



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT

on Behalf of the Republic of Latvia

in Riga on 16 May 2019

in Case No. 2018-17-03

The Constitutional Court of the Republic of Latvia, comprised of: chairperson of the court hearing Ineta Ziemele, Judges Sanita Osipova, Aldis Laviņš, Gunārs Kusiņš, Daiga Rezevska, Jānis Neimanis, and Artūrs Kučs,

having regard to an application submitted by the Administrative District Court, on the basis of Article 85 of the Constitution of the Republic of Latvia and Para 3 of Section 16, Para 9 of Section 17 (1), as well as Section 19¹ and Section 28¹ of Constitutional Court Law,

at the court hearing on 16 April 2019 examined in written procedure the case

“On Compliance of Para 459 of the Binding Regulation of the Riga City Council of 7 February 2006 No. 38 “Regulation on the Use of and Construction in the Territory of the Historic Centre of Riga and the Protection Zone Thereof” with the First, Second and Third Sentence of Article 105 of the Constitution of the Republic of Latvia”.

The Facts

1. On 7 February 2006, the Riga City Council adopted decision No. 832 “On Approving the Spatial Planning of the Historic Centre of Riga and its Protection Zone” but the graphical part and the rules on the use of the territory and construction on it of Spatial Plan of the Historic Centre of Riga and its Protection (hereafter also – Plan of the Historic Centre) were issued as the binding regulation of the Riga City Council No. 38 “Regulation on the Use of and Construction in the Territory of the Historic Centre of Riga and the Protection Zone Thereof” (hereafter – Binding Regulation No. 38), and it entered into effect on 18 February 2006.

Para 7.1.9.2. of Binding Regulation No. 38 provided: “Installing gaming halls shall be prohibited on land plots JC, JC1, JC2, JC3 and JC4, except in four- and five-star hotels”.

By the decision of the Riga City Council of 18 June 2013 No. 6331 “On Approving the Amendments to Binding Regulation No. 34 of the Riga City Council of 20.12.2005 “Regulation on the Use of and Construction in the Territory of Riga” and Binding Regulation No. 38 of the Riga City Council of 07.02.2006 “Regulation on the Use of and Construction in the Territory of the Historic Centre of Riga and the Protection Zone Thereof” and Issuing Binding Regulation of the Local Government”, Binding Regulation No. 220 was adopted, by which Binding Regulation No. 38 was expressed in the wording that is currently valid. Pursuant to the Letter No. 15.18-le/8819 by the Ministry of Environment Protection and Regional Development of 22 September 2013, Binding Regulation No. 38, in its new wording, had to be implemented from 23 September 2013.

Currently, Para 459 of Binding Regulation No. 38 (hereafter – the contested provision) provides: “Installing gaming halls shall be prohibited in territories JC, JC1, JC2, JC3 and JC4, except in four- and five- star hotels.”

2. The applicant – **the Administrative District Court** (hereafter – the Applicant) – has decided to suspend legal proceedings in case No. A420327717, which has been initiated with regard to an application by a limited liability company “ALFOR” (hereafter – “ALFOR” Ltd.) and has submitted an application to the Constitutional Court, requesting reviewing the compatibility of the contested provision with the first, second and third sentence of Article 105 of the Constitution of the Republic of Latvia (hereafter – the Constitution).

It is stated in the application that, on 3 February 2006, the Riga City Council had issued to the limited liability company “Spēļu nams” (later it was reorganised and merged with “ALFOR” Ltd.) permit No. ICR-06-3-apa to open a gaming hall at 48/50 Brīvības Street in Riga. Whereas by the decision No. 269 of 18 October 2017 (Minutes No. 10, 10. §), the Riga City Council had withdrawn the issued permit, substantiating this decision, *inter alia*, by the contested provision.

Allegedly, the contested provision substantially restricts the right to property of “ALFOR” , enshrined in Article 105, since it actually prohibits from continuing its commercial activities and benefiting from them. Promoting commercial activities by private persons in the economically and socially most active territory of the city of Riga is said to be in the interests of the State and the local government. However, in the

particular case, taking into account the special nature and cultural-historical value of the historic centre of Riga (hereafter also – the Historic Centre), it should be verified whether the withdrawal of the permit, taking into consideration only the location of a gambling hall in the territory of the Historic Centre and without assessing the site-specific conditions, is proportionate.

It is recognised in the application that the legitimate aim of the contested provision is to protect the right of residents of the Historic Centre and its protection zone to live in a benevolent environment, determined in Article 115 of the Constitution. One of the most essential purposes of Law on Preservation and Protection of the Historic Centre of Riga (hereafter – Law on Protection of the Historic Centre) is to preserve and protect the cultural-historical values of the Historic Centre from architectural and urban planning perspective; however, another purpose of this law cannot be disregarded, i.e., to ensure qualitative development of this territory and to set requirements for drawing up its plan.

The local government has the right to determine different restrictions on the right to property in the spatial plan, in accordance with the directions of development, envisaged in the plan, and the wishes of society's majority regarding the further development of the territory. The Applicant holds that the restriction on fundamental rights had been established by law and that the contested provision is a suitable measure for reaching the legitimate aim. To assess whether the restriction, established in the contested provision, is proportionate to its legitimate aim, it should be assessed whether a reasonable balance between the interests "ALFOR" Ltd. and residents of the Historic Centre had been ensured.

The Applicant holds that the legitimate aim of the contested provision could be reached as effectively if the Riga City Council exercised the rights established in the third and the sixth part of Section 42 of the law "On Gambling and Lotteries" (hereafter – Gambling Law). The Riga City Council had not looked for a solution to protect the rights of residents of the Historic Centre by such measures that would infringe upon a person's right to property to a lesser extent.

Allegedly, it follows from the case law of the Court of Justice of the European Union (hereafter – CJEU) that the restrictions, established by the Member States, should comply with the principle of proportionality and that national legal regulation can ensure that the set aim is reached only if the measures for implementing it are concerted and systemic, moreover, changes in the circumstances after adoption of the legal regulation should be taken into account. It is not enough to refer to the aim of general interests to justify restrictions that do not meet these requirements. The

regulatory enactments and explanations provided by the Riga City Council do not allow to identify the reason why such measures for restricting gambling had to be introduced, i.e., withdrawal of a previously issued permit for opening a gambling hall. For more than 10 years after the contested provision had been issued, the Riga City Council had not taken any actions to apply this provision, therefore the justification, provided by the Riga City Council, is said to be incompatible with care for players and cultural-historical values of the Historic Centre.

Likewise, the Riga City Council has not substantiated the impact of the particular type of commercial activities on the cultural-historical values of the Historic Centre. If the threat to these values in connection with organising of gambling is seen in the visual presentation of places where gambling is organised then this threat could be eliminated by less restrictive measures, e.g., prohibiting all decorations on the facades of premises where gambling is organised.

Moreover, general prohibition from organising gambling in the entire Historic Centre and its protection zone, at the same time retaining the possibility to organise these, in accordance with regulatory enactments, throughout the rest of the country's territory, *inter alia*, in other urban areas of Riga, as well as in four- and five-star hotels in the Historic Centre and its protection zone, is not indicative of concerted and systemic efforts to decrease the possibilities for gambling. There are no objective grounds for providing greater protection against gambling addiction to those residents who stay on daily basis in the Historic Centre and its protection zone than to residents of any other part of the City of Riga or the state.

It should be taken into account that the commercial companies, which have opened gambling halls in four- and five-star hotels located in the Historic Centre and its protection zone, have been placed in a privileged position because they may continue their commercial activities and benefit from them. The Riga City Council has not substantiated its opinion why operation of gambling halls in hotels infringes upon the right of the residents of the Historic Centre to live in a benevolent environment to a lesser extent.

Interpretation of the second sentence of Article 105 of the Constitution in conjunction with the third sentence of the same Article allows concluding that restriction of the right to property is admissible only in public interests, i.e., to protect the rights of other persons, public security, welfare and morals. The contested provision should ensure a balance between a person's right to exercise their right to property without interference and gain from the property as great economic benefit as possible, on the one hand, and, on the other hand, the right of the residents of the Historic Centre

to live in a benevolent environment. The Riga City Council has not conducted research or provided another substantiation as to why more lenient measures for restricting a person's right to property are not available. Therefore, it cannot be concluded that the benefit that society gains from the closing of gambling halls in the Historic Centre would outweigh the damage inflicted upon the applicant in the administrative case. Moreover, the Applicant calls into question whether, at the time of adopting and applying the contested provision, the aim of the Riga City Council, indeed, had been to ensure a particularly high level of protection [of the legitimate aim], therefore, the withdrawal of lawfully issued permits on the basis of the contested provision cannot be considered as being proportionate.

Following the initiation of the case, the Constitutional Court has received the decisions by the Administrative District Court and the Administrative Regional Court on suspending legal proceedings in 28 more cases regarding the decisions by the Riga City Council to withdraw the permits issued to commercial companies to open gambling halls in the territory of the Historic Centre and its protection zone.

3. The institution, which issued the contested act, – **the Riga City Council** – holds that the contested provision complies with the first, the second and the third sentence of Article 105 of the Constitution.

Various spatial development planning documents, *inter alia*, Latvian Development Strategy, Riga Long-term Development Strategy, Riga Development Programme for 2006-2012, Riga Spatial Plan for 2006-2018, provide that the territory of the City of Riga and, in particular, the territory of its Historic Centre should be developed sustainably as a major European centre of culture and tourism. The primary task of the planning for the Historic Centre is to conserve, protect and develop qualitatively the Historic Centre and its protection zone in a way to ensure that the cultural environment (or cultural-historical) urban environment would be benevolent, appealing and, due to its quality, attractive not only to the local residents and visitors but also to foreign tourists. Although the territory of the Historic Centre is economically and socially the most active part of the City of Riga, historically it has not developed as a centre of gambling. Namely, historically, gambling halls had not been objects, typical of the cultural-historical urban environment of the Historic Centre and its protection zone. The Riga City Council, in adopting the contested provision, had taken into account also the opinion of the absolute majority of society, ascertained as the outcome of a survey.

Referring to case law, the Riga City Council notes that such a legal solution that provides for restricting organisation of gambling in some functional zones of the territory of the respective local government is logically substantiated, as each of the zones has its own development strategy. It is maintained that a solution like this creates certainty with respect to the long-term use of the specific territory, remediating the environment and ensuring integrated spatial development. This is said to create the possibility for the economic operators who organise gambling to reckon with the new situation in due time and plan their business activities. Whereas other persons who purchase property can expect that such objects of entertainment that cause the risk of threat would not be opened in direct vicinity of their property.

The Riga City Council is of the opinion that the restriction on fundamental rights, established by the contested provision, had been defined by law because, firstly, Plan of the Historic Centre and Binding Regulation No. 38 had been drafted in accordance with the valid regulatory enactments in the area of spatial planning. Secondly, at the time when this plan was elaborated and public discussions on it were held, as well as at the time when its final wording was determined, the provision of Section 20 (1) of the law “On Lotteries and Gambling” had been in effect, directly defining the competence of local governments to determine the territories where organisation of gambling was prohibited. Pursuant to the legal regulation that had been valid at the time and the authorisation granted by the legislator, the Riga City Council had been entitled to establish general prohibition on organising gambling in gambling halls that had been opened or where there was an intention to open them in the functional zones of the territory of the Historic Centre. The fact that, on 8 June 2006, the legislator amended Gambling Law and that, since 4 July 2006, the third and the sixth part of Section 42 of this law is in effect, is said to confirm that the Riga City Council had acted in accordance with the legislator’s intent. Thirdly, the contested provision is sufficiently clear for anyone to understand that it, in conjunction with the third and the sixth part of Section 42 of Gambling Law, applies not only to the opening of new gambling halls but also to the gambling halls that already have been opened in the respective territory.

The Riga City Council holds that the legitimate aim of the restriction on fundamental rights, established by the contested provision, is the protection of other persons’ rights, i.e. , the right to a benevolent cultural environment and the right to the protection of cultural heritage, as well as ensuring public welfare. Moreover, determination of such a restriction on the organisation of gambling, allegedly, is compatible with the protection of other persons, to the extent possible, against gambling addiction, as well as protection of the welfare of a gambler and his immediate family.

The Riga City Council points out that the Applicant has defined the legitimate aim of the restriction too narrowly.

It is noted in the written reply that the State is obliged, in the interests of sustainable development of territories with cultural-historical importance, to decrease or eliminate, to the extent possible, such negative risk factors of cultural environment that might, objectively, overshadow the symbols, expressed by the cultural heritage that forms such cultural environment and other spiritual values of human importance, as well as hinder adequate perception of historic events, traditions and the moral values of society, reflected in the cultural environment, causing in a large part of society feelings of dislike, dissatisfaction or openly negative attitude.

The use of territory for organising gambling is said to be one of the pronouncedly negative elements of cultural environment or a risk factor, being not a symbol of universal human cultural values but of profit-making, as well as leading to a morbid addiction to gambling, which tends to combine with other forms of addiction, most commonly, alcohol addiction. According to the Riga City Council, the organisation of gambling in the gambling halls in the Historic Centre would degrade the quality of cultural heritage, human character, universal moral-ethical value, benevolent urban environment, the unique cultural environment, which has developed over centuries, and its attractiveness, as well as its cultural and historic distinctiveness and authenticity, including by hindering the full appreciation and enjoyment, *inter alia*, on the level of feelings and mood, of the cultural and historic values of the Historic Centre and its protection zone and of the cultural heritage as such.

It is noted in the written reply that the exemption, envisaged in the contested provision, i.e., permission to set up gambling halls in four- and five-stars hotels, does not impact the suitability of this restriction for reaching the legitimate aim. The Riga City Council had acted “concertedly and systematically” because the restriction, envisaged in the contested provision, is applied equally to all organisers of gambling and gambling halls, which have been opened or intended to be opened in certain functional zones of the Historic Centre – territories JC, JC1, JC2, JC3 and JC4 (hereafter also – JC territories).

The Riga City Council holds that the restriction, established in the contested provision, cannot be regarded as such that would prohibit completely “ALFOR” Ltd. from continuing its commercial activities. Firstly, a gambling hall is only one of the forms of organising gambling. Secondly, organisers of gambling have not been denied the possibility to continue their commercial activities in the entire remaining administrative territory of the City of Riga and elsewhere in Latvia. Likewise, gambling

halls may continue their operations in four- and five-star hotels in the Historic Centre and its protection zone.

It is stated in the written reply by the Riga City Council that such a legal solution, which has already been envisaged in regulatory enactments and pertains directly to the particular situation, i.e., the rights granted to a local government in the third and the sixth part of Section 42 of Gambling Law to assess the particular circumstances on a case-by-case basis and decide on opening or closing a gambling hall cannot be deemed to be a more lenient measure. Likewise, “making the visual presentation of gambling halls more neutral” would not reach the legitimate aims of the restriction in the same quality. Hence, the restriction, established in the contested provision, is said to be a measure that is necessary for reaching the legitimate aim.

The Riga City Council notes that, in elaborating Plan of the Historic Centre, it had assessed and balanced different rights and interests, *inter alia*, the right of economic operators to organise gambling, on the one hand, and, on the other hand, every person’s right to a benevolent cultural environment and cultural heritage, as well as the need to ensure public welfare, and had preferred the latter. The contested provision is said to concretise the undefined legal concept, included in the third and the sixth part of Section 42 of Gambling Law, “a substantial infringement of the interests of the State and the residents of the respective administrative territory”. Moreover, the term of substantial validity of the decision by the local government, defined in the seventh part of this section, which is five years, is said to be sufficiently long to allow the organisers of gambling – professionals in the respective field – to find solutions and take appropriate measures that would decrease, to the extent possible, or even eliminate negative economic consequences caused by the closure of the particular gambling halls.

The Riga City Council is of the opinion that every person benefits from the specific restriction, both from the perspective of exercising their rights to a more benevolent cultural environment and the right to cultural heritage, as well as from the perspective of tangible and intangible public welfare, and that this benefit significantly outweighs and is more important than the negative economic consequences that the organisers of gambling might incur as the result of the restriction on their right to property. Hence, the restriction, established by the contested provision, is said to be compatible with the legitimate aim and commensurate to it.

The Riga City Council also points out that the decisions to withdraw permits for opening gambling halls had been taken to enforce the ancillary decision of the Supreme Court of 24 February 2017 in case No. SKA-34/2017 (hereafter – the Supreme Court’s ancillary decision). Whereas the Applicant had not made full use of legal methods for

resolving the legal dispute. Allegedly, it is proven by the fact that, from 12 February 2018 until 27 July 2018, the Administrative District Court, in several other compositions, had delivered and pronounced judgements in 24 similar cases, by which the respective application regarding revoking of the decision by the Riga City Council that was appealed against, had been dismissed.

The Riga City Council is of the opinion that it follows from the application that the Applicant wants the Constitutional Court to reassess the interpretation of legal provisions, provided in the Supreme Court's ancillary decision. However, such "review and reassessment", as well as "expediency considerations" of the decision, allegedly, do not fall with the Constitutional Court's jurisdiction. Likewise, the Riga City Council assumes that the fundamental rights of "ALFOR" Ltd. could be infringed upon not by the contested provision but by Section 42 (6) of Gambling Law because this is exactly the provision that grants the right to a local government to withdraw an already issued permit to open a gambling hall. Therefore, the Riga City Council requests the Court to terminate the case on the basis of Para 6 of Section 29 (1) of Constitutional Court Law.

When answering the Constitutional Court's questions, the Riga City Council emphasised repeatedly that, at the time when Plan of Historic Centre was elaborated and the final wording was determined, clear and unambiguous legal regulation in the area of gambling had been in force, granting to local governments the right to determine the territories where organisation of gambling was prohibited. From the chronological perspective of developing the legal regulation, in elaborating Plan of Historic Centre, the Riga City Council, quite objectively, could not have assessed the legitimate aim of the restriction on fundamental rights, established in the contested provision, in conjunction with the purpose of Gambling Law, because this law had not yet been adopted and had not entered into effect. However, the Riga City Council holds that, substantially, such assessment had been done, i.e., in the process of elaborating the contested provision, the aim of the restriction, established in it, had been assessed in conjunction with the purpose of Gambling Law – to protect public interests.

After familiarising itself with materials in the case, the Riga City Council points out that, in the recent case law, the local governments' competence to regulate organising of gambling as one of the types of using the territory also in a spatial plan has been accepted. Only the fact that the *Saeima*, by the third and the sixth part of Section 42 of Gambling Law, has determined the procedure, in which an organiser of gambling can receive a permit for opening a gambling hall or lose a permit that already has been issued, does not mean that the Riga City Council, in adopting Plan of the Historic Centre, was not allowed to restrict organising of gambling in gambling halls in

certain territories of the Historic Centre and its protection zone. The local government's competence includes also assessment of the location of gaming halls within the framework of its spatial development planning, as the spatial development plan is a comprehensive planning document.

Moreover, the Riga City Council points out that the Member States of the European Union may define freely their political objectives in the area of gambling and, if needed, define precisely the necessary level of protection, taking into account the moral, religious, cultural particularities of their state and the related protected values. Allegedly, it follows from the case law of CJEU that both the protection of gamblers or consumers or combatting fraud, as well as protection of cultural environment, preservation of the national history and art, the protection of national cultural- historical heritage, as well as also culture policy objectives may be a legitimate aim, justifying restrictions on organising gambling.

4. The summoned person – **the Saeima of the Republic of Latvia** (hereafter – the *Saeima*) – holds that, first and foremost, the restrictions on organising gambling have been defined in Article 41 of Gambling Law and these restrictions, according to their purpose, meaning and nature, can be divided into several categories. The *Saeima* is of the opinion that the main reason why, in general, gambling is restricted is the fact that gambling can cause addiction and is always linked to a high financial risk for the player, likewise, it can have significant negative impact not only upon a person's financial wellbeing by also their mental state, relationships with immediate family, work and other aspects of life. Therefore, the legislator had deemed it necessary to introduce certain restrictions to decrease these risks or, with respect to certain groups of persons, e.g., minors, eliminate them.

The prohibition to organise gambling at a certain venue, established in Gambling Law, could be linked to several reasons that are substantially different, however, basically it is always aimed at ensuring that gambling is not easily accessible in venues where persons in need of special protection gather, persons who might be easier influenced and encouraged to participate in gambling, or in places where persons should not be subject to such a risk at all. It follows from the preparatory materials for drafting the respective restrictions that these restrictions are aimed at public welfare (health and financial welfare) and the protection of other persons' (players) rights, i.e., the main aim of the restriction is to decrease the accessibility of gambling and, thus, the wish to gamble, which may lead to addiction and the related adverse consequences.

The *Saeima* notes in its opinion that the local government's competence in defining restrictions on organising gambling, i.e., both the substantive restrictions on organising gambling, as well as the way and form for establishing them, first and foremost, follow from Gambling Law and its Section 2 "Rights of a Local Government to Regulate Gambling". Allegedly, this Section regulates a local government's rights only in connection with the individual permits, referred to in Section 26 and Section 27 of the law, to open a venue for organising gambling and does not include a legislator's authorisation to a local government to regulate organising of gambling in the form of a generally binding external regulatory enactment – binding regulations. This is also proven by the terms, consistently used in Section 42 of the law – "a permit", "a decision", "a reasoned decision". Likewise, this is said to follow from the effective mechanism of legal remedies, included in the ninth part of the said section, which allows the respective organiser of gambling to appeal against the local government's decision in court. A local government may interpret broadly the term "venue", used in Section 42 (6) of Gambling Law, understanding by it not solely particular premises or a building; however, the assessment made by the local government and its decision, adopted in compliance with the authorisation granted to it by the legislator, in any case must be individual and applicable to the application by the particular organiser of gambling.

The *Saeima* underscores that a local government has certain discretion in assessing what should be considered as "a substantial infringement of the interests of the State and the residents of the respective administrative territory" because the law does not determine the reasons why and the grounds on which a local government may establish such restrictions. Namely, a local government may take into consideration persons' fundamental rights, *inter alia*, the right to a benevolent environment as one of the grounds for restricting organising of gambling. However, these reasons require individual assessment in each particular case when a permit is requested and cannot be contrary to the provisions that the legislator has made in law or what, in accordance with the legislator's authorisation, has been included in the Cabinet regulations.

As regards Law on Protection of the Historic Centre, the *Saeima* points out that, first and foremost, it is aimed at physical (visual) protection of cultural-historical values.

Preservation of cultural-historical values, undeniably, ensures to them also retaining of associations or atmosphere related to them; however, it does not follow from Law on Protection of the Historic Centre that protection of cultural-historical values should be ensured otherwise than physically.

The *Saeima* also noted that the authorisation granted to a local government by Law on Protection of the Historic Centre to develop the spatial plan for the historic centre of Riga and its protection zone could not be interpreted as broadly as to mean that the local government had the right to regulate all aspects related to staying of residents in the Historic Centre and its protection zone. Law on Protection of the Historic Centre does not authorise a local government to regulate, by its binding regulations, restrictions on organising gambling, unless these are linked to rules, defined for any economic operator, with respect to outer appearance of buildings, as well as construction rules and other requirements aimed at preservation of cultural-historical values and environment. It is alleged that organising of gambling does not fall within the autonomous competence of local governments and thus, local governments' discretion in this area is strictly limited. Likewise, in this case, the general requirements regarding issuing regulatory enactments on the grounds of authorisation are applicable to local governments.

5. The summoned person – **the Ministry of Justice** – points out that Binding Regulation No. 38 had been issued on the basis of authorisation, determined in Section 9 of Law on Protection of the Historic Centre, and regulatory enactments in the area of spatial planning and subscribes to the conclusion that the restriction on fundamental rights that follows from the contested provision has been established by law and has the legitimate aim to protect the right of residents of the Historic Centre to live in a benevolent environment, established in Article 115 of the Constitution, as well as to protect the right to a benevolent cultural environment and the right to cultural heritage.

The Ministry of Justice holds that the permit to open a gambling hall, issued by the Riga City Council, guarantees to a person the right to engage in certain commercial activities which the person would be unable to do otherwise. Thus, a person's right to organise gambling on the basis of a permit at a specific venue is to be recognised as a person's right to property in the meaning of Article 105 of the Constitution.

The Ministry of Justice notes that, upon withdrawing a favourable administrative act, the legal provisions, included in Section 85 and Section 86 of Administrative Procedure Law should be taken into account, these, *inter alia*, provide that a person, in certain circumstances, has the right to receive compensation for losses and non-pecuniary damages. The matter of compensation for losses should be part of the administrative act that revokes an act and the institution, prior to issuing such an act, must assess the preconditions for compensation of

damages in accordance with the legal provisions of Administrative Procedure Law and Law on Compensation for Losses Caused by State Administration Institutions.

The Ministry of Justice upholds the opinion of the Riga City Council that the regulatory enactments provide for a sufficient period of transition, i.e., a decision by the Riga City Council on revoking an administrative act that is favourable to a person becomes substantively valid five years after this decision has become procedurally valid, it also envisages an appropriate mechanism in connection with the compensation of losses that have occurred due to revoking of a favourable administrative act. The Ministry of Justice holds that a reasonable balance has been ensured in the case between a person's legitimate expectations that arose when a permit to open a gambling hall was issued to it and those interests for the sake of which the regulation was amended. Administrative decisions that are favourable to a person cannot be revoked if the beneficiary has relied on the permanence of this administrative act and that this reliance, when compared to the public interest of revoking, is worth protection; however, in the particular case, the amended legal regulation that envisaged adverse legal consequences (prohibition of particular activities) had been in effect for a long time. Namely, after a permit was issued, the prohibition to set up gambling halls in JC territories, except four- and five-star hotels, was introduced. Moreover, local governments were granted the right to withdraw, in certain cases, the already issued permits. The economic operators who are professionally involved in organising gambling cannot not know that this sector is strictly regulated and that such amendments had been introduced to the respective legal regulation that provide for more stringent protection of society's rights and restrictions on the placement of gambling halls. Thus, the Riga City Council had the grounds to expect that organisers of gambling would act in accordance with law. Whereas "ALFOR" Ltd. and other organisers of gambling could not have developed stable and long-lasting legal expectations regarding the permits to open gambling hall.

The Ministry of Justice also notes that it is important to assess how the principle of legitimate expectations and the principle of good governance manifest themselves in actual facts of the particular case. Namely, from the moment when the contested provision entered into effect, the Riga City Council had done nothing to enforce this provision and, in particular, if because of this delay the legal situation of a private person has deteriorated, a violation of the principle of good governance could be established.

6. The summoned person – **the Ministry of Environment Protection and Regional Development** (hereafter – MEPRD) – holds that the contested provision complies with regulatory enactments, as well as strategic planning documents of Latvia and Riga.

Allegedly, the Applicant had not taken into account that the Riga City Council had made the decision that had been appealed against in the framework of the administrative case, just like all other similar decisions on withdrawing the issued permits, to enforce the Supreme Court's ancillary decision and by fulfilling its competence, defined in Section 42 (6) of Gambling Law.

The Ministry holds that the Applicant, by turning to the Constitutional Court, the wants the Constitutional Court to reassess the interpretation of legal provisions and application thereof by the Riga City Council, in enforcing the Supreme Court's ancillary decision and taking the decision to withdraw the permit to open a gambling hall, and, in particular, the Constitutional Court to reassess the interpretation of the third and sixth part of Section 42 of Gambling Law, falling within the Supreme Court's judicature, in conjunction with the contested provision.

MEPRD does not agree that the contested provision had been issued by exceeding the authorisation granted to the Riga City Council by law. The fact that the third and the sixth part of Section 42 of Gambling Law determine the procedure, in which an organiser of gambling can receive permit to open a gambling hall or lose such a permit that already has been issued, does not mean that the Riga City Council, in adopting a spatial plan, could not restrict organisation of gambling in gambling halls in the functional zones of the Historic Centre and its protection zone.

MEPRD holds that the restriction, established in the contested provision, complies with both regulatory enactments that have become void and with the regulatory enactments that are in effect. It has been established that ,in compliance with law, its legitimate aim is the protection of other persons' rights, i.e., the right to a benevolent cultural environment and the right to the protection of cultural heritage, as well as ensuring public welfare. Moreover, this restriction is suitable for reaching the legitimate aim. Hence, the contested provision complies with the first, the second and the third sentence of Article 105 of the Constitution.

7. The summoned person – **the Ombudsman** – notes: the fact that a permit to engage in a certain type of commercial activities in one's own immovable property, is withdrawn on the basis of the contested provision should be considered as being a restriction on the right to property. The Ombudsman subscribes to the arguments provided in the written reply by the Riga City Council and he does not doubt that the restriction on a person's right to property under review has been established by law and has a legitimate aim – protection of other persons' right to a benevolent cultural environment and the right to the protection of cultural heritage, in line with the principle

of sustainability. The Ombudsman holds that the restriction, established by the contested provision, is suitable for reaching the legitimate aim.

The Ombudsman expresses the opinion that, since Binding Regulation No. 38 and, *inter alia*, the contested provision entered into effect, “ALFOR” Ltd. and other organisers of gambling who had received permits to open gambling halls in the Historic Centre and its protection zone enjoyed an exceptional status in the particular area of commercial activity and within the specific territory vis-à-vis other economic operators to whom the contested provision was applied. The use of other measures, e.g., removal of signboards and ads from shop windows, would not allow reaching the legitimate aim in the same quality and, at the same time, it would distort the legal stability, established by the regulation of Binding Regulation No. 38. Moreover, the Ombudsman holds that also this measure would have negative impact upon a person’s commercial activities since any successful commercial activity is based upon successful advertising. Hence, the chosen measure is necessary for reaching the legitimate aim.

In assessing the compliance of the Riga City Council’s actions, a person’s right to property should be compared, i.e., the right to freely choose the area of commercial activities and benefit from it, on the one hand, with, on the other hand, the right of society to live in a benevolent environment, which is manifested as the right to cultural heritage. The restriction on a person’s right to property is not absolute, i.e., it is not prohibited from engaging in a particular type of commercial activity outside the Historic Centre or in four- and five-star hotels within the territory of the Historic Centre. Likewise, a person has not been prohibited from choosing another type of commercial activity and engaging in it in its immoveable property. Moreover, since the contested provision entered into effect, persons could not have expected that the previously acquired rights and the status of exception, incompatible with general competition, would be protected for ever. The Ombudsman is convinced that benefit gained by society outweighs the infringement on a person’s rights, pointed out by the Applicant. Thus, the restriction is said to be compatible with the principle of proportionality and the contested provision complies with Article 105 of the Constitution.

8. The summoned person – **the Latvian National Commission for UNESCO** (hereafter – the National Commission for UNESCO) – notes that, in preparing its opinion, it had sought the advice of local experts and of the UNESCO (The United Nations Educational, Scientific and Cultural Organization) World Heritage Centre, which is the Secretariat for implementing the UNESCO Convention Concerning

the Protection of the World Cultural and Natural Heritage (hereafter – the UNESCO Convention).

In the context of the UNESCO Convention, organising of gambling could be assessed only if it endangered the universal value of special importance that the heritage site has, i.e., if the type of land-use were changed or large-scale construction projects were implemented. In the current practice, there had been a case where it had been recognised that the building of a hotel and a casino significantly endangered a world heritage site – the historic centre of Sacramento in Uruguay. However, in this case the threat had been linked to the design and volume of the building rather than its intended function.

When approving various construction and urban planning projects, it is essential to take into account both national and international legal acts, as well as the best practice examples to ensure full conservation and protection of the Historic Centre as a world heritage site. Pursuant to the guidelines for implementing the UNESCO Convention, the impact of changes to urban environment is predominantly assessed on the basis of three various parameters, i.e., whether the changes are not of the kind that could substantially degrade or completely destroy the authenticity of the world heritage site, its integrity or wholeness, as well as an outstanding universal value.

Thus, the admissibility of installing gambling halls should be reviewed in the context of the aforementioned parameters because the guidelines on implementing the UNESCO Convention do not determine specific preconditions for installing gambling halls in world heritage sites. The National Commission for UNESCO is of the opinion that, in this case, special attention should be paid to the authenticity of the buildings' function and the atmosphere in the heritage site. Traditionally, both the residential and the commercial function had been implemented side by side in the Historic Centre; however, the residential premises in some neighbourhoods are no longer compatible with contemporary requirements and also the residential function in the territory of the Historic Centre continues to diminish. However, the matters related to retaining and developing of the residential function should be examined in a broader context and cannot be resolved through total or partial prohibition of commercial activities or specific forms thereof.

Respecting the residents' wishes with respect to the city's development (e.g., negative opinion regarding gambling halls in the territory of the Historic Centre) and inclusion thereof in the spatial plan and the regulatory framework should be supported. However, the mood or the atmosphere of the world heritage site is threatened and damaged not only by the presence of a particular form of commercial activity in the

historic territory, but also by negative factors that affect the authenticity of the substance of the buildings of the Historic Centre and other aspects of their use and the perception of their historic design, such as brightly illuminated advertisements and signs, alteration of the original layout of premises, replacement of authentic materials with newer materials or construction techniques, outdoor terraces built alongside the commercial spaces, filling in the part of the public open space that was historically used to organise the traffic of vehicles and pedestrians, etc. Such changes could have a significant impact on the universal value and authenticity of the Historic Centre with special significance. Experts in the field are continuously discussing these problems and are searching for appropriate solutions.

9. The summoned person – **association “The Latvian Association of Gaming Business”** (hereafter – the Association) – points out that, over time, the legislator has made conceptual changes to the local government’s competence in the area of supervision and control over gambling.

Allegedly, the contested provision directly restricts the possibilities of organisers of gambling to engage in commercial activities. Whereas the Supreme Court’s ancillary decision *per se* does not create legal consequences for economic operators and neither has the Applicant objected to the interpretation of legal provisions provided in this decision. Moreover, the Riga City Council had not applied the contested provision for more than 10 years, thus, no binding practice of applying Binding Regulation No. 38 can be discussed. Therefore, the Association is of the opinion that legal proceedings in the case should be continued.

The Association points out that the Riga City Council had been obliged to assess the proportionality of the restriction on fundamental rights, established in the contested provision, and its compliance with Article 105 of the Constitution already before Binding Regulation No. 38 entered into effect. Whereas, pursuant to the case law, the undefined legal concept “a substantial infringement of the interests of the State and the residents of the respective administrative territory” should be filled with content, taking into account such criteria as the intensity of public movement, residents’ attitude, the aims indicated in the city’s spatial plan. The Riga City Council, in deciding on closing gambling halls, had not eliminated the restrictions on competition, identified in the Supreme Court’s ancillary decision, but rather had worsened the conditions of competition, i.e., ensuring to economic operators whose gambling halls are located in four- and five-star hotels conditions outside competition. Moreover, the Supreme Court’s ancillary decision does not release the Riga City Council from the obligation to

comply with the requirements set in Administrative Procedure Law and Gambling Law. With respect to a territory that is as large and economically active as the Historic Centre, where various interests of the State and residents constantly manifest themselves and clash, filling with content the aforementioned undefined concept is a task that requires meticulous analysis to the actual circumstances. The actual circumstances in the Historic Centre and its protection zone differ and setting identical requirements with respect to various neighbourhoods is said to be unreasonable and unfounded. The Historic Centre cannot be considered to be “a venue” in the meaning of Section 42 (6) of Gambling Law.

Contrary to the assertions made by the Riga City Council, the Association is of the opinion that the presence of gambling halls in the territory of the Historic Centre does not destroy in any way, does not damage and does not prohibit from protecting the cultural-historical values found there, quite the opposite – the owners and lessees of gambling halls restore the buildings. The Riga City Council has not provided substantiation with respect to how the presence of venues for organising gambling in the Historic Centre has negative impact on tourism and leads to “losing the cultural-historical uniqueness and appeal of Riga”.

The Riga City Council had exceeded its statutory rights because there are no regulatory enactments or related preparatory materials, nor case law from which the legislator’s intention to authorise the Riga City Council to determine in binding regulations restrictions on engaging in a particular type of commercial activities or to regulate the organisation of gambling in the territory of the Historic Centre could be deduced. The prohibition to install gambling halls in the territory of the Historic Centre violates such principles of spatial planning as the principle of equal opportunities and the principle of diversity. Moreover, such planning of the Historic Centre does not allow reaching the purposes of Spatial Planning Law, *inter alia*, regarding balanced economic development. Moreover, Plan of the Historic Centre does not restrict installing other venues for organising gambling in the territory of the Historic Centre.

Allegedly, the UNESCO Convention is not applicable to the placement of gambling halls in the Historic Centre since its objective and aim is conservation of architectural values. Moreover, gambling halls already had been located in the Historic Centre when UNESCO decided on its inclusion in the List of World Heritage, and the majority of permits to open gambling halls in the territory of the Historic Centre were issued after Law on Protecting the Historic Centre entered into effect. Thus, initially, the Riga City Council had not regarded the issuing of these permits as a threat to the cultural-historical values and environment of the Historic Centre. Moreover, currently,

both the National Commission for UNESCO and residents mention the building of shopping malls as the main problem, typical of the Historic Centre and its protection zone, rather than the operation of gambling halls.

The Association points out that the legitimate aims of the contested provision, defined by the Riga City Council, are incompatible with the aims, recognised by CJEU and are illusory because the Riga City Council has not conducted due assessment. Actually, the Riga City Council avoids recognising that the real infringement on the cultural-historical values of the Historic Centre, which the gambling halls, indeed, could cause, is their visual outer presentation, but this threat could be easily eliminated by restrictions on the visual presentation of the facades of buildings where the gambling halls are located or by other measures that are less restrictive upon a person's rights. The cultural-historical values of the Historic Centre include objects that can be visually appreciated, and it is impossible to protect these by prohibiting a certain type of commercial activities, in particular, such that are conducted only indoors.

With respect to the legitimate aim to protect residents' welfare, indicated by the Riga City Council, the Association notes that there are no grounds for providing greater protection for the welfare of the residents and visitors of the territory of the Historic Centre than the welfare of those persons who live or stay in other parts of the city. Moreover, cafes, bars, pawn-shops and other institutions hinder reaching of this legitimate aim. The Riga City Council should have chosen a less radical solution than withdrawal of the issued permits, e.g., it could have set a certain term for the permits. The Association concludes that the restriction on fundamental rights, established in the contested provision, is not suitable and is not necessary for reaching the legitimate aims, set by the Riga City Council.

The Association underscores that, as the result of adopting the contested provision, all economic operators, who had set up gambling halls prior to the adoption of the contested provision, had incurred substantial and irreversible damage, and some of them are even under the threat of insolvency. The term of five years, defined in Section 42 (7) of Gambling Law cannot be recognised as such that would compensate for this damage. Moreover, several hundred employees are going to lose their jobs and also the budget of the State and local government will lose considerable resources. The Association holds that economic operators cannot expect at all to have the possibility to restructure their operations in the territory of the City of Riga. If a local government prohibits the operation of gambling halls within one territory it should allocate to economic operators another venue for organising gambling; however, this had not happened. Hence, the benefit that society gains from the adoption of the contested

provision does not outweigh the damage inflicted upon economic operators. Moreover, it should be taken into account that the right of every person to choose, according to one's own free will, to gamble is protected by fundamental rights, i.e., the right to private life, established in Article 96 of the Constitution, which is restricted by the contested provision.

The Association draws the Constitutional Court's attention also to the fact that a restriction that is identical to the restriction, established in the contested provision, is included also in Para 465 of Binding Regulation No. 38 with respect to mixed development territories and in Para 478 with respect to territories for public buildings.

10. The summoned person – **Professor of the Riga Technical University, Expert of the Latvian Science Council Dr. arch. Uģis Bratuškis** – points out that, pursuant to the provisions of Strategy for Riga's Sustainable Development and Law on Protecting the Historic Centre, alongside buildings that define the spatial framework of a city, processes of social life is an integral part in the identity of urban environment, as they bring special colouring to the spatial environment. Since the Historic Centre has been included in the List of World Heritage, the qualities typical of this territory is the interest of the whole world, i.e., of global society. Thus, responsibility before society for the preservation of the Historic Centre should be examined on the global scope, not merely that of the City of Riga or the State of Latvia.

“The principle of dense perimetral construction on blocks” is said to be one of the qualities inherent to the spatial environment of the Historic Centre, i.e., strict division of street spaces and buildings, which means uninterrupted constructions on the front sides of streets, where buildings are lined up close to each other. It is the difference in the environmental scale that is the determining factor, which influences the quality of public life in the historic centres of cities and outside thereof. In the conditions of dense construction in the centre, and individual (a user of urban environment) has rather limited possibilities to choose their routes of movement – the comparatively narrow pavements and small distances between buildings make them move along the buildings even if, psychologically, this route does not seem to be pleasant. Outside the historic centre, the construction is usually less dense, there are more areas without buildings or covered in greenery and broader possibilities for choosing alternative routes. Hence, the placement of gambling halls in the buildings of the Historic Centre has more direct impact upon the users of urban environment because the scale of construction determines closer contacts between the buildings and people.

Pedestrians are said to be one of the most important and numerically largest groups of users of urban environment and the assessment of the quality of urban environment depends directly on their perception. Predominantly, pedestrians move on the pavements alongside the facades of buildings, thus, those functions that are fulfilled on the lower floors of buildings, i.e., directly in the zone of pedestrians' perception, acquire special importance. Thus, the quality of urban environment is defined not only by the character of buildings in general but mainly by those details that a pedestrian can see and perceive, while moving through the city. U. Bratuškis underscores that the possibility to see from the street what is going indoors is an important indicator of the quality of the environment, just as the possibility to see from indoors what is happening outside. If the ground floors are closed and uniform, built from black glass, concrete or bricks then walks in the urban environment are impression-poor.

Transparent public life, saturated with social processes, within the urban public space is said to be not only an aesthetic value but also a factor that promotes public security. An active dialogue between outdoor and indoor spaces not only expands the functionality of using buildings and outdoor territories but also fosters the psychological comfort and security of the users of this environment, i.e., society. Thus, any activity that increases transparent use of the lower floors and attracts public both indoors and outside deserves support, whereas activities that hinder this should be restricted and eliminated. Isolation from the surrounding environment and focusing only on going-on inside, typical of gambling halls, is said to be incompatible with the principles for creating transparent and safe public space. Moreover, aggressive, often flashing, advertising, saturated with light effects, is said to be incompatible with the guidelines for preserving historic environment.

Since the planning of urban environment is a process that requires the balancing of the opinions of various stakeholders, but one of the indicators of sustainable and people-friendly environment, in particular, in the historic centres of cities, is the number of visitors, local governments are interested in promoting diverse use of environment within their territory. Different cities have different experiences, the Riga City Council, in developing its spatial plan, has implemented in it such principles that foster the viability of urban environment. To a large extent, this is ensured by active public life, in particular, the functions of trade and catering. The public benefit from properly developed urban environment is the possibility to use and enjoy this urban environment in full for all groups of users, both according to their status (permanent residents, visitors of the city, employees of the workplaces located in the buildings), and their age (children and adolescents, adults, seniors), and their physical particularities (people

with mobility disorders or difficulties in environment perception). U. Bratuškins is of the opinion that the restriction, established by the contested provision, could be regarded as proportional from the perspective of the viability of urban environment since it, on the one hand, permits opening a gambling hall also in the Historic Centre, and, on the other hand, protects the cultural-historical environment from direct confrontation with the unfriendly impact factors of gambling halls upon the urban environment.

11. The summoned person – **Professor Emeritus of the University of Latvia Dr. phil. Skaidrīte Lasmane** – holds that supervision of gambling by the State and appropriate control is not the only kind of regulation. In view of the problematic and risky nature of the gambling sector, a precise and long-sighted political strategy is required, as well as a reasoned assessment of moral permissibility.

To substantiate the moral permissibility of gambling, predominantly the opinion that the actual possibilities of an individual's liberal freedoms are implemented in a society with relationships between consumers and the free market is used. Studies on the impact of gambling underscore both arguments regarding their permissibility and justification, as well as regarding risk factors and restrictions. Arguments in favour of gambling are, e.g., that the possibilities of a certain group of residents for entertainment and spending their leisure time expand, the State and local governments, by issuing permits to open gambling halls and collecting taxes, increase their revenue, tourists are attracted and the tourism industry develops. However, the entertainment and commercial activities offered by the gambling sector should be recognised as being a specific, problematic and risky choice. In studies, gambling is usually equalled to the habits of using alcohol, nicotine, drugs and other addiction forming substances. It is linked to an actual risk of property, financial or moral loss and all the consequences that follow from it, which affect the player, his family, the State, and society in general.

As regards the moral losses of an individual and society's in general, caused by gambling, degradation and deformation of the player's selfhood must be mentioned because the frenzy of gambling develops uncontrollable wishes, which, sooner or later, lead to excesses and morally unjustifiable individually and socially problematic situations. Gambling addiction destroys an individual's dignity, self-esteem and sense of happiness because selfish pleasure and helpless, uncontrolled subjection to the power of gambling bring no benefit either to the individual or to others. Frequently, this addiction is accompanied by alcoholism, and these two addictions together cause depression and other mental diseases. The risk that the addicted person's family might break up and he might lose his friends is high.

In relation to all the above-mentioned, increase in poverty and social inequality is unavoidable and devastating because, due to many persons' inability to resist the temptation of gaming, financial resources and properties are unjustly re-divided in favour of those who profit – owners of the gambling halls. The revenue that the State and local governments gain from the gambling sector cannot be compared to the misery of the part of society subject to the risk of poverty. Moreover, growing poverty and inequality lead to increase in conflicts and clashes, dissatisfaction with life, making social environment and society more and more depressive.

Gambling addiction and the long hours spent in gambling halls undermine the Latvian traditional work ethics, seriously jeopardises a person's ability to work and frequently causes the loss of one's job. Likewise, the individual and social morals of a person diminishes because the wasting of one's time in gambling halls promotes neither intellectual nor emotional growth. Allegedly, gambling addiction leads a person away from moral reasonableness, social justice, fulfilled, qualitative leisure and the possibilities to maintain quality of life. Gambling is said to be primitive, consumerist entertainment that causes financial, cognitive and moral losses both for the individual and society.

In Latvia, the benefits and losses that are related to gambling have not been assessed and properly discussed either in the framework of national policy or legislation and mass media. S. Lasmane expresses concern regarding the intensive and dense increase of gambling halls in the capital city and throughout the territory of Latvia and its impact on social environment and welfare. In terms of healthy social environment, more important than freeing the Historic Centre from gambling halls would be concentrating them in a certain geographical location, thus facilitating, indeed, tourism rather than the residents' addiction.

S. Lasmane holds that more stringent legal acts are needed that would focus on gambling, would foster awareness of its harmfulness and highlight the degrading consequences thereof. Likewise, stricter restrictions should be imposed on direct and indirect advertising of gambling, *inter alia*, the rights and possibilities of the economic operators in this sector to support sports and culture events. Gambling halls should be recognised as risky venues of entertainment where a small part of society gains profit but losses are incurred not only by the regular visitors to them but also by social environment and society in general. From the perspective of moral permissibility, the functioning of gambling halls should be seen as unfair, irresponsible commercial activity that degrades social and moral environment. Restrictions on the prevalence of gambling halls bring invaluable benefit to society in terms of quality of life, moral and

social welfare.

12. The summoned person – **Docent at the Department of Psychosomatic Medicine and Psychotherapy of the Riga Stradins University and psychotherapist Dr. med. Artūrs Utināns** – points out that pathological addiction to gambling is a mental state that can be caused by the accessibility of gambling venues. Researchers of gambling addiction consider that gambling halls have the obligation to limit, with “due care”, their impact on the development of pathological addiction to gambling. Owners of gambling halls could help in preventing the development of pathological addiction to gambling, e.g., by decreasing the duration of a game, speed and variability of games, as well as by refraining from encouraging to participate in such games or by restricting access to gaming halls. Enforcement of these rules would not help in preventing effectively the development of pathological addiction to gambling but could, though, bring certain benefit both to society and the gaming sector, as it would decrease the negative public attitude towards it.

A. Utināns notes that a number of different methods are used to treat persons with gambling addiction, *inter alia*, psychodynamic psychotherapy, cognitive behavioural therapy, inpatient rehabilitation programmes, mindfulness-based therapies, Gamblers Anonymous groups, pharmacological treatments, and combined therapies. However, none of these treatment methods has proven to have sufficiently high effectiveness in the long-term. Combined therapies lead to better outcomes; however, this treatment is rather complicated and, irrespective of the time and resources invested, often does not guarantee the desired outcome.

The lack of effective treatment strategies also determines the complexity of treatment because the patients who are not cured continue to suffer themselves and cause suffering and financial losses to their family. The employers of these persons also may suffer. Persons who are addicted to gambling frequently end up in prisons. A. Utināns also draws attention to the fact that the costs of treating the persons with gambling addiction are born by society or the family.

The Findings

13. The Riga City Council requests terminating the legal proceedings in the case on the basis of Para 6 of Section 29 (1) of Constitutional Court Law and points out that Applicant wants the Constitutional Court to re-examine the interpretation of the contested provision and other legal provisions done by the Riga City Council and the

Supreme Court. The Constitutional Court has concluded that issues of procedural nature must be examined before reviewing the constitutionality of legal provisions on their merits (*see, for example, Judgement by the Constitutional Court of 10 February 2017 in Case No. 2016-06-01, Para 17*).

It follows from the Riga City Council's written reply that, in its opinion, the legal proceedings in the case should be terminated because a person's rights are not infringed upon by the contested provision itself but by the application thereof. Section 29 (1) of Constitutional Court Law defines the cases when the Constitutional Court may, by its decision, determine legal proceedings in a case before delivery of the judgement. Para 6 of this provision sets out that it can be done "in other cases when it is impossible to continue legal proceedings in the case". Thus, the Constitutional Court must, first and foremost, examine whether such circumstances are present due to which legal proceedings in the case cannot be continued.

Pursuant to Para 2 of Section 19¹ (1) of Constitutional Court Law, an application must be submitted to the Constitutional Court if a court, reviewing an administrative case in the first instance, considers that the legal provision that has been applied by the authority or that should be applied in the administrative legal proceedings in this case is incompatible with the Constitution.

The application to the Constitutional Court has been submitted by the Administrative District Court that holds that the contested provision infringes upon a person's rights – "ALFOR" Ltd., the applicant in the administrative case. It is noted in the application that "ALFOR" Ltd. is an organiser of gambling and has appealed against the decision, addressed to it, by the Riga City Council of 18 October 2017 No. 269 "On Withdrawing the Permit to Open a Gambling Hall and Organise Gambling at 48/50 Brīvības Street". The said decision had been substantiated by, *inter alia*, the contested provision, thus, an authority – the Riga City Council – has applied it. Likewise, the application provides substantiation why the Applicant is of the opinion that the contested provision is incompatible with the Constitution. The Applicant holds that the contested provision restricts the fundamental rights of "ALFOR" Ltd., established in Article 105 of the Constitution, by prohibiting it from continuing its commercial activities and gaining economic benefit from them. Thus, the Applicant's application complies with the requirements set in Section 19¹ (1) of Constitutional Court Law. The decision by the Constitutional Court's Panel of 9 August 2018 on initiating the case concludes that the application meets also other requirements of Constitutional Court Law and, therefore, a case was initiated.

The Constitutional Court's jurisdiction allows it to review only the legal provision and not the compliance of the actions by the parties applying it (*see Judgement by the Constitutional Court of 4 January 2005 in Case No. 2004-16-01, Para 17*). Thus, the Constitutional Court's main task is not to review how the institutions, applying the legal provision – the Riga City Council and administrative courts, have interpreted and applied the contested provision and other legal provisions or the fact that the Riga City Council had not applied the contested provision for more than 10 years. However, a legal provision cannot be understood outside the practice of its application and the legal system, in which it functions (*see Judgement by the Constitutional Court of 28 November 2014 in Case No. 2014-09-01, Para 20.2.2.*). The fact alone that the Constitutional Court, in the course of reviewing the case, might have to interpret the same legal provisions that have already been interpreted by the Riga City Council or courts is not sufficient grounds for terminating legal provisions.

Thus, the Riga City Council's request to terminate legal proceedings in the case is unfounded. No other circumstances that would make continuing legal proceedings impossible have been identified.

Hence, legal proceedings in the case shall be continued.

14. Article 105 of the Constitution Provides: "Everyone has the right to own property. Property shall not be used contrary to the interests of the public. Property rights may be restricted only in accordance with law. Expropriation of property for public purposes shall be allowed only in exceptional cases on the basis of a specific law and in return for fair compensation." Reviewing the compliance of the contested provision with the first, the second and the third sentence of Article 105 of the Constitution is requested in the application.

The Constitutional Court has concluded that Article 105 of the Constitution envisages both exercise of the right to property without interference and the State's right to restrict this right in public interests. Thus, this article comprises, on the one hand, the State's duty to promote and support the right to property, i.e., to adopt such laws that would ensure protection of this right; however, on the other hand, it also gives the State the right to interfere in exercising of this right, in a certain scope and procedure (*see Judgement by the Constitutional Court of 20 May 2002 in Case No. 2002-01-03, Findings, and Judgement of 16 December 2005 in Case No. 2005-12-0103, Para 21*).

In the meaning of Article 105 of the Constitution, "the right to property" must be understood as all rights of financial nature that a person can exercise in one's favour and which they may handle as they wish, *inter alia*, a person's economic interests that

are related to engaging in commercial activities. The Constitutional Court has also recognised that a person's right to engage in commercial activities on the basis of a licence also falls within the scope of the first sentence of Article 105 of the Constitution or within the content of the right to property (*see, for example, Decision by the Constitutional Court of 20 April 2010 on Terminating Legal proceedings in Case No. 2009-100-03, Para 8.2., and Judgement of 12 December 2014 in Case No. 2013-21-03, Para 10.1.*). To recognise any economic interests as being an object of the right to property in the meaning of Article 105 of the Constitution, they must meet the criteria defined in the legal system (*see Decision by the Constitutional Court of 6 October 2015 on Terminating Legal Proceedings in Case No. 2014-35-03, Para 11.1.*).

It is stated in the application: "ALFOR" Ltd. considers that, in the particular situation, its legitimate expectations are also infringed upon (*see Case Materials, Vol. 1, p. 3*). The Constitutional Court has interpreted Article 105 of the Constitutional also in conjunction with the principle of legitimate expectations, enshrined in Article 1 of the Constitution, which provides that the state institutions, in their actions, should be consistent and should respect legitimate expectations that persons might have developed with respect to a particular legal provision or the acquired rights (*see, for example, Judgement by the Constitutional Court of 8 November 2006 in Case No. 2006-04-01, Para 21*).

Thus the right to engage in certain type of commercial activities, acquired by a person, falls within the scope of the first sentence of Article 105 of the Constitution.

15. To review the compliance of the contested provision with Article 105 of the Constitution, it must be established whether the contested provision restricts the fundamental rights of the respective person.

The contested provision sets out: "The provision of a gambling hall shall be prohibited in territories JC, JC1, JC2, JC3 and JC4, with the exception of four- and five-star hotels." This restriction is included in the local government's spatial plan. The contested provision applies to the JC territories of development in the centre as defined in Plan of the Historic Centre. Para 442 of the Binding Regulation No. 38 states: "The territory of the centre development (C) is a territory where the permitted use is intensive mixed development with a variety of commercial functions and housing construction, but the use of the territory for industrial functions is not permitted." Whereas Para 456 of this Regulation provides that JC areas are subject to exceptions and additional provisions and they are depicted in the Layout Plan for the Historic Centre "Detail

Planned (Permitted) Uses of the Historic Centre of Riga”. It follows from this Plan that almost all JC territories are located within the borders of the Historic Centre but some of them also in protection zone of the Historic Centre.

The Constitutional Court has recognised that in those cases where an owner cannot use their property freely, gaining the possible benefits from it, their right to property is restricted (*see Judgement by the Constitutional Court of 12 February 2016 in Case No. 2015-13-03, Para 13*). One of the ways, in which the right to property may be restricted in public interests, is spatial planning because the spatial plan restricts the free and undisturbed use of immovable property. The restriction on the right to property, established by a spatial plan, is direct because the planning in public interests restricts a private person’s right to property (*compare, see Judgement by the Constitutional Court of 14 December 2005 in Case No. 2005-10-03, Para 8, and Judgement of 26 April 2007 in Case No. 2006-38-03, Para 8.1. and Para 10*). The type of use defined for a territory in the spatial plan is the legal grounds, on the basis of which a local government adopts decisions on the use of the particular property and restrictions on it, binding upon a private person (*see Judgement by the Constitutional Court of 5 April 2013 in Case No. 2012-20-03, Para 6*).

Gambling Law defines the procedure for licensing the organisers of gambling. Pursuant to Section 3 (1) of the law, in the Republic of Latvia, gambling may be organised only after the receipt of the respective licences. A licence for organising gambling grants to its recipient the right to organise gambling, indicated in the licence, in the entire territory of Latvia. This licence is issued for an indefinite period of time but it has to be re-registered annually (*see Section 10 of Gambling Law*). Whereas pursuant to Section 20 (1) and Section 26 (1) of Gambling Law, a gambling hall is one of the possible venues for organising gambling, for the opening of which in a particular venue a licence of a gambling hall must be obtained. The licences for organising gambling and gambling hall licences are issued by the Lotteries and Gambling Supervision Inspection. To receive a gambling hall licence, the organiser of gambling must submit, *inter alia*, a permit by the local government to open a gambling hall and organise the respective gambling at the particular venue (*see Para 2 of Section 26 (2) of Gambling Law*). Thus, to engage in organising gambling, economic operators must receive, firstly, a licence for organising gambling, secondly, a local government’s permit to open a gambling hall and organise gambling at a particular venue and, thirdly, a gambling hall licence.

The Riga City Council, by the contested provision, has established restrictions on installing gambling halls in particular functional zones of a part of the Historic

Centre – JC territories. This means that the contested provision may be used, *inter alia*, to substantiate a local government’s decision to withdraw a permit, issued previously to organisers of gambling, to open a gambling hall and organise gambling at a certain venue. An economic operator cannot engage in organising gambling at the specific venue without the said permit by the local government and, thus, cannot receive a gambling hall licence. Hence, the contested provision restricts a person’s right to engage in a certain type of commercial activity at a certain venue, where, until now, on the basis of a permit, issued previously by the local government, and a gambling hall licence, it had engaged in its commercial activities.

Thus, the contested provision restricts the fundamental rights, defined in Article 105 of the Constitution, of a person – an organiser of gambling.

16. To ascertain whether the restriction on fundamental rights, established in the contested provision, is justifiable, it must be verified whether:

- 1) the restriction has been established in compliance with law;
- 2) the restriction has a legitimate aim;
- 3) the restriction is proportional (*see, for example, Judgement by the Constitutional Court of 11 October 2018 in Case No. 2017-30-01, Para 12*).

Thus, the Constitutional Court must ascertain, first and foremost, whether the restriction on a person’s fundamental rights has been established by law.

The third sentence of Article 105 of the Constitution provides that the right to property may be restricted only in accordance with law. Interpreting this provision in compliance with the case law of the European Court of Human Rights, the Constitutional Court has concluded that the word “law” comprises not only the laws that are adopted by the *Saeima* but also others generally binding (external) regulatory enactments if they meet certain defined criteria, *inter alia*, if they have been issued on the basis of law, if they have been published or are made accessible otherwise and are worded with sufficient clarity, allowing the addressee to understand their rights and obligations (*see Judgement by the Constitutional Court of 20 May 2002 in case No. 2002-01-03, Findings*).

Pursuant to Section 14 (3) and Section 41 (2) of the law “On Local Governments”, to ensure that their functions are fulfilled, local governments have the right to issue binding regulations, which must comply with the Constitution, the said law, other laws and Cabinet regulations. The Constitutional Court, in turn, has concluded: for a spatial plan to be lawful, it should be, first of all, elaborated and approved in the procedure, defined in regulatory enactments and, secondly, it should

comply with regulatory enactments (*see, for example, Judgement by the Constitutional Court of 17 January 2008 in Case No. 2007-11-03, Para 16*).

Thus, to assess whether the restriction on fundamental rights, established in the contested provision, can be regarded as being established in accordance with law, it should be determined:

1) whether Plan of the Historic Centre and Binding Regulation No. 38, included in it, have been elaborated and approved in the procedure, determined in regulatory enactments that regulate the planning of spatial development, and whether they have been published or made accessible otherwise;

2) whether the Riga City Council has issued the contested provision, on the basis of authorisation granted by law, whether this law is not contrary to laws and Cabinet regulations and whether it is sufficiently clear, allowing the addressee to understand their rights and obligations.

17. The Constitutional Court has concluded: for a spatial plan to be lawful, first and foremost, it must have been developed and approved in a certain procedure. If substantial violations have been made in the process of preparing the spatial plan then the spatial plan or a part thereof has not been adopted in due procedure. A substantial violation can be qualified in accordance with several criteria. Firstly, a substantial violation of the procedure for preparing the spatial plan is a violation that has led to a different decision than the one that would have been made if the procedure had been complied with. Secondly, a substantive violation has been made in such cases when the society's right to participate in the process of preparing the spatial plan has been substantively infringed upon. Thirdly, other infringements on the principles of spatial planning can be recognised as a substantial violation (*see Judgement by the Constitutional Court of 17 January 2008 in Case No. 2007-11-03, Para 16*).

Elaboration of the Plan of the Historic Centre began on 26 September 2000, on the basis of decision No. 8883 by the Riga City Council "On Elaboration of the Plan for the Preservation and Development of the Historic Centre of Riga". While Plan of the Historic Centre was elaborated, the legal regulation changed several times, however, at the time of its adoption, Spatial Planning Law, which entered into effect on 26 June 2002, as well as the Cabinet Regulation of 19 October 2004 No. 883 "Regulation on the Local Government Spatial Planning" (hereafter – the Cabinet Regulation No. 833), which entered into effect on 4 November 2004, were valid.

The Riga City Council has noted that, in accordance with regulatory enactments, at the time when Plan of the Historic Centre was elaborated, public discussion had been

held in the following four stages (following the publication of respective announcements in a local newspaper and newspaper “Latvijas Vēstnesis”):

1) the first stage of public discussion– from 18 January 2001 until 28 June 2002;

2) the second stage of public discussion – from 5 April 2004 until 31 May 2004;

3) the third stage of public discussion – from 7 December 2004 until 29 December 2004;

4) the fourth stage of public discussion – from 6 September 2005 until 18 October 2005.

During the implementation of the first stage of public discussion, public opinion had been surveyed and a programme for public involvement had been realised in the framework of the project “Let’s Leave Riga to our Children!” It is stated in the final report of the project that 71 percent of respondents, irrespective of their gender, age and education, were against the location of gambling halls in the centre of Riga (*see Case Materials, Vol. 2, pp. 40 and 41*).

On 15 November 2005, the Riga City Council adopted decision No. 583 “On the Determination of the Final Version of the Spatial Plan of the Historic Centre of Riga and its Protection Zone”. Prior to the approval of Plan of the Historic Centre, the opinions of authorities, defined in regulatory enactments, had been requested.

On 7 December 2005, the State Inspection for Heritage Protection in its letter No. 3235 approved proceeding with Plan of the Historic Centre for approval if some amendments would be introduced.

On 11 January 2006, Plan of Historic Centre was reviewed at LVII sitting of the Council for the Conservation and Development of the Historic Centre of Riga and the decision was made to permit approval of the final version of Plan of the Historic Centre if the planning work for the Historic Centre was continued and the necessary corrections were made.

The Ministry of Regional Development and Local Government Matters, on the basis of Para 3 of Section 7 (3) of Spatial Planning Law and Sub-para 80.3. of the Cabinet Regulation No. 883, on 25 January 2006, provided its opinion No. 1-22/13702/972 on Plan of the Historic Centre. Some deficiencies were identified in the opinion and introduction of specific amendments was requested. The amendments, requested in this opinion and previously mentioned opinions by authorities, were not linked to the contested provision.

On 7 February 2006, the Riga City Council approved Plan of the Historic Centre and issued Regulation on the Use and Development of the Territory of the Historic Centre as Binding Regulation No. 38. It entered into effect on 18 February 2006, i.e., on the following day after the local government's decision on issuing the binding regulation had been published in the newspaper "Latvijas Vēstnesis". Pursuant to Para 46 of Cabinet Regulation No. 883, the Riga City Council notified it to the Ministry of Regional Development and Local Government Matters within two days after the plan entered into effect. Plan of the Historic Centre is accessible on the webpage of the Riga City Council (*see <http://www.rdpad.lv/rtp/rvc/>*).

Neither the Applicant nor the summoned persons point to substantial violations that had been made in the process of elaborating and approving of Plan of the Historic Centre. In the course of preparing the case, neither has the Constitutional Court identified such violations of the procedure of elaborating and approving the Plan of Historic Centre due to which Plan of the Historic Centre should be deemed to be invalid.

Hence, Plan of the Historic Centre has been elaborated and approved in the procedure set out in regulatory enactment and is accessible.

18. The Constitutional Court has concluded that the basic norm of a democratic State, governed by the rule of law, and Article 101 of the Constitution include the principle of local government and creates the legal basis for the institutional existence and functional activities of local governments. In the institutional terms, a local government is a special form of public administration or of governing public matters – self-government, the supreme body of which – the council – has been democratically directly legitimised, i.e., it has been elected by the residents of the local government. In the functional terms, in turn, pursuant to the principle of democracy and the principle of local government, public administration must be organised in subsidiary manner, i.e., the administration of important needs and interests of local nature should be transferred as close to the residents themselves as possible, i.e., to the self-government, organised by them. The separation of administrative functions in the jurisdiction of the State and a local government depends on the legislator's considerations regarding the most effective public administration and decision on the interests to be governed as close as possible to the residents. Local governments are under the authority and competence of the Cabinet and, as subordinate administrative bodies, are organisationally part of the unified system of public administration (*see Judgement by the Constitutional Court of 29 June 2018 in Case No. 2017-32-05*,

Paras 11 and 12, and Judgement of 15 November 2018 in Case No. 2018-07-05, Para 15.1.).

The legislator may transfer deciding on certain matters also in the jurisdiction of local governments; however, a local government council does not have the legislator's discretion. It follows from the principles of lawfulness and separation of powers that a local government has the right to issue binding regulations only in cases defined in law, in the framework of law and they cannot be contrary to the constitutional provisions, as well as other superior legal provisions (*see Judgement by the Constitutional Court of 12 February 2016 in Case No. 2015-13-03, Paras 14.1. and 14.3.*). Binding regulations is an instrument of executive power for a local government, it may use it to organise fulfilment of its autonomous functions and regulate other matters if the law or the Cabinet regulation has authorised the local government to do so (*see Judgement by the Constitutional Court of 15 November 2018 in Case No. 2018-07-05, Para 15.2.*).

The Constitutional Court has recognised that, in clarifying the scope of authorisation, granted by the legislator, the specific nature of the particular sector must be taken into account. The legislator's authorisation should be understood not solely as one concrete, brief legal provision but as the substance and purpose of the legal regulation (*see Judgement by the Constitutional Court of 11 January 2011 in Case No. 2010-40-03, Para 10.4.*). Thus, in reviewing the authorisation to the Riga City Council to issue the contested provision, the specific nature of the particular sector should be taken into account, and this could be deduced not only from one specific legal provision.

18.1. The general authorisation of local governments to elaborate and approve of spatial plans and determine the procedure for using and developing land is defined in Para 13 of Section 15 (1) and Para 1 of Section 43 (1) of the law "On Local Governments", as well as the regulatory enactments on spatial planning that were valid at the time.

Pursuant to Section 1 and Para 4 of Section 5 of Spatial Planning Law, which was in effect at the time when Plan of the Historic Centre was elaborated and approved, the spatial plan of a local government is a long-term planning document, which has been elaborated and has entered into effect in the procedure set out in regulatory enactments and which defines the possibilities, directions and restrictions of the local government's spatial development, as well as the current and planned (permitted) use of the local government's territory . In elaborating the spatial plan, such spatial planning principles as the principle of sustainability, the principle of balancing interests, the principle of diversity, the principle of competition, as well as the principle of continuity and

succession must be taken into account (*see Section 3 of Spatial Planning Law*). The law also defined the competence of local governments and other institutions in the area of spatial planning.

The Constitutional Court has concluded that Article 105 of the Constitution, as well as regulatory enactments in the area of spatial planning grant to a local government the discretion to determine in its spatial plan priority actions, directions of development and aims to be reached, for the sake of which preconditions for exercising the right to property must be envisaged. However, the granted discretion is not absolute. Both general legal principles and principles of public administration, as well as spatial planning principles must serve as the guidelines for correct and adequate exercise of this discretion (*compare, see Judgement by the Constitutional Court of 9 March 2004. gada in Case No. 2003-16-05, Para 5, and Judgement of 5 April 2013 in Case No. 2012-20-03, Para 12*).

Thus, within the framework of the authorisation, granted by the legislator, a local government has certain discretion in the area of spatial planning, *inter alia*, the right to envisage restrictions on the right to property in its spatial plan.

18.2. In the present case, it should be taken into account that the contested provision applies to the Historic Centre and is included in Plan of the Historic Centre. Hence, in reviewing the contested provision, the legal regulation on the protection of the Historic Centre must be considered.

Since 10 April 1995, the UNESCO Convention is in effect in Latvia. It is noted in the Preamble to it that the cultural heritage and the natural heritage are increasingly threatened with destruction, which might be caused also by the development of social and economic life. Therefore, international community as a whole must participate in the protection of the cultural and natural heritage of outstanding universal value Pursuant to Article 1 of the Convention, the cultural heritage is monuments, groups of buildings and sites: works of man or the combined works of nature and man and areas, including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view. Article 4 of the Convention, in turn, stipulates that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage, belongs primarily to that State. The State must do all it can, to the most using its own resources and, in case of need, with any international assistance and cooperation.

The Historic Centre was recognised as a cultural monument of national importance already in 1983. On 4 December 1997, the UNSECO World Heritage

Committee made the decision and, on 6 December, included the Historic Centre in the World Heritage List. The Historic Centre of Riga – UNESCO world culture and nature heritage object No. 852 – is also part of the cultural monument of national importance, i.e., a monument of urban structure No. 7442, “Historic Centre of the City of Riga”, which, by the Order of 29 October 1998 of the Ministry of Culture No. 128, was included in the List of Culture Monuments under State Protection.

Law on Protection of the Historic Centre was adopted on 29 May 2003 and, pursuant to its Section 2, the purpose of this law is to ensure the preservation, protection, and qualitative development of the historic centre of Riga and the protection zone thereof. Section 3 of the law provides that the task of this law is to prescribe the status of the historic centre of Riga and the protection zone thereof, the territory thereof, the procedures for the preservation, protection, use, and also for implementation of the development projects and the requirements for the development of spatial planning of the historic centre of Riga. Section 5 of Law on Protection of the Historic Centre envisages that any activity which may cause destruction or damage of the cultural and historical values to be preserved and protected and located in the historic centre of Riga and the protection zone thereof is prohibited therein.

Section 9 of Law on Protection of the Historic Centre, in the wording that was in effect until 31 May 2017, established the obligation of the Riga City Council to elaborate and approve, in the form of binding regulation, the spatial plan for the Historic Centre and its protection zone, complying with regulatory enactments, as well as requirements of the National Heritage Board (until 12 June 2018 – the State Inspection for Heritage Protection) and the National Commission for UNESCO. The current and planned (permitted) use of the Historic Centre and its protection zone, restrictions on use and requirements regarding preservation of cultural-historic environment and historic values had to be reflected in the Plan of the Historic Centre in writing and in graphically (*see Section 8 (1) of Law on Protection of the Historic Centre*).

The Historic Centre and its protection zone are part of the administrative territory of the City of Riga, for which Law on Protection of the Historic Centre requires elaboration of a separate spatial plan. The planned (permitted) use of the Historic Centre and its protection zone has not been defined in detail in the Spatial Plan of Riga for 2006–2018, *inter alia*, neither in the regulation on the use and development of the territory, nor the graphic part.

Para 9 of Binding Regulation No. 34 of the Riga City Council of 20 December 2005 provides that Law on the Protection of the Historic Centre, the Cabinet Regulation No. 127 of 8 March 2004 "Regulations on the Preservation and

Protection of the Historical Centre of Riga" and Plan of the Historical Centre are observed in the territory of the Historical Centre and its protection zone. It is stated in the explanatory note to Spatial Plan of Riga for 2006–2018: in view of the special importance of the Historic Centre and its protection zone in the city, a special spatial plan has been elaborated for this territory, which provides detailed planning for the territory of Riga for 2006–2018. Plan of the Historic Centre is said to prevail in the implementation of any new project for the use of the territory or building development (*see: Explanatory Note to the Spatial Plan of Riga for 2006–2018, p. 54. Available: <http://www.rdpad.lv/rtp/speka-esosais/>*). Thus, Plan of the Historic Centre specifies the permitted use of the Historic Centre and its protection zone, as well as restrictions in it.

Section 9 (1) of Law on Protection of the Historic Centre, in the currently valid wording, establishes the obligation for the Riga City Council to elaborate a local plan for the territory of the Historic Centre and its protection zone. The Constitutional Court has concluded that a local plan is a long-term planning documents for spatial development, which specifies (provides in greater detail) the rules of the spatial plan, is elaborated for complex planning of a certain territory or for resolving a planning task. The findings on spatial planning, included in the Constitutional Court's rulings, are applicable also to local plans, insofar this does not contradict the special rules on the elaboration of a local plan (*see Judgement of the Constitutional Court of 10 October 2014 in Case No. 2014-04-03, Para 6*).

The summoned person *Saeima* expresses the opinion that the authorisation, granted to the Riga City Council in Section 9 (1) of Law on Protection of the Historic Centre, cannot be interpreted as broadly as to allow the Riga City Council to regulate in Plan of the Historic Centre all aspect that influence the staying of residents in this territory, *inter alia*, resident's health, welfare and other aspects related to the right to live in a benevolent environment (*see Case Materials, Vol. 3, p. 65*). Whereas the Riga City Council points out that such an approach would be unable to ensure that various economic, cultural, social and environmental aspects, interests of specific sectors, as well the priorities of the spatial plan would be assessed simultaneously and balanced, taking into consideration the diversity of natural, cultural environment, human and material resources, as well as economic activities (*see Case Materials, Vol. 8, p. 15*).

The Constitutional Court concludes that the balancing of interests, conducted in the framework of elaborating the spatial plan to ensure sustainable development of society, is a complex, comprehensive process and separate, specific interests cannot be fully assessed in separate planning document, taking into account all other interests of individuals and society that co-exist in this territory. It would not be expedient and

compatible with the principles of spatial planning to plan the development of one territory twice – in Plan of the Historic Centre, taking into account only the interests of preserving, protecting and developing cultural-historical values, and in the general spatial plan of the Riga City, taking into account all other interests, which have to be balanced in any spatial plan.

Thus, in the present case, the regulatory enactments that authorise the local government to elaborate and approve the spatial plan for the Historic Centre and its protection zone, i.e., the law “On Local Governments”, regulatory enactments in the area of spatial planning and Law on Protection of the Historic Centre, constitute a united system of legal regulation. These regulatory enactments must be interpreted in their conjunction and are not to be opposed. A local government’s right to plan the development of its territory and define restrictions on the use of the territory follow from them, if they are not contrary to laws and the Cabinet Regulations, if they have a legitimate aim and if they are proportionate.

18.3. The contested provision establishes restrictions for the organisers of gambling, thus, in reviewing this provision, the legal regulation on organisation of gambling should be taken into consideration.

From 2 July 1994 until 31 December 2005 the law “On Lotteries and Gambling” was in effect, its Section 20 (1) (in the initial wording – Section 20) envisaged a local government’s right to determine the territories where gambling houses could not be located. On 1 January 2006, Gambling Law, which is currently valid, entered into effect, and does not envisage *expressis verbis* such right of local governments.

It is noted in the annotation to the draft law “On Gambling and Lotteries”, which was submitted to the *Saeima* on 27 October 2005, that the current regulation had created a negative public perception of gambling as a form of commercial activities, therefore increased restrictive requirements for the sector should be determined and enforced – on the one hand, decreasing the prevalence and public accessibility of gambling, and, on the other hand, increasing requirements regarding the quality and safety of the services offered by this sector. The intention was to balance public interests by the new law – the wish to restrict gambling, on the one hand, and the wish to use these services and to organise gambling, on the other hand (*see Annotation to the draft law No.1419 “On Gambling and Lotteries”, submitted to the Saeima on 27 October 2005. Available: http://www.saeima.lv/saeima8/lasa?dd=LP1419_0*).

Pursuant to Section 20 (1) of Gambling Law, gambling may be organised only in casinos, gambling halls, bingo halls, as well as on the venues of betting or wagering shops. Whereas a gambling hall is a gambling venue, marked in the building’s technical

inventory plan as a structurally separate isolated space or several interconnected spaces, with at least 20 gaming machines installed and operated (*see Section 22 (1) of Gambling Law*).

Chapter VI of Gambling Law defines various restrictions on the organisation of gambling. Section 41 (1), included in this Chapter, defines those cases where the organisers of gambling are prohibited from organising gambling. The second part of the same section, in turn, provides that organisation of gambling is prohibited in State institutions, churches and places of worship, institutions of healthcare and education, shops, bus stations, railway stations, bars, cafes, and other public places.

Section 42 of Gambling Law envisages a local government's competence in regulating gambling. In the initial wording that was in effect until 3 July 2006, this section determined a local government's right to issue a permit to open a venue for organising gambling or, in cases provided for in law, not to issue such a permit

Section 42 (3) of Gambling Law, in the currently valid wording, provides: "If gambling is intended to be organised on the venue to which the restrictions laid down in Section 41 (2) of this Law are not applicable, a local government council shall decide on the permit to operate gambling on a case by case basis, assessing whether the operation of gambling on the particular venue does not cause a substantial infringement of the interests of the State and the residents of the respective administrative territory. No permit from the local government shall be needed to open a casino in the four- or five-star hotel." Pursuant to the sixth part of this section, in turn, if the operation of gambling on the particular venue causes a substantial infringement of the interests of the State and the residents of the respective administrative territory, a local government council is entitled, by means of a reasoned decision, to withdraw the permit to open a casino, a gambling hall, a bingo hall, a betting or a wagering shop and to operate the respective gambling on the particular premises.

18.4. Plan of the Historic Centre was elaborated and its final version was adopted by the order of 15 November 2005 of the Riga City Council No. 583 when the law "On Lotteries and Gambling" was in effect, which granted the right to local governments to determine territories where organisation of gambling was prohibited. Whereas Plan of the Historic Centre and Binding Regulation No. 38, included in it, were approved on 7 February 2002⁶ and entered into effect on 18 February 2006 when the initial wording of Gambling Law was already in effect.

Section 23 (5) of Spatial Development Planning Law provides: If new laws and regulations with a higher legal force, related to information to be included in a local government spatial plan, come into force, the local government shall evaluate the

necessity of amending its spatial plan. If the local government does not amend its spatial plan, in case of contradictions the requirements of the legal act with a higher legal force shall be applied.

The *Saeima*, referring to the third and the sixth part of Section 42 of Gambling Law, as well as the preparatory materials for the draft law “On Gambling and Lotteries”, points out in its opinion that, as regards restrictions on organising gambling, the legislator has envisaged a local government’s right to issue, instead of binding regulations, an administrative act, the substantiation of which in each particular case may be reviewed in court (*see Case Materials, Vol. 3, p. 67*).

Thus, it should be ascertained whether the Riga City Council, in issuing the contested provision and not introducing any amendments to it, had acted in compliance with Gambling Law, i.e., whether the regulation of this law allows local governments to determine in spatial plans restrictions on installing venues for organisation of gambling.

On 17 November 2005, at the sitting of the *Saeima*, debating the draft law “On Gambling and Lotteries”, in the second, i.e., the last reading, deputies P. Simsons un J. Strazdiņš pointed out that local governments were the ones who knew the best in which parts thereof the organisation of gambling should be allowed and which – prohibited, therefore, local governments’ rights to restrict the prevalence of venues where gambling was organised should be retained. K. Šadurskis, in turn, noted that organisation of gambling should be controlled both on the national and the local government level: the State should define the general criteria, whereas local governments should be granted the right to reinforce the restrictions, defined in law, in accordance with their residents’ needs. With 47 votes “for”, 36 votes “against” and eight deputies abstaining, the *Saeima* supported the proposal of the Budget and Finance (Taxation) Commission regarding the wording of Section 42, and it was determined that control over organisation of gambling was within the State’s competence (*see Transcript of the sitting of the 8th Convocation of the Saeima on 17 November 2005. Available: http://www.saeima.lv/steno/2002_8/st_051117/st1711.htm*).

Extensive debates regarding the local governments’ right in the area of organising gambling took place in the *Saeima* also when the draft law “Amendments to the Law “On Gambling and Lotteries”, which was adopted in the third reading on 6 April 2006, was discussed (the President returned it to the *Saeima* for reconsideration and the law was repeatedly adopted on 8 June 2006). When the wording of the third and the sixth part of Section 42, proposed by the Budget and Finance (Taxation) Commission was discussed, several deputies pointed to possible difficulties for local

governments to justify a substantial infringement of the interests of the State and the residents of the respective territory and, thus, inability to restrict prevalence of organising gambling in their own territory. Responding to these statements, deputy A. Kampars stated that the working group had chosen the particular solution because the previous regulation could not be deemed to be effective and, therefore, a solution that would allow local governments to decide faster on particular venues for organising gambling was necessary. Deputy Ē. Zunda, in turn, pointed out that only 20 of all, at the time – approximately 500, local governments had exercised the right to issue binding regulations, comprising restrictions on organising gambling. It was maintained that the new regulation of Gambling Law would provide broader possibilities for a local government when deciding on whether to allow or not to allow organising gambling in a particular venue (*see Transcript of the Sitting of the 8th Convocation of the Saeima on April 6 2006. Available: http://www.saeima.lv/steno/2002_8/st_060406/st0604.htm*).

As revealed by the transcripts of the *Saeima's* sittings, several deputies had objected to the solution, included in the draft law, the wording of the third and the sixth part of Section 42; however, the *Saeima* adopted these provisions in the wording that required a local government to assess how substantive the infringement on the residents' interests is, in adopting each individual decision on refusal to issue a permit to open a gambling hall and organise gambling on the particular premises or on withdrawing such a permit.

18.5. The text of the third and the sixth part of Section 42 of Gambling Law, as well as the discussions between the deputies regarding the wording of these provisions that took place at the time prove that the legislator both had wanted to make it easier for local governments to restrict the prevalence of gambling but had not authorised local governments *expressis verbis* to issue such binding regulations, *inter alia*, spatial plans by which organisation of gambling would be permitted or prohibited within its administrative territory or a part thereof.

However, in the interpretation of any legal provision, the general legal principles, *inter alia*, the principle of the unity of the legal system, should be taken into account. Pursuant to this principle, the legislator adopts mutually consistent legal provisions that operate harmoniously within the legal system as a whole, and legal provisions, included in different regulatory enactments, must be interpreted as forming a united legal system (*compare, see Judgement by the Constitutional Court of 8 March 2017 in Case No. 2016-07-01, Para 25.2., and Judgement of 22 December 2017 in Case No. 2017-08-01, Para 13.1.*). The Constitutional Court must ascertain whether the text of the aforementioned provisions of Gambling Law and the history of its drafting are to be considered as factors that are sufficiently important to deny a local government the right to determine restrictions on installing venues for organising gambling in its spatial plan.

The Constitutional Court concludes that, in practice, there are two ways, in which a local government can restrict the prevalence of venues for organising gambling within its territory: a local government can, first of all, determine respective restrictions on the use of the territory in its spatial plan and, secondly, pursuant to the third or the sixth part of Section 42 of Gambling Law, adopt an individual decision not to issue a permit or withdraw an already issued permit to open a venue for organising gambling. The summoned persons, the *Saeima* and the Association, hold that these ways of determining restrictions to be opposed and are mutually exclusive. The *Saeima*, in adopting Section 42 of Gambling Law in the currently valid wording, has denied the right to local governments to determine the respective restrictions by generally binding regulatory enactments – binding regulations of a local government, *inter alia*, spatial plans (*see Case Materials, Vol. 3, p. 64, and Vol. 7, p. 51*).

The Constitutional Court, conducting systemic and teleological interpretation of the legal regulation, concludes that establishing of restrictions on organisation of gambling in a local government's spatial plan and the adoption of individual decisions with respect to particular venues for organising gambling are such solutions that are not mutually exclusive but are such that complement each other. In a contemporary situation, both these legal solutions may function in parallel and ensure the most

meaningful system for controlling the prevalence of venues for organising gambling. Such understanding is compatible with the legislator's aim to set up as effective system as possible, within the framework of which a local government, if necessary, could restrict the prevalence of venues for organising gambling in its territory. In view of the nature and principles of spatial development planning, it must be recognised: if a local government has been granted the right to prohibit, by individual decisions, from installing venues for organising gambling within its territory, then the local government, even more so, has the right to determine in its spatial plan respective restrictions on the use of territory, in accordance with the legal regulation on spatial planning.

Determination of a restriction on organising gambling as a limitation on the use of territory in a local government's spatial plan ensures foreseeability both for economic operators, residents and general society to a larger extent than through the system of individual permits. Moreover, a spatial plan is subject to a judicial review, i.e., a person may submit an application to the Constitutional Court regarding a spatial plan, adopted by a local government, just as regarding any regulatory enactment by which, in the person's opinion, their fundamental rights had been infringed upon.

The local governments' right to determine restrictions on organising gambling both in the spatial plan and by individual decisions with respect to particular venues for organising gambling has been recognised also in the existing case law of administrative courts. Sometimes the justification provided by a local government in the individual decision regarding a substantive infringement on residents' interests has been recognised as insufficient exactly because the local government had not included the respective matter in the spatial plan. For example, the Supreme Court, in the decision of its assignments sitting on 27 April 2018 in Case No. SKA-428/2018, noted that a local government had to perform a complex and long-term assessment of the situation, envisaging in the territory of the city certain venues for organising gambling, possibly, by elaborating an appropriate spatial plan, and that a local government could, in accordance with planning documents and clearly defined criteria, in the subsequent stage of development change the location of gambling halls in the city, adopting already concrete administrative acts (*see Decision by the Supreme Court's Assignments Sitting of 27 April 2018 in Case No. SKA-428/2018, Para 8*).

The Constitutional Court, in turn, has reviewed a local government's right to determine in its spatial plans restrictions on the use of territory with respect to a sector of commercial activities with a special system of permits and has recognised: the fact that the *Saeima* and the Cabinet have defined the procedure, in which a person may receive a permit for engaging in polluting activities *per se*, does not mean that a local

government, in adopting a spatial plan, could not prohibit completely certain polluting activities. A local government has the right to determine in the spatial plan various restrictions on the right to property in accordance with the directions of spatial development, defined in the spatial plan, as well as the wishes on society's majority regarding future spatial development (*see Judgement by the Constitutional Court of 12 November 2008 in Case No. 2008-05-03, Para 9.1.*).

Moreover, in the present case, with respect to the contested provision, the third and the sixth part of Section 42 of Gambling Law must be reviewed in conjunction with Law on Protecting the Historic Centre and the requirements set for the Historic Centre by UNESCO. I.e., it can be concluded that in already in 2003, when Law on Protecting the Historic Centre was adopted, the legislator had set the aim to determine a comprehensive regulation for the preservation and protection of the Historic Centre and its cultural-historical values. This aim follows also from Latvia's international commitments and the status of the Historic Centre as a cultural monument that has been included in the List of World Heritage. Assessing the provisions of Law on Protecting the Historic Centre, the Constitutional Court has recognised that spatial planning is one of the most important functions of a local government and an important pre-condition for reaching the aims defined in the UNESCO Convention: “[Spatial planning] not only defines the main guidelines for the future use of a territory and allows complex solutions to the issues of land use, balancing the interests of an individual and those of society, but also defines the relationship between the interests of protecting environment and cultural heritage and construction” (*see Judgement by the Constitutional Court of 30 January 2004 in Case No. 2003-20-01, Para 8.2.*). Thus, in reviewing the legal regulation on gambling, the status of protection for the Historic Centre and the Plan of the Historic Centre, subordinated to it, must be taken into account.

In view of the above, the Constitutional Court concludes that, in the particular situation, by determining restrictions on setting up gambling halls in Plan of the Historic Centre and adopting individual decisions, pursuant to Section 42 (6) of Gambling Law, it is possible to reach the result that is most expedient and just and complies with the legal system the best. Hence, the contested provision is not contrary to Gambling Law.

18.6. The Applicant expresses the opinion that the Riga City Council had defined restrictions only on the opening of gambling halls in the future and not on the operation of those gambling halls that had received a local government's permit before Plan of the Historic Centre entered into effect (*see Case Materials, Vol. 1, p. 8*). The Riga City Council, in turn, points out that the contested provision is applicable not only to the planned but also to the already existing gambling halls, which had been installed

in JC territories before the Plan of the Historic Centre entered into effect (*see Case Materials, Vol. 2, p. 65*). Thus, the Constitutional Court must assess whether the contested provision is sufficiently clear and comprehensible to allow a person to understand their rights and obligations.

To assess, whether the contested provision is sufficiently clear and comprehensible, its aims must be established and taken into consideration. The legitimate aims of the restriction, established in the contested provision, will be examined further in this judgement, however, on the basis of the purposes of the Law on Protecting the Historic Centre and of the Plan of the Historic Centre – preservation, protection of the Historic Centre and its qualitative, sustainable development, allows concluding *prima facie* that they cannot be reached by applying the restrictions, established in the contested provisions, only to new gambling halls. Moreover, regulation that would prohibit only from opening new gambling halls in JC territories would allow those organisers of gambling who already had opened the gambling halls to operate outside competition, which would be incompatible with the legal regulation on competition. Hence, the contested provision is sufficiently clear and comprehensible.

Thus, the contested provision has been issued on the basis of authorisation, granted by the legislator, and is sufficiently clear and comprehensible. Therefore, the restriction on fundamental rights, determined in the contested provision, has been established in accordance with law.

19. Any restriction on a person's fundamental rights should be based upon circumstances and arguments proving its necessity. Thus, a restriction has been established for the sake of important interests – a legitimate aim (*see, for example, Judgement by the Constitutional Court of 13 May 2005 in Case No. 2004-18-0106, para 16 of Findings*). The Constitutional Court has concluded that there is a property-restricting, social aspect to a spatial plan, which has been enshrined in the second sentence of Article 105 of the Constitution and limits the right to property. Alongside the right of individual persons to use their property without interference, also the enforcement of environment protection requirements, correct planning and functioning of infrastructure, as well as preservation of cultural environment are ensured (*see Judgement by the Constitutional Court of 26 April 2007 in Case No. 2006-38-03, Para 10*).

19.1. All participants in the case and the summoned persons recognise that the restriction, determined by the contested provision, has a legitimate aim; however, this aim is understood differently.

The Applicant states that preservation and protection of the Historic Centre as cultural heritage and its sustainable, balanced and qualitative development, as well as a benevolent environment is “the interest of the State and the residents of the administrative territory of the Riga municipality.” Hence, in the Applicant’s opinion, the legitimate aim of the restriction could be the right of the residents of the Historic Centre and its protection zone to live in a benevolent environment. It is also noted in the application that the local government is obliged to develop such a spatial plan for its territory that would envisage, in the interests of the sustainability of this territory, *inter alia*, also preconditions for the permitted use of immovable property (*see Case Materials, Vol. 1, pp. 5 and 7*).

Such possible legitimate aims of the restriction, established in the contested provision, as public morals, every person’s right to a benevolent cultural environment, protection of cultural heritage (and the right to protection of cultural heritage), protection of gamblers’ rights, society’s tangible and intangible welfare, promotion of tourism and developing a positive image of Latvia’s capital have been mentioned in the written reply by the Riga City Council and in the summoned persons’ opinions.

To determine the legitimate aim of the restriction, established in the contested provision, the Constitutional Court must take into account the purposes of both Law on Protecting the Historic Centre and of Plan of the Historic Centre, as well as Gambling Law.

19.2. Section 2 of the Law on Protecting the Historic Centre provides that the purpose of the law is to ensure, *inter alia*, preservation and protection of the Historic Centre and its protection zone. Whereas, pursuant to Para 4 of Binding Regulation No. 38, the purpose of Plan of the Historic Centre is to preserve and protect the Historic Centre and its protection zone as cultural heritage.

The Constitutional Court already has concluded that the inclusion of the Historic Centre in the UNESCO List of World Heritage confirms the outstanding universal value of this culture site, as well as the fact that the conservation thereof is in the interests of the entire mankind. Thus, conservation, protection and development of the Historic Centre is not only of local but also of national and even international significance. Latvia has undertaken all obligations that UNESCO Convention imposes upon it as a State Party, *inter alia*, has committed itself to grant to cultural heritage certain functions in public life, including the protection of this heritage in planning programmes, to introduce due legal, scientific, technical, administrative and financial measures to protect this heritage (*see Judgement by the Constitutional Court of 30 January 2004 in Case No. 2003-20-01, Paras 8.1. and 8.2.*).

Pursuant to Para 1 of Section 1 of Law on Protection of the Historic Centre, cultural and historical value is a masterpiece of the creative spirit of a human being demonstrating an interaction of significant values of humanity in a specific period of time or location in relation to the development of architecture or technology, monumental art, city planning, landscape design which is directly or materially related to events, living traditions, art or literary works which has an outstanding universal value and are not less than 25 years old.

The *Saeima* holds that Law on Protection of the Historic Centre is aimed at physical (visual) protection of cultural-historical values rather than the protection of their “content” – limiting activities that are not related to unauthorised physical (visual) or, in certain cases, functional transformation (*see Case Materials, Vol. 3, p. 65*). Thus, the Constitutional Court must examine the scope of protection for the Historic Centre and its cultural-historic values.

While assessing whether the cultural-historical values of the Historic Centre receive national and international protection merely as physical objects, it should be taken into consideration that the Historic Centre is formed not only by separate cultural-historic values belonging to it, *inter alia*, culture monuments with different levels of protection, but also the fact that the Historic Centre *per se* is a culture monument, under the protection of the State and UNESCO, a complex object that needs to be viewed as a whole. The Historic Centre is also the liveliest part of Riga with the largest movement and concentration of people. Thus, in addition of physical objects, *inter alia*, buildings, streets, squares, the Historic Centre is characterised by special atmosphere and mood, created also by people and activities taking place there. This is confirmed by several international documents and the opinions sought while preparing the case.

Thus, for example, the Council of Europe Framework Convention on the Value of Cultural Heritage for Society defines cultural heritage as a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of values, beliefs, knowledge and traditions. It is recognised in the Convention that the European cultural heritage in general constitutes a shared source of remembrance, understanding, identity, cohesion and creativity (*see Council of Europe Framework Convention on the Value of Cultural Heritage for Society of 27 October 2005, Articles 2 and 3*).

References to the scope of protection for the Historic Centre as a site of cultural heritage are found also in UNESCO recommendations and guidelines. For example, the Recommendation on the Historic Urban Landscape, adopted on 10 November 2011 by UNESCO’s General Conference, defines the historic urban landscape as the urban area

that has developed as the result of a historic layering of cultural and natural values and attributes. This concept comprises a wider urban context, *inter alia*, also social and cultural practices and values, economic processes and the intangible dimensions of heritage as related to diversity and identity. The Historic Urban Landscape approach emphasises the preservation of the quality of the human environment and the productive and sustainable use of urban spaces, a balanced and sustainable relationship between the urbanised and natural environment, and between the needs of present and future generations and the heritage of the past. It is also noted that architecture is not the only element of the overall urban environment and that the preservation of urban heritage is not only about the preservation of individual buildings but should be considered the basis for urban planning and a complex multifaceted discipline (*see Recommendation on the Historic Urban Landscape, adopted on 10 November 2011 by UNESCO's General Conference, Paras 8, 9 and 11. Available: <http://www.unesco.lv/lv/dokumenti/ieteikumi-2/ieteikumi-1/>*).

The Operational Guidelines for the Implementation of the World Heritage Convention, adopted by the Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage of UNESCO, in turn, mention also the spirit and feeling as a criterion for assessing the authenticity of a cultural monument and inclusion it in the World Heritage List (*see The Operational Guidelines for the Implementation of the World Heritage Convention, adopted by the Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage of UNESCO, Paras 82 and 83. Available: <https://whc.unesco.org/en/guidlines/>*). Annex 4 of this documents comprises “The Nara Document on Authenticity”, which was adopted in 1994 by the International Council of Monuments and Sites, and this documents underscores that the diversity of cultures and heritage is an irreplaceable source of spiritual and intellectual richness for all humankind, which should be protected as an essential aspect of human development. All cultures and societies are rooted in the particular forms and means of tangible and intangible expression which constitute their heritage. Conservation of cultural heritage in all its forms and historical periods is rooted in the values attributed to the heritage. It is also concluded in the documents that, depending on the nature of the cultural heritage, its cultural context and its evolution through time, authenticity judgements may be linked to a great variety of sources of information. Aspects of the sources may include form and design, materials and substance, use and function, traditions and techniques, location and setting, and spirit and feeling, and other internal and external factors (*see “The Nara Document on Authenticity of the International Council of Monuments and Sites, Paras 5, 7, 9 and 13. Available: <https://www.icomos.org/charters/nara-e.pdf>*).

The summoned person U. Bratuškis also expresses the opinion that processes of public life are an integral element in the identity of urban environment. The quality of cultural-historical environment is said to be a complex concept, including aspects related to the site, its current visually-aesthetical and technical conditions, as well as its use (utilisation). It is formed by the quality of constructions and the totality of diverse social processes, which may take place both indoors and outdoors (*see Case Materials, Vol. 7, pp. 133 and 134*).

Having examined the said arguments, the Constitutional Court concludes that the architectural form of the urban environment cannot be separated from its social significance and use. The physical or architectural form of cultural-historical values, listed in Section 5 (2) of Law on Protecting the Historic Centre, requires primary protection; however, it is only one of the objects under protection in the Historic Centre. The special rules on the conservation, protection and development of the Historic Centre are applicable not only to the visually perceivable values of the city and its cultural-historical values but also to its intangible, content-related aspect, to ensure comprehensive conservation, protection and also sustainable development of the Historic Centre.

19.3. The purpose of Law on Protecting the Historic Centre and of the Plan of Historic Centre is also promotion of sustainable, balanced and qualitative development of the Historic Centre and its protection zone and a benevolent environment. Sustainability is one of the constitutional principles, directed at the protection and implementation of aims and values, included in the Constitution. The sustainability principle is applied in many branches of law and it is, *inter alia*, also a fundamental principle in spatial planning (*see Judgement by the Constitutional Court of 6 October 2017 in Case No. 2016-24-03, Para 11*).

The Constitutional Court has concluded that sustainable development is integrated and balanced development of public welfare, environment and economy, which satisfies the current social and economic needs of residents and ensures compliance with requirements of environment protection, without jeopardising the possibilities for satisfying the needs of future generations (*see Judgement by the Constitutional Court of 17 January 2008 in Case No. 2007-11-03, Para 15*). The purpose of spatial planning is to create conditions for sustainable, healthier and better organised society. Sustainable development is characterised, *inter alia*, also by conservation of urban ecosystems. The local government's task, in choosing particular solutions in the spatial plan, is to ensure to individuals better living conditions in urban environment and to improve the quality of life. Hence, a local government has the right

and, at the same time, also the duty to achieve through this actions, taking into account all interests that need to be balanced, a sustainable solution, which is the most compatible with the principles of spatial planning and the actual situation (*see Judgement by the Constitutional Court of 19 November 2009 in Judgement No. 2009-09-03, Paras 14 and 15, and Judgement of 10 October 2014 in Case No. 2014-04-03, Para 14*).

There are three inter-linked aspects to sustainability: ecological, economic and social sustainability. Efforts of sustainable development are aimed at people and their right to lead a healthy and productive life in harmony with nature (*see Judgement by the Constitutional Court of 24 February 2011 in Case No. 2010-48-03, Para 6.1.1.*). Man-made environment dominates in cities; however, this does not mean that sustainability requirements would not be applicable to it. Respect for cultural-historic values and balancing of various public interests and needs must be ensured, by using spatial planning, also in urban environment, in particular, historic centres of cities, making these territories as suitable (friendlier) as possible for society.

19.4. Pursuant to Section 2 (1) of Gambling Law, the purpose of this law is to ensure the protection of public interests and the rights of players. Historically, gambling has been seen as entertainment and public will always be interested in it. Therefore, balance between organising gambling as an entertaining event and public interests must be ensured, *inter alia*, by protecting persons' rights, preventing possible development of gambling addiction and, thus, decreasing both the risk to public health and social risks. On the level of the European Union, the gambling sector has been recognised as a commercial activity of special nature, in which the particularities and traditions of each Member State are taken into account, the regulation on it has not been harmonised on the European Union's level and has been left in the competence of each Member State (*see Annex to the "Guidelines on Gambling and Lotteries Policy for 2019-2026" announced at the Meeting of State Secretaries on 10 January 2019", pp. 4–6. Available: <http://tap.mk.gov.lv/lv/mk/tap/?pid=40468195>*).

Persons summoned in the case also point to the risks of gambling and the possible adverse impact on an individual and society in general. S. Lasmane expresses her opinion that the entertainment offered by the gambling sector and its commercial activities are risky, degrades the social and moral environment, is linked to the risk of gambling addiction, as well as cause the risk of material and non-pecuniary losses for the player, his family, the State and society in general (*see Case Materials, Vol. 7, pp. 144, 145 and 148.*). A. Utināns, in turn, points out that gambling addiction is a mental state, the development of which is facilitated by the accessibility of venues for

gambling, that the treatment of gambling addiction is complicated and often without result; moreover, its costs have to be borne by the family or society (*see Case Materials, Vol. 7, pp. 139 and 140*).

The Constitutional Court concludes: the legislator had been aware of the fact that the services, offered by the gambling sector, comprise an elevated risk for an individual and the society in general, therefore, restrictions of different kind have been defined in regulatory enactments, *inter alia*, age restrictions for receiving the services, restrictions on the advertising of gambling and places where it is organised, also, the procedure of licensing the organisers of gambling and the venues for organising gambling is strictly regulated.

19.5. The Constitutional Court concludes that the restriction on fundamental rights, included in the contested provision, had been established for the sake of the following several rights and interests under protection: conservation and protection of the Historic Centre and its cultural-historical values, an individual's right to living in a benevolent environment, *inter alia*, the right to a benevolent cultural environment and the right to cultural heritage, society's right to sustainable development and society's interest in being protected against the adverse impact of gambling, as well as the rights of players and their immediate family. All these protected rights and interests are interconnected and partially overlap, therefore cannot be examined in separation. Generally, they can be covered by two legitimate aims: firstly, protecting other persons' rights and, secondly, protection of public welfare. Moreover, the protected public interests cannot be examined narrowly, attributing them only to the part of society residing in the territory of the Historic Centre because it is visited by other residents of Riga and entire Latvia, as well as by tourists, whose impressions on Riga and Latvia, first and foremost, form through exploring the central part of the city.

Thus, the legitimate aim of the restriction on fundamental rights, established in the contested provision, is protection of other persons' rights and public welfare.

20. Upon establishing the legitimate aim of the restriction on fundamental rights, the compliance of this restriction with the proportionality principle must be ascertained and, thus, it must be established whether:

1) the measures used by the legislator are suitable for reaching the legitimate aim, i.e., whether the legitimate aim of the restriction can be reached by the contested provision;

2) such action is necessary, i.e., whether the legitimate aim could be reached by other measures, restricting a person's rights and lawful interests to a lesser extent;

3) the legislator's action is appropriate, i.e., whether the benefit gained by society outweighs the damage inflicted upon a person's rights and lawful interests.

If, while assessing the proportionality of the restriction, it is deemed to be incompatible with one of these criteria then the legal provision does not comply with the proportionality principle and is unlawful (*see, for example, Judgement by the Constitutional Court of 16 June 2016 in Case No. 2015-18-01, Para 15*).

20.1. The measures, chosen by the issuer of the legal provision, are suitable for reaching the legitimate aim if this aim is reached by the particular regulation (*see Judgement by the Constitutional Court of 7 October 2010 in Case No. 2010-01-01, Para 13*).

The Applicant stated that the restriction, established in the contested provision, is suitable for reaching the legitimate aim; however, it also expresses the opinion that the restriction of setting up gambling halls only in the Historic Centre is not compatible with care for the rights of all other residents of Riga and Latvia to live in a benevolent environment and be protected against gambling addiction (*see Case Materials, Vol. 1, p. 9*).

Assessing whether the restriction on fundamental rights, established in the contested provision, is suitable for reaching the legitimate aim, it should be taken into account that the restriction of fundamental rights, established in the contested provision, has two legitimate aims and they comprise several interconnected interests. The Constitutional Court already concluded that, *inter alia*, the obligation to preserve and protect the Historic Centre and its cultural-historic values in their tangible and intangible dimension followed from Latvia's international commitments (*see Para 19.2. of this judgement*). The contested provision, which limits the possibility to install gambling halls in JC territories, is a suitable measure for reaching this aim as it allows avoiding in the Historic Centre architectural and advertising elements that are typical of gambling halls, e.g., opaque windows and brightly lit advertisements. This increases society's sense of security and makes the Historic Centre more attractive in the eyes of residents and visitors, allowing them to use and enjoy the urban environment to full extent.

Moreover, the Constitutional Court already concluded that the gambling sector is linked to adverse consequences for an individual and society, as well as the fact that the Historic Centre is the territory of Riga that is visited the most intensively (*see Paras 19.2. and 19.4. of this judgement*). The restriction on fundamental rights,

established in the contested provision, protects persons against access to gambling halls and, thus, also against potential gambling addiction because the accessibility of gambling halls is one of the factors facilitating addiction. Hence, the said restriction allows protecting other persons' rights and public welfare.

Thus, the restriction on fundamental rights, established in the contested provision, is suitable for reaching the legitimate aims – protection of other persons' rights and public welfare.

20.2. A restriction on fundamental rights is necessary if there are no other measures that would be as effective and the choice of which would restrict fundamental rights to a lesser extent. In assessing whether the legitimate aim could be reached by different means, the Constitutional Court underscores that a more lenient measure is not just any other measure but only such that allows reaching the legitimate aim in, at least, the same quality. Moreover, the probable existence of alternative solutions *per se* does not make the provision under review legally unfounded (*see Judgement by the Constitutional Court of 7 October 2010 in Case No. 2010-01-01, Para 14, and Judgement of 7 July 2014 in Case No. 2013-17-01, Para 28.1.*).

The Constitutional Court has the jurisdiction to ascertain whether alternative measures do not exist that would infringe upon persons' fundamental rights, defined in the Constitution, to a lesser extent. Likewise, the Court has the jurisdiction to clarify whether the legislator, by restricting the fundamental rights of a person or a group of persons, has considered whether, in the particular case, there are some alternative measures that would be less restrictive upon persons' fundamental rights, defined in the Constitution (*see Judgement by the Constitutional Court of 30 March 2010 in Case No. 2009-85-01, Para 19, and Judgement of 7 July 2014 in Case No. 2013-17-01, Para 28.1.*). However, clarifying the feasibility of a more lenient solution, the Court may not act instead of the legislator and public administration and look for more optimal solutions because it is the task of the institution that adopts legal provisions (*compare, see Judgement by the Constitutional Court of 13 May 2005 in Case No. 2004-18-0106, Para 19 of Findings, and Judgement of 4 November 2005 in Case No. 2005-09-01, Para 14.3.*).

20.2.1. It follows from the case materials, i.e., the request made by "ALFOR" Ltd. to the Administrative District Court to submit an application to the Constitutional Court, that, in its opinion, the contested provision comprises absolute prohibition and that the legitimate aim could be reached by more lenient measures (*see Case Materials, Vol. 1, p. 105*).

In a democratic state, governed by the rule of law, the legislator may include in legal provisions absolute prohibitions; however, in such a case, the legislator must ascertain that if exemptions to this prohibition are envisaged, it would be impossible to reach the legitimate aim in equal quality (*compare, see Judgement by the Constitutional Court of 24 November 2017 in Case No. 2017-07-01, Para 19.3.*).

The Constitutional Court concludes that the restriction with respect to economic operators, including “ALFOR” Ltd., established in the contested provision, is not absolute. Economic operators may continue organising gambling outside the territory of the Historic Centre of Riga and elsewhere in Latvia. The Constitutional Court is informed about the conceptual decision, adopted by the Riga City Council on 27 March 2019, to close all gambling halls in Riga; however, this decision cannot be reviewed within the framework of the present case.

Moreover, an exemption is envisaged in the contested provision, i.e., it is allowed to install gambling halls in the territory of the Historic Centre in four- and five-star hotels. This does not place the gambling halls that operate in four- and five-star hotels in a privileged situation but indicates that the local government had reviewed the restriction and recognised that an exemption from it would be permissible. Gaming halls that are located in hotels are focusing mainly on entertaining their residents – tourists, and, most frequently, are not visible to passers-by. Hence, gaming halls that have been opened in four- and five-star hotels and gaming halls that have been opened outside such hotels are not in a comparable situation. Moreover, also the organisers of gambling who wish to install gambling halls in four- and five-star hotels must receive the local government’s permission to open a gambling hall and organise gambling at the particular venue.

20.2.2. The Applicant and the Association refer to restrictions on the visual presentation of gaming halls and advertising as an alternative measure for the restriction, established in the contested provision (*see Case Materials, Vol. 1, p. 9, and Vol. 7, p. 530.*

Already now, Section 41 (5) of Gambling Law provides that advertising of gambling is prohibited outside the venues where gambling is organised and that only the name of the venue for gambling and the trademark, registered by the organiser of gambling, may be indicated in it. Gambling is organised indoors, it is characterised by isolation from environment, most frequently, by using opaque windows, and this, as pointed out by summoned person U. Bratuškins, is incompatible with the principles for creating a secure and transparent public space (*see Case Materials, Vol. 7, p. 136.*) However, if these solutions, typical of gambling halls, were prohibited then the

ongoings inside would become visible to passers-by and that would be contrary to the legitimate aims of the restriction, established in the contested provision.

Thus, restrictions on the visual presentation and advertising of gambling halls would not be as effective and would not allow reaching the legitimate aim of the restriction on fundamental rights, established in the contested provision, in the same quality as the one ensured by the contested provision.

20.2.3. The Applicant points out that the possibility for a local government to revoke the permit to open a gambling hall if the gambling hall at the particular venue causes substantive harm to the interests of the State and residents of the respective administrative territory, envisaged in Section 42 (6) of Gambling Law, restricts a person's rights to a lesser extent (*see Case Materials, Vol. 1, p. 8*). However, this right of the local government cannot be deemed to be an alternative measure, less restrictive upon a person's rights. This is a local government's right, envisaged in the law already now, and the local government, in the particular case, may exercise it parallel to or in addition to the regulation set out in the spatial plan. In its decision to withdraw the permit to open a gambling hall in the territory of the Historic Centre, the local government may, on the grounds of substantive infringement upon the residents' interests, refer to, *inter alia*, Plan of the Historic Centre, during the elaboration of which it already has balanced the interests of some persons and those of society. Moreover, defining restrictions on the right to property in the spatial plan is a more favourable solution for economic operators because it ensures the foreseeability of business environment and allows them to plan their commercial activities in the respective territory better. The Constitutional Court concludes that there are no such alternative measures that would restrict a person's fundamental rights to a lesser extent than the restriction, established in the contested provision, and would allow reaching the legitimate aim of this restriction in, at least, the same quality.

Thus, the restriction on fundamental rights, established in the contested provision, is necessary for reaching the legitimate aims of the restriction on fundamental rights, established in the contested provision, – protection of other persons' rights and public welfare.

20.3. In assessing the suitability of the restriction on fundamental rights for the legitimate aim, it has to be verified whether the adverse consequences that a person incurs because of the restriction on their fundamental rights do not outweigh the benefit that society in general gains from this restriction. Namely, the interests that need to be balanced in the case and those that should prevail must be identified. (*see Judgement by the Constitutional Court of 7 October 2010. gada in Case No. 2010-01-01, Para 15*).

The aim of the spatial plan is to ensure both economic development and realisation of social and cultural interests, as well as environmental protection (*see Judgement by the Constitutional Court of 17 January 2008 in Case No. 2007-11-03, Para 15*).

In the present case, the right of an economic operator – an organiser or gambling – to engage in commercial activities and gain benefit, on the one hand, must be compared to, on the other hand, the rights and interests included in the legitimate aims of the restriction on fundamental rights, established in the contested provision, *inter alia*, conservation and protection of the Historic Centre and its cultural-historic values, and individual's right to live in a benevolent environment, society's right to sustainable development and interest to be protected against the adverse effects of gambling, as well as the rights of gamblers and their immediate family.

The main objective of spatial planning process is to reconcile, in a complex way, the interests of some private persons with the possibilities of sustainable development for the respective territory. Providing or implementing a different original spatial planning objective, e.g. promoting only the economic growth of the city without taking into account the special natural and cultural values, leads to an unlawful result (*see Judgement by the Constitutional Court of 9 March 2004 in Case No. 2003-16-05, Para 5*). In assessing whether a restriction on fundamental rights is necessary in a democratic society, the Constitutional Court has also focused on whether the restriction is socially necessary (*see Judgement by the Constitutional Court of 26 January 2005 in Case No. 2004-17-01, Para 14*). In view of the possible adverse consequences of gambling that affect and individual and the whole society, the State has been given larger discretion in regulating this sector compared to regulating other sectors.

The Riga City Council has examined and balanced the comparable interests both in elaborating and approving Plan of the Historic Centre and before – elaborating Binding Regulation No. 97 “On Prohibition to Organise Gambling in Riga”. This regulation, which entered into effect on 2 April 2005, in its initial wording provided that it was prohibited to organise gambling in certain territories of Riga, *inter alia*, in the Historic Centre.

Whereas the amendments to this Regulation of 13 September 2005, which entered into effect on 22 September 2005, provided that organising of gambling was prohibited in the entire territory of Riga, except the territories of particular hotels. At the time when this regulation was elaborated, many submissions from residents, supporting introduction of such restrictions, were received. The organisers of gambling and the Association also expressed their opinion. The interested organisers of gambling had the opportunity to express their opinion also at the time when Plan of the Historic

Centre was elaborated. Thus, regulation on restricting organisation of gambling in the territory of Riga had been in effect already from 2 April 2005 until 31 December 2005, and, during this period, even stricter restrictions on organising gambling compared to the ones defined in the contested provision had been established. The contested provision applies to particular functional zones of the Historic Centre, it does not establish absolute prohibition and an exemption with respect to four- and five-star hotels is envisaged in it. Moreover, this provision was not amended while elaborating and approving amendments to Plan of the Historic Centre, which entered into effect on 23 September 2013.

The Constitutional Court already concluded that other persons' rights and interests of public welfare are of great importance in the present case. The restriction on fundamental rights, established in the contested provision, affects some economic operators, whereas the rights and interests that are protected by the legitimate aim pertain to a much larger circle of persons and the whole society benefits from this restriction. The Riga City Council, as a decision-making body, in adopting Plan of the Historic Centre, has examined considerations of expediency to determine which of the aforementioned interests should prevail. The Constitutional Court could recognise the respective restriction as disproportional only if it were not suitable for reaching the appropriate legitimate aim (*compare, see Judgement by the Constitutional Court of 10 October 2014 in Case No. 2014-04-03, Para 18*).

The organisers of gambling had to take into account that Section 42 (6) of Gambling Law envisaged, already since 4 July 2006, a local government's right to review the permissibility of a venue for organising gambling in particular territory and withdraw the permit to open a gambling hall if it infringed upon substantive interests of the State or residents of the respective administrative territory. Moreover, the seventh part of this section provides that the permit to open a gambling hall is valid for five more years after the respective decision by the local government enters into effect. When a favourable administrative act is revoked, also the regulation of Administrative Procedure Law and the mechanisms for protecting a person's rights must be taken into account. Thus, the valid legal regulation allows economic operators to diminish the adverse consequences of the restriction on the right to property and respects their legitimate expectations. The Constitutional Court concludes that the benefit to society from the restriction on fundamental rights, established in the contested provision, outweighs the adverse consequences incurred by an individual person due to this restriction.

Thus, the restriction on fundamental rights, established in the contested provision, is appropriate for reaching the legitimate aims – protection of other persons’ rights and public welfare. Hence, the restriction on fundamental rights, established in the contested provision, is proportional.

21. In view of all the above, the Constitutional Court concludes that the restriction on a person’s fundamental rights, established in the contested provision, that prohibits from setting up a gambling hall in the functional zones of JC territories of the Historic Centre, except for four- and five-star hotels, has been determined in accordance with law, it has a legitimate aim and it is proportional.

Thus, the contested provision complies with the first, the second and the third sentence of Article 105 of the Constitution.

The Substantive Part

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

held:

to recognise Para 459 of the Binding Regulation of the Riga City Council of 7 February 2006 No. 38 “Regulation on the Use of and Construction in the Territory of the Historic Centre of Riga and the Protection Zone Thereof” as being compatible with the first, second and third sentence of Article 105 of the Constitution of the Republic of Latvia.

The judgement is final and not subject to appeal.

The judgement enters into effect on the day it is published.

Chairperson of the court hearing

I. Ziemele