but actually the pre-requisites for submitting an application

[74] Section 20(6) of the Constitutional Court Law
[75] Ziemele I., Spale A., Jurcēna L. Constitutional Adjudication in Latvia. 2018.
[76] Judgements of 20 April 2012 by the Constitutional Court of the Republic of Latvia in Case No. 2011-16-01; 9 May 2008 in Case No. 2007-24-01; 4 January 2005 in Case No. 2004-16-01; 19 April 2010 in Case No. 2009-77-01.
[77] Judgements of 7 February 2014 by the Constitutional Court of the Republic of Latvia in Case No. 2013-04-01; 6 October 2003 in Case No. 2003-08-01.
[78] Judgements of 26 November 2002 by the Constitutional Court of the Republic of Latvia in Case No. 2002-09-01; 26 April 2007 in Case No. 2006-38-03; 27 March 2008 in Case No. 2007-17-05; 13 February 2009 in Case No. 2008-23-03: 10 May 2013 in Case No 2012-16-01; 27 June 2013 in Case No. 2012-22-0103; 10 June 2014 in Case No. 2013-18-01.
[79] Judgement of 9 May 2008 by the Constitutional Court of the Republic of Latvia in Case No. 2007-24-01, Para 8.
[80] Judgement of 21 October 2013 by the Constitutional Court of the Republic of Latvia in Case No. 2013-02-01, Para11.
[81] Judgement of 10 June 2014 by the Constitutional Court of the Republic of Latvia in Case No. 2013-18-01, Para 15.
[82] Judgement of 27 June 2003 by the Constitutional Court of the Republic of Latvia in Case No. 2003-04-01, Para 1.1.

cannot be met, then it cannot be considered that the State has ensured that the right of access to court can be exercised in practice.[83]
Payment of various fees as a restriction upon a person's right to free access to court is admissible only if this is not an obstacle preventing from exercising the right to free access to court.
[…] By not establishing a mechanism for releasing persons with low income in full or partially from the obligation to pay the fee to access court, the legislator has totally deprived these persons from the possibility to exercise their right to a fair trial.[84]
The State is obliged to cover the costs of prison inmates' correspondence which is linked to access to court in those cases, where the person does not have at his or her disposal the means for covering the costs of correspondence.[85]

17. Has your Court developed case-law on other individual rights related to the rule of law?

Yes. See the answer to Question 4.

[83] Judgement of 9 May 2008 by the Constitutional Court of the Republic of Latvia in Case No. 2007-24-01, Para 12.
[84] Judgement of 20 April 2012 by the Constitutional Court of the Republic of Latvia in Case No. 2011-16-01, Para 15.
[85] Judgement of 9 May 2008 by the Constitutional Court of the Republic of Latvia in Case No. 2007-24-01, Para 12.