



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## JUDGEMENT

on Behalf of the Republic of Latvia

in Rīga on 9 November 2023

in Case No. 2022-17-01

The Constitutional Court, comprised of: 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 Uldis Augulis, the representative of the applicants, and advocate Inese Nikuļceva, the authorised representative of the applicants – twenty two members of the 13<sup>th</sup> convocation of the *Saeima*: Uldis Augulis, Edgars Tavors, Gundars Daudze, Viktors Valainis, Didzis Šmits, Armands Krauze, Janīna Jalinska, Māris Kučinskis, Raimonds Bergmanis, Jānis Vucāns, Ramona Petraviča, Māris Možvillo, Ēriks Pucens, Ieva Krapāne, Kaspars Ģirģens, Ralfs Nemiro, Karina Sprūde, Jūlija Stepaņenko, Aldis Gobzems, Jānis Dūklavs, Romāns Naudiņš, and Ingūnas Rībena,

Jānis Vītoliņš, chairperson of the Municipal Council of State City of Ventspils, and advocate Artis Stucka, its authorised representative,

Rolands Neilands, the authorised representative of the institution, which issued the contested act, the *Saeima*,

and Laura Stutāne, as the secretary of the court hearing,

on the basis of Article 85 of the Constitution of the Republic of Latvia and Para 1 of Section 16, Para 3 and Para 7 of Section 17 (1), Section 19 (1) and Section 28 of the Constitutional Court Law,

on 13 September, 20 September and 11 October 2023 in Rīga reviewed at an open court hearing, with the participants in the case present, the case

**“On Compliance of Para 1 and Para 3 of Section 4 (3), of the Fifth and the Ninth Part of Section 4, Section 7 (1 ), Sub-para 1 and Sub-para 2 of Para 16 of the Transitional Provisions of the Law on Ports, Section 11 (2) of the Law of 10 February 2022 “Amendments to the Law on Ports”, as well as Section 4 (1) of the Free Port of Ventspils Law with Article 1 and the First Sentence in the Second Part of Article 101 of the Constitution of the Republic of Latvia”.**

### **The Facts**

1. The Law on Ports of 22 June 1994 (hereafter – the Law on Ports) was adopted by the *Saeima* and it entered into force on 26 July 1994. The initial wording of Section 4 (4) of the Law on Ports provided that the common hydrotechnical structures of the port (breakwaters, dams for regulating currents, gryones, shore reinforcements), berths, fairways, floating navigation equipment and devices in the ports of Rīga, Liepāja and Ventspils were in the ownership of the State or the local government. They are in the possession of the respective port authority. In other ports, the common hydrotechnical structures may be in the ownership of also other legal or natural persons. Section 5 of the Transitional Provisions of the Law on Ports, in the wording of 1997, provided that the Ministry of Transport and local government would transfer the land of the port, the aquatorium, berths and the common hydrotechnical structures to the port authorities by 1 October 1992. The port authorities had the right to conclude lease agreements with respect to the land, transferred into their possession, also before the title to the property had been corroborated in the Land Register.

The initial Section 8 (3) of the Law on Ports provided, *inter alia*, that the board of the port was appointed by the respective council of the city or the municipality, and it would be comprised of no more than 10 members of the board. Whereas the Board of Rīga Port and the Board of Ventspils Port included

representatives of the relevant local government, as well as representatives proposed by the Minister for Economics, the Minister for Finance, the Minister for Transport, as well as the Minister for Environmental Protection and Regional Development.

By amendments to the Law on Ports of 12 December 2019, the port authority of Rīga Port and the port authority of Ventspils Port as derived entities governed by public law were transferred under the Cabinet's supervision (*see Section 7 (1<sup>1</sup>) of the Law on Ports in the wording of the law of 12.12.2019.*). Likewise, local government representatives were excluded from port authorities by the aforementioned amendments (*see Section 7 (1<sup>1</sup>) and Section 8 (3) of the Law on Ports in the wording of the law of 12.12.2019.*). Whereas by the amendments to the Law on Ports of 18 December 2019, the functions of port authority at Ventspils Port were transferred to a state capital company, determined by the Cabinet (*see Section 7 (1<sup>2</sup>) of the Law on Ports in the wording of the law of 12.12.2019.*).

On 10 February 2022, the *Saeima* adopted the law “Amendments to the Law on Ports”, which entered into force on 27 April 2022 (hereafter – Amendments to the Law). By the Amendments to the Law, Section 4 (3) of the Law on Ports was expressed in new wording. Its Para 1 sets out that the state and local government land and the aquatorium are in the possession of the respective port authority, whereas Para 3 provided that the common hydrotechnical constructions (breakwaters, dams for regulating currents, gryones, shore reinforcements), fairways, berths in the ownership of the State or the local government were in the possession of the port authority in the Ports of Rīga, Liepāja and Ventspils, whereas in other ports – common hydrotechnical constructions and berths in the ownership of the State or the local government.

By the Amendments to the Law on Ports, Section 4 (5) was expressed in the following wording: “The port authority is entitled to: 1) lease, rent the immovable property in its possession owned by the State or the local government, grant the right of superficies for it, encumber it with the property rights, including with servitudes for the construction of buildings (structures) and the construction

of aboveground and underground communications or for the performance of other economic activities; 2) build the buildings (structures) necessary for the port operation as independent property objects on the land in its possession owned by the State or the local government. These buildings (structures) shall be entered in the Land Register by the port authority on its behalf. The port authority has the same rights also in respect of land of legal or natural persons in respect of which a personal servitude has been established.” The ninth part was added to Section 2 of the Law on Ports, worded as follows: “The State and the local government are entitled to alienate the immovable property in the territory of the port owned by it, the State transferring it to the local government and the local government transferring it to the State without reimbursement.”

By the Amendments to the Law on Ports, Section 7(1<sup>1</sup>) was expressed as follows: “The port authority in the ports of Rīga and Ventspils is a capital company, the capital shares (stocks) of which are owned by the State and may also be owned by the relevant local government. The State shall own not less than three fifths of the capital shares (stocks) in the capital company. This capital company shall implement the functions of the port authority in the ports of Rīga and Ventspils and shall be under supervision of the Ministry of Transport in respect of the implementation of the functions, tasks, and obligations specified in the Free Port of Rīga Law and the Free Port of Ventspils Law. The capital shares (stocks) of the capital company may not be pledged and they may be alienated only jointly between the shareholders.”

By the Amendments to the Port of Law, the second and the third part of Section 12 of the Law on Ports were deleted from the Law on Ports: “(2) the financial resources of the port authority may be used only for the maintenance and development of the port and its infrastructure, as well as to perform the functions defined in Section 7 of this law. The financial resources of a port authority may be gifted (donated) to the State, by entering these into the State budget. The Cabinet shall decide on the use of the gifted (donated) financial resources. The Cabinet shall be entitled to exercise this right on the condition that the Budget and Finance (Taxation) Committee of the *Saeima*, within three

business days from the receipt of the respective information, provided by the Cabinet, examines it and does not object to the use of the particular gift (donation). (3) A port authority may not participate by its financial resources in the operations of commercial companies outside the territory of the port.” These legal provisions are no longer valid.

Moreover, by the Amendments to the Law on Ports, Section 16 was added to the Transitional Provisions of the Law on Ports, worded as follows: 1) the Cabinet and the municipality of Rīga shall, until 1 September 2022, take the decision on the founding of a capital company for the management of Rīga Port in accordance with the procedures laid down in the State Administration Structure Law and in the Law on Governance of Capital Shares of a Public Person and Capital Companies. In reaching an agreement on the establishment of a joint capital company – of the State and the local government –, the State shall invest the property and the assets owned by the Free Port Authority of Rīga in the equity capital, but the Rīga local government – the property and assets owned by it in the territory of the port that up until now were transferred into possession of the Free Port Authority of Rīga, provided that the State owns not more than 60 per cent and the Rīga local government – not more than 40 per cent of the capital shares (stocks). The shareholders of the capital shares (stocks) shall enter into the shareholders' agreement in order to determine and specify the rights and obligations of the shareholders and to define the responsibility in relation to the joint management of a capital company;

2) the State shall, until 1 September 2022, invest the property and assets owned by the Free Port Authority of Ventspils in the equity capital of "Joint-stock company "Ventas osta"" in accordance with the procedures laid down in the Law on Governance of Capital Shares of a Public Person and Capital Companies and if an agreement is reached with the Ventspils local government on its participation in the capital company, the Ventspils local government shall invest the property and assets owned by it in the territory of the port provided that the State owns not less than 60 per cent and the Ventspils local government – not more than 40 per

cent of the capital shares (stocks). The shareholders of the capital shares (stocks) shall enter into the shareholders' agreement in order to determine and specify the rights and obligations of the shareholders and to define the responsibility in relation to the joint management of a capital company.”

By the amendments to the Law on Ports of 2 February 2023, which entered into force on 8 February 2023, the term, defined in Sub-para 1 and Sub-para 2 of Para 16 of the Transitional Provisions of the Law on Ports, for establishing a capital company for managing the Port of Rīga and for investing the property and assets owned by the Free Port Authority of Ventspils in the equity capital of “Joint-stock company “Ventas osta”” was extended until 1 September 2023.

On 5 May 2022, the *Saeima* adopted the law “Amendments to the Free Port of Ventspils Law”, which entered into force on 10 May 2022 and by which Section 4 (1) of the Free Port of Ventspils Law was expressed as follows: “State and local government land within the territory of the Free Port may not be sold, gifted or otherwise alienated, except for the cases specified in the Law on Ports or invested in the equity capital of a capital company established for the management of the Free Port.”

**2.** Case No. 2022-17-01 “On Compliance of Para 1 of Section 4 (3), of Section 4 (9), Section 7 (1<sup>1</sup>), Sub-para 1 and Sub-para 2 of Para 16 of the Transitional Provisions of the Law on with Article 1 and the First Sentence of the Second Part of Article 101 of the Constitution of the Republic of Latvia” was initiated at the Constitutional Court with regard to an application by twenty-two members of the 13<sup>th</sup> convocation of the *Saeima*.

Likewise, case No. 2022-35-01 “On Compliance of Para 1 and Para 3 of Section 4 (3), of the Fifth and the Ninth Part of Section 4, Sub-para 1 and Sub-para 2 of Para 16 of the Transitional Provisions of the Law on Ports, Section 11 (2) of the Law of 10 February 2022 “Amendments to the Law on Ports”, as well as Section 4 (1) of the Free Port of Ventspils Law with Article 1 and the First Sentence of the Second Part of Article 101 of the Constitution of the

Republic of Latvia” was initiated at the Constitutional Court with respect to an application by the Municipal Council of State City of Ventspils.

Pursuant to Section 22 (6) of the Constitutional Court Law, these cases were joined in one case. The joined case No. 2022-17-01 was entitled “On Compliance of Para 1 and Para 3 of Section 4 (3), of the Fifth and the Ninth Part of Section 4, Section 7 (1<sup>1</sup>), Sub-para 1 and Sub-para 2 of Para 16 of the Transitional Provisions of the Law on Ports, Section 1 (2) of the Law of 10 February 2022 “Amendments to the Law on Ports”, as well as Section 4 (1) of the Free Port of Ventspils Law with Article 1 and the First Sentence in the Second Part of Article 101 of the Constitution of the Republic of Latvia” (hereafter also – the contested provisions).

**3. The applicants – twenty-two members of the 13<sup>th</sup> convocation of the Saeima** (hereafter also – members of the *Saeima*) – hold that the contested provisions are incompatible with Article 1 and the first sentence in the second part of Article 101 of the Constitution of the Republic of Latvia (hereafter – the Constitution) because, allegedly, the contested provisions violate the principle of the local government’s autonomy, restrict the rights and obligations of a local government, as well as the local government’s independence in performing its autonomous functions. Likewise, the principle of separation of property to be used for satisfying the needs of local residents has been violated. Moreover, the obligation to conduct appropriate consultations with the local power has not been respected and this is said to be incompatible with the principle of good legislation.

Members of the *Saeima* hold that the State’s right to define a local government’s functions in law does not mean the State’s absolute discretion. The restrictions, established by the State, with respect to a local government’s right to decide, within its territory, on behalf of the local residents and their interests, should comply with the principle of proportionality. Similar principles should be applied also to the reform in port management.

It is contended that the contested provisions restrict a local government’s right of possession with respect to the land, which falls with the territory of the

port, and the local government's right to alienate immovable property in its ownership. Hence, the local government's possibilities to manage part of its territory have been restricted. Three-fourths of the local government's territory, included within the boundaries of the Port of Ventspils, are special economic zone, used for commercial activities. Whereas specially protected nature areas, as well as historical buildings are situated within the territory of the Port of Rīga.

As the result of applying the contested provisions, the local government's ability to fulfil its functions would be negatively impacted. Companies, which are not directly linked to the port and are engaged in commercial activities, as well as residential buildings, institutions of pre-school education, as well as protected nature areas are located within the territory of the Port of Ventspils. If the local government does not participate in the capital company for managing the port or is involved as a minority shareholder it cannot implement self-government in full in a part of its administrative territory.

Members of the *Saeima* are of the opinion that no reasonable explanation can be found for the prohibition for a local government to alienate its immovable property otherwise than by transferring it into the State's ownership without reimbursement. Whereas no specific benefits can be identified from the fact that the State's influence in the ports is increased, decreasing, accordingly, the influence of local governments.

The financial autonomy of a local government is said to follow from the principle of self-government, included in Article 1 and the first sentence in the second part of Article 101 of the Constitution. Pursuant to the principle of self-government, a local government as a derived public legal person has the right to its own, separated property, the right to manage and use it, as well as gain all possible benefits from it. Allegedly, the contested provisions deprive a local government, as the owner of an object, the right of possession, enshrined in Section 875 and Section 876 of the Civil Law.

Timely, fair and genuine consultations with local governments had not been held in the course of discussing and adopting the contested provisions and the contested provisions had not been duly substantiated by explanatory research.

Moreover, the reform to the model of port management is not applied to the Port of Liepāja, although it is one of the three major Latvian ports. Allegedly, this decision shows that the State's treatment of local governments is not equal.

At the court hearing, representatives of the members of the *Saeima* underscored that local governments were democratically legitimised and were not in relations of subordination with the central state power, in particular, with the Cabinet. The local power and the central state power should be examined from equivalent positions. Allegedly, the contested provisions mean interference with the division of responsibility with respect to handling the local government's territory.

It is contended that the Civil Law provides equal protection for the property of both the local government and the State and that of private persons. A local government as an autonomous legal person governed by public law has the right to decide on its property, the use and utilisation thereof for satisfying inhabitants' needs. The contested provisions, substantially, have deprived a local government of the content of the right to property and a situation like this cannot be recognised as being proportionate. Whereas such process of negotiations, in which local governments are heard but their opinion, essentially, is not taken into account, cannot be considered as being fair and genuine consultations.

**4. The applicant – the Municipal Council of State City of Ventspils** (hereafter also –the Municipal Council of Ventspils) – holds that the contested provisions, insofar they are applicable to Ventspils' local government, infringe upon the principle of self-government, included in Article 1 and the first sentence in the second part of Article 101 of the Constitution, as they restrict the institutional and organisational safeguards of a local government. Allegedly, the local government is restricted in performing its autonomous functions and in managing its immoveable property, located within the territory of the Port of Ventspils. Moreover, violation of the principle of good legislation had been committed in the process of adopting the contested provisions.

The principle of separation of local government's property is said to follow from the Local Government Law. Within the limits of its competence, a local government has both the right and the obligation to use its property, which is said to be a pre-condition for providing for the interests of inhabitants. Allegedly, the contested provisions restrict a local government's rights, established in Section 927 of the Civil Law.

It is contended that a local government's economic foundation is not only property but also sufficient financial resources for fulfilling the autonomous functions, which are formed by the revenue from managing the local government's property. Allegedly, it follows from the European Charter of Local Self-Government (hereafter – the Charter) that local self-government has the right to sufficient financial resources of its own, which it can handle freely, within the limits of its authorisation. By restricting significantly the right to use the local government's land and other objects of immovable property, the possibilities of a local government to gain revenue from managing its immovable property are decreased and, accordingly, the quality of services provided by the local government to the local inhabitants, subsequently, diminishes. The contested provisions, allegedly, restrict without grounds the local government's right to acquire and alienate movable and immovable property, privatise objects in the ownership of the local government, competing, within civil law relations, with other legal persons, *inter alia*, capital companies, founded by the State.

Disproportionally large resources of land, in the ownership of Ventspils' local government, have been transferred into the possession of stock company "Ventas osta", which the capital company even does not need to perform the functions, defined in the Law on Ports. The State may interfere with the local government's competence only on clear terms, defined in law. Alienation, pledging, privatisation of a local government's immovable property, as well as the acquisition of immovable property in the local government's ownership is said to fall within the exclusive competence of a local government. Pursuant to the principle of self-government, the revenue gained from managing the immovable property of Ventspils' local government may be used only for the

needs of the local government's inhabitants. Allegedly, the contested provisions allow using the resources gained from the use of the local government's property as the stock company "Ventas osta" would deem it useful, without linking it to the needs of the municipal territory or its inhabitants. Thus, the institutional safeguard of Ventspils' local government is violated.

The Municipal Council of Ventspils holds that the restrictions, established by the contested provisions, lack a legitimate aim and are not proportional. In adopting the contested provisions, the principle of good legislation, which follows from Article 1 of the Constitution, has been violated because the initially intended reform to the port management had envisaged applying this reform in equal measure to all three major ports of Latvia – the ports of Rīga, Liepāja, and Ventspils. In the course of adopting the contested provisions in the *Saeima*, rational substantiation as to why the reform to port management is applied only to the Port of Rīga and the Port of Ventspils had not been provided. This should be regarded as being political arbitrariness, which is inadmissible in a democratic state governed by the rule of law.

At the court hearing, representatives of the Municipal Council of Ventspils noted that 42 per cent of the total administrative territory of the city were included in the territory of the port of Ventspils. Within the territory of the port of Ventspils, 54 per cent of land are in the ownership of the local government, the State owns 25 per cent, whereas the authority of the Free Port of Ventspils – one per cent. On 24 November 2003, the local government of Ventspils adopted a decision, by which 505 objects of immovable property were transferred into the possession of the Free Port of Ventspils. Since 2004, an agreement had been concluded between the authority of the Free Port of Ventspils and the local government, providing that the local government had the right to reclaim any property, transferred into the possession, if it was necessary for performing the local government's autonomous functions. By concluding respective agreements, the local government had regained the right to possession with respect to particular objects of property. Allegedly, the contested provisions change this legal order and all objects of property, included in the territory of the Port of

Ventspils, must be transferred to the stock company “Ventas osta” without reimbursement. The revenue that the local government might gain from managing the property, transferred into the possession of the Free Port of Ventspils, annually constitutes approximately EUR 3.3. million.

Representatives of the Municipal Council of Ventspils hold that the contested provisions hindered significantly the local government’s possibilities to perform its autonomous functions. The local government’s possibilities to make mid-term strategic plans regarding the use of land, organising public utility services, caring for the maintenance of the territory, sanitary cleanliness, as well as promotion of economic activities are said to be restricted. Allegedly, cooperation with the authority of the Free Port of Ventspils is not constructive, as the transfer into the local government’s possession of the land, needed to implement a project, financed by structural funds, is being delayed. The local government’s right to perform certain functions are said to become meaningless if the local government is denied the financial resources needed for the fulfilment thereof. The port authority has been restructured into a capital company, the main aim of which is gaining profit, whereas the local government had had to participate in maintaining the infrastructure, located within the port’s territory, as the result of which the local government’s expenditure had increased by EUR 71 212.

**5. The institution, which issued the contested act, – the *Saeima* – holds that the contested provisions comply with Article 1 and the first sentence in the second part of Article 101 of the Constitution.**

It is contended that the reasoning, set out in the applications, are predominantly political by nature and cannot serve for reviewing the constitutionality of the contested provisions. The port authority of the Free Port of Ventspils and the port authority of the Free Port of Rīga as derived legal persons governed by public law are not subordinated to the respective local governments and do not belong to the institutional system of the respective local governments. Property in the ownership of these subjects cannot be considered

as being owned by the local government. Likewise, the functions of the port authorities of the Free Port of Rīga and the Free Port of Ventspils cannot be considered as being such that would fall within the competence of the local governments of the State City of Rīga and the State City of Ventspils.

A specific, pre-determined territory is said to correspond to each port, it is managed by one institution, established specifically for this purpose. The *Saeima* points out: if agreement is reached on establishing a joint stock company of the State and the local government then, after investing property into the equity capital of stock company, each local government will receive a certain number of capital shares, becoming a member of the respective capital company, with all the right that are granted to a shareholder.

By the amendments of 12 December 2019 to the Law on Ports, the Cabinet has been entrusted with the task to assess the compliance of the Latvian port management model with the international principles of good governance and to submit, by 1 July 2020, to the *Saeima* a draft law on changing the model of management for the Latvian ports. The Cabinet has concluded that the Port of Ventspils and the Port of Rīga are subject to a high risk of corruption and, thus, urgent reforms to the management model of these ports are required.

At the court hearing, the representative of the *Saeima* noted that a local government's right to the inalienability of its property did not follow from the principle of self-government. The functions of public administration are decentralised, *inter alia*, in compliance with the principle of self-government, by transferring the fulfilment of some functions to democratically legitimised local governments. Already initially, the legal regulation of the Law on Ports had envisaged transferring of the immovable property, located within the territory of the port, into the possession of the port authority.

Whereas the industrial territories of the Port of Liepāja and the Liepāja Special Economic Zone are used in complex interaction and the development of the port is inseparably linked with the development of the industrial territory of the special economic zone. Pursuant to the Law on Ports, the management principle for the Port of Rīga and the Port of Ventspils is the same, i.e., it follows

from the regulation established in the Law on Ports. The management of the Liepāja Special Economic Zone is said to be governed by another regulatory enactment – the Law on the Liepāja Special Economic Zone.

In view of the above, different process should be applied to the development of the management model for the Liepāja Special Economic Zone. Moreover, neither the Constitution nor any other laws provide that the legislator should mandatorily accept the proposals, made by local governments in the process of legislation regarding the management model for ports and the choice of criteria as to the content thereof.

**6. The summoned person – the Ministry of Transport** – holds that the contested provisions are compatible with Article 1 and the first sentence in the second part of Article 101 of the Constitution.

The boundaries of a port are determined by the Cabinet, taking into consideration the proposals made by the respective local government and other institutions referred to in Section 3 of the Law on Ports. Therefore, a local government may submit proposals but the Cabinet, by its Regulation, may determine as the territory of the port only such territory which prospectively should be developed for the needs of the port. Moreover, both the local government and the Cabinet, in determining the boundaries of a port, have the duty to verify whether the new boundary of the port and the process of determining it comply with the requirements set in special laws. Such territory that cannot be linked to the operations and functioning of the port but can be used to ensure the autonomous functions of a local government should not be included within the boundaries of a port.

The legislator's aim, in adopting the contested provisions, had been to regulate matters related to the possession and use of objects of immovable property, necessary for the operation and development of the port. Allegedly, the contested provisions do not have the aim to regulate the conditions of the possession and use of land plots and engineering structures unrelated to the operation and development of a port.

In view of the functions, tasks and obligations of a port authority, it is natural that the land in the State's and local government's ownership and engineering structures related to the functioning of the port are transferred directly in the possessions of a port authority. Otherwise, port authorities would not be able to fulfil their obligations and tasks in a sufficiently effective way. Effective and successful functioning and development of ports is said to be in the interests of both the State and the local government, and its inhabitants.

The Ministry of Transport is of the opinion that, pursuant to the previous valid regulation of the Law on Ports, a local government did not have the discretion to decide whether to transfer into the possession of a port authority the land and engineering constructions needed for the functioning and development of the port. In the context of successful functioning and development of a port, there are no grounds for contrasting the interests of Latvia's society in general and the interests of the inhabitants of the respective local government. The interests of the State and the local government, i.e., successful functioning and development of the port, are said to coincide.

It is contended that Article 1 and Article 101 of the Constitution do not provide for the local government's right to receive reimbursement for the use of the land in its ownership to ensure the economic interests of its inhabitants. In the activities of the port authorities, aimed at the development of the port outside the territory of the respective local government, a violation of the local government's institutional safeguards cannot be identified.

Establishment and liquidation of a derived public person falls within the legislator's competence, therefore, also the issue of the further handling of the property of a derived public person undergoing liquidation is resolved by the legislator. However, if the legislator has to regulate the transition of the property of a derived public person undergoing liquidation to another person and if no stipulations have been made with regard to the respective issues in the contractual relations then the State, as the initial legal person governed by public law, would be entitled to the property of the liquidated public person.

Hence, if the State takes over the property of the liquidated legal person governed by public law, it does not infringe upon a local government's rights.

At the court hearing, representatives of the Ministry of Transport pointed out that the right to property had been enshrined constitutionally in Article 105 of the Constitution, however, a local government is not the subject of this article.

Allegedly, the existence of a local government's property is not a fundamental pre-condition for meaningful and full-fledged existence of a local government. Situations where a local government is not financially self-sufficient and receives subsidies from the State are also possible. The matter of port boundaries should be, substantially, separated from the issue of port reform. The Ministry of Transport has doubts regarding the compatibility of the reasoning with respect to boundaries with the principle of prohibition of contradictory actions. The local government of Ventspils has chosen the current boundaries of the port territory to optimise the functioning of the Free Port of Ventspils. Thus, the local government itself had held the current boundaries of the port and the free port as being optimal for ensuring the functioning of the free port.

**7. The summoned person – the local government of the State City of Rīga** – has submitted the documents at its disposal, reflecting the decisions by the Municipal Council of the State City of Rīga related to the reform of the management of the Port of Rīga, as well as other information that, in the opinion of the State City of Rīga, could be relevant in this case.

At the court hearing, representatives of the State City of Rīga described the functioning of the Free Port of Rīga and its connection to the fulfilment of the local government's functions in general. It is contended that the contested provisions infringe upon the principle of self-government. Although local governments were excluded completely from port management in 2019, however, the participation in a capital company, offered by the contested provisions, is possible but only if additional local government's property is invested. Moreover, the distribution in percentage of representation in the capital company is not fair. Infringement on the local government's property can be discerned with respect to

transferring the right of possession to the port authority. Historically, the entire property of local government had not been transferred into the possession of the port authority of the Free Port of Rīga. Thus, the local government's right of possession with respect to several objects of immovable property within the territory of the port had been retained. However, the infringement on the local government of the State City of Rīga is said to be not so substantial since a major part of property had been transferred into the possession of the port authority in 2012.

**8. The summoned person – the local government of the State City of Ventspils** – has provided its opinion in the case, initiated on the basis of the application by the Members of the *Saeima*, No. 2022-17-01. In view of the fact that, by the decision of the assignments sitting of the Constitutional Court on 25 April 2023 the aforementioned case has been joined with case No. 2022-35-01, which was initiated on the basis of an application submitted by the State City of Ventspils, its opinion as the opinion of a summoned person will not be reflected in this judgement.

**9. The summoned person – association “The Latvian Association of Local and Regional Governments”** – holds that the contested provisions are incompatible with Article 1 and the first sentence in the second part of Article 101 of the Constitution.

Allegedly, in adopting the contested provisions, the *Saeima* had failed to respect the principle of good legislation and had not ensured qualitative consultations in the process of adopting the contested provisions.

It is maintained that the contested provisions restrict the local governments' right to use their property, located within the territories of ports, because this right is granted to the state capital companies, established to implement port management. Allegedly, it does not follow from the substantiation of the contested provisions that those who drafted the Amendments to the Law had assessed the impact of the intended restrictions on the local

governments' right to property or the proportionality of this restriction. Proper substantiation does not follow from the *Saeima*'s written reply either because the *Saeima* is explaining only its intended handling of the property of the port authority of the Free Port of Rīga and the port authority of the Free Port of Ventspils, to be reorganised.

At the court hearing, the representative of the association "The Latvian Association of Local and Regional Governments" pointed out that several kinds of a local government's autonomy followed from the principle of self-government – territorial autonomy, organisational autonomy, autonomy of personnel, planning autonomy, the autonomy to issue legal acts, and financial autonomy. The legislator has the right to determine the model of port management at its discretion; however, from the perspective of good governance, an assessment of whether the chosen form of port management is the most appropriate is necessary. Namely, the impact on the state budget and the budgets of local governments and, accordingly, the impact on the legal system had to be assessed.

Historically, deciding on which property should be transferred to the port authority for use had been within the local government's competence. Allegedly, the contested provisions deprive of this right and this has negative impact upon the local government's financial autonomy.

**10. The summoned person – association "The Latvian Association of Large Cities"** – holds that the contested provisions are incompatible with Article 1 and the first sentence in the second part of Article 101 of the Constitution.

Pursuant to the statute of the association "The Latvian Association of Large Cities", one of its aims is protection of the legal interests of the State cities. Association "The Latvian Association of Large Cities" had represented the interests of the local governments of Rīga, Ventspils and Liepāja both at the *Saeima* and the *Saeima* Economic, Agricultural, Environmental and Regional Policy Committee also at the time when the contested provisions had been

reviewed. However, during the consultations, the local governments' opinion had not been heard properly.

By the contested provisions, the *Saeima* had established differential treatment of the local governments of Liepāja, Rīga and Ventspils since, in similar actual situations, it had made different decisions without grounds. The *Saeima* had been unable to substantiate such differential treatment and still no research is available that would justify the objective differences between the management models for the ports of Liepāja, Rīga, and Ventspils.

The scope of local government's property transferred to the port authority of the Free Port of Ventspils by the contested provisions, as well as the aspect of the use thereof without reimbursement, which causes losses for Ventspils local government and affects the exercise of the local government's competence should be taken into consideration. Association "The Latvian Association of Large Cities" has ascertained that, since the coming into force of the contested provisions, there had not been a single case where the boundaries of the Port of Ventspils had been changed or where the local government's of the State City of Ventspils right to possession with respect to an object of immovable property in its ownership had been restored.

Association "The Latvian Association of Large Cities" holds that implementation of the reform of port management had been arbitrary, without studies that would justify it, and does not reach the aim initially set for it.

At the court hearing, the representative of the association "The Latvian Association of Large Cities" underscored that the contested provisions hindered completion of the privatisation process and that the inhabitants of the local government could not alienate their land, located within the territory of the port. Implementation of the structural funds of the European Union is delayed, likewise, the development of the plan for improving the urban environment is hindered. Moreover, there are doubts whether the stock company "Ventspils osta" will invest resources to resolve matters that are important for the inhabitants of Ventspils. Likewise, the contested provisions would have negative impact on the business environment within the territory of the port.

**11. The summoned person – docent of the Faculty of Law, the University of Latvia, Dr. iur. Edvīns Danovskis** – holds that the transfer of the port management function and of the related rights and obligations to a stock company does not create an infringement on the constitutionally protected local government's rights.

Every public person may own its own property, separated from the property of another public person. A public person may handle it as any owner, however, respecting the restrictions set out in legal provisions. Depending on the type of property and the purpose of use, also the legal regulation established with respect to the handling of this property may differ. Allegedly, the State enjoys broad discretion in regulating the management of a public person's property, this discretion follows from the principle of unity of public administration.

The legal relations of two public persons, the object of which is the property of one public person, could be discussed only from the perspective of the interests of public administration. The subjective rights of a public person to demand granting of specific property or objecting against alienation of the property transferred to it or otherwise encumbering it cannot be recognised. A local government's right to inviolability of its property, as well as the right to demand the State to grant it certain property do not follow from the principle of self-government.

Although a local government may need property, specific precepts with respect to a local government's property cannot be derived from the constitutional regulation, included in the Constitution. Only the State's procedural obligation, in deciding on alienating property in the local government's ownership or significantly encumbering its use, to consider also the local interests, could fall within the content of the principle of self-government. However, weighing of the State's and the local government's interests rather should be linked to the principle of prohibition of arbitrariness, i.e., the obligation to substantiate the decision by objective and rational considerations.

Likewise, it should be underscored that, following the liquidation of port authorities as derived public persons, their functions become the State's functions. Whereas the state capital companies, in performing the functions delegated to them, act on behalf of the State. Although the Amendments to the Law have changed the model of local government's representation, participation of local governments both in the port authority and the respective capital companies is not a requirement that would follow from the Constitution. Allegedly, this mechanism is only one of several possible models for balancing the strategic interests of the State and the interests of local community in port management.

At the court hearing, *Dr. iur.* Edvīns Danovskis pointed out that the principle of self-government was a set of minimum requirements, following from the Constitution, with respect to the functioning of local governments. Namely, both the local government and its main decision-taking body must be democratically legitimised. Infringement on the principle of self-government should be differentiated from other restrictions on a local government's rights. *Locus standi*, referred to in Section 19 of the Constitutional Court Law and the principle of self-government are said to be two different matters. If a local government were deprived of its property in such a scope that it would be prohibited from or would be significantly hindered in performing the autonomous functions of local government, then it would have to be assessed whether this intensity is not so great that it could jeopardise the minimum guarantees, included in the principle of self-government. However, in cases where only some objects of property or a specific set of property are affected, the principle of self-government is not infringed upon. With respect to restrictions, established in law, on handling a local government's property, the same requirements that should be set in the case when the right to property is restricted cannot be set.

**12. The summoned person – *Dr. iur.* Aivars Lošmanis** – holds that the principle of the priority of the port authority's economic interests, enshrined in Section 4 of the Law on Ports, is not unlawful.

The local government, by investing property into the equity capital of a capital company, receives a certain number of shares, alongside all rights granted to the respective shareholder. Hence, the opinion that the property is transferred without reimbursement is not valid. Investing into the equity capital of a capital company cannot be considered as being a transaction without compensation because, in the process of establishing a capital company or in the process of increasing the equity capital, the subject receives appropriate financial equivalent – shares.

With respect to the role of a local government as a minority shareholder in port management and in capital companies that are planned to be established for managing the Port of Rīga and the Port of Ventspils, *Dr. iur.* Aivars Lošmanis points out that, in capital companies, the decision-making procedure is not “democratic” but is based on the amount of invested capital, i.e., the greater participation in the equity capital, the more votes. Since the State is the one who is responsible for the functioning of major ports in the interests of entire society and the Amendments to the Law are aimed at introducing this principle, it is only self-evident that the State as a shareholder wants to retain decisive influence in the decision-making procedure.

A local government can acquire the status of a shareholder in such a capital company, alongside with the rights and obligations that the legislator has defined in both the Commercial Law and the Law on Governance of Capital Shares of a Public Person and Capital Companies. Allegedly, the Commercial Law envisages a number of rights, aimed at protecting the interests of minority shareholders that would be at the disposal of the respective local governments as shareholders.

**13. The summoned person – *Dr. sc. admin.* Lilita Seimuškāne** – holds that the contested provisions are incompatible with Article 1 and the first sentence in the second part of Article 101 of the Constitution.

*Dr. sc. admin.* Lilita Seimuškāne points out that the local governments’ right to be heard or consulting with local governments on the level of supreme power is one of the fundamental principles of the European legal and democratic

practice, which has been enshrined in several articles of the Charter. The participation of the Municipal Council of the State City of Ventspils in the discussions on the contested provisions had been formal since dialogue and partnership had been lacking in the decision-making. The Municipal Council of the State City of Rīga, in turn, had not been involved in the legislative process at all. The local government's right to become fully involved in the process of adopting the contested provisions had been disregarded because the legislator had not provided answers to important questions, posed by the local government, and had not heard its opinion on its merits.

Likewise, the expedience of the possible solutions, as well as economic and social benefits from changing the model of port management had not been assessed. Allegedly, the contested provisions do not establish fair and proportional division of the shares, compatible with the local governments' investments, and proper involvement of local governments in the decision-making process has not been ensured, although these decisions pertain directly to the local power.

Following the adoption of the contested provisions, the functions of port management are no longer fulfilled by a subject of public law, jointly established by the State and the local government, but by a subject of private law – a stock company. At the shareholders' meeting, representatives of the State may make decisions that are contrary to the opinion of the local government's representatives, thus, within the framework of representative democracy, the territorial community loses control over the land in its ownership. The legislator's right to nationalise a local government's property is admissible only to reach important aims of the entire society and in compliance with the principle of proportionality. Moreover, nationalisation without compensation and contrary to the interests of the entire community as a general principle cannot be justified.

Thus, coercive nationalisation has been carried out in ports, without reaching agreements with the respective local governments, and such action is incompatible with the principles of subsidiarity and proportionality.

**14. The summoned person – *Dr. phys., Dr. oec. Māris Pūķis*** – holds that the contested provisions are incompatible with Article 1 and the first sentence in the second half of Article 101 of the Constitution.

The losses that the contested provisions cause for a local government, which acts in the interests of the city's inhabitants, are greater than the possible benefits. With the local government's influence upon an important part of Ventspils' territory decreasing, the local government has lost the possibility to gain fruit from the local government's property transferred into possession, whereas the obligation to cover the costs related to the maintenance and development of the public infrastructure, located with the territory of the port, has been retained. The administrative and financial problems that have been caused will have negative impact also upon the business environment of the capital company, established to replace the port authority. To reinforce good governance, there is no need to establish a capital company for performing the functions of public administration.

Allegedly, the contested provisions discriminate against the local inhabitants. Coercive nationalisation of a local government's property or transferring it into the possession of a private person should be considered as being a violation of the principle of legal equality, enshrined in Article 91 of the Constitution. The citizens that are affiliated with the local government's territory are placed in a less advantageous situation, compared to other citizens of Latvia.

**15. The summoned person – *Mg. iur. Anita Kovaļevska*, lecturer at the Faculty of Law, the University of Latvia**, – holds: only if local governments' right to property as part of the principle of self-government were recognised there would be grounds to recognise that local governments' right to property had been restricted by the contested provisions.

In German legal literature, usually at least six types of local governments' autonomy are distinguished: territorial autonomy, organisational autonomy, autonomy regarding personnel, planning autonomy, autonomy in issuing legal acts, and financial autonomy. Allegedly, these types of autonomy follow also

from the Charter. However, the autonomy of local governments is not absolute. In exceptional cases, the rights that follow from the principle of self-government can be restricted to ensure other values, enshrined in the Constitution. Moreover, such a restriction should comply with the principle of proportionality and the core of the local government's rights should remain intact.

*Mg. iur.* Anita Kovaļevska underscores that the management of one's immovable property by the local government as the owner should be differentiated from local governments' right to exercise their autonomous competence within the territory of a specific local government. The existence of one's own property is not a mandatory feature of a derived public person. Traditionally, immovable property owned by other legal and natural persons are found within the territory of local government but this *per se* is not the grounds for considering that the local government would not have the right and the ability to exercise its autonomous competences within the respective territory. Therefore, restrictions on the actions by local governments as owners in handling their immovable property do not mean that local governments would be unable to exercise their autonomous functions with respect to these objects of property.

The contested provisions do not decrease the number of sources of local governments' financing. Local governments have not been denied fully the possibilities to gain income from civil law transactions, only the possibility to gain revenue from the particular objects of immovable property has been denied.

Additionally, *Mg. iur.* Anita Kovaļevska notes that the State enjoys great discretion in choosing the organisational forms for the public administration and, thus, also with respect to reorganising one subject of public administration. Restrictions that would prohibit from transforming a derived public person into a capital company or a subject of another kind do not follow from the Constitution. The principle of self-government requires ensuring the existence and broad autonomy of local governments. Likewise, also with respect to the institutional form of port management such restrictions do not follow from the Constitution.

At the court hearing, *Mg. iur.* Anita Kovaļevska underscored that self-government meant the rights and abilities of the local power, within the limits

defined in law, to regulate and manage an important part of state affairs, under its own responsibility and in the interests of local inhabitants. Allegedly, it follows from the concept “self-government” that a local government needs sufficient autonomy, i.e., local governments should be granted competence and sufficient autonomy, allowing to exercise this competence. Since regulation on a local government’s property is included in the Latvian legal system, cases where the State restricts actions in handling this property may be assessed only as restrictions on the financial autonomy of a local government.

**16. The person summoned in case No. 2022-17-01 – Dr. iur. Artis Stucka** – draws attention to the fact that the *Saeima* has adopted the contested provisions without careful and reasonable assessment.

Property, including financial resources, is said to be the economic foundations of a local government, it is constituted by the revenue gained from managing the local government’s property and economic activities conducted by the local government’s institutions. Although the economic foundations of a local government and the local government’s right to use the property, following from them have not been directly enshrined in the Charter, these rights, however, are said to follow from the definition of the concept “local self-government”, included in the first part of Article 3 of the Charter. The “ability “of a local self-government to exercise its competence, within the limits of the law, under its own responsibility and in the interests of the local population has been indicated therein as one of the most essential features of the institution of local self-government.

The local governments’ right to use their property, located within the territory of the port, is significantly restricted and, thus, the revenue of Ventspils’ local government will be affected. The *Saeima* has not assessed the impact on the local government’s budget and this should be considered as being a violation of the principle of good legislation. The economic foundation of a local government, which includes also finances, property and the right to use it, is the grounds for

the existence of a local government as an independent and democratically formed institution, which historically has been enshrined in regulatory enactments.

The finding that the proportionality of the restriction on local governments' right to property had been reviewed does not follow from the substantiation of the contested provisions. Deciding on the alienation, pledging or privatisation of a local government's immovable property, as well as on acquiring immovable property in the local government's ownership is said to fall with the exclusive competence of the municipal council.

By the decision of the assignments sitting of the Constitutional Court of 25 April 2023, it was decided to review the joint case No. 2022-17-01 at a court hearing with the participants in the case present. At the court hearing, in which the case was heard, *Dr. iur.* Artis Stucka represented the Applicant –the Municipal Council of Ventspils.

### **The Findings**

**17.** Members of the *Saeima* and the Municipal Council of Ventspils (hereafter jointly – the Applicants) request the Constitutional Court to review the compatibility of the contested provisions with several provisions of the Constitution.

If the compatibility of several legal provisions with several superior legal provisions is contested then the Court, taking into account the merits of the case, must determine the most effective approach to this compatibility review (*see, for example, Judgement by the Constitutional Court of 15 May 2020 in Case No. 2019-17-05, Para 13*).

**17.1.** The Applicants contest the provisions of the Law on Ports and the provision of the Free Port of Ventspils Law as united legal regulation.

The contested provisions envisage transition to a new institutional model of port management and determine how the new port authorities handle the local government's property. The said legal matters are closely interconnected. The contested provisions, in conjunction, constitute united legal regulation, pursuant to which the property of local governments, located within the territory of the Port

of Rīga and the Port of Ventspils, is transferred in the possession of the new port authorities without reimbursement, as well as determine the procedure for using and alienating this property.

Thus, in the present case, the compatibility of the contested provisions as united legal regulation, insofar it applies to the management of the Port of Rīga and the Port of Ventspils, with the Constitution must be reviewed, assessing separately, if necessary, each contested provision.

**17.2.** The Applicants request recognising the contested provisions as being incompatible with Article 1 and the first sentence in the second part of Article 101 of the Constitution, being of the opinion that the contested provisions violate the principle of self-government.

The Applicants' considerations are linked to the alleged incompatibility with the principle of self-government, included in Article 1 and the first sentence in the second part of Article 101 of the Constitution. Namely, the Applicants hold that the local government's right to participate in the management of the port, as well as the right to handle its property and, accordingly, gain revenue are being violated.

The Constitutional Court has recognised before that, in a situation where the compatibility of a legal provision with the principle of self-government, included in Article 1 of the Constitution, and with Article 101 of the Constitution is contested, the compatibility of this provision with both constitutional provisions in their conjunction should be reviewed (*see Judgement by the Constitutional Court of 3 December 2020 in Case No. 2020-16-01, Para 19*).

Thus, taking into consideration the merits of the Applicants' arguments and the substantiation, included in the *Saeima's* written reply, as well as other materials in the case, the Constitutional Court will review the compatibility of the contested provisions with Article 1 of the Constitution, in conjunction with the first sentence in the second part of Article 101 of the Constitution.

**18.** Article 1 of the Constitution provides: "Latvia is an independent democratic republic." The first sentence in the second part of Article 101 of the

Constitution provides: “Local governments shall be elected by Latvian citizens and citizens of the European Union who permanently reside in Latvia.”

**18.1.** In a democratic state, local governments serve to ensure the involvement of inhabitants in managing the matters of the local community, and Article 1 and Article 101 of the Constitution guarantee the institutional existence of local governments. A local government as an institution is a legal subject that, within a certain administrative territory of the State, implements public administration, in the broadest meaning of it, with the mediation of its institutions (*compare, see Article 25 of the Constitution*).

The existence of local governments is inconceivable without certain competence of a local government, which the local government exercises as a legal subject. The Constitutional Court has recognised that the competence of local governments are functions for the sake of which local governments exist at all, namely, so that the inhabitants of a certain administrative territory could implement their local interests themselves in a democratic procedure (*see Judgement by the Constitutional Court of 29 June 2017 in Case No. 2016-23-03, Para 15.1.*). The law designates such functions as the *autonomous* competence of a local government. These functions characterise the essence of a local government as organisation of local self-government, they are rooted in the local community and local by nature. Thus, in the functional sense, a local government means implementing the needs and interests of the local community as close as possible to the inhabitants and the self-government, organised by them. Self-government, in turn, means that the local government is managing these functions at its own responsibility and defines the type and organisation of management itself.

It is impossible to exercise the autonomous competences of a local government without financial basis. A local government has the right to handle independently its revenue and expenditure, determine its budget, as well as to establish fees, within the framework of laws, and to engage in commercial activities.

Thus, the institutional existence of a local government and the right to functional competence constitute the principle of self-government.

**18.2.** To determine the scope of the principle of self-government, included in Article 1 and the first sentence in the second part of Article 101 of the Constitution, Latvia's international commitments and harmony of the provisions, included in the international treaties that are binding upon Latvia, must be taken into consideration (*see, for example, Judgement by the Constitutional Court of 8 June 2022 No. 2021-40-0103, Para 7.2.*).

The Charter also specifies the content of the principle of self-government. Several fundamental principles, compliance with which guarantees the essence of the existence of self-government, are consolidated in it, namely: 1) the principle of the autonomy of competences; 2) the principle of financial autonomy; 3) the principle of consulting.

**18.2.1.** Pursuant to the principle of the autonomy of competences, the state power, organised on a higher hierarchic level, must abstain from interfering with the exercise of a local government's autonomous competences, except for cases provided for in law. Thus, a local government has the right to exercise independently the autonomous competences, transferred to it, in the interests of local population (*see: Congress of Local and Regional Authorities. A contemporary commentary by the Congress on the explanatory report to the European Charter of Local Self-Government, CG-FORUM(2020)02-05, Para 33.*).

The autonomy of a local government's competences is not absolute and it depends on the functions that the legislator has decided to entrust a local government with. The State determines the autonomous competences of local governments, taking into account the local nature of issues to be resolved.

**18.2.2.** Pursuant to the principle of financial autonomy, a local government should have sufficient financial resources for exercising the autonomous competences, transferred to it, as well as the right to handle these freely. The principle of a local government's financial autonomy has been enshrined in Article 9 of the Charter (*see: Congress of Local and Regional Authorities. A*

*contemporary commentary by the Congress on the explanatory report to the European Charter of Local Self-Government, CG-FORUM(2020)02-05, Paras 27, 36*). Several fundamental principles in the area of financial autonomy can be derived from Article 9 of the Charter:

1) a local government should have its own financial resources, which it may gain independently from various sources of financing, defined in legal provisions, for exercising the autonomous competences, transferred to it, and

2) it should have the right to decide how these resources will be used (*see: Congress of Local and Regional Authorities. A contemporary commentary by the Congress on the explanatory report to the European Charter of Local Self-Government, CG-FORUM(2020)02-05, Para 141*). However, the State's obligation to determine specific sources of financing, guaranteed to a local government, does not follow from Article 9 of the Charter (*see: Congress of Local and Regional Authorities. A contemporary commentary by the Congress on the explanatory report to the European Charter of Local Self-Government, CG-FORUM(2020)02-05, Paras 144–146*).

Revenue of local governments is constituted by sources of financing, defined by the State: such that are ensured by the legislator, e.g., tax revenue, co-financing for exercising specific autonomous functions in the form of State budget subsidies, resources granted within the framework of the Fund for the Equalisation of Local Government Finances, as well as such, from which, in compliance with the autonomous competence of the local government, the local government gains revenue independently, e.g., local government fees, services for a charge, revenue gained from managing immovable property owned by the local government. Thus, a local government's right to form at least part of its total budget resources from its own revenue follows from the principle of financial autonomy.

Thus, the State's obligation to ensure to local governments diversity of sources of financing for exercising their autonomous competences and the local government's right to decide on the use of these financial resources follow from the principle of financial autonomy.

**18.2.3.** Pursuant to the principle of consulting, local governments must be timely involved in the development of legal policy regarding matters that influence the principle of self-government. The principle of consulting has been enshrined in several articles of the Charter. For example, regarding issues related to changes in the administrative territorial boundaries of local governments, consultations with the local power are mandatory (*see Article 5 of the Charter*). Likewise, local governments must be consulted, in an appropriate manner, on the way in which redistributed state financial resources are to be allocated to them (*see the sixth part of Article 9 of the Charter*). The sixth part of Article 4 of the Charter, in turn, provides that consultations must be held, insofar as possible, in due time and in an appropriate way, in planning and elaborating such reforms that concern local governments directly. The principle, enshrined in the sixth part of Article 4 of the Charter, is applicable in those cases that influence the legal status of a local government, the scope of competences and functions, transferred to it, and of local government's powers, or financial autonomy (*see: Congress of Local and Regional Authorities. The consultation of local authorities by higher levels of govern. The right to consultation in the Charter, CG35(2018)20final, Para 10*).

Thus, the legislator's obligation to involve local governments in the process of consulting with respect to those matters that impact the principle of self-government follows from the principle of consulting.

**18.3.** In view of the above, the Constitutional Court concludes that, *inter alia*, the State's obligation, in the legal relations with a local government, to respect the principle of the autonomy of its competences, the principle of financial autonomy and the principle of consulting follows from the principle of self-government, included in Article 1 and the first sentence in the second part of Article 101 of the Constitution.

**19.** Contested Section 7 (1<sup>1</sup>) of the Law on Ports provides that the port authority in the ports of Rīga and Ventspils is a capital company, the capital shares (stocks) of which are owned by the State and may also be owned by the relevant local government. This capital company implements the functions of the port

authority in the ports of Rīga and Ventspils and is under the supervision of the Ministry of Transport. Implementation of the respective functions, tasks, and obligations specified in the Free Port of Rīga Law and the Free Port of Ventspils Law, have been transferred to the aforementioned capital companies. Thus, it follows from the contested provisions that the management of the territories of the Port of Rīga and the Port of Ventspils is implemented by a legal person governed by private law.

Substantially, the Applicants hold that the principle of autonomy of competences, which follows from the principle of self-government, guarantees the local government's right to act freely and implement its initiatives in all matters within its administrative territory. In deciding on port management and taking into account both their national and local importance, the legislator should respect the local power and reconcile divergent interests, finding balance between the interests of the State and the local government, based on rational considerations, taking into account sustainable development. Allegedly, the contested provisions exclude the local government from managing the port, which is important for it.

The *Saeima* has stated that the large Latvian ports, such as the Port of Rīga and the Port of Ventspils, are of strategic importance for Latvia's development. These ports, primarily, should serve common public interests, i.e., the management and operation of these ports should be directed at satisfying the interests of the entire Latvian society. Allegedly, the right of local self-government to participate in the management of ports only because land, owned by the local government, belongs to the territory of the relevant port does not follow from the principle of self-government.

The representative of the association "The Latvian Association of Local Governments", in turn, underscores that, in terms of planning the local government territory, ports are strategically important objects not only for the State but also for the local government. Historically, cooperation with port authorities had been directed also at ensuring the interests of local inhabitants. Likewise, the legislator should have assessed whether a capital company, in

managing the territory of the port, has the right to make decisions related to exercising the autonomous competences of a local government. *Dr. iur.* E. Danovskis, however, points out that more specific rules that would envisage a local government's right to participate in port management cannot be derived from the Constitution.

**19.1.** The national policy for developing the area of transport and logistics is linked to setting up the infrastructure of ports and choosing a model for port management that is most appropriate for the common national economic interests. Several solutions to the institutional management of ports are possible. Regulation of the European Union also allows various models of port management, on the condition that the framework for the provision of port services and the common rules on the financial transparency set for the Member States are complied with (*see Regulation 2017/ 352 of the European Parliament and of the Council of 15 February 2017 establishing a framework for the provision of port services and common rules on the financial transparency of ports, Recital 10*).

Choosing the institutional model of port management is within the legislator's competence. Which model of institutional management of ports the legislator chooses and whether local governments are involved in it is a matter of expedience. The choice of the institutional model of port management made by the State should not be subordinated to a local government's interest to participate in exercising the functions of port management.

**19.2.** The Latvian system of port management has been created in accordance with the landlord principle. The land and aquatorium of ports basically are owned by the State and the local government that have transferred it into the possession of a port authority (*see Latvijas ostu attīstības programmas 2014.–2020. gadam 24. lp., available: sam.gov.lv.*).

Historically, there have been several institutional models of port management. Initially, port authorities were formed by the councils of the relevant cities or municipalities. The State had determined that the boards of the authorities of the port of Rīga and Ventspils should include representatives of

direct administration institutions along with representatives of local governments. Whereas by the amendments to the Law on Ports of 12 December 2019, the port authorities of the Port of Rīga and the Port of Ventspils, as derived legal persons governed by public law, were transferred under the Cabinet's supervision. Likewise, representatives of local governments were excluded from the port authority by the amendments referred to above. By amendments to the Law on Ports of 18 December 2019, the functions of the port authority in the Port of Ventspils was transferred to a capital company, determined by the Cabinet.

Thus, the Law on Ports did not envisage the participation of local governments in the institutional management of the Port of Rīga and the Port of Ventspils already since 2019 and they did not have statutory rights to participate in the decision-making process with respect to discharging the functions of port management regarding the territory of the port. Moreover, pursuant to the Cabinet's Order No. 640 of 18 December 2019 "On Establishing State Stock Company "Ventas osta"", the institutional management of the Port of Ventspils was implemented by a legal person governed by private law.

Thus, in the Port of Ventspils, since 2019, the port management and the port management functions, determined in the Law on Ports, were implemented by a legal person governed by private law. In 2022, in turn, by the contested provisions also the institutional management of the Port of Rīga was transferred under the responsibility of a capital company. Thus, the same institutional model of port management, which had been determined for the Port of Ventspils already in 2019, was established for the Port of Rīga by the contested provisions.

**19.3.** The management of the Port of Rīga and the Port of Ventspils already initially had been the function of public administration (*see the initial wording of the third, fourth and fifth part of Section 8, Section 10 and Section 11 of the Law on Ports*). The contested provisions do not amend the stipulation of the Law on Ports that port authority performs the functions of the State administration (*see Section 7 (2) of the Law on Ports*). Thus, irrespectively of whether local governments historically were or were not involved in the institutional management of ports, performing the management function for the Port of Rīga

and the Port of Ventspils was not and is not linked to any of the local government's autonomous competencies, determined in law.

**Thus, the contested provisions do not violate the principle of the autonomy of a local government's competences, which follows from the principle of self-government, included in Article 1 and the first sentence in the second part of Article 101 of the Constitution.**

20. The Applicants hold that a local government's right to handle its property and gain revenue from managing this property follows from the principle of financial autonomy. It is alleged that the obligation, established by the contested provisions, to transfer into the possession of a capital company also such property of the local government which is not directly linked to the functioning of a port but is mainly used for the local government's commercial activities and other aims is not proportional because this property is needed to exercise the autonomous competences of the local government.

The *Saeima* is of the opinion that a derived legal person governed by public law has its own autonomous competence, which should be separated from the local government's competence. The same is said to apply also to the property transferred into the possession of these subjects. Before the adoption of the contested provisions, the port authority of the Free Port of Rīga and the port authority of the Free Port of Ventspils had been derived legal persons governed by public law and neither had been functionally subordinated to the local government, nor belonged to its institutional system.

*Mg. iur.* A. Kovaļevska, in turn, underscores that the existence of a local government requires the State to ensure certain legal capacity to the local government as a subject. The contested provisions affect the possibilities of a local government to gain revenue from particular objects of property, and this should be examined from the perspective of the principle of financial autonomy, which follows from the principle of self-government, i.e., it should be considered whether any reasonable causes and values, enshrined in the Constitution, for the sake of which this regulation has been established can be discerned and whether

it is not excessive. The representative of the association “The Latvian Association of Large Cities”, in turn, is of the opinion that a local government’s property is primarily used for satisfying the needs of the local government’s inhabitants and exercising the autonomous competences of the local government. In port cities, the local government’s economic interests are said to coincide with the interests of the port, therefore the local government’s property, included in the territory of the port, should be retained in its possession, so that the local government could exercise its autonomous competences and, at the same time, enjoy the advantages of the economic zone of a free port.

**20.1.** Contested Para 1 of Section 4 (3) of the Law on Ports sets out that the State and local government land and aquatorium are in the possession of the relevant port authority. It follows from the case materials that the land in the territory of the port owned by the local government, on the basis of a concluded agreement, since 2004 has been transferred back from the possession of the Free Port of Ventspils into the local government’s possession (*see Case Materials, Vol. 2, p. 101, Vol. 5, p. 18, and Transcript of the court hearing of 13 September 2023 in Case Materials, Vol. 11, p. 13.*).

The Municipal Council of Ventspils sees an infringement on the local government’s rights also in the fact that, by the contested provisions, the local government has been denied the right to possession of the land, owned by it, which is located within the territory of the Port of Ventspils and constitutes 42 per cent of the total area of the city’s administrative territory. The largest part of the local government’s land, which has been included in the territory of the Free Port of Ventspils, was not needed for performing the functions of a port. Although the local government had the right to initiate revision of the territory of the Free Port of Ventspils and request excluding from it the land that was not needed for performing the functions of a port, the local government had not been interested in decreasing the territory of the Free Port of Ventspils.

It can be concluded from the explanations, provided by the Municipal Council of Ventspils at the court hearing, that the Municipal Council of Ventspils links the area of the city’s administrative territory, included in the territory of the

Free Port of Ventspils, to its obligation to ensure exercise of its autonomous competences within the city's territory, because within it, mainly by promoting commercial activities, revenue had been gained from the commercial activities of merchants, fees and services for a charge. Thus, the contested provisions had deprived the local government of a permanent source of revenue.

The Constitutional Court has recognised that the land within the territory of a free port is necessary for ensuring economic interests that are important for the State and society. Therefore, legal property relations within the territory of a port should be linked to the performance of functions that are typical of ports (*see Judgement by the Constitutional Court of 13 February 2009 in Case No. 2008-34-01, Para 15.1.*). As regards the aims of using the land, to be included in the territory of ports, the Constitutional Court has noted that only such territory, which prospectively should be developed for the needs of the port, may be determined as the territory of a port (*see Judgement by the Constitutional Court of 17 January 2008 in Case No. 2007-11-03, Para 18*). Also, in the course of applying legal provisions, the Senate, interpreting the legal regulation on ports, has acknowledged: if the relevant territory is not necessary for the functioning of the port and could be used for other purposes, it should not be included in the territory of a port (*see Judgement by the Senate of 8 October 2012 in Case No. SKA-460/2012 (A42854209), Para 9*).

A public person needs property to perform the functions of public administration. The legislator's aim, in transferring land into the possession of port authorities, had been to ensure sufficient economic foundations for the commercial activities and development of ports. Already initially, the Law on Ports provided that the local government's land and aquatorium were transferred into the possessions of the port authority by the decision of the relevant council of the city or municipality (*see initial wording of Section 4 (3) of the Law on Ports*). The obligation, established in the Law on Ports, to transfer to the port authorities the land, aquatorium, berths and common hydrotechnical structures had to be fulfilled by 1 October 1994 (*see Para 5 in the Transitional Provisions of the Law on Ports in the wording of the Law of 17.04.1996*).

Thus, the regulation on transferring land into the possession of the port authority, set out in the Law on Ports, has remained unchanged since the date when the Law on Ports was adopted. Historically, the legislator's aim to guarantee to a local government, whose land is within the territory of a port, the right to gain revenue from commercial activities cannot be derived from the regulation of the Law on Ports. The main lines of activities of Latvian ports are linked to the policy on ports, established by the State. The development aims of these ports are subordinated to the common benefit for the State and not to the interests of a separate local government.

Although one of the aims in creating the territory of the Free Port of Ventspils was to facilitate the development of production and services, as well as creating new jobs, this cannot be interpreted to mean that the tax relief regime, applied in this territory, would be economic grounds for exercising the autonomous competences of the particular local government. The primary aim in determining the principles of functioning and the procedure of management for the Free Port of Ventspils is to promote Latvia's involvement in international trade and to attract investments. The right to use the regime of the territory of the free port cannot be understood to mean that the Cabinet would determine the boundaries of a port in compliance with the commercial interests of that local government, within whose administrative territory this port is located. Such interpretation of the legal provisions would be contrary to the purpose set for the operations of a free port. Moreover, in view of the functions determined for port authorities in the Law on Ports, port authorities are the ones that have to facilitate the development of business activities within the entire territory of the port, creating favourable conditions for engaging in commercial activities and developing the necessary infrastructure for it.

Thus, the financial resources, which historically have formed as the result of an agreement, concluded by the Municipal Council of Ventspils, cannot be regarded as such sources of financing, established by law, which have been transferred for the exercise of a local government's autonomous competences.

**20.2.** Contested Para 3 of Section 4 (3) of the Law on Ports provides, *inter alia*, that the common hydrotechnical structures, fairways and berths in the ownership of the respective local government are in the possession of the respective port authority.

The Municipal Council of Ventspils is of the opinion that the contested provisions have restricted its right to gain revenue from the berths and buildings that have been rented to the port authority. The revenue gained from the rent of berths constitute a part of the local government budget, which is needed for exercising the autonomous competences.

The Constitutional Court establishes that also the initial wording of Section 4 of the Law on Ports comprised such general regulation that the common hydrotechnical structures of the port, including the berths, were in the possession of the relevant port authority. Such regulation was applied also to the Port of Rīga and the Port of Ventspils.

Also the Ministry of Transport, in its correspondence of 14 July 2022 with the Municipal Council of the State City of Ventspils, had called upon it to fulfil the obligation, determined in the Law on Ports, and transfer the berths, in the ownership of the local government, at the same time explaining that it was important for the stock company “Ventas osta” to acquire in its possession such property owned by local government, located within the territory of the port, that was necessary for it to ensure performance of the functions defined in the Law on Ports in full.

The Municipal Council of Ventspils has not provided explanation regarding the legal grounds, on the basis of which it had not fulfilled, since 1994, the obligation, established in Section 4 of the Law on Ports, to transfer into the possession of the port authority the berths, owned by the local government, in the Port of Ventspils. The actual situation where the common hydrotechnical constructions of the Port of Ventspils, including the berths, have been retained in the local government’s possession, does not give legal grounds for the local government of Ventspils to consider that the berths, which are necessary for fulfilling the functions of a port, should be kept in the local government’s

possession and used as a source of financing for exercising the autonomous competences of a local government.

Thus, a local government's right to use the infrastructure and constructions, including berths, necessary for performing the functions of a port, as a source of financing, defined in law, for exercising the autonomous competences of a local government was not determined in the Law on Ports.

**20.3.** Contested Section 4 (5) of the Law on Ports provide for, *inter alia*, the right of a port authority to lease, rent the property in its possession owned by the local government, grant the right superficies for it and encumber it with property rights. Likewise, a port authority has been granted the right to build buildings (structures) necessary for the port operation as independent property objects on the land in its possessions owned by the local government. Whereas a local government may alienate its immovable property, located within the territory of the port, only to the State, without reimbursement, or invest into the equity capital of the capital company, established for managing the Free Port of Ventspils (*see Section 4 (9) of the Law on Ports and Section 4 (1) of the Free Port of Ventspils Law*).

The Municipal Council of Ventspils holds that the transferring into the possession of a port authority such immovable property, located within the territory of the port, which until the adoption of the contested provisions had been in the local government's possession, could restrict the local government in handling its property. Whereas the prohibition, established by the contested provisions, to gain revenue from the transactions to alienate immovable property is said to violate the principle of a local government's financial autonomy. In establishing prohibition for a local government to alienate its immovable property to anyone else but the State, fair reimbursement should be envisaged in law.

As concluded in Para 20.1. of this judgement, already the initial wording of the Law on Ports had envisaged that the land within the territory of the port was in the port authority's possession. The local government's title to the particular objects of immovable property had been retained; however, the possibilities to handle them were limited because it was the port authority that

had the right to conclude rental agreements, encumber this property with the right to property, etc. Likewise, the port authority had been granted the competence to fulfil the functions related to the maintenance of the territory of the port. Therefore, since the adoption of the Law on Ports in 1994, the local government's discretion with respect to the property in the possession of the port authority was limited.

As regards a local government's right to gain revenue from immovable property, located within the territory of the port, that are not in the port authority's possession, it should be taken into consideration that one of the legislator's aims, in transferring land into the possession of the port authority, was to ensure sufficient economic foundations for the commercial activities and development of ports. Thus, it is only self-evident that, within the territory of the port, the sole and lawful manager decides on how to handle property in its possession. As the result of the agreement, concluded by the local government of Ventspils, historically, a situation that has evolved where on the land within the territory of the port, constructions owned by the local government and private persons are located, does not influence the aims for establishing the territory of a port, defined in the law. Namely, there are no grounds for including into the territory of the port such property that is not necessary for performing the functions of the port. Whereas the management of such immovable property that is used in the areas of commercial activities that are typical of a port's functions, which, *inter alia*, envisage concluding rental agreements and entering into other civil law transactions with merchants are the function of the port manager, defined in the Law on Ports, and not a function of the local government.

Moreover, also before the contested provisions were adopted, with respect to the land owned by the local government and included in the territory of the port, the Law on Ports provided that vacant land in the ownership of the local government that was needed for performing the functions of a local government could be excluded from the port authority's right of possession. Likewise, there are no grounds to recognise that a land owned by the local government that has been built on and if the buildings on it are necessary for performing the local

government's functions could not be excluded from the port authority's possession.

Thus, it follows from the purpose of the Law on Ports and the contested provisions that the prohibition to alienate land owned by the local government to third parties is attributable only to such land, which, in accordance with the legal provisions, should be in the possession of the port authority, moreover, the local government as the owner, already initially, had limited possibilities to handle this land and gain benefit from it. As mentioned above, the land, which is necessary for successful functioning and development of the port and for ensuring interests that are important for entire society, should be included in the territory of a port. Therefore, land owned by a local government, which is not needed for performing the functions of a port, may be excluded from the port authority's possession and, accordingly, from the territory of the port. The contested provisions neither determine nor change the territory of the Port of Rīga and the Port of Ventspils, and what this port territory should be like does not follow from them, i.e., how large the part of land should be within the territory of the port and what kind of properties owned by the State and local government should be included in it.

Thus, the revenue that a local government might gain from alienating immovable property cannot be regarded as such a source of financing, established in law, that would ensure exercising of the local government's autonomous competences.

**20.4.** Section 12 (2), deleted from the Law on Ports, provided, *inter alia*, that the port authority's financial resources could be used only for managing and developing the port and its infrastructure, as well as for performing the functions, defined in Section 7 of this law. The third part of this section, in turn, provided that a port authority was not allowed to participate, with its financial resources, in a commercial company outside the territory of the port.

The Municipal Council of Ventspils holds that the revenue that the capital company gains from managing ports would not be channelled for performing the autonomous competences of a local government.

The provisions that were deleted from the Law on Ports were part of the regulation that defined the sources of financing for port authority. Namely, the legislator had envisaged in Section 12 (1) of the Law on Ports particular sources of financing for the port authority, the revenue gained from which, pursuant to the second part of the same section, were to be used for managing and developing the port and its infrastructure. As already found in Para 19.3. of this judgement, the functions, referred to in Section 7 (2) of the Law on Ports, were the functions of the State administration, transferred by law to the port authority, and not the autonomous competences of the local government of the State City of Ventspils. Likewise, after the adoption of the contested provision, the regulation retained in Section 14 (2) of the Law on Ports, which envisages the obligation of the port authority to transfer into the budget of the local government ten per cent of payments for the tonnage, canal, small ship, anchorage and cargo fees, pertains to financial resources that are envisaged for the development of infrastructure related to the port operations.

Thus, the legislator had not provided that the revenue from the sources of financing, envisaged for the port authority, should be used for exercising the autonomous competences of a local government. Hence, the revenue that a capital company might gain from port management cannot be recognised as being such source of financing that has been determined by law for exercising the autonomous competences of a local government.

**Hence, the principle of the financial autonomy of a local government derived from the principle of self-government, included in Article 1 and the first sentence in the second part of Article 101 of the Constitution, has not been violated by the contested provisions.**

21. The Applicants hold that, in the course of adopting the contested provisions, timely, fair and genuine consultations with the relevant local governments had not been held. Whereas the principle of good legislation had been violated because the contested provisions had not been duly substantiated by explanatory research. Likewise, in the course of drafting and discussing the

Amendments to the Law in the Cabinet and, later, in the responsible committee of the *Saeima*, the local government's opinion regarding issues pertaining to the management of a considerable part of the local government's territory and the performance of autonomous functions had not been duly assessed.

The *Saeima* notes that the Ministry of Transport had commissioned a report on the possible transformation of the port authorities of major Latvian ports into capital companies, assessing also the practice of other countries in port management (*see: study "Atzinums par Latvijas lielo ostu pārvalžu iespējamo pārveidošanu par valsts kapitālsabiedrībām", available: petijumi.mk.gov.lv/*). The *Saeima* also underscores that the local government's representatives had been heard and the submitted opinion had been reviewed in the legislative process.

The principle of good legislation also can be derived from the principle of a state governed by the rule of law. The branches of power in a democratic state governed by the rule of law, *inter alia*, the legislator, must strive at achieving that every person's trust in the State and the law, as well as understanding of the democratic process would continue to increase. Compliance with the principle of good legislation facilitates reaching of this aim (*see Judgement by the Constitutional Court of 6 March 2019 in Case No. 2018-11-01, Para 18.1.*).

Hence, the Constitutional Court must establish whether, in drafting and adopting the contested provisions, the principle of good legislation and the principle of consulting, which is derived from the principle of self-government, have been complied with.

On 30 June 2020, the Ministry of Transport announced public consultations regarding the Amendments to the Law. Moreover, "Opinion on the Possible Transformation of Port Authorities of the Large Latvian ports into State Capital Companies" was published on the website of the Cross-Sectoral Coordination Centre and the Ministry of Transport. This Opinion provided analysis of the existing management model of major Latvian ports, practice of its application, port management models existing abroad, the legal regulation in the area of managing capital companies, as well as assessment of the advantages and

shortcomings of the existing port management model and of the possibilities of transforming port authorities into capital companies.

The objections, expressed by the local government of the State City of Ventspils, against the Amendments to the Law, were reviewed at the inter-ministerial and inter-institutional meeting (*see initial impact assessment (annotation) of the draft law “Amendments to the Law on Ports” and Note on the objections stated in the opinions regarding the draft law “Amendments to the Law on Ports”*). Additionally, the Amendments to the Law were examined at the sitting of the Latvian Port, Transit and Logistics Council, as well as at a meeting for the users of ports, organised by the Ministry of Transports, in which 48 participants took part – representatives of various port companies, non-governmental organisations, and port authorities.

The Amendments to the Law were submitted to the *Saeima* on 19 April 2021. At the time when Amendments to the Law were reviewed, representatives of the local government of the State City of Ventspils, participated in the sittings of the responsible committee of the *Saeima* and their opinion on the changes pertaining to the management of the Port of Ventspils was heard. Likewise, during the legislative process, the proposals submitted by the local government of the State City of Rīga and the local government of the State City of Ventspils were assessed (*see Materials of the sitting of the Economic, Agricultural, Environmental and Regional Policy Committee related to the draft law “Amendments to the Law on Port No. 1045/Lp13, available: saeima.lv*). The Amendments to the Law were examined in three readings and their examination in the *Saeima* lasted for almost 10 months. The local governments had sufficient time to familiarise themselves with the planned changes in the model of port management and, if necessary, prepare their opinion regarding these changes and their proposals.

The materials pertaining to the drafting and adoption of the contested provisions allow concluding that the initial drafting of these provisions had been based on research and that legislator had ensured that the local governments’ opinions were heard. The fact that the legislator has not taken into account all

objections that were expressed and all proposals that were submitted cannot be the grounds for recognising that the principle of good legislation had not been complied with (*see, for example, Judgement by the Constitutional Court of 25 March 2015 in Case No. 2014-11-0103, Para 18.1.*).

**Hence, the contested provisions had been drafted and adopted in compliance with the principle of good legislation and they do not violate the principle of consulting that follows from the principle of self-government, included in Article 1 and the first sentence in the second part of Article 101 of the Constitution.**

### **The Substantive Part**

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

**held:**

**to recognise Para 1 and Para 3 of Section 4 (3), the Fifth and the Ninth Part of Section 4, Section 7 (1<sup>1</sup>), Sub-para 1 and Sub-para 2 of Para 16 of the Transitional Provisions of the Law on Ports, Section 11 (2) of the Law of 10 February 2022 “Amendments to the Law on Ports”, as well as Section 4 (1) of the Free Port of Ventspils Law as being compatible with Article 1 and the First Sentence of the Second Part of Article 101 of the Constitution of the Republic of Latvia.**

The judgement is final and not subject to appeal.

The judgement enters into force at the time it is delivered.

Chairperson of the court hearing

Aldis Laviņš