CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT
on behalf of the Republic of Latvia
Rīga, 8 April 2024
Case No. 2023-01-03

The Constitutional Court composed of the chairperson of the court hearing Aldis Laviņš, judges Irēna Kucina, Gunārs Kusiņš, Jānis Neimanis, Artūrs Kučs, Anita Rodiņa, and Jautrīte Briede,

with the participation of sworn advocate Toms Krūmiņš who is the authorised representative of the applicants, i.e. the foundation Latvian Fund for Nature, the foundation World Wide Fund for Nature, and the society Latvian Ornithological Society, the representative of the foundation Latvian Fund for Nature Baiba Baltvilka, the representative of the foundation World Wide Fund for Nature Jānis Rozītis, and the representative of the society Latvian Ornithological Society Viesturs Ķerus,

and sworn advocate Kristaps Zaķis who is the authorised representative of the authority having issued the contested act, i.e. the Cabinet of Ministers (hereinafter – the Cabinet), as well as representatives Arvīds Ozols, Lelda Pamovska, and Āris Jansons,

with the secretary of the court hearing Paula Marta Daugavvanaga-Vanaga,

on the basis of Article 85 of the Constitution of the Republic of Latvia and Section 16, Clause 3, Section 17, Paragraph one, Clause 11, Section 19.^{2}, and Section 28 of the Constitutional Court Law,

with the participation of participants to the case, examined, on 14 February, 22 February, 28 February, and 7 March of 2024, at an open court hearing the following case:

"On Conformity of Annex 7 to Cabinet Regulation No. 935 of 18 December 2012, Regulations Regarding Felling of Trees in Forests, insofar as it Reduces the Final Felling Diameter According to the Dominant Tree Species and Site Index, with Article 115 of the Constitution of the Republic of Latvia".

Establishing Part

1. On 18 December 2012, the Cabinet adopted Regulation No. 935, Regulations Regarding Felling of Trees in Forests, (hereinafter – the Felling Regulations) which entered into force on 1 January 2013. Annex 7 to the Felling Regulations defined the final felling diameter according to the dominant tree species and site index:

No.	Dominant tree species	Site index			
		Ia	I	II	III
		average diameter of the dominant stand (centimetres)			
1.	Pine	39	35	31	27
2.	Spruce	31	29	29	27
3.	Birch	31	27	25	22

By Cabinet Regulation No. 374 of 21 June 2022, Amendments to Cabinet Regulation No. 935 of 18 December 2012, Regulations Regarding Felling of Trees in Forests, (hereinafter – the Amendments to the Felling Regulations) which entered into force on 30 June 2022, Sub-paragraph 1.9 of Annex 7 to the Felling Regulations was reworded as follows:

No.	Dominant tree species	Site index			
		Ia	I	II	III, IV, and V

		average diameter (cm) of the first level trees of the dominant tree species			
1.	Pine	30	30	30	30
2.	Spruce	26	26	26	26
3.	Birch	25	25	25	25

Annex 7 to the Felling Regulations was not subsequently amended and remains in force in such wording. It reduced the final felling diameter for pines of site indices Ia, I, and II; spruces of site indices Ia, I, II, and III; and birches of site indices Ia and I.

2. The applicants, i.e. the foundation Latvian Fund for Nature, the foundation World Wide Fund for Nature, and the society Latvian Ornithological Society (hereinafter – the applicants), consider that Annex 7 to the Felling Regulations, insofar as it reduces the final felling diameter according to the dominant tree species and site index, (hereinafter – the contested norm) fails to conform to Article 115 of the Constitution of the Republic of Latvia (hereinafter – the Constitution).

The applicants take the view that the obligation of public authorities to establish and ensure an effective system of environmental protection, arising from Article 115 of the Constitution, has been infringed. The contested norm was adopted in a hasty procedure, without ensuring proper public participation, without assessing whether the contested norm would facilitate the objective set forth in the draft amendments, i.e. the extraction of wood chips and the reduction of energy prices, and without assessing whether the public benefit would outweigh the environmental damage.

2.1. The draft amendments to the Felling Regulations, which contain the contested norm, was included in the agenda of the Cabinet sitting only one day earlier, while during the sitting discussions on the necessity and justification of the contested norm lasted less than an hour. The applicants were not given the opportunity to examine the draft amendments in detail and to prepare a written opinion; they had to express the views orally. Thus, the applicants were deprived of a timely and full exercise of their right to participate. The fact that the applicants

had already expressed their views on the draft amendments to the Felling Regulations in 2017 and 2019 is irrelevant, since the draft amendments adopted in 2022 have a new objective, i.e. to increase the possibility of extracting wood chips and to reduce the price of wood chips.

The Cabinet failed to comply with the precautionary principle. It justified the adoption of the contested norm with the Guidelines for the Development of Forest and Related Sectors 2015–2020 (hereinafter also – the Forest Guidelines). However, neither the Forest Guidelines nor any other forestry planning document provide for the reduction of the final felling diameter. Consequently, the environmental impact of the activity provided for in the contested norm was not assessed. On the contrary, the Forest Guidelines do not stipulate an increase in timber extraction volumes during the planning period. As the reduction of the final felling diameter is to be regarded as an amendment to the Forest Guidelines that may have a substantial impact on the environment, a strategic environmental impact assessment (hereinafter – the strategic assessment) was required.

The principle of good legislation, the principle of assessment, and the principle of sustainability were disregarded as well.

2.2. The Cabinet failed to duly assess the compatibility of the contested norm with the Constitution, as well as the norms of international and European Union law. The necessity of such a legal framework was not based on studies and economic analysis confirming that the reduction of the final felling diameter and extraction of additional wood chips would help reduce the price of wood chips, alternative options were not considered as well. The contested norm infringes the European Green Deal, the European Union Forest Strategy for 2030 of 16 July 2021 (hereinafter – the European Forest Strategy), the European Union Biodiversity Strategy for 2030 of 20 May 2020 (hereinafter – the European Biodiversity Strategy), and the medium-term and long-term planning documents of Latvia.

The European Forest Strategy stresses that clear felling should be carried out with caution and only in duly justified cases, as it affects aboveground biodiversity and leads to the loss of carbon stored in roots and, to some extent, in the soil. However, in Latvia, clear felling is the way in which the final felling is carried out in most cases.

2.3. The objective of adopting the contested norm, i.e. to increase the availability of wood chips and to reduce the price of wood chips, will not be achieved without simultaneous imposition of restrictions on the exports of wood chips. The necessity of the contested norm was justified by the fact that wood chips were no longer imported from Belarus and their price had risen sharply. However, data on the balance between imports and exports of wood chips show much higher exports of wood chips than imports thereof. Reduction of the average diameter of trees could only increase the amount of wood chips produced by private forests by 2.6 per cent, instead of 20 per cent as claimed during the adoption of the contested norm.

There are alternative and more environment-friendly options that could be used to address the energy crisis and achieve energy independence, including, for instance, the promotion of wind energy production. Another possible alternative is to increase the felling volumes in forests managed by the joint-stock company Latvian State Forests.

2.4. The number of confirmations of tree felling issued after the contested norm entered into force has doubled. Along with the adoption of this norm, Cabinet Regulation No. 308 of 2 May 2012, Regulations Regarding Reforestation, Afforestation, and Plantation Forest, (hereinafter – the Reforestation Regulations) was amended. The purpose of these amendments was to mitigate the negative effects caused by the contested norm. However, the respective requirements apply only to forest stands for which a confirmation of tree felling is issued after 1 January 2023. For this reason, forest owners have been interested in obtaining a confirmation of tree felling by 1 January 2023.

2.5. The permission to carry out felling of younger forests prevents the achievement of the objective to reduce greenhouse gas emissions. The contested norm would allow the felling of trees that are up to several decades younger, which would reduce the proportion of mature forest stands, i.e. older than 70 years, which are important for biodiversity. The contested norm causes degradation of the forest ecosystem, as well as reduces the opportunities to fully use the forest non-timber values, including the recreational, environment stabilising, and ecological properties of the forest. In the long term, several protected habitats will be adversely affected, including specially protected bird species nesting in mature and

large trees. It is significant that the identification of the distribution and quality of protected habitats of European Union importance (hereinafter – the habitat mapping) had not yet been completed at the time of adoption of the contested norm. The Cabinet should not have been allowed to adopt the contested norm before completion of this procedure. These actions have resulted in allowing to carry out felling of protected habitats.

The applicants consider that the contested norm fails to achieve a reasonable balance between the economic interests and the right of the society to live in a benevolent environment.

2.6. During the court hearing, the representatives of the applicants argued that the reduction of the final felling diameter had an impact on the environment, but whether this impact was beneficial or adverse should have been assessed in the strategic assessment. According to the case-law of the Court of Justice of the European Union, the contested norm must be regarded as a legislative act which must be preceded by a strategic assessment.

The representatives of the applicants pointed out that the forest bird index is one of the biodiversity indicators used in the National Development Plan of Latvia for 2021–2027, as well as in other planning documents. The forest bird index has a significant negative correlation with timber harvesting volumes, i.e. increase in these volumes causes decrease in the forest bird index. The amendments will result in an increase in timber harvesting intensity which is expected to have an even greater negative impact on forest bird populations. The projections of the Cabinet that the final felling area will initially increase, but then the timber harvesting intensity will decrease, is related to the fact that the area suitable for final felling will eventually decrease.

Coniferous forests, which are planted to replace felled trees, have lower bird densities. The young stands of those trees would be the poorest part of the forest for bird species. Similarly, the abundance of bird species will be adversely affected by fragmentation that will increase along with the augmentation of clear felling. In young forests, the volume of large dead wood will be reduced, but its availability is an indicator of the suitability of the forest for maintaining biodiversity and is one of the indicators of sustainable forest management. The growth of artificially restored forests will only increase the risks to forest diversity.

Biodiversity ensures the overall stability and wider functionality of ecosystems. A more diverse space is needed for a variety of habitats, not a more simplified and homogeneous forest ecosystem.

The determination of the final felling diameter is a matter of public importance, and therefore there are doubts as to whether the legislator was entitled to authorise the Cabinet to decide on this matter.

3. The authority which issued the contested act, i.e. the *Saeima*, believes that the contested norm conforms to Article 115 of the Constitution.

By the *Saeima* Decision of 16 June 2016, Regarding Tasks to be Performed to Ensure Sustainable, Efficient, and Rational Management of the Natural Resources and Public Assets of Latvia, the Ministry of Agriculture was instructed to assess the laws and regulations governing forest management and their impact on the economic viability of forestry, as well as to prepare proposals to improve the effectiveness of such laws and regulations. The assessment of the regulatory framework regarding the final felling diameter in Latvia and other Baltic Sea countries, as well as scientific studies concerning forest maturity models in Latvia, revealed the necessity to change the final felling diameter. In order to balance this, it is intended to increase the requirements for final felling and reforestation after clear felling. Amendments to the Felling Regulations and the Reforestation Regulations have generally been aimed at improving the efficiency of forest management. The contested norm cannot be viewed separately from the entire legal framework introducing changes to the regulations regarding felling of trees in forests and reforestation.

3.1. Apart from the reduction of the final felling diameter, the requirements for reforestation after clear felling were increased. In particular, the time limit for reforestation has been shortened, the obligation to reforest with trees of the same or higher quality after clear felling has been established, and the prohibition to carry out the final felling earlier than three years after thinning has been established. Thus, on the one hand, the amendments allow for increased deforestation, while on the other hand they impose new obligations on forest owners to promote the protection of forest habitats and the conservation of the most valuable tree species. Not only will it help to increase the volume of timber

extraction, but also to create high-quality and productive forest stands and to maintain a higher proportion of economically valuable species. Genetically sustainable forest stands will be able to sequester much more carbon dioxide. Thus, the interests of individual private entities are generally aligned with the opportunities for sustainable development, and the principle of sustainability is thus also respected.

The Cabinet believes that the applicants have a narrow perspective of forestry activities, seeing them only as deforestation and sale of timber. However, deforestation is only a small part of forest management. Forest management also requires significant investments and expenditures, and the amendments make the overall use of the funds more efficient and of higher quality.

3.2. Since 2016, the main objective of the amendments, including the contested norm, has been to improve the resilience of future forests to climate change and to increase both their productivity and their carbon sequestration. In 2022, the energy crisis that followed the Russian invasion of Ukraine prompted the adoption of the contested norm. However, this circumstance is not to be regarded as the main purpose of adopting the contested norm. The current energy market situation, the necessity to increase the resilience of forests to climate change, to improve forest productivity, and to increase carbon sequestration were also taken into account. Thus, the compatibility of the legal framework with the public needs has been ensured. However, the impact of the contested norm on the price and availability of wood chips, as well as on the energy crisis in general, can only be judged in the long term. Although it cannot be said that the contested norm has had an impact on the price of wood chips, the price of wood chips has normalised since the adoption of the contested norm and has almost reached its pre-crisis level.

3.3. There is no scientific justification that the contested norm is likely to cause significant or irreversible damage to the environment. There are no grounds for refusing the changes in a legislative act if the parties involved only refer to theoretical risks in general terms. Moreover, forest scientists believe that the contested norm will not only help to preserve forest biodiversity, but even qualitative improvement thereof.

The adoption of the contested norm did not require a strategic assessment. According to Section 4, Paragraph three of the law On Environmental Impact

Assessment, this assessment is required for planning documents. However, the contested norm was adopted in the form of a Cabinet regulation. The reference to the Forest Guidelines is justified, given that the contested norm has already been in progress since 2016. Even if a strategic assessment should have been carried out, the urgent circumstances present in the particular situation would justify the absence of such assessment.

The assessment carried out before the adoption of the contested norm reached the standard of conduct resulting from the principle of assessment. In particular, several studies were carried out in order to ascertain the possible effects of the contested norm, and several consultations were organised, involving therein the applicants, scientists, and other interested parties. The contested norm was adopted only after substantial information had been gathered over several years in relation to its impact on various sectors. The benefit to society as a whole outweighs the environmental damage.

3.4. The Cabinet disagrees with the statement that timely and full exercise of the right of public participation was not ensured. The contested norm has not changed since discussion of its draft in 2017 and 2019. The position of the applicants has not changed as well. It would be ineffective to approach the applicants repeatedly, demanding detailed views from them. Public awareness activities were organised also after 2019.

The alternative solution proposed by the applicants, envisaging restrictions on the exports of wood chips, is in fact not feasible, since Latvia must comply with the Treaty on the Functioning of the European Union which provides for the free movement of goods in the common market of the European Union. Latvia may not arbitrarily impose restrictions on the exports of wood chips.

The Cabinet disagrees with the statement that the increase in the number of certificates issued for clear felling is related to the entry into force of the contested norm. The increase in the number of certificates issued in the second half of 2022 is related to the rise in timber prices and the increase in the cost of obtaining a certificate after 1 January 2023.

3.5. The representatives of the Cabinet pointed out at the court hearing that the contested norm had no negative impact on the environment. Mature trees of a larger diameter do not necessarily mean a forest with greater biodiversity. In

Latvia, the diameter of trees for felling is not determined for the purpose of ensuring environmental protection. As regards the necessity of a strategic assessment, the representatives pointed out that, although the average reduction of the diameter is not explicitly mentioned in the Forest Guidelines, it can be inferred from the manner in which the increase in the proportion of overgrown forests is planned to be addressed. A policy planning document should include the lines of action and objectives, but not such detailed provisions as reduction of the diameter by a few centimetres.

The age of felling is derived from the diameter of the trees and is based on economic needs. The contested norm does not affect the choice of the type of felling, i.e. clear felling or selective felling, and therefore there is no justification for the claim that the application of this norm will encourage clear felling. Laws and regulations lay down various obligations for forest owners in order to ensure the preservation of their biodiversity during day-to-day management of forests.

After the adoption of the contested norm, the volume of wood chips produced increased by 24 per cent and, consequently, the price of wood chips decreased. The amendments have thus achieved their objective. The Cabinet did not have to intervene in the market economy and restrict exports, nor was it necessary to change the amount of final felling in the forests across the country. The studies carried out during the adoption of the contested norm have confirmed that it will not have a negative impact on the environment, in particular because the volume of final felling by diameter is rather low. According to the data at the disposal of the State Forest Service, the area subject to final felling by diameter increased by 711 hectares in the second half of 2022.

It was necessary to determine the transitional period for the requirement to reforest within three years after clear felling for reasons of legal certainty, as otherwise there would not have been a sufficient number of seedlings available in tree nurseries.

The Cabinet followed the precautionary principle by not only reducing the diameter, but also by adopting stricter requirements in respect of the conservation of important elements for biodiversity.

The authorisation granted by the legislator to determine the final felling diameter is not infringed, since the Law on Forests does not require that the final

felling diameter should correspond exactly to the final felling age laid down in Section 9, Paragraph one of the Law on Forests. The diameters laid down in the contested norm are also within the limits in which a forest stand can grow to a certain age.

4. The Ministry of Environmental Protection and Regional Development, i.e. the invited party, points out that no agreement has been reached with the Ministry throughout the development of the amendments to the Felling Regulations.

The contested norm allows felling of high quality and productive forest stands with the site index Ia, I, and II before they have reached the felling age, thus reducing the contribution to ensuring biodiversity. It also does not encourage the replacement of low-value forest stands, as low-value forest stands either do not correspond to the target tree species of the amendments or do not reach the relevant diameter parameters. The reduction of the diameter applies to pine, spruce, and birch, but these are not traditional target species for firewood or wood chips.

The contested norm does not apply to specially protected nature territories and micro-reserves, but it significantly threatens the existence of specially protected species and their habitats outside specially protected territories and micro-reserves, as well as specially protected species whose habitats are large trees or old forest stands. The contested norm could significantly reduce the proportion of old, large, and biologically valuable forests and thus jeopardise the implementation of the European Forest Strategy. Increased reforestation requirements will not compensate for the loss of biodiversity. Increasingly intensively managed forests are experiencing significant biodiversity loss and such forest management practices are not sustainable. The Cabinet took into consideration only the economic benefits.

Before the adoption of the contested norm in 2022, the data were not updated and the impact of the project was not assessed. The Forest Guidelines do not provide for the reduction of the diameter and, consequently, its impact has not been assessed in the strategic assessment.

The Ministry of Environmental Protection and Regional Development points out that the habitat mapping had not been completed yet at the time of

adoption of the contested norm. The contested norm also allows the felling of forest stands in which protected habitats and species of European importance were identified as part of the habitat mapping. The loss of these habitats and species would have a significant impact on the achievement of the objectives of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (hereinafter – the Habitats Directive) transposed into the Latvian legislation and on the favourable conservation status of habitats and species of European Union importance.

The representative of the Ministry of Environmental Protection and Regional Development pointed out at the court hearing that according to the habitat mapping data it was established that many protected habitats of European importance are located just outside protected nature territories. The transition to young stands is leading to the loss of habitats and potential homes for rare and protected species of birds and bats.

The Ministry of Environmental Protection and Regional Development should ensure that new specially protected nature territories are not created in a planned manner until the informative report on the habitat mapping is examined by the Cabinet. A total of 9100 hectares of habitats were destroyed during the habitat mapping, as habitats outside specially protected territories are not protected in any way at all. Felling of younger forest stands reduces the likelihood of old forest stands expanding in the long term and creating protected habitats of European importance.

5. The State Environmental Monitoring Bureau, i.e. the invited party, points out that neither the law On Environmental Impact Assessment nor Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (hereinafter – the Environmental Impact Assessment Directive) *expressis verbis* stipulates that the strategic assessment would be applicable to an external legal act.

The State Environmental Monitoring Bureau has issued the opinion "Regarding Environmental Report of the Guidelines for the Development of Forest and Related Sectors 2015–2020". The Environmental Report does not foresee solutions for increasing the felling volumes based on changes in the average

diameter of trees. It derives from the Environmental Report that the proportion of overgrown forest stands will increase. The Environmental Report defines measures to increase the value of the forest, but it cannot be established that any of these measures would have provided for changes in the average diameter. Tt is not apparent from the Forest Guidelines as well. Accordingly, no strategic assessment has been carried out in respect of the change in the average diameter as provided for in the contested norm.

It follows from the judgments of the Court of Justice of the European Union of 27 October 2016 in Case C-290/15 and of 25 June 2020 in Case C-24/19: the mere fact that a change is determined by a legal norm contained in an external legal act does not mean that such a change should not be subject to strategic assessment in the event that the respective legal norm is recognised to be consistent with a particular plan or programme.

6. The State Forest Service, i.e. the invited party, points out that the contested norm is the result of a political decision and the reduction of the final felling diameter gives forest owners more freedom of choice when taking decisions in relation to the management of their forests.

Although a higher number of confirmations of tree felling were issued in 2022 than compared to previous years, the actual felling volumes have not changed significantly. In 2022, willingness of forest owners to obtain a confirmation of tree felling was affected by the expected increase in State fees at that time. It should also be taken into account that a confirmation of tree felling is valid for three years, or two years for certain felling sites, therefore, the volume of timber not extracted in 2022 will probably be extracted in 2023 or 2024. The timber market situation and the logging opportunities available in Latvia also affect willingness of forest owners to harvest timber.

The representative of the State Forest Service pointed out at the court hearing that, in terms of sustainability, it is impossible to predict what will happen in 10 or 20 years. However, in 2022, there have been no significant changes, even though the felling volumes applied for were higher than before. However, the felling permit is valid for three years, so it is difficult to predict when exactly the felling will take place.

From a forestry point of view, the condition of the forest is optimal, because what is harvested is also restored. Laws and regulations impose the obligation on forest owners to take care of their forests.

Before the adoption of the contested norm, the final felling diameter and age values were equal. Currently, the final felling age diameter is higher than that laid down in the contested norm, but lower than before.

7. The joint-stock company Latvian State Forests, i.e. the invited party, supports the arguments put forward in the response. The contested norm will reduce the bureaucratic burden on forest owners and strengthen the possibilities of sustainable forest management, i.e. increased productivity of forest stands, the ability of forests to sequester carbon dioxide, without reducing the possibilities of other forest ecosystem services.

It is already evident in practice that as a result of the amendments made to the Felling Regulations and the Reforestation Regulations, the capital value of forests managed by the joint-stock company Latvian State Forests is increasing, which is of great importance for the development of the entire national economy. The joint-stock company Latvian State Forests carries out final felling according to diameter on a limited scale, i.e. less than one per cent, which results in a large number of forests stands having reached the final felling age. Typically, the final felling is carried out when forest stands are low-yielding.

8. The Latvian State Forest Research Institute "Silava", i.e. the invited party, considers that the constitutional complaint is unfounded.

Prior to the adoption of the contested norm, the final felling diameters established were based on the average values in forest stands where the trees of the dominant species of the first level of the forest stand had reached the final felling age. These values were not calculated or modelled, but mechanically determined at least 24 years ago as the average values in the final felling age of the forest stands at that time, which was determined according to the demand for timber at that time. Nowadays, demand has changed and it is unreasonable to ask forest owners to grow a product that is not suitable for the current market.

According to the National Forest Monitoring data, the area of pine forests has decreased. This is due to the previously determined diameter. In particular, before the adoption of the contested norm, the final felling diameter in pine forests with the site index Ia was 39 centimetres, while in spruce forests it was 31 centimetres. The forest owners had no incentive to restore and grow pine trees, as a difference of eight centimetres in diameter would mean at least 20 extra years of growing. Currently, the contested norm provides for a difference of four centimetres in the final felling diameter of pine and spruce, which is more motivating for the restoration of pine forests.

Forest biodiversity will maintain or even increase in the long term, rather than decrease. As stricter requirements for reforestation are also foreseen, it can be expected that in the future there will be more coniferous and birch forests in Latvia than low-value deciduous forests. Conifers will take longer to reach the final felling parameters than low-value deciduous trees.

In old forest stands that have not been disturbed for a long time, where the age of the trees ranges from 104 to 218 years and old trees are the dominant forest element, the total carbon stock is on average 20 per cent higher than in younger forest stands. However, the carbon storage efficiency, or the annual accumulation of carbon in tree biomass and dead wood, is much lower in old forest stands than on average in forest stands that are twice younger. Effective forestry is therefore essential for maintaining climate neutrality in the long term. In aged soils, the number of first level trees, or forest stand density, is much lower than in young forest stands, which indicates to low stability of carbon stocks.

The assessment of ground vegetation diversity and the comparison of its values at the average age of the target diameter and in old pine stands shows that the main factor affecting biodiversity is not the age of the stand, but its structure.

The representative of the Latvian State Forest Research Institute “Silava” pointed out at the court hearing that in 33 per cent of cases trees of the final felling age do not grow up to the specified diameter, in 67 per cent of cases they grow up to it or exceed it. There is no clear correlation between the age of the forest and the average diameter of the trees. The determined forest age and diameter are only of economic importance.

Assessment of how forests will look like in the future, what will happen to their diversity and carbon sequestration, should be based on assumptions. One of these assumptions is that in the future, the felling of trees in forests by diameter will decrease as the cost of reforestation increases. However, the opposite can also happen if, for instance, the price of wood products rises. It is basically assumed that there will be no significant changes. People are expected to harvest 15 per cent of felling areas available for felling by diameter.

Climate neutrality objective of the country is not to ensure a larger carbon stock, but to achieve zero emissions and zero carbon sequestration. Encouraging the growth of forest trees can help achieve this goal.

In Latvia, clear felling activities are counted from 0.1 hectares, and in some cases from 0.2 hectares. In the European Union, there are countries where areas of 50 hectares or more are considered as clear felling areas. Consequently, the concept of clear felling in the European Union documents must be interpreted in the context of the situation in Latvia.

9. The association Latvian Forest Industry Federation, i.e. the invited party, considers that the contested norm conforms to Article 115 of the Constitution.

The association points out that during the process of adoption of the contested norm it has made calculations on the potential increase of felling activities. As a result of the contested norm, in the next decade, the felling volumes will only increase by 500,000 to 700,000 cubic metres per year. This does not mean that overall felling volumes will increase, as forests usable for economic purposes are decreasing year by year due to the diversion of these areas for environmental protection objectives. At the moment, the reliability of the different forecasts can be checked by reference to the 2022 felling volumes and the statistics on the issuance of felling permits. The statistics on the issuance of felling permits show only willingness, but these actions are not always finalised.

The contested norm helps to a large extent to address the issue of availability of additional wood fuel.

The territories affected by the contested norm have few habitats. Latvia has already implemented precautionary measures during the habitat mapping. Also,

laws and regulations do not require that the entire area in which the habitat is located is protected.

The increase in felling volumes has not been nearly as significant as environmental protection organisations have claimed. The contested norm applies to commercial forests that their owners will in any case be able to harvest within the next three to five years. It should also be taken into account that future regulatory framework will significantly reduce the area of commercial forests. This will affect not only the forest sector, but also the energy sector.

10. The association Latvian Forest Owners' Association, i.e. the invited party, points out that the precautionary principle should also be assessed in the context of the increasing risks of storm damage, as well as diseases and pests caused by climate change. The contested norm will allow forest owners to react more promptly to an increase in the likelihood of such risks.

The contested norm is related to the requirements for reforestation after felling. It will promote sustainable development by ensuring better forest growth and increased forest resources. Better tree growth also means more carbon sequestration and oxygen release, contributing to climate change mitigation and improving the possibility of people to live in a healthy environment. The requirement to carry out reforestation within three years will also help to speed up the carbon sequestration and reduce landscape change. In addition, the requirement to use high-quality planting material could halt the decline in pine plantations, which is thought to be due to the replacement of pine by other tree species.

The contested norm simplifies the legal framework by establishing the final felling diameter irrespective of the site index of the forest stand. This in turn reduces the risks of corruption, as the secondary parameter, i.e. the site index of the forest stand, no longer has an impact on the issuance of the permit required for timber harvesting. Moreover, changes to the final felling diameter offer a more equal position for Latvian forest owners in comparison with forest owners in competing forest growing countries, i.e. Estonia and the Scandinavian countries.

The representative of the Latvian Forest Owners' Association pointed out at the court hearing that climate change is causing changes in forest biodiversity. Timber is the only significant renewable natural resource that can replace energy-

intensive materials such as cement and plastics, and there will be even greater demand for timber in the future. The contested norm, together with the reforestation regulation, solves this problem. This will make future forest stands more productive and efficient, which means more timber to replace fossil resources.

The contested norm allows forest owners to apply it in forest management practice in a rather flexible manner. This promotes diversification of the species and age structure of forest stands, and management with small openings. This does not contradict the guidelines of the European Commission "Nature Friendly Forestry". First, the guidelines recognise that boreal forests in Europe are predominantly managed by private forest owners and that the approach should involve their education and financial incentives to encourage the use of different forest management practices. Secondly, the contested norm does not provide for the type of felling, i.e. clear felling, selective felling, or gradual felling, that the forest owner should choose. Third, there is no provision in the new regulatory framework for the formation of monocultures. According to the Reforestation Regulations, almost 20 per cent of various other tree species in a planted forest stand may have been seeded from surrounding forest stands.

11. ***Dr. silv.*** **Dagnis Dubrovskis, i.e. the invited party,** points out that the final felling target diameter and age depend on the forest management objective. Each forest management objective has a different final felling diameter. The optimum felling diameter and age are calculated by determining the maturity of a forest, i.e. the age at which the forest stand yields maximum timber and industrial assortment, as well as the afforestation of the area after felling trees that have reached the felling age. Natural, reproductive, quantitative, technical, commercial, and economic maturity are distinguished.

The choice of the final felling target diameter and age determines the freedom of choice in forest management. If the State imposes strict restrictions, it can regulate the choice of forest management objectives, which sometimes imposes additional costs on the forest owner that are not compensated by the State. Such a restriction on property rights must therefore be justified. In Finland and Sweden, the final felling target diameter or age is not nationally determined or is

set according to a threshold of quantitative maturity parameters to prevent restriction of the rights of land owners. This approach maximises forestry efficiency, raising incomes and increasing the value of land properties. In Estonia, the final felling target diameters are also lower than in Latvia.

The diameter established by the contested norm would contribute to the increase in the forest capital value, the increase of the annual profit potential of forest owners, and the potential for the increase of the value of additional production of the Latvian forest sector. Number of employment positions in the fields of logging, reforestation, and maintenance of young growths will increase in the regions. The annual increase in felling volumes is expected to be around 10 per cent, without jeopardising the principle of sustainability.

The contested norm provides for an increase in the efficiency of sequestration of greenhouse gas emissions in forest stands, as well as an increase in carbon storage in wood products and a substitution effect of fossil fuels in heating. The risks of biodiversity loss are not related to the contested norm, but to the spatial arrangement of felling sites, which are addressed by the forest stand structure design guidelines, i.e. ecological tree placement, fallen dead wood preservation, spatial planning conditions, and the implementation of ecological landscape planning principles.

The European Biodiversity Strategy provides for a substantial increase in the coverage of protected areas. In some of these areas, economic activity will be fully or partially restricted, thus also affecting economic growth and social well-being. In order to ensure the ecological, economic and social sustainability of land use, solutions should be sought to mitigate or compensate for negative impacts, including optimising the final felling target diameter.

Dr. silv. Dagnis Dubrovskis pointed out at the court hearing that Latvian forestry imitates natural disturbances and creates landscapes with similar structures. The difference is that in the case of natural disturbances, without human intervention, the wood decomposes and no harvest is obtained. The structures that are preserved in felled areas are designed to bring the landscape closer to the processes that would occur in the event of natural disturbances, for instance, forest fire, windthrow, bark beetle proliferation, or other disturbances.

Latvia needs to fulfil the obligations undertaken thereby under the European Biodiversity Strategy, but at the same time find ways to meet climate objectives and offset emissions from protected nature territories in areas where forestry is the primary objective rather than pro

12. *Dr. biol.* Guntis Brūmelis, i.e. the invited party, points out that protected species and habitats are increasingly exposed to risks.

Of the total area of forest habitats mapped since 2017, 5000 hectares have been felled in final felling, thus the contested norm poses additional risks to protected habitats. Although the contested norm does not apply to protected territories, this does not mean that the risk to protected species and habitats that are outside protected territories of European importance is minimised.

Biodiversity in forests is provided by natural processes and structures, including large trees and dead wood, which build up during a longer period of time. The period during which a productive forest reaches the age at which clear felling by diameter is allowed is not sufficient to allow the development of large trees and dead wood. The requirement to maintain eight ecological trees per hectare of a felling area, instead of the current five, will not contribute to the increase in structures. The requirement to leave 30 ecological trees would have a substantial impact. Scientists recommend that five to 10 per cent of trees should be preserved, and even more. The requirement to keep the 10 thickest fallen, broken, or standing dry trees per hectare of a felling area, instead of the current four, will also not have a substantial impact, as cutting younger forests will reduce the chance of dead trees forming.

Dr. biol. Guntis Brūmelis draws attention to the conservation plans for several bird species, which point to the potential risks associated with a reduction in the diameter of tree felling. For instance, the black woodpecker nests in pine trees between 36 and 38 centimetres in diameter, but the number of these trees will decrease. The three-toed woodpecker, which tends to forge cavities in spruce trees, chooses trees with a diameter at breast height of 28.7 to 29.4 centimetres on average for nesting, so the volume of available nest trees for this species will also decrease. Several owl species require large trees and continuity of forest cover. The population of wood grouse will also be affected by intensive forestry.

The study prepared to assess the impact of the amendments on biodiversity was carried out to show that there would be no negative effects. No objective assessment has been carried out, involving a wide range of nature conservation, species and habitat experts.

Since 1990, carbon sequestration in forest land has declined sharply due to increased deforestation. In order to achieve the objective laid down in the European Climate Law of reducing greenhouse gas emissions by at least 55 per cent by 2030, the area of forests over the felling age or diameter must be increased, i.e. the area of protected forests must be increased. Greater impact on greenhouse gas emissions could be achieved by increasing the area of protected forests, as well as by using non-clear felling methods that would allow a significant increase in the long-term sequestration of carbon in living biomass.

There are no studies that show that high quality planting stock and less frequently planted young stands will be more resistant to pests, diseases, and forest fires than naturally regenerating stands.

At the court hearing, *Dr. biol.* Guntis Brūmelis pointed out that the contested norm was justified from the economic point of view, but its impact on ecosystem services and biodiversity should also be assessed. Biodiversity has different levels, i.e. genetic, species, ecosystem, landscape diversity. If only genetic diversity is assessed, it will be higher in a planted stand. However, to assess biodiversity as a whole, rather than in certain aspects, we would first need to spatially separate the stands that can be harvested now and in the future by diameter. The map can then be overlaid with information on habitats of European importance to see whether or not there will be an impact. Bird monitoring data can also be used to model what will happen in the stands. However, no such assessment has been made.

13. Edvards Kušners, i.e. the invited party, points out that the contested norm affects one of the major problems of sustainability which is the preservation of natural diversity.

Forest ecosystem services include regulating the natural water cycle, cleaning up air pollution, and providing recreational or well-being services. Clear felling over decades, and even the complete exclusion of the continued availability

of certain ecosystem services under intensive forestry practices, requires compensatory measures within the framework of forest and environmental protection policies. However, in practice, no such measures are taken.

Edvards Kušners refers to the concept of strong and weak sustainability. The concept of sustainability, which has long been based on the assumption that economic, environmental, and social interests can be balanced while safeguarding the interests of future generations, has not been translated into sustainable policies. Formal compliance with the principle of sustainability continues to degrade resources of the planet for future generations, or to significantly reduce the quality of life. The representation of the interests of future generations is vague and weak compared to the clearly defined present problems and the need to address them. In the interests of the environment, natural science evidence should be integrated into the decision-making process. The definition of sustainable development in the Environmental Protection Law is also based on weak ideas of sustainability.

The concept of strong sustainability offers a clearer view on the essential aspects of applying this principle. It is based on the concept of natural capital and the credible provision of opportunities for future generations. Strong sustainability avoids replacing natural capital with man-made capital, but focuses on not limiting the choices of future generations and preserving the natural capital available or transferable to them. The resolution of current conflicts must be proportionately subordinated to the interests of future generations. The principle of strong sustainability is also reflected in the introductory part of the Constitution, which emphasises both responsibility towards future generations and the existence and development of the Latvian nation through the centuries.

From a sustainability perspective, it is the resilience of the ecosystem as a whole, the continuity of the services it provides, that matters, not the protection of individual rare species. In Latvia, forest is the largest natural ecosystem and its natural form is primeval forest, i.e. old-growth, diverse forest that is rich in species of whatever type. Biologically old forest stands account for only 5.7 per cent of all forest stands in Latvia. The contested norm reduces the possibility of old-growth forests and, together with the new requirements for reforestation, limits the regeneration of diverse and natural ecosystems after final felling. The use of

planting material contributes to the formation of intensively managed and uniform forests.

In order to comply with the principle of sustainability and the purpose of Article 115 of the Constitution and to apply the precautionary principle correctly, the adoption of norms that impair the natural diversity in forests should not be allowed until a sufficient proportion of protected natural areas and their effective management are ensured. The contested norm contradicts subgoals 5 and 9 of Goal 15 of the United Nations Sustainable Development Goals.

The contested norm reduces the natural capital to be passed on to future generations. The impact of the amendments on the ability of future generations to exercise their rights has not been assessed and is likely to be negative. The process of adoption of the contested norm was also not consistent with the principle of good governance and was not carried out in a transparent and accountable manner. The precautionary principle has been infringed.

At the court hearing, Edvards Kušners pointed out that the understanding of the concept of sustainability had changed, as new problems had been discovered, and new facets of the concept had emerged, changing its application. Economic activity has gone beyond planetary boundaries. The planet has physical boundaries and it is the environment where people pursue all their interests, including those related to fundamental rights. Human activity is thus hierarchically framed within the environment. An economy functions to meet human needs. It is necessary to find an external border, which often limits our desire to exercise our rights. The elements of sustainability should be integrated into each other, not separated. It is also necessary to consider not only the interests of the current generation, but also those of future generations. One of the modern-day problems is that the present benefits are being put ahead of those of future generations. Natural capital is often replaced by economic capital, leading to a gradual loss of natural diversity.

14. Forest owner Modris Fokerots, i.e. the invited party, points out that nowadays pine forests can only form naturally in a few small areas. In order to grow a coniferous forest, you need to plant, take care of, and protect the forest.

Forest is not a resource, but fruit. If a forest is planted by its owner, it should be up to him to decide how long and for what purpose the trees are grown.

The contested norm does not impose an obligation, but only permits the felling of trees when they reach the specified diameter. The volume of tree felling is influenced by felling capacity, which is a fixed quantity, and demand, which is a variable quantity. Thus, whatever the diameter of the trees allowed to be felled, this diameter does not determine the volume of timber harvested per year.

Arguments about the decline in forest cover are not valid. In Latvia, forests covered 23 per cent of the territory in 1930 and 53 per cent in 2022. These areas are growing every year. Moreover, only growing trees sequester carbon dioxide.

There was no increase in tree felling in 2022, even despite the high timber prices. The increase in the issuance of confirmations of tree felling at the end of 2022 is due to the fact that the price per confirmation of tree felling previously was EUR 3.48, but reached EUR 100 and more in 2023.

The diameter of a tree growing in a forest much more than its age is affected by the tree genetics, growing conditions, and soil fertility, as well as the density of the trees. In good growing conditions, trees reach the rotation age by diameter much earlier than the specified age. On average, trees reach the specified felling diameter within the following periods of time: birch within 30–40 years, spruce within 40–50 years, pine within 40–50 years.

The argument of the applicants that before the adoption of the contested norm confirmations of tree felling in the final felling were issued mainly according to the age of the trees is unfounded, since approximately 70 per cent of confirmations of tree felling were issued according to the diameter of the trees.

15. *Dr. iur.* Ilma Čepāne, i.e. the invited party, considers that the contested norm does not conform to Article 115 of the Constitution.

The purpose of the authorisation granted by the legislator was to instruct the government to determine the final felling diameter only in cases where the trees of the respective species, due to favourable growing conditions or care, have reached the felling diameter earlier than the indicators typical for trees of the felling age specified in the table in Section 9, Paragraph one of the Law on Forests.

Thus, it should be assessed whether the Cabinet, by adopting the contested norm, has not violated the authorisation granted thereto by the legislator.

The actions of the Cabinet since 2015 with regard to the conservation of biodiversity, including protected habitats of European importance, *inter alia* the issuance of the contested norm, do not demonstrate the alignment of economic, social, and environmental protection interests and compliance with the principle of good legislation.

By the contested norm, the Cabinet has authorised the felling of thinner trees. Such a measure in the context of increasing the forest value is not foreseen in the forest sector policy and therefore has not been subject to a strategic assessment. In order to comply with the principle of sustainability in timber harvesting and also to balance the interests of ecology and biodiversity, the legislation sets a number of restrictions, including the felling age and diameter. The contested norm changes the parameters of one of the criteria for determining the balance of interests, and this change in turn significantly affects the previously existing balance of interests. This was sufficient justification for a strategic assessment to be carried out before the adoption of the contested norm.

The axiom of Latvia's national development, i.e. the promotion of sustainable and democratic development, is the foundation of the country's existence. Article 115 of the Constitution protects the environment and its components. Thus, the protection of the environment and the natural ecosystem, including the forest as an ecosystem, by itself is a legal and constitutionally protected value. Therefore, the felling of trees in the final felling and the criteria for felling laid down by law cannot be considered outside the context of sustainability, including environmental sustainability, as it is a coherent system of environmental constitutionalism.

The precautionary principle relates to potential vague threats and applies where there is no hard evidence that the threat will materialise. So the environmental damage has not yet occurred, but there is also no conclusive evidence that it will not occur. If a decision taken by the State or an authority may have an impact on the environment or human health, the precautionary principle must be respected, according to which, in a situation of scientific uncertainty, environmental risks can and should be controlled before the activity is authorised.

16. *PhD.* Žaneta Mikosa, i.e. the invited party, points out that the Assessment Directive does not contain a classic definition of 'plans and programmes', but qualifying elements. The Court of Justice of the European Union has stressed that the title of a document is not decisive for the application of European Union law. What matters is the content of the document and the consequences it produces or may produce. The Court of Justice of the European Union has already emphasised in its judgment of 7 June 2018 in Case C-671/16 that it is not the title of the document that should be assessed, but the terms contained in the document, otherwise it would be relatively easy to circumvent the requirements of the Directive. The fact that a document is of general application is not a reason for excluding it from the concept of plans and programmes as defined in the Assessment Directive. The requirements of the Assessment Directive also cover amendments to such legislative acts. Otherwise, there may be a desire to distribute the conditions among various subsequently adopted legislative acts and thus circumvent the requirements of the Directive. Therefore, in assessing the legislative act, it is necessary to understand whether it amends the provisions of the relevant planning document, which accordingly has not been subject to a strategic assessment, and whether it should have been subject to a strategic assessment, i.e. whether the legislative act meets the criteria of the Directive. A condition that significantly alters or affects the development of a sector, in particular the management of the natural resource it exploits, and which may have a concomitant impact on the environment, should be assessed at the time of the strategic assessment, while it is still possible to consider in a comprehensive manner the various impacts, both positive and negative, and the various alternatives and options.

According to the Assessment Directive, a strategic assessment is required for a legislative act if the act, first, contains conditions for the planned activities and, second, the implementation of the planned activities is likely to have significant effects on the environment. As regards the contested norm, there is no doubt that it contains relevant conditions on the basis of which permits will subsequently be issued, and therefore that norm corresponds to the first criterion. The second criterion requires an assessment of the significance of the

environmental impacts, which should be carried out by experts who are competent to assess how significantly the proposed changes will affect the environment.

In order to assess the significance in a particular situation, it would be necessary to examine not only the extent of the territory affected by the contested norm, but also what is located in the relevant territories, where the territories themselves are located, whether the planned activities could affect any specially protected species or habitats, as well as whether the fulfilment of Latvia's obligations arising from the European Union's environmental requirements would be jeopardised. The fact that the legislative act affects only a small part of the forest territory in Latvia cannot be the sole criterion.

If there is a risk that the plan could affect specially protected territories, an assessment corresponding to the Habitats Directive would be required. As explained by the Court of Justice of the European Union, for instance, in Case C-323/17, an assessment must be carried out not only if it is clear that the proposed activity is likely to have an adverse effect on the specially protected nature territory, but also if there is a likelihood or risk of an adverse effect. A risk exists if, on the basis of reasonable information, occurrence of an adverse effect cannot be excluded.

The strategic assessment process requires objective information and consultation with the competent authorities on potential adverse effects and possible measures to mitigate or avoid these effects, so that the document approver can make a reasoned decision.

If the legislative act is not adopted solely for the purpose of handling an emergency situation, it cannot qualify as an exception to the Assessment Directive.

Concluding Part

17. The applicants consider that the reduction of the final felling diameter for pine, spruce, and birch trees of certain site index, as laid down in Annex 7 to the Felling Regulations, will result in the felling of much younger trees of these species. This will lead to adverse effects on forest ecosystems and biodiversity. The contested norm was adopted in disregard of the principles of environmental law, the principle of sustainability, and a reasonable balance between the public

interest in living in a benevolent environment and the promotion of economic development.

The Cabinet considers that the contested norm, together with the amendments to the Reforestation Regulations, reasonably balances both the interests of environmental protection and the economic interests of forest owners. Moreover, the contested norm by itself does not affect the environment, as it only determines the final felling diameter. This increases the flexibility of owners in terms of choosing forest management, but not the actual felling volumes in a forest.

17.1. Article 115 of the Constitution determines the following: "The State shall protect the right of everyone to live in a benevolent environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment."

The right to live in a benevolent environment means the right to live in an environment that does not endanger the health and well-being of people. Article 115 of the Constitution covers the non-material aspect of health and well-being of people. This is due to the inherent aesthetic and spiritual value of the natural environment. Changes in the natural environment therefore affect everyone or society as a whole (*see Meiere S., Čepāne I. 115. panta komentārs [Comment on Article 115]. Book: Balodis R. (scientific editor). Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības [Comments on the Constitution of the Republic of Latvia. Chapter VIII. Fundamental Human Rights]. Rīga: Latvijas Vēstnesis, 2011, p. 730*) Consequently, Article 115 of the Constitution protects not only the rights of individuals, but also the right of society as a whole to a benevolent environment.

The Constitutional Court has recognised that Article 115 of the Constitution imposes the obligation on the State to establish and ensure an effective system of environmental protection. The State must take into account the interests of environmental protection when policy objectives or legislative acts are developed and adopted, as well as when the adopted legislative acts are applied and the policy objectives are implemented (*see Paragraph 1 of the Concluding Part of the judgement of the Constitutional Court of 14 February 2003 in Case No. 2002-14-04 and Paragraph 11 of the judgement of 17 January 2008 in Case No. 2007-11-03*).

The State has a wide margin of discretion when taking measures to protect the right of an individual to live in a benevolent environment. The State enjoys this discretion insofar as the general principles of law and other provisions of the Constitution are not infringed. Moreover, the State must use its discretion in such a way as to ensure that the various interests of all parties involved are taken into consideration in the fairest and most appropriate way for the particular situation. When assessing the lawfulness of measures taken by the State in the field of the environment, the principles of law in this area play a significant role (*see Paragraph 17 of the judgment of the Constitutional Court of 19 December 2017 in Case No. 2017-02-03*).

17.2. Sustainability is one of the constitutional principles aimed at the protection of the objectives and values enshrined in the Constitution, as well as the implementation thereof (*see Paragraph 11 of the judgment of the Constitutional Court of 6 October 2017 in Case No. 2016-24-03*).

Sustainable development covers the integrated and balanced development of public welfare, the environment and economy, which meets the present social and economic needs of inhabitants and ensures the compliance with environmental requirements, not endangering the possibility to meet the needs of the future generations, as well as ensures the preservation of biologic diversity (*see Paragraph 6.1 of the judgment of the Constitutional Court of 24 February 2011 in Case No. 2010-48-03*). Environmental sustainability, in turn, is closely related to Article 115 of the Constitution and, together with the fundamental human rights included therein, forms an integrated system of environmental constitutionalism (*see Paragraph 36.1 of the judgment of the Constitutional Court of 27 October 2022 in Case No. 2021-31-0103*).

The State is entitled to take decisions that may have an impact on the environment, but such decisions must correspond to the principle of sustainability, i.e. comprehensively assessed, balancing public welfare, environmental and economic interests, and justifying the selected development option. Only a solution that has been comprehensively assessed and justified can be considered sustainable (*cf. Paragraph 12.1.1 of the judgment of the Constitutional Court of 3 May 2011 in Case No. 2010-54-03*).

The Constitutional Court has also previously recognised that the precautionary principle also plays an important role in an effective system of environmental protection. Environmental protection is not limited to protecting against existing threats and dealing with their consequences, but also includes mitigating or avoiding the possible adverse effects of future activities. The precautionary principle requires identification and assessment of these consequences before the planned action is taken. Compliance with the precautionary principle also promotes environmental sustainability by ensuring the availability of natural resources for as long as possible (*cf. Paragraph 20.1 of the judgment of the Constitutional Court of 17 January 2008 in Case No. 2007-11-03 and Paragraph 19.2 of the judgment of 19 December 2017 in Case No. 2017-02-03*).

Moreover, the precautionary principle has two aspects. First, the onus of proving that the actions taken will not have adverse effects on environmental sustainability is on the person who is planning to take such actions or take a decision. Second, the impact of the proposed actions or decision should be assessed, to the extent possible, using technologies and methods that most fully reveal the likely consequences (*cf. Paragraph 20.1 of the judgment of the Constitutional Court of 17 January 2008 in Case No. 2007-11-03*).

Consequently, Article 115 of the Constitution includes the positive obligation of the State to ensure that legal regulation which may have an impact on the environment is aimed at sustainability and, before its adoption, the possible negative consequences are identified and assessed.

17.3. Forests and timber are among the most important natural resources in Latvia. At the same time, a forest is also an ecosystem, with trees as its main component. But it also includes underwood and ground vegetation, forest animals and soil (*see Nikodemus O., Segliņš V., Blumberga D. Meža resursi [Forest Resources]. Book: Kļaviņš M., Zaļoksnis J. (editors) Vide un ilgtspējīga attīstība [Environment and Sustainable Development]. Rīga: LU akadēmiskais apgāds [Academic Publishing House of the University of Latvia], 2011, p. 56*).

Forests fulfil a variety of ecological functions. They also play an important role in sequestering and storing carbon, regulating climate and water cycles, and serving as habitats for many species (*see Ikauniece S. Meža ekosistēmu*

pakalpojumi [Forest Ecosystem Services]. Book: Ikauniece S. (editor) Aizsargājamo biotopu saglabāšanas vadlīnijas Latvijā. 6. sējums. Meži [Guidelines for the Conservation of Protected Habitats in Latvia. Volume 6. Forests]. Sigulda: Dabas aizsardzības pārvalde [Nature Conservation Agency], 2017, pp. 26, 27). In addition, forest biodiversity is important for forest ecosystem stability (*see Zemkopības ministrijas Informatīvais ziņojums par mežu nozīmi Latvijā [Informative Report of the Ministry of Agriculture on the Importance of Forests in Latvia]. Available at: tap.mk.gov.lv*).

The Communication released by the European Commission for the European Forest Strategy for 2030 also highlights the multifunctional role of forests and also the important role they play in ensuring the health and well-being of people, the public interest and the economy, biodiversity and adaptation to climate change. Forests and the forest sector also provide many socio-economic functions and benefits, including additional jobs and growth opportunities in rural areas and recreational functions favourable to the physical and mental health of people (*see Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. New EU Forest Strategy for 2030. Available at: eur-lex.europa.eu*).

The Law on Forests sets the objective of forest policy, i.e. to promote economically, ecologically, and socially sustainable management and use of the forest (*see Section 2, Paragraph one, Clause 1 of the Law on Forests*). Sustainable forest management is management and use of a forest in such a manner and intensity which maintain the biological diversity, productivity, regenerative capacity, viability, and potential of the forest at present and in the future, its ability to fulfil the significant ecological, economic, and social functions on a local and global scale, as well as which do not cause damage to other ecosystems (*see Section 1, Paragraph one, Clause 13 of the Law on Forests*).

Forest management is aimed at securing economic, ecological, and social interests, as well as preserving forest biodiversity. The Law on Forests thus specifies the principle of sustainability enshrined in the Constitution. Furthermore, Article 115 of the Constitution protects forests as an important part of the environment.

The contested norm determines only the final felling diameter, but it has been adopted in the field of forest management and cannot be viewed separately from the rest of the regulation in this field. According to Section 9, Paragraph one, Clause 1 of the Law on Forests, attainment of the final felling diameter of a forest stand is one of the prerequisites for allowing final felling. Moreover, as indicated by the State Forest Service, the number of confirmations of tree felling issued on the basis of the diameter of trees has increased after the adoption of the contested norm in the second half of 2022. Thus, the contested norm, although by itself it does not grant a permit for felling trees in a forest, nevertheless establishes a precondition on the basis of which the felling of trees in a forest is permitted.

Consequently, the contested norm falls within the scope of Article 115 of the Constitution and the reduction of the final felling diameter infringes the right of everyone to a benevolent environment, which is stipulated in Article 115 of the Constitution.

18. The fundamental issues in the case relate principally to whether the State has fulfilled the positive obligations imposed thereon under Article 115 of the Constitution. In order to assess compliance of the contested norm with Article 115 of the Constitution, the Constitutional Court will examine whether the Cabinet was entitled to adopt the contested norm, as well as whether the contested norm was adopted in compliance with the principle of sustainability and the precautionary principle.

19. At the court hearing, the representative of the applicants pointed out that the determination of the final felling diameter was a matter of importance for society as a whole, which the legislator should decide itself. Consequently, there are doubts as to whether the legislator was entitled to authorise the Cabinet to take a decision in this matter. The representative of the Cabinet, on the other hand, stated at the court hearing that the authorisation had not been violated, since the law did not stipulate that the diameter had to comply with the felling age as laid down in Section 9, Paragraph one of the Law on Forests. The diameters laid down in the contested norm are also within the limits within which a forest stand can grow at a given age.

Dr. iur. Ilma Čepāne, the invited party, pointed out that the purpose of the authorisation granted by the legislator was to instruct the Cabinet to determine the final felling diameter only in cases where the trees of the respective species, due to favourable growing conditions or care, have reached the felling diameter earlier than the felling age specified in Section 9, Paragraph one, Clause 1 of the Law on Forests.

The Constitutional Court has repeatedly stated in its rulings that compliance with the procedures for the adoption of a legal norm is a precondition for the validity of the legal norm *(see, for instance, Paragraph 10.4 of the judgment of the Constitutional Court of 21 November 2005 in Case No. 2005-03-0306 and Paragraph 6 of the judgment of 11 January 2011 in Case No. 2010-40-03*). Thus, the Constitutional Court must first of all assess whether the determination of the final felling diameter is a matter that the legislator should decide by itself and whether the legislator was entitled to authorise the Cabinet to determine the final felling diameter. However, if it were held that the legislator was entitled to grant such an authorisation, it would be necessary to assess whether the Cabinet had complied with the scope of the authorisation granted thereto.

19.1. The Constitutional Court has already indicated that the legislator itself should decide on the regulation of such important and significant matters of public life that require conceptual decision and political discussion (*see Paragraph 10 of the judgment of the Constitutional Court of 14 October 2015 in Case No. 2015-05-03*).

The *Saeima* has adopted the Law on Forests, which is the main legislative act governing the field of forest management, and has determined the purpose thereof, i.e. to promote economically, ecologically, and socially sustainable management and use of the forest. As regards cutting of trees in the final felling, the legislator has established two cases when it is allowed, i.e. when the forest stand has reached the final felling age or the final felling diameter (*see Section 9, Paragraph one of the Law on Forests*). The legislator has also stipulated that a confirmation must be obtained before felling trees in a forest, as well as provided for cases when no confirmation is required and when it is not issued (*see Section 12, Paragraphs one and two of the Law on Forests*).

Thus, the legislator itself has decided on the most important matters concerning the final felling and was entitled to authorise the Cabinet to determine additional criteria for the final felling.

19.2. In order to verify whether the Cabinet has complied with the scope of the authorisation granted thereto, the Constitutional Court must establish the content and purpose of the authorising norms.

The final felling diameter is specified in Annex 7 to the Felling Regulations. Furthermore, Section 13 of the Law on Forests has been also specified as the legal basis for the Felling Regulations, and Clause 1 thereof stipulates that the Cabinet shall issue regulations regarding tree felling in a forest, determining the following final felling criteria: the minimum and critical basal areas of a forest stand and the final felling diameter according to the dominant tree species and side index.

In accordance with Section 1, Paragraph one, Clause 11 of the Law on Forests, the final felling diameter is the average diameter of the first level trees of the dominant tree species of a forest stand at the height of 1.3 metres which must be reached in order to cut the forest stand in the final felling before reaching the final felling age. Thus, the legislator has provided that trees can be felled earlier if they have reached the specified diameter.

The legislator has not aligned the final felling diameter with the final felling age. The Cabinet has a certain degree of discretion in determining the final felling diameter. However, this discretion is limited by the objective of sustainable forest management as laid down in the Law on Forests. This means that the Cabinet has the authorisation to determine the final felling diameter, as long as it does not contradict with this objective. Thus, the fact that the contested norm has reduced the final felling diameter does not mean that the contested norm has been issued in violation of the scope of the authorisation granted by the legislator.

The abstract to the amendments to the Felling Regulations stipulates that it is necessary to change the final felling diameter in order to ensure efficient use of land resources and to promote the productivity of forest stands, as well as to increase the forest capital value, the annual net income potential of the forest sector and the competitiveness of the forest sector (*see the initial impact assessment report (abstract) of the draft Cabinet Regulation "Amendments to Cabinet*

Regulation No. 935 of 18 December 2012, Regulations Regarding Felling of Trees in Forests").

Thus, the objectives underlying the adoption of the contested norm do not contradict the objective laid down in the Law on Forests to promote economically, ecologically, and socially sustainable management and use of the forest.

Therefore, it can be concluded that the legislator itself has decided on the most important matters concerning the final felling and was entitled to authorise the Cabinet to determine the final felling diameter. The Cabinet, in turn, was entitled to decide on the respective matter.

20. The Constitutional Court must now assess whether the contested norm has been adopted in compliance with the principle of sustainability and the precautionary principle.

In order to contribute to the sustainability of the country, a development planning system has been established, as part of which various development planning documents, including policy planning documents, are developed. Guidelines are one of the policy planning documents through which the principle of sustainability is implemented. They lay down medium-term development directions for sectoral policies, including policy objectives and lines of action for the achievement thereof. Furthermore, the succession of development planning documents is taken into account in development planning activities (*see Section 1, Section 5, Paragraph two, Clauses 1 and 2, Section 6, Paragraph one of the Development Planning System Law and Paragraphs 11, 12, and 18 of Cabinet Regulation No. 737 of 2 December 2014, Regulations Regarding Drafting of Development Planning Documents and Impact Assessment*).

Strategic assessment is required for sectoral policy guidelines *(see Paragraph 2.1.1 of Cabinet Regulation No. 157 of 23 March 2004, Procedures for Carrying Out a Strategic Environmental Impact Assessment*). The Constitutional Court has already recognised that the strategic assessment is a procedural measure through which the precautionary principle is complied with in the process of adoption of planning documents related to the environment (*see Paragraph 20 of the judgment of the Constitutional Court of 17 January 2008 in Case No. 2007-11-03*). Strategic assessment therefore ensures that environmental protection interests

are taken into account when laying down policy objectives and lines of action, and that the environmental impacts of implementing the planning document are assessed.

Development planning also complies with the principle of linking the development planning with drawing up of laws and regulations – policy shall be planned before the issuance of the law or regulation, and the development planning documents shall be taken into account when drawing up laws and regulations (*see Section 5, Paragraph two, Clause 9 of the Development Planning System Law*).

Therefore, the development directions and policy objectives laid down in the policy planning document should be taken into account in the process of drafting laws and regulations. This promotes compliance with the principle of sustainability and the precautionary principle enshrined in the Constitution.

21. It follows from the materials for drafting the contested norm that it was adopted in order to comply with the objective laid down in the Forest Guidelines 2015–2020 to implement measures aimed at increasing the value of the forest. There is no dispute in the case that the Forest Guidelines required a strategic assessment, which was carried out as well.

The applicants consider that the adoption of the contested norm with reference to the Forest Guidelines 2015–2020 is unfounded. At the time of adoption of the contested provision, no guidelines had been adopted for a new programming period.

The Cabinet points out that the development of the contested norm was initiated at the time when the Forest Guidelines 2015–2020 were in force, and the contested norm was adopted in order to fulfil the objective laid down therein to implement measures to increase the value of the forest.

A development planning document shall become invalid if the term of validity thereof has expired (*see Section 13, Paragraph two of the Development Planning System Law*). The Forest Guidelines 2015–2020 were adopted for the planning period up to 2020. No new Forest Guidelines have been adopted. The contested norm was adopted on 21 June 2022, i.e. at a time when the term of

validity of the policy planning document had already expired and a new planning document had not yet been drafted.

However, the adoption of a law or regulation without a valid planning document as such does not serve as grounds for declaring the contested legal norm invalid. Even after the expiry of the term of validity of a planning document, a regulatory framework can be developed and adopted in compliance with the previous development direction and policy objectives.

Therefore, the fact that the Cabinet adopted the contested norm after the expiry of the term of validity of the Forest Guidelines 2015–2020 as such does not serve as grounds for declaring the contested norm invalid.

22. As mentioned above, the law or regulation adopted without a valid planning document must comply with the previous development direction and policy objectives. If the development direction or the objectives laid down by the law or regulation are substantially altered, the compliance thereof with the principle of sustainability and the precautionary principle must be assessed repeatedly. Consequently, the Constitutional Court must examine whether the contested norm complies with the policy objectives laid down in the Forest Guidelines 2015–2020 and whether the impact thereof on the environment has been assessed within the framework of the strategic assessment of the Forest Guidelines.

The applicants point out that the strategic assessment of the Forest Guidelines does not assess the consequences of reducing the final felling diameter. The Guidelines had stipulated that no increase in timber extraction volumes was foreseen during the planning period. The reduction of the final felling diameter is also not a performance indicator for determining whether the objective of increasing the value of the forest has been achieved. The reduction of the final felling diameter therefore constitutes an amendment to the Forest Guidelines. Since such an activity may have a substantial impact on the environment, a strategic assessment should have been carried out before the adoption of the contested norm.

The Cabinet, on the other hand, points out that while the Forest Guidelines do not specify changes in the final felling diameter, the objectives laid down in the

Guidelines and how they are planned to be achieved should be assessed. The reduction of the final felling diameter provided for in the contested norm is a measure by which the State implements a policy planning document which should not contain detailed criteria. The representative of the Cabinet emphasised at the court hearing that it was necessary to assess, for instance, the Forest Guidelines in respect of the sequestration of carbon dioxide and the increase in the proportion of overgrown forests. A policy planning document should lay down directions or the performance target, instead of such detailed solutions as the reduction of the diameter by a few centimetres.

The State Environmental Monitoring Bureau pointed out to the Constitutional Court that the Environmental Report of the Forest Guidelines did not foresee solutions for increasing the felling volumes on the basis of changes in the average diameter of trees, as it derived from the documents that not everything that had reached the felling age was felled, and the proportion of overgrown forest stands was even increasing. The Environmental Report lists measures to be taken to increase the value of the forest, but none of them foresees changes in the felling diameter.

Also the Ministry of Environmental Protection and Regional Development has already objected to the fact that no strategic assessment was carried out for the reduction of the final felling diameter (*see the statement of objections provided in the opinions on the draft Cabinet Regulation "Amendments to Cabinet Regulation No. 935 of 18 December 2012, Regulations Regarding Felling of Trees in Forests" (VSS-651, 15.06.2017, No. 23, § 48)*).

The Forest Guidelines and their Environmental Report strategic assessment indicate that specific objectives and measures are identified to achieve each of the policy objectives laid down in the Guidelines. According to the Cabinet, the contested norm was adopted in order to fulfil the objective of implementing measures to increase the value of the forest. The Forest Guidelines in respect of the line of action 'support for and implementation of increasing the value of the forest, including achievement of the CO_2 sequestration target for forest management' indicate the following as performance indicators: area of young stands tended, reduction of the area of unproductive stands, use of selected planting material in reforestation and afforestation, length of reconstructed and constructed

forest roads, length of renovated forest drainage systems (*see the Guidelines for the Development of Forest and Related Sectors 2015–2020. Informative Part, p. 53, Table 7.1*).

The Cabinet refers to the relation of the contested norm to the following two indicators: reduction of the area of unproductive forest stands and use of selected planting material in reforestation and afforestation. The Constitutional Court considers that it cannot be inferred from these performance indicators that they would also cover the reduction of the final felling diameter. Moreover, these indicators cover the reduction of the area of unproductive forest stands, but the contested norm applies to all forest stands, including those of high value.

It can be concluded that the specific line of action 'increasing the value of the forest', on the basis of which the contested norm was adopted, did not provide for the reduction of the final felling diameter. The Constitutional Court also fails to see that any of the other mentioned performance indicators could cover the reduction of the final felling diameter.

22.1. During the court hearing, the representative of the Cabinet pointed out that the Environmental Report of the Forest Guidelines refers to the carbon sequestration and the increase in the proportion of overgrown forests, and that the reduction of the final felling diameter could be considered as a solution to this problem, as the carbon sequestration can be increased through timber harvesting. However, the Environmental Report strategic assessment of the Forest Guidelines in respect of the solution to the problem specified by the Cabinet lists the same tasks as those included in the informative part of the Forest Guidelines, i.e. tending of young stands, replacement of unproductive stands, reforestation with high quality forest reproductive material sourced in Latvia, establishment and maintenance of forest infrastructure. It may be concluded, therefore, that the environmental impacts of these objectives and the results to be achieved have been assessed in the Environmental Report (*see the Guidelines for the Development of Forest and Related Sectors 2015–2020. Strategic Environmental Impact Assessment. Environmental Report, pp. 55, 57.*).

Consequently, the Forest Guidelines do not include, as a line of action, increasing the timber harvesting volume or reducing the final felling diameter, as

specified by the Cabinet, with regard to the objective of increasing the value of the forest and carbon sequestration.

The Environmental Report includes an environmental impact assessment of the final felling. What regards the impact of final felling on forest biodiversity, it is noted that all types of final felling have both positive and negative effects on the environment, including biodiversity. Furthermore, it is stressed that compliance with the requirements of the applicable laws and regulations regarding the felling of trees in a forest and nature protection regulations in forest management generally ensures minimal impact on the environment (*see the Guidelines for the Development of Forest and Related Sectors 2015–2020. Strategic Environmental Impact Assessment. Environmental Report, p. 67*). Accordingly, it must be established that the impact of the final felling on the biodiversity of a forest has been assessed in the light of the requirements for the felling of trees in a forest that were in force at that time, and therefore also the final felling diameter determined before the adoption of the contested norm.

22.2. The Constitutional Court disagrees with the argument of the Cabinet that the reduction of the final felling diameter should be considered only as a measure to achieve one of the solutions included in the Forest Guidelines. The final felling diameter is the requirement laid down in the Law on Forests that must be complied with in order to obtain a confirmation of tree felling. If the numerical values of the diameter change, then the criteria for allowing such an action also change. Reduction of the diameter allows younger trees to be felled and this may have an impact on the environment.

Thus, the contested norm, which reduces the final felling diameter, provides for a solution which was not included in the Forest Guidelines. Consequently, the reduction of the final felling diameter does not comply with the development direction and policy objectives laid down in the Forest Guidelines and has not been subject to a strategic assessment.

23. Since no strategic assessment has been carried in respect of the reduction of the final felling diameter, the Constitutional Court must establish whether the adoption of the contested norm should have been subject to the

requirements for strategic assessment laid down in the law On Environmental Impact Assessment.

23.1. The reduction of the final felling diameter is prescribed by a legislative act. It follows from the law On Environmental Impact Assessment that a strategic assessment is to be carried out for a planning document the implementation of which may have a substantial impact on the environment (*see Section 1, Clause 6 of the law On Environmental Impact Assessment*).

The law On Environmental Impact Assessment incorporates the Environmental Impact Assessment Directive by legal norms governing the strategic assessment, the application and interpretation of which has been repeatedly referred to by the Court of Justice of the European Union. In order to establish whether the process of adoption of the contested norm may be regarded as the adoption of a planning document, the Constitutional Court should also take into account the findings established in the case-law of the Court of Justice of the European Union.

The terms 'plans and programmes' are used in the Environmental Impact Assessment Directive. In interpreting these concepts, the Court of Justice of the European Union has held that, having regard to the objective of the Directive to ensure a high level of environmental protection, those concepts must be interpreted broadly and may also refer to legislation governing the rules applicable in the relevant sector, the essential requirements, and the detailed set of procedures for authorising and implementing projects likely to have significant effects on the environment (*cf. see Paragraphs 49 and 52 of the judgment of the Court of Justice of the European Union of 27 October 2016 in Case C-290/15 D'Oultremont and Others and Paragraph 60 of the judgment of 7 June 2018 in Case C-671/16 Inter-Environnement Bruxelles and Others*). Otherwise, a narrow interpretation of these concepts could circumvent the obligation to carry out a strategic assessment by justifying the absence of an assessment solely on the basis of the legal nature of the document. Moreover, if a legislative act that may have a substantial impact on the environment is adopted at a time when there are no effective policy guidelines for which a strategic assessment is mandatory, the absence of such an assessment is contrary to the principle of sustainability and the precautionary principle.

Thus, the mere fact that the contested norm, whereby the final felling diameter is reduced, has been included in the Cabinet Regulation does not preclude it from being recognised as a document that requires a strategic assessment before the adoption thereof.

As mentioned above, the attainment of the final felling diameter is the requirement laid down in the Law on Forests that must be complied with in order to obtain a confirmation of tree felling. The contested norm serves as the legal basis for an activity that may have an impact on the environment. Consequently, the contested norm essentially corresponds to a plan or a programme, or a planning document within the meaning of the Environmental Impact Assessment Directive and the law On Environmental Impact Assessment.

23.2. Two situations, provided for in Section 4, Paragraphs three and four of the law On Environmental Impact Assessment when a strategic assessment is to be carried out, could apply to the present case.

Section 4, Paragraph three, Clause 2 of the law On Environmental Impact Assessment stipulates that a strategic assessment shall be carried out for a planning document that may have a substantial impact on a protected nature territory of European importance (*Natura 2000*), except for planning documents that lay down nature conservation and management requirements and measures for these territories.

The law On Environmental Impact Assessment also contains legal norms deriving from the Habitats Directive. According to recital 10 of the Habitats Directive, an appropriate assessment must be made of any plan or programme likely to have a significant effect on the conservation objectives of a site which has been designated or is designated in future. Thus, the fact that a territory containing a protected species or a protected habitat of European importance has not yet been designated as a protected nature territory of European importance is not a reason not to carry out a strategic assessment if there is a potential impact on such a territory.

Section 4, Paragraph four of the law On Environmental Impact Assessment stipulates that a strategic assessment shall be carried out for planning documents in areas which are not referred to in Paragraph three, Clause 1 of this Section if they include the basic requirements for the implementation of intended activities

and the implementation of planning documents may have a substantial impact on the environment.

As regards the criterion ‘the basic requirements for the implementation of intended activities’ it has already been recognised in this judgment that the final felling diameter is a prerequisite laid down in the Law on Forests for obtaining a confirmation of tree felling. The contested norm contains the basic requirements for carrying out final felling by diameter.

Thus, the contested norm is subject to the requirement to carry out a strategic assessment if it is established that it may have a substantial impact on the environment or a protected nature territory of European importance.

24. During the development of the contested norm, the Cabinet was informed of several risks related to the contested norm that could lead to environmental damage.

The applicants have pointed out that the reduction of the final felling diameter for pine, spruce, and birch trees may cause environmental damage, as it may lead to an increase in clear felling, which would lead to more forest and habitat fragmentation and the decrease of the proportion of older stands. The contested norm will have a long-term negative impact on a number of protected habitats of European importance and specially protected bird species. Growth of felling volumes will increase the number of nests destroyed in the short term and reduce the availability of habitats for species associated with old forests or large trees in the long term.

The Ministry of Environmental Protection and Regional Development has pointed out that the reduction of the final felling diameter will have a negative impact on two of the most important factors for biodiversity conservation in forests, i.e. the integrity of forest areas and the availability of large trees in forests. Biodiversity will be negatively affected, as large trees are an important factor for the presence of rare and specially protected species in forests. The black woodpecker digs cavities in trees that are at least 38 centimetres in diameter. Several other rare and protected species depend on the presence of the woodpecker. Under the previous regulations, at least some of the trees were suitable for woodpecker nesting. Large trees are also necessary for diurnal birds of prey, most

of which are protected species. Not all bird species can be protected by creating micro-reserves, so nesting also depends on trees in commercial forests. If the final felling diameter is reduced, the breeding opportunities for rare and specially protected bird species will be significantly diminished.

The Ministry of Environmental Protection and Regional Development has emphasised that although the contested norm does not apply to specially protected nature territories, the reduction of the final felling diameter will significantly affect specially protected habitats outside specially protected nature territories and micro-reserves. This was also pointed out at the court hearing by *Dr. biol.* Guntis Brūmelis, i.e. the invited party, who acknowledged that there is a risk to protected species and habitats outside protected nature territories of European importance.

24.1. The Cabinet states that it has assessed the possible risks of environmental damage in the process of adoption of the contested norm. The impact of this norm on biodiversity and bird species, as well as the risk factors, have been assessed in the study "Environmental Impact Analysis Matrix for Changes to the Final Felling Diameter", as well as in the study "Determination of the Parameters of the Final Felling" by scientists of the Latvia University of Life Sciences and Technologies, on the basis of which the environmental impact of the contested norm was modelled. The study by more than 10 scientists of the Latvian State Forest Research Institute "Silava" has also been taken into account. The Cabinet considers that the studies have proved that the contested norm will not have any negative impact on the environment.

It follows from the materials for drafting the contested norm and from what the representatives of the Cabinet stated at the court hearing that, when assessing the risk factors, it was concluded that the number of large trees in artificially formed stands of the same age at the final felling age and diameter is higher than in naturally formed stands of different ages; no significant reduction in the proportion of forests older than 60 to 70 years is expected, but overall there will be a slight increase in the area occupied by young stands; the network of specially protected nature territories and micro-reserves is not affected by the change in the final felling target diameter. Also, the final felling area will increase insignificantly, by 0.05 to 2.06 per cent of the total area of privately owned forests; the requirement for mandatory reforestation by planting high-quality material in stands subject to

felling by diameter will prevent the decline of coniferous stands; and the age structure of stands will become more balanced in the long term. The Cabinet has also pointed out that the average clear felling area in Latvia is small, i.e. less than two hectares.

During the court hearing, the representative of the Cabinet pointed out that the main reason why the contested norm does not have a substantial impact on the environment is that the average volume of the final felling by diameter is small. When the contested norm was drafted, it was projected that the increase in the final felling volume could be 1670 hectares per year. According to the data at the disposal of the State Forest Service, after the adoption of the contested norm, in the second half of 2022, this increase reached 711 hectares. In 2023, the increase in the felled area reached around 1200 hectares.

The Cabinet has indicated that there will be no negative impact on habitats outside specially protected nature territories and micro-reserves, because once protected habitats are identified, a protected area or micro-reserve will be established where final felling by diameter will not be allowed. Moreover, the contested norm would not be able to cause significant damage to habitats outside specially protected territories and micro-reserves, since the increase in the final felling area is not significant.

Thus, the Cabinet considers that before adopting the contested norm it has assessed its impact on the environment and concluded that no substantial impact on the environment is expected.

24.2. The study mentioned by the Cabinet, i.e. "Environmental Impact Analysis Matrix for Changes to the Final Felling Diameter", has been prepared in the form of a presentation and does not give an idea of how the conclusion that no substantial impact on the environment is expected was reached. In addition, the applicants pointed out at the court hearing a number of risks that have not been assessed in this study, for instance, simplification of the stand structure, decrease in the dead wood volume, increase in disturbance to birds, and forest fragmentation.

It derives from the study "Determination of the Parameters of the Final Felling", which has also been prepared in the form of a presentation, that its goal was to determine the optimal final felling parameters that ensure economically

efficient management of forest resources, and conclusions were drawn regarding the increase in the forest capital value and net income generation potential.

In the process of adopting the contested norm, the Cabinet also referenced to forestry research studies. However, from the case files and the responses provided by the Cabinet, it can be seen that no independent specialists in species and habitat conservation have been involved in the environmental impact assessment and no studies by such specialists have been used. This shows that the balance of different interests has not been comprehensively examined, and the actions of the Cabinet also do not provide assurance that the potential impact of the contested norm has been assessed by properly examining the identified risks of environmental damage to species and habitats.

It should also be noted that at the sitting of the Cabinet of 21 June 2022, when the contested norm was adopted, the Ministry of Agriculture together with the Ministry of Environmental Protection and Regional Development was instructed to prepare and submit an informative report which would comprehensively assess all aspects related to clear felling, including the impact on the environment and its diversity (*see the minutes of the sitting of the Cabinet of 21 June 2022, No. 33, § 79*). This suggests that before the adoption of the contested norm, the Cabinet did not have complete and sufficient information to identify and assess the possible negative consequences.

24.3. The Cabinet justifies its considerations on the possible impact on protected species and habitats outside specially protected nature territories mainly by the fact that a small increase in the final felling area had been projected and even after the adoption of the contested norm it is evident that the increase in the area has been insignificant. However, this does not exclude the risk that even a small area may contain specially protected species and habitats which may be harmed by the contested norm. In assessing the significance of an environmental impact, not only the area of the territory, but also such criteria as duration, frequency, reversibility, cumulative effect, sensitivity, and characteristics of the potentially affected area should be taken into account (*see Section 23.[2] of the law On Environmental Impact Assessment*).

A proper impact assessment of a plan or a project must be carried out where there is a likelihood or risk that the plan or project may have a substantial impact

on the relevant territory. In particular, having regard to the precautionary principle, such a risk exists where it cannot be established on the basis of objective circumstances that the plan or project will not have a substantial impact on the relevant territory (*see Paragraph 39 of the judgment of 6 May 2011 in Case C-538/09 Commission v Belgium and Paragraph 34 of the judgment of 12 April 2018 in Case C-323/17 People Over Wind and Sweetman*). In case of doubt as to whether there is likely to be a substantial impact, a test must be carried out which effectively avoids allowing plans or projects which have a substantial impact on the protected territory (*see Paragraph 44 of the judgment of the Court of Justice of 7 September 2004 in Case C-127/02 Waddenvereniging and Vogelsbeschermingvereniging*).

Thus, taking into account the precautionary principle, a strategic environmental assessment should be carried out not only if there is a risk that the planned activity may affect a specially protected nature territory, but also if, on the basis of objective information, the possibility of such an impact cannot be excluded.

At the court hearing, *Dr. biol.* Guntis Brūmelis, pointed out that before the adoption of the contested norm, it was possible to identify potential forest stands subject to felling by diameter using the data of the Forest Register and to assess the potential adverse impact in conjunction with the information on protected habitats of European importance.

The Constitutional Court establishes that the Cabinet has not carried out such an assessment, but has based its conclusions only on the forecast that the increase in the final felling area would be small.

24.4. The Cabinet has pointed out that the contested norm should be considered in conjunction with other amendments to the Felling Regulations and the Reforestation Regulations, which provide for additional nature protection requirements and additional reforestation requirements. They set a higher number of ecological trees and dead wood to be left in the felling, and reduce the time period for forest regeneration after clear felling. These regulations provide for stricter requirements for reforestation to improve the quality and long-term value of the forest. Forest stands will be created with genetically superior trees that are more resilient to climate change. Reduction of the final felling diameter in

conjunction with the amendments to the Reforestation Regulations will have a positive environmental impact.

A strategic assessment should be carried out if the environmental impact is likely to be substantial. The law On Environmental Impact Assessment defines environmental impact as direct or indirect changes in the environment which have or can have an impact on a human being, the health and safety thereof, and also biological diversity (specially protected species and their habitats, specially protected habitats and habitats of European Union importance), soil, subterranean depths, water, air, climate, landscape, material values, cultural and natural heritage (*see Section 1, Clause 1 of the law On Environmental Impact Assessment*).

Thus, the law On Environmental Impact Assessment does not stipulate that a substantial impact can only be adverse. The strategic assessment assesses different types of impacts, i.e. positive, neutral, and negative, in the context of the overall assessment. The fact that additional requirements are imposed which may have beneficial effects on the environment cannot serve as grounds for not carrying out a strategic assessment.

24.5. Both before the adoption of the contested norm and during the Constitutional Court hearing, the parties to the case, as well as the persons invited to the court hearing, had and still have substantially different opinions on the possible impact of the contested norm on the environment. The arguments of the applicants regarding the possible impact of this norm on the environment, including on protected habitats of European importance and specially protected bird species, are not abstract and formal, but indicate that the contested norm could have such an impact. However, the actions taken by the Cabinet prior to the adoption of the contested norm do not indicate a comprehensive assessment of the potential environmental impact.

The Constitutional Court recognises that there is a possibility that the contested norm may have a substantial impact on the environment or a protected nature territory of European importance.

25. If there is a possibility that the contested norm may cause a substantial impact on the environment, the Cabinet must act in accordance with the principle of sustainability and the precautionary principle and follow the procedures for

deciding on the necessity of a strategic environmental impact assessment provided for in the law On Environmental Impact Assessment and Cabinet Regulation No. 157 of 23 March 2004, Procedures for Carrying Out a Strategic Environmental Impact Assessment (hereinafter – the Regulations Regarding the Procedures for Carrying Out a Strategic Assessment).

According to Section 23.[1], Paragraph one of the law On Environmental Impact Assessment, when commencing the preparation of such a planning document which may have a substantial impact on the environment, also on the protected nature territories of European significance *(Natura 2000*), the developer thereof shall submit a written submission to the competent authority. Prior to submitting the written submission, the developer shall consult with the environmental and public health institutions concerned regarding the possible impact of the implementation of the planning document on the environment and human health and regarding the need for the strategic assessment. In the submission, the developer, taking into account also the criteria for a strategic assessment laid down in Section 23.[2] of the law On Environmental Impact Assessment and the views of the involved authorities, must justify the necessity of a strategic assessment or the reasons why a strategic assessment is not necessary for the specific planning document.

In turn, having assessed the submission of the developer, the State Environmental Monitoring Bureau takes a decision on whether a strategic environmental impact assessment should be carried out for a particular document (*see Section 23.[3] of the law On Environmental Impact Assessment and Paragraph 7 of the Procedures for Carrying Out a Strategic Environmental Impact Assessment*).

The Constitutional Court recognises that the assessment of the potential impact, which was carried out by the Cabinet before the adoption of the contested norm, cannot replace the procedure provided for in the law On Environmental Impact Assessment which lays down specific criteria for assessing the significance of the impact, as well as provides for consultations with environmental institutions. In situations where there are grounds to suspect that a potential environmental impact may be substantial, this procedure allows to determine objectively, taking

into account the interests of all the parties involved, whether such an impact will actually occur and whether a strategic assessment should be carried out.

In its response, the Cabinet points out that even if a strategic assessment had to be carried out before the adoption of the contested norm, there were urgent circumstances which justified the failure to carry out such an assessment. In particular, it was necessary to adopt the contested norm, together with the amendments to the Reforestation Regulations, as a matter of urgency, since the energy crisis in 2022 had raised concerns about the availability of locally sourced renewable energy sources, i.e. firewood and wood chips.

According to Section 4, Paragraph six, Clause 2 of the law On Environmental Impact Assessment, the provisions on strategic assessment do not apply to planning documents relating solely to emergency situations. It follows from the aforementioned provision that an emergency situation must be the sole objective for a derogation from the requirement for a strategic assessment to be permissible.

The Cabinet points out that the adoption of the contested norm was based on the aim to improve the resilience of future forests to climate change and to increase forest productivity and carbon sequestration already from 2016 when the development of the norm was initiated. However, the energy crisis and the increase in prices of wood chips have only accelerated the adoption of the contested norm, but addressing these issues was not the main objective of the contested norm. The rise in the price of wood chips was a reason for urgency, but the draft regulations had a different objective, i.e. sustainable, multilateral forest management.

Thus, the Cabinet itself acknowledges that the adoption of the contested norm was not related to the emergency situation alone. Since the contested norm was not intended merely to deal with an emergency situation, there are no circumstances which would allow a derogation from the strategic assessment procedure.

The Cabinet has failed to comply with the procedures for assessing the significance of a potential environmental impact and the necessity of a strategic assessment before adopting a legislative act that may have a substantial impact on the environment. According to the abovementioned procedural arrangements,

a different decision could have been taken on the necessity of a strategic assessment.

Thus, the Constitutional Court recognises that the principle of sustainability and the precautionary principle have not been respected in the process of adoption of the contested norm. Consequently, the contested norm does not conform to Article 115 of the Constitution.

26. In accordance with Section 32, Paragraph three of the Constitutional Court Law, a legal norm that has been declared as not conforming to the norm of a higher legal force shall be regarded as not in effect from the day of publication of the judgment, unless the court has determined otherwise. Pursuant to Section 31, Clause 11 of the Constitutional Court Law, the Constitutional Court may indicate in its judgement the moment from which the contested legal norm declared as not conforming to the norm of higher legal force ceases to have effect.

The applicants requested the Constitutional Court to declare the contested norm invalid from the moment of its entry into force. Thus, the Constitutional Court has to assess from which moment the contested norm should be recognised as invalid.

The applicants justify their request on the grounds that from 30 June 2022, when the contested norm entered into force, until 1 January 2023, the number of the issued confirmations of tree felling has increased significantly. Forest owners were interested in obtaining three-year confirmations of tree felling so that they would not be subject to the new forest stand restoration requirements. If the contested norm were recognised as invalid from the date of the judgment of the Constitutional Court, then confirmations of tree felling issued on the basis of the diameter indices included in the contested norm would be valid and the felling of trees that had not yet been felled could continue until the expiry of the validity period of the confirmation. This would have a substantial negative impact on the environment and wider public interests.

The representative of the Cabinet pointed out that it should also be taken into account that many forest owners, after receiving confirmations of tree felling, have sold these felling sites to companies related to timber extraction and received

payment for this. Repealing the norm will lead to an increase in civil disputes before the courts.

26.1. When assessing whether to declare the contested norm invalid from the moment of its entry into force, the Constitutional Court must consider what consequences it could cause (*cf. Paragraph 24.2 of the judgment of the Constitutional Court of 20 February 2020 in Case No. 2019-09-03*).

On the basis of the contested norms, confirmations of tree felling have been issued. These confirmations are valid for three years, so there is a possibility that the stands not yet harvested can be felled during this period. In view of the above, the Constitutional Court concludes that the contested norm should be declared invalid from the moment of its entry into force.

Confirmations of tree felling are administrative acts that are favourable to their addressees. According to the provisions of the Administrative Procedure Law, an administrative act does not lose its validity merely because the legal norm on the basis of which it was issued has been declared unlawful. Although this means that the administrative act was objectively unlawful from the outset, such an act remains valid until it is implemented or until it expires.

Thus, the recognition of invalidity of the contested norm from the moment of its entry into force would not as such eliminate the consequences of the contested norm, which the applicants have pointed out.

26.2. Section 31, Clause 12 of the Constitutional Court Law stipulates that 'other court rulings' may be included in the judgment of the Constitutional Court. The Constitutional Court Law grants the court itself the authorisation to decide on ensuring the execution of a judgment, i.e. to determine the legal consequences of its judgments (*see Paragraph 14.1 of the judgment of the Constitutional Court of 6 November 2014 in Case No. 2013-20-03*).

According to Paragraph 86 of the Felling Regulations, in the event that legal circumstances change during the term of the confirmation, the State Forest Service is entitled to take the decision on the revocation of the confirmation. Also, according to Section 86, Paragraph two, Clause 2 of the Administrative Procedure Law, an unlawful administrative act favourable to the addressee may be revoked if a legal norm provides for the revocation of the administrative act. Moreover, in such a case, the addressee of the administrative act is not safeguarded by the

principle of protection of legitimate expectations, since it has been warned of the possibility of such consequences and must take them into account.

One of the cases when legal circumstances change is when a legal norm is declared invalid by a judgement of the Constitutional Court. Thus, the Felling Regulations stipulate that the revocation of confirmations of tree felling is possible on the basis of a judgment of the Constitutional Court and that their addresses are not safeguarded by the principle of protection of legitimate expectations.

The Felling Regulations do not impose a mandatory obligation to revoke confirmations of tree felling, but the Court of Justice of the European Union has also underlined the obligation of a Member State to remedy the consequences of deficiencies in the environmental impact assessment. The main objective of the Environmental Impact Assessment Directive would not be fulfilled if the courts did not take the measures under their national law which are appropriate to prevent the possibility that such a plan or programme, including projects to be carried out as part thereof, could be implemented without an environmental assessment (*see Paragraphs 44 to 47 of the judgment of the Court of Justice of the European Union of 28 February 2012 in Case C-41/11 Inter-Environnement Wallonie and Terre wallonne*).

Consequently, the Constitutional Court recognises that the Cabinet must take measures to ensure that the valid confirmations of tree felling issued on the basis of the contested norm in cases where the diameter of trees in felling is smaller than that provided for in Annex 7 to the Felling Regulations in the wording in force until 29 June 2022 would cease to have effect.

26.3. The Constitutional Court has already recognised that it must ensure, to the extent possible, that the situation which might arise from the moment when the contested norm becomes invalid does not lead to an infringement of the fundamental rights guaranteed to the applicants or other persons by the Constitution, nor does it cause significant damage to the interests of the State or society. If possible and necessary, the Constitutional Court may, in the substantive part of the judgement, recognise that the legal norms amended by the contested act which the Constitutional Court recognised as not conforming to the norm of a higher legal force regain legal force (*cf. Paragraph 22 of the judgement of the Constitutional Court of 30 March 2010 in Case No. 2009-85-01*).

The applicants have challenged Annex 7 to the Felling Regulations only to the extent that the final felling diameter was reduced. If the contested norm were to lose its validity, the situation would arise that the legal framework would not determine the final felling diameter in the case of spruce, pine, and birch trees of a certain site index. The main felling of the tree species with the respective site index could still be carried out when the trees reach the age specified in Section 9, Paragraph one, Clause 1 of the Law on Forests. However, forest owners have so far had also the option of clear felling by diameter. Moreover, the strategic assessment of the Forest Guidelines 2015–2020 was carried out at the time when Annex 7 to the Forestry Regulations was in force in the wording prior to the adoption of the contested norm. The environmental impact assessment therefore takes into account the previously determined final felling diameter. Taking into account also the interests of forest owners, it is recognised that it is necessary to decide on the restoration of the legal force of the legal norm that was in force before the contested norm entered into force. However, having regard to the fact that Annex 7 to the Felling Regulation ceases to have effect only in the contested part, the wording of Annex 7 in force until 29 June 2022 should be reinstated in the part in which the contested provision ceases to have effect.

Substantive Part

Pursuant to Sections 30 to 32 of the Constitutional Court Law, the Constitutional Court

decided as follows:

1. It is hereby declared that Annex 7 to Cabinet Regulation No. 935 of 18 December 2012, Regulations Regarding Felling of Trees in Forests, insofar as it reduces the final felling diameter according to the dominant tree species and site index, fails to conform to Article 115 of the Constitution of the

Republic of Latvia and therefore is no longer valid from the moment of its entry into force.

2. It is hereby determined that Annex 7 to Cabinet Regulation No. 935 of 18 December 2012, Regulations Regarding Felling of Trees in Forests, in the part declared as not conforming to Article 115 of the Constitution shall remain in force in the wording which was in force until 29 June 2022.

The judgement is final and not subject to appeal.

The judgment was delivered in Rīga on 8 April 2024.

The judgement shall enter into force as of the date of its delivery.

Chairperson of the court hearing Aldis Laviņš