



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT

on Behalf of the Republic of Latvia

in Case No. 2016-08-01

9 December 2016, Rīga

The Constitutional Court of the Republic of Latvia comprised of: chairman of the court hearing Aldis Laviņš, Justices Kaspars Balodis, Gunārs Kusiņš, Uldis Ķiniņš, Sanita Osipova and Daiga Rezevska,

having regard to a constitutional complaint submitted by Ilze Spila,

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

at the court hearing of 4 November 2016 examined in written procedure the case

“On Compliance of Law “On Expropriation of Part of Immoveable Property “Kaktiņi” in Lēdmane Parish, Lielvārde County for Public Needs to Implement Reconstruction Project of State Road E22 in the Section Rīga (Tīnūži) – Koknese” with Article 105 of the *Satversme* of the Republic of Latvia”.

The Facts

1. On 24 September 2015 the *Saeima* adopted the law “On Expropriation of Part of Immoveable Property “Kaktiņi” in Lēdmane Parish, Lielvārde County for Public Needs to Implement Reconstruction Project of State Road E22 in the Section Rīga (Tīnūži) – Koknese” (hereinafter – the contested law). It entered into force on 15 October 2015.

The first part of Section 1 of the contested law provides that in order to implement the reconstruction project of the state road E22, in the section Rīga (Tīnūži) – Koknese, the state expropriates parts of a land parcel of the immovable property property “Kaktiņi”, Lēdmane parish, Lielvārde county (cadastre register No. 7464 001 0013, registered in the land register of the Land Register of Ogre District Court, Lēdmane Land Register Division No. 52): 1) part of land parcel (cadastre designation 7464 001 0013) in the size of 0.71 hectares; 2) part of land parcel (cadastre designation 7464 001 0013) in the size of 0.25 hectare (hereinafter also – immovable property to be expropriated)

2. The applicant – Ilze Spila (hereinafter – the Applicant) – holds that the aforementioned law is incompatible with Article 105 of the *Satversme* of the Republic of Latvia.

It is noted in the application that the Applicant is the owner of immovable property to be expropriated. By the contested law, a part of immovable property owned by the Applicant had been expropriated for public needs (parts of the land parcel in the size of 0.71 and 0.25 hectares from the total area of property– 13.47 hectares).

2.1. The Applicant had consented to voluntary expropriation of the immovable property, as well as the set amount of compensation – 9105.53 *euro*. However, the Applicant had expressed a clear wish, in accordance with the wording of the Law on Expropriation of Immoveable Property for Public Needs that had been in force until 31 May 2016 (hereinafter – the Expropriation Law), to receive instead of monetary compensation another immovable property of equal worth as compensation. Notwithstanding this request made by the Applicant, the institution, which initiated expropriation of immovable property – the Ministry of Transport (hereinafter also – the Institution) had not fulfilled the obligation to offer to the Applicant another immovable property as compensation. Therefore the Applicant herself had looked for possible solutions and had reached an agreement with the local government of Ogre county regarding possible exchange of immovable property. However, the Ministry of Transport had refused to examine this proposal by the Applicant without due grounds.

2.2. In view of the fact that the Applicant had agreed to voluntary expropriation of immovable property, pursuant to Section 11(3) an Section 12

(1) of the Expropriation Law, the Ministry of Transport had had the obligation to conclude an agreement with the Applicant regarding voluntary expropriation of immovable property, granting to the Applicant as fair compensation another property of equal worth. The Applicant underscores that pursuant to Section 5 of the Expropriation Law expropriation of immovable property for public needs is admissible only in an exceptional case, when it is impossible to reach an agreement on voluntary expropriation of property. It is alleged that in the adoption of the contested law the exceptional nature of expropriation of immovable property had not been taken into consideration, and therefore it is said to be incompatible with Article 105 of the *Satversme*.

2.3. Having familiarised herself with the case materials, the Applicant notes that in examining compliance of the contested law with Article 105 of the *Satversme*, the Constitutional Court should also verify, whether the procedure established in the Expropriation Law had been complied with.

The Applicant repeatedly underscores that she had consented to voluntary expropriation of the immovable property; however, she had wished to receive compensation in the form of another immovable property of equal worth. Therefore the Institution had the obligation to assess this proposal in a due manner and take actions to implement it.

Regulation on exchanging the immovable property to be expropriated for another immovable property of equal worth has not been created. It should be provided, *inter alia*, that it is possible to exchange the immovable property to be expropriated not only for immovable property owned by the Institution, but also immovable property in the ownership of other public or private person. The Applicant herself had found immovable property of equal worth, which could have been exchanged for the immovable property to be alienated. However, expropriation of immovable property had been initiated exactly because the lack of regulation that would allow the Institution to grant to the owner of immovable property to be expropriated property owned by another public person.

3. The institution, which issued the contested law, – the *Saeima* – notes in its written reply that legal proceedings should be terminated, since the contested law does not define the amount and form of compensation; thus, neither does it infringe upon the Applicant's fundamental rights established in Article 105 of the *Satversme*.

3.1. In adopting a law on expropriation of immovable property for public needs, the *Saeima*, allegedly, examines only if expropriation is exceptional in nature, whether it is necessary for performing functions of public importance, as well as borders of the immovable property to be expropriated (area, the need to expropriate parts of the property or the whole property) and other essential circumstances. However, the amount and form of compensation are not included in the law, by which particular immovable property is expropriated, and are not established in a generally binding way.

The amount and form of compensation defined by the Institution may be changed in further process of expropriation by a court's decision or through mutual agreement between the parties. The amount of compensation, which is indicated in annotation to the respective draft law by the submitter of the draft law, should be considered as being the minimum amount of compensation that the owner of immovable property would receive, if no other agreement were reached or if the court did not change it upon the owner's request. In assessing, whether immovable property should be expropriated for public needs, the *Saeima* only verifies, if the amount of compensation that has been set is fair. It hears all involved parties, verifying validity of previous expropriation procedures and of the decisions adopted by the Institution.

3.2. The *Saeima* holds that neither the fourth sentence of Article 105 of the *Satversme*, nor Section 26 of the Expropriation Law grant to the owner of the immovable property to be expropriated the right to choose and to receive fair compensation in a particular form. The *Saeima* refers to the case law of the Constitutional Court and the European Court of Human Rights (hereinafter – ECHR) and notes that the State has broad discretion to decide on the way, in which in the particular circumstances, in view of the aim of expropriation and a person's interests, a fair balance between the interests of a person and those of society should be reached. Thus, the legislator enjoys broad discretion in regulating form of compensation, also providing, *inter alia*, in which cases immovable property of equal worth may be granted as fair compensation.

The type of compensation is said to depend upon the parties' agreement – the possibilities of the State to ensure an alternative type of compensation and the owner's wish to accept it. A possibility to agree upon compensation in the form of another immovable property of equal worth is envisaged in the law only if the owner wishes to receive this form of compensation and if the State is able to ensure it. If the request made by the owner of the immovable

property to be expropriated is not reasonable, if the State does not have this possibility or if provision of other, alternative forms of compensation demand disproportionate resources of the State, disproportionate length of time or is impossible due to other reasons, the State may refuse to satisfy such request. The Institution does not have the obligation to ensure in all instances such form of compensation that the owner of the immovable property to be expropriated has chosen and considers to be fair. Otherwise, the Institution would have the obligation to meet also such requests made by the owner of immovable property to be expropriated that are excessive or cannot be reasonably fulfilled.

3.3. Upon having acquainted itself with materials of the case, the *Saeima* underscores that the Institution, in the procedure of expropriating immovable property, must comply both with the law “On Prevention of Squandering of the Financial Resources and Property of a Public Person” and also the law “On Alienation of Property of a Public Person”. In adopting the contested law, the *Saeima* had examined the procedure for expropriating immovable property and had, *inter alia*, verified, whether in the particular case it had been possible to reach an agreement on voluntary expropriation of property.

Active involvement of the owner of immovable property in the procedure of expropriation of property is said to be essential. If the owner of immovable property wishes to receive compensation in the form of another immovable property of equal worth instead of monetary compensation, he should inform the Institution about it in due time. For the Institution, in turn, it is important to identify the wishes of the owner of immovable property to be expropriated in due time, to assess availability of the State’s resources and look for solutions to the owner’s rights protection.

4. The summoned person – the Ministry of Transport – notes that the contested law complies with Article 105 of the *Satversme*.

4.1. Since October 2012, when negotiations with the Applicant regarding voluntary expropriation of immovable property began, neither proposals, nor objections regarding the form of compensation had been received from her. Therefore the Ministry of Transport did not have the obligation to take additional actions to exchange the immovable property to be expropriated for another immovable property of equal worth. Moreover, the Ministry of Transport did not have at its disposal properties that were not needed for performance of state functions that it could have offered as compensation.

On 27 August 2014, a notice had been sent to the Applicant, inviting her to conclude purchase agreement regarding the immovable property to be expropriated. Upon receipt of this notice, the Applicant had informed the Ministry of Transport that she had reached an agreement with the local government of Ogre county regarding possible exchange of immovable properties. The Institution had sent a letter to the local government of Ogre county, requesting information on the concluded agreement. The local government of Ogre county had noted in its answer that no agreement with the Applicant regarding exchange of immovable property had been concluded, nor could it be concluded, because the local government of Ogre county did not need immovable property located within the territory of Lielvārde county to perform the functions of the local government of Ogre county. Therefore a repeated invitation to conclude a purchase agreement had been sent to the Applicant, simultaneously explaining, why her proposal was not feasible. The Applicant had not responded to this invitation, therefore procedure for expropriating immovable property had been initiated.

4.2. In the course of examining the draft law, the Applicant had been invited to the sitting of the *Saeima* Legal Affairs Committee. At the sitting of 16 September 2015, attended by the Applicant and representatives of the local government of Ogre county and the Ministry of Justice, it had explained to the Applicant that the transaction to exchange immovable property with the local government of Ogre county could not be concluded, because that would be contrary to the law “On Alienating Property of a Public Person”. This law prohibits the State from buying from local governments immovable property to offer as properties of equal worth to a person in a case of expropriation. Likewise, it had been explained to the Applicant that the State did not have at its disposal other properties that could be offered instead of the immovable property to be expropriated.

Thus, the Ministry of Transport in the procedure of expropriating immovable property had performed its obligation to examine proposals and objections submitted by the Applicant; likewise, it had provided sufficient substantiation on why these had not been feasible. The Applicant’s request to receive compensation for the value of the immovable property to be expropriated in the form of another immovable property of equal worth, in turn, is to be assessed as interfering into the State’s competence, i.e., issues that are linked to the management of the State’s property.

4.3. When concluding an agreement on voluntary expropriation of property, both parties are said to have equal rights to express proposals regarding the content of this transaction. The Expropriation Law does not envisage the right for the owner of immovable property to choose the type of compensation that is most advantageous for him. Thus, the State is not obliged to satisfy the requirements set by the owner of immovable property with respect to the type of compensation, because meeting of such requirements is said to depend upon the possibilities of state institutions and availability of resources. Likewise, the Institution is not obliged to offer to the owner of the immovable property to be expropriated another immovable property of equal worth.

The Ministry of Transport notes that thus far there have been approximately ten cases, where immovable property had been expropriated on the basis of an agreement with the owner of immovable property on compensation in the form of immovable property of equal worth. Most frequently this had been possible in those cases, where the immovable property of the State that had been offered as compensation had been situated adjacent to the immovable property to be expropriated and had not been necessary for performance of public administration functions.

5. The summoned person – the Ministry of Justice – upholds the arguments provided in the written reply by the *Saeima* that the contested law does not infringe upon the Applicant's fundamental rights established in Article 105 of the *Satversme*.

5.1. The fourth sentence of Article 105 of the *Satversme* is said not to envisage a State's obligation to conclude an agreement with the respective person on voluntary expropriation of immovable property prior to expropriation of property for public needs. Since expropriation is an extreme measure, which interferes into a person's rights for the purpose of meeting public needs, a possibility is envisaged for a person to reach an agreement on voluntary expropriation of immovable property. However, the possibility to reach an agreement on voluntary expropriation of immovable property does not guarantee to a person that expropriation of immovable property will not be initiated.

The absence of a voluntary agreement should not be interpreted to mean that the law on expropriation of property had been adopted without taking into

consideration that is exceptional by nature. Such an interpretation would lead to a conclusion that in those cases, where voluntary expropriation had not been reached, the State loses its right to expropriate immovable property for public needs.

5.2. Section 26 of the Expropriation Law is said to define the Institution's actions with respect to disbursing compensation to prevent arbitrariness on its part and ensure transparency in the process of disbursing compensation. However, this Section of the law does not define specific types of compensation that the Institution would be obliged to ensure upon request made the owner of immovable property to be expropriated.

The Institution has the duty to disburse compensation as a cashless payment. Only if the Institution is able to ensure another type of compensation, moreover, if it is fair and the owner of immovable property to be expropriated agrees to it, compensation may be disbursed in this way. The owner of immovable property to be expropriated does not have the right to choose a preferred type of compensation. Moreover, the Institution is not obliged to reach an agreement with the owner of immovable property to be expropriated or to consent to his wishes in any case. If the owner of immovable property to be expropriated and the Institution have not reached an agreement, this does not mean that a dispute concerning the defined type of compensation would exist. In this case compensation should be disbursed in the form of cashless payment.

It is said to follow from the law "On Prevention of Squandering of the Financial Resources and Property of a Public Person", as well as the law "On Alienation of Property of a Public Person" that the owner of immovable property to be expropriated does not have the right to propose exchange of immovable property owned by the public person. An exchange of property in the ownership of a public person may be initiated only by the respective institution, recognising this, after due assessment, to be the most expedient and effective form of alienating immovable property owned by the public person. Likewise, regulatory enactments on handling property of a public person prohibits an institution of public administration to obtain into ownership immovable property of a derived public person, for example, a local government, to further use it as compensation for expropriation of immovable property. The Ministry of Justice holds that the owner of immovable property to be expropriated, by receiving compensation in the form of a cashless

payment, loses neither the right, nor the possibility to purchase a preferable immovable property for the disbursed monies.

5.3. Section 26 of the Expropriation Law does not impose an obligation upon the legislator, in examining issues regarding expropriation of immovable property, to define a certain type of compensation, because only the Institution itself is able to decide on it. However, the legislator, in deciding on expropriation of immovable property, must hear the requests made by the owner of immovable property and verify, whether the Institution has examined them and provided an answer on accepting or rejecting these. Therefore the *Saeima*, in adopting the particular law on expropriation of immovable property for public needs, had to assess, whether expropriation of parts of immovable property complied with the criteria of the rule of law.

6. The summoned person – the local government of Ogre county – notes that legal proceedings in the case should be terminated.

In 2015, the local government of Ogre county received the Applicant's application regarding expropriation of land for the State. The Applicant had request the Council of Ogre county to examine a possibility to alienate for the State four immovable properties in its ownership, so that the State could exchange these for the immovable property to be expropriated from the Applicant. At the sitting of the *Saeima* Legal Committee the representative of Ogre county local government had confirmed that the local government would be ready to alienate property in its ownership, if there were legal grounds for it. However, the local government itself has no right to initiate alienation of immovable property in its ownership.

7. The summoned person – the local government of Lielvārde county – notes that the contested law is incompatible with the fourth sentence of Article 105 of the *Satversme*.

7.1. Expropriation of immovable property owned by the Applicant had been necessary to ensure the possibility to cross the road E22. I.e., part of the reconstructed road E22 section Rīga (Tīnūži) – Koknese is located in the territory of the local government of Lielvārde county. As the result of this reconstruction, the actual location of roads, lack of connections to sidings and

construction of new connections is said to leave a significant impact upon traffic and its safety in Lielvārde county.

7.2. Allegedly, the Ministry of Transport did not perform all activities envisaged in the Expropriation Law to reach an agreement with the Applicant on voluntary expropriation of immovable property. The Applicant herself, not the responsible state institutions, had looked for possibilities to exchange immovable property. It has not been confirmed that all types of compensation envisaged in the Expropriation Law had been offered to the Applicant and that she had rejected all of them. Likewise, the Ministry of Transport had not provided due substantiation as to why the Applicant's proposals could not be met.

Also the law "On Alienation of Property of a Public Person" provides for the State's obligation to offer for exchange those immovable properties that are not needed to ensure performance of its functions. The aim of the law "On Prevention of Squandering of the Financial Resources and Property of a Public Person" is to ensure that the financial assets and property of a public person are used lawfully and in residents' interests. Award of compensation by offering in exchange for immovable property to be expropriated another property of equal worth could facilitate reaching of this aim.

8. The summoned person – the Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) – notes that the contested law is incompatible with the fourth sentence of Article 105 of the *Satversme*.

8.1. In examining compliance of the contested law with the fourth sentence of Article 105 of the *Satversme*, the Constitutional Court should verify, whether expropriation of immovable property had been of exceptional nature. Expropriation of immovable property restricts the right to property in the most substantive way. Therefore the legislator, in adopting the contested law, had to duly assess the whole prior process of expropriation and to verify, whether, indeed, it was impossible to conclude an agreement on voluntary expropriation of property. Expropriation of immovable property is said to be admissible only if it impossible to conclude and agreement on voluntary expropriation of immovable property.

It is exactly in the process of voluntary expropriation that the owner of immovable property has betted chances to obtain more advantageous terms, *inter alia*, with respect to type and procedure of compensation. He has the right

to demand instead of immovable property to be expropriated another immovable property of equal worth. The state institution, in turn, has the obligation to examine this request and, if it is refused, to provide reasonable grounds as to why this request cannot be satisfied,

8.2. In the particular case the Ministry of Transport had analysed in a general way a possible exchange of the immovable property to be expropriated only for those options that had been offered by the owner of the immovable property herself. Expropriation of immovable property would be admissible only if the responsible state institution had prepared concrete proposals for exchange of immovable property, but the Applicant had refused to assess these.

The *Saeima*, in adopting the contested law, had recognised the actions by the Ministry of Transport in the procedure of voluntary agreement as being sufficient. However, it cannot be established that in the process of examining the draft law the Ministry of Transport had been looking for feasible options for exchanging immovable property to be expropriated. Thus, it is alleged that the contested law is incompatible with the fourth sentence in Article 105 of the *Satversme*.

Although pursuant to Section 27(2) of the Expropriation Law, the Applicant may submit a claim to court in the procedure established by the Civil Procedure Law and contest the compensation that has been set, it is unlikely that such legal proceedings would be effective, because identifying property to be offered for exchange does not fall with a court's jurisdiction. Whereas if the responsible state institutions were imposed the obligation to look for and offer equivalent immovable properties that could be used in exchange, the procedure of expropriation would only be even more extended.

9. The summoned person – Professor of the Faculty of Law of the University of Latvia *Dr. iur. Jānis Rozenfelds* – notes that the right of the owner of immovable property to be expropriated to demand another immovable property instead of it does not follow from the fourth sentence in Article 105 of the *Satversme*.

9.1. The type of fair compensation must be determined, depending upon whether the property is expropriated voluntarily, by an agreement between the parties, or whether it is expropriated on the basis of a specific law. Pursuant to Section 26 of the Expropriation Law compensation in the form of another

immoveable property of equal worth is admissible only in the case of voluntary expropriation, by reaching an agreement with the owner of immoveable property.

The Expropriation Law is said to envisage also the right of the owner of immoveable property to express proposals regarding the type of applicable fair compensation, *inter alia*, to indicate concrete immoveable property. It is said to follow from the meaning and purpose of the Institution of voluntary expropriation – to attain a mutually advantageous, feasible and fair agreement on the terms of expropriation of property. Since the Expropriation Law does not set special rules with respect to concluding an agreement, it is regulated by rules of the Civil Law, which grants to both parties equal rights to express proposals regarding the content of transaction, *inter alia*, also the type of compensation.

The Institution, in turn, must assess the proposals expressed by the owner of immoveable property to be expropriated regarding the content of agreement and must provide answer on accepting or rejecting these. This, however, does not mean that the Institution should mandatorily meet the proposals expressed by the owner of immoveable property. Allegedly, it follows from Section 11 of the Expropriation Law that the final decision on the type and amount of compensation must be adopted by the Institution. The Institution has not been imposed the obligation to offer a particular type of compensation, defined in Section 26 of the Expropriation Law, to the owner of immoveable property to be expropriated.

9.2. If an agreement on voluntary expropriation of immoveable property is not reached and the expropriation procedure of the immoveable property is initiated on the basis of a specific law, the possibility to freely agree on the type of compensation no longer exists. In such a case fair compensation can be defined only in monetary terms and disbursed as a cashless transfer. In this stage of expropriation of property the Expropriation Law no longer provides for the legislator's discretion to decide on another type of compensation.

In deciding on expropriation of property, the *Saeima* does not set the amount and a particular type of compensation. However, it must verify, whether the procedure established in the Expropriation Law has been abided by and, *inter alia*, whether it had not been possible to reach an agreement on voluntary expropriation of immoveable property.

10. The summoned person – Dr. iur. Elīna Grigore-Bāra, Docent of the Faculty of Law of the University of Latvia, – points out that historically in Europe different types of compensation for immovable property that had been expropriated for public needs have been applied, *inter alia*, granting property of equal worth. A possibility to agree on compensation in the form of equivalent immovable property in case of expropriation of immovable property has been included also in regulatory enactments of the Republic of Latvia. Section 26 of the Expropriation Law also provides for this possibility. However, monetary compensation is to be considered as being the most flexible type of compensation.

10.1. The procedure of voluntary expropriation had been introduced with the purpose of guaranteeing a legal procedure for expropriating immovable property for public needs. By including in law the possibility for the Institution and the owner to conclude an agreement on voluntary expropriation, both parties are placed in equal positions. Thus, they are given the possibility to attain inclusion into the contract terms that comply with their interests, by making various proposals. However, the Institution as a subject of public law is subjected to much stricter terms for implementing the principle of contractual freedom. I.e., in the context of expropriation of immovable property prohibition of arbitrariness and the principle of procedural fairness are said to be of particular importance. Thus, the Institution is not obliged to ensure in all cases the type of compensation that the owner has chosen and deems to be fair, however, it has the obligation to provide due arguments for the choice of any type of compensation.

10.2. To make the procedure of expropriation as swift and effective as possible, the Institution's obligation to offer to the owner of immovable property another immovable property of equal worth is said to be applicable only to those cases, where the owner of immovable property has expressed a wish to receive in exchange an equivalent property. Granting of compensation in the form of immovable property of equal worth that is not needed for performance of public functions in only rare cases can be contrary to public interests.

The *Saeima*, in adopting the contested law, had the obligation to establish the reasons, why a purchase agreement of the immovable property had not been concluded. By verifying only, whether the set amount of minimum compensation is fair, the *Saeima* cannot form a comprehensive idea on whether

expropriation had been fair. The fact that the *Saeima* does not define in law the amount and concrete type of compensation, allegedly, does not release it from the obligation to assess, whether expropriation is legal.

The Findings

11. In its written reply the *Saeima* has requested the Constitutional Court to terminate legal proceedings in the case under review. The *Saeima* holds that the contested law does not infringe upon the Applicant's fundamental rights defined in Article 105 of the *Satversme*, because it sets neither the type of compensation, nor the amount thereof. Persons summoned in the case – the Ministry of Justice and the local government of Ogre county– have noted that they uphold the *Saeima*'s opinion regarding termination of legal proceedings in the case (*see Case Materials, Vol. 2, pp. 46 and 57*).

It has been recognised in rulings by the Constitutional Court that usually issues pertaining to termination of legal proceedings must be examined before reviewing constitutionality of a legal norm, insofar there is no need to examine some aspects of the case on their merits (*see, for example, Judgement of 19 October 2011 by the Constitutional Court in Case No. 2010-71-01, Para 11, and Judgement of 7 July 2014 in Case No. 2013-17-01, Para 15*). Thus, the Constitutional Court will examine, first and foremost, whether no circumstances exist due to which legal proceedings in the case should be terminated.

To decide on the issue regarding termination of legal proceedings, the Constitutional Court must establish, whether the contested law infringes upon such fundamental rights of the Applicant that fall within the scope of Article 105 of the *Satversme*.

12. Article 105 of the *Satversme* 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.”

12.1. The Constitutional Court has found that Article 105 of the *Satversme* provides both for exercise of the right to property without interference, as well as the right of the State to restrict the use of property in

public interests (*see, for example, Judgement of 20 May 2002 by the Constitutional Court in Case No. 2002-01-03, the Findings*).

On the one hand, the State has the obligation to promote and support the right to property, i.e., to adopt such laws that would facilitate protection of this right. On the other hand, however, the State also has the right to interfere in the exercise of the property right, in certain scope and procedure (*see Judgement of 16 December 2005 by the Constitutional Court in Case No. 2005-12-0103, Para 21*). The first sentence of Article 105 of the *Satversme* protects a person's legally acquired property, the second and third sentence, however, allow the State to restrict the right of property for public interests by law (*see Judgement of 8 April 2015 by the Constitutional Court in Case No. 2014-34-01, Para 12.3.*). The fourth sentence in Article 105 of the *Satversme*, in turn, establishes the procedure, in which property may be expropriated for public needs.

The Constitutional Court has already recognised that in the case, where the *Saeima* expropriates immovable property, a person's right to property is restricted in the most substantive way (*see Judgement of 21 October 2009 by the Constitutional Court in Case No. 2009-01-01, Para 13.3*).

A part of immovable property owned by the Applicant has been expropriated for public needs by the contested law. Thus, the Applicant, a part of whose immovable property has been expropriated by the State on the basis of the contested law, has lost title to it. Always, when property is expropriated for public needs, a person's right to property established in Article 105 of the *Satversme* is infringed upon.

Thus, the contested law affects the Applicant's right, which falls within the scope of Article 105 of the *Satversme*.

12.2. The Applicant holds that the contested law is incompatible with Article 105 of the *Satversme*, because the procedure of expropriating immovable property had not been legal. It had been possible to reach an agreement on voluntary expropriation of immovable property prior to the adoption of the contested law, by granting to the Applicant another immovable property of equal worth as fair compensation. However, the agreement was not reached, because the responsible institution had not done everything to implement the Applicant's proposal regarding the type of compensation awarded (*see Case Materials, Vol. 1, pp. 1 –7*).

As noted in Section 2 of the contested law, the parts of immovable property owned by the Applicant are to be expropriated in the procedure

defined by the Expropriation Law. Thus, pursuant to the contested law, in expropriation of the Applicant's property, the Expropriation Law must be applied and the type and amount of fair compensation must be determined in compliance with this Law. Thus, the *Saeima's* opinion that the contested law should not be linked with setting the type and amount of fair compensation cannot be upheld.

The purpose of the Expropriation Law, in accordance with Section 1 of this Law, is to establish a transparent, effective and fair procedure for expropriating immovable property for public needs. Pursuant to Section 20 (2) of this Law, the Cabinet has issued Regulation of 15 March 2011 No. 204 "Procedure for Setting Fair Compensation for Immoveable Property Expropriated for Public Needs" (hereinafter – Regulation No. 204).

Abiding by the procedure for expropriation of immovable property is one of the prerequisites for protecting a person's right to property (*compare: Judgement of 16 December 2005 by the Constitutional Court in Case No. 2005-12-0103, Para 22.3*). A person, in turn, should have the possibility to have the responsible institutions comprehensively examine restriction upon his rights (*see Judgement of 21 October 2009 by the Constitutional Court in Case N. 2009-01-01, Para 11.3*).

The regulation included in the Expropriation Law provides that prior to initiating expropriation of immovable property on the basis of a specific law, the owner of immovable property and the Institution may agree upon voluntary expropriation of the property. In the procedure of expropriation the parties also may agree on the type of compensation, envisaging that another immovable property of equal worth is granted to owner of immovable property as compensation.

Thus, to conclude that the contested law complies with Article 105 of the *Satversme*, the Constitutional Court should verify, whether the procedure of expropriation established by the Expropriation Law has been complied with. The Constitutional Court must verify, whether in the procedure of expropriating immovable property the Applicant had the possibility to express her opinion, *inter alia*, on the type of fair compensation, and whether the Institution has duly examined this opinion. Since the participants in the case have different opinion as to whether the procedure of expropriation had been complied with, without additional assessment it is impossible to conclude that the property has been expropriated for fair compensation. In view of these

considerations, the Constitutional Court holds that in order to provide full protection to the Applicant's fundamental rights, legal proceedings must be continued by examining the case on its merits.

Thus, legal proceedings in the case are to be continued.

13. The Applicant contests expropriation of immovable property in her ownership for public needs on the basis of the contested law. Thus, the claim in the case under examination falls within the scope of the fourth sentence of Article 105 of the *Satversme*.

Therefore, the Constitutional Court will examine compliance of the contested law with the fourth sentence of Article 105 of the *Satversme*.

A finding has been consolidated in the case law of the Constitutional Court that in establishing the content of human rights included in the *Satversme*; Latvia's international commitments in the field of human rights must be taken into consideration. The Constitutional Court already has recognised that Article 105 of the *Satversme* must be interpreted and applied in interconnection with Article 1 of the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) (*see, for example, Judgement of 26 April 2007 by the Constitutional Court in Case No. 2006-38-03, Para 10, and Judgement of 7 June 2012 in Case No. 2011-19-01, Para 9.1.*). In establishing the content of Article 105 of the *Satversme*, the Constitutional Court takes into consideration the case law of ECHR in applying Article 1 of the First Protocol to the Convention.

Similarly to Article 1 of the First Protocol to the Convention, the fourth sentence of Article 105 of the *Satversme* provides for the right of the State in certain cases to deprive a person of property right *de jure* (*see Judgement of 16 December 2005 by the Constitutional Court in Case No. 2005-12-0103, Para 22*). A person, whose immovable property is expropriated by the State, loses his title to object of property right or a part thereof. Therefore expropriation of property in no case can be arbitrary.

The fourth sentence of Article 105 of the *Satversme* comprises a number of criteria that the State must meet to ensure legality of expropriation. Thus, to assess, whether in the particular case the fourth sentence in Article 105 of the *Satversme* has been complied with, the Constitutional Court must verify, whether expropriation of immovable property has been conducted:

- 1) on the basis of a specific law;
 - 2)
- or public needs;
- 3) in exceptional case;
 - 4) for fair compensation (*see Judgement of 21 October 2009 by the Constitutional Court in Case No. 2009-01-01, Para 10*).

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14. The fourth sentence of Article 105 of the *Satversme* provides that expropriation is admissible only on the basis of a specific law.

The purpose of provision included in Article 105 of the *Satversme* providing for expropriation on the basis of a specific law is to protect a person's fundamental rights against possible arbitrary actions by institutions of public administration. In this case the word "specific" must be interpreted not only in a formal grammatical way, but, first of all, substantially. In adopting a "specific" law, the legislator must pay special attention to all circumstances of the case, must establish, whether expropriation, indeed, is exceptional and serves the needs of the State or society, and also must verify, whether expropriation is done for fair compensation (*see Judgement of 16 December 2005 by the Constitutional Court in Case No. 2005-12-0103, Para 22.2*).

14.1. Pursuant to Section 4 of the Expropriation Law, immovable property is expropriated for public needs by concluding an agreement on voluntary expropriation of immovable property or by expropriating it on the basis of a specific law. It follows from regulation included in the Expropriation Law, that the Institution expropriates immovable property on the basis of a specific law only if voluntary expropriation is impossible. This is based upon the need to refrain from infringing a person's rights to the extent possible in those cases, where public needs cannot be satisfied without expropriation of immovable property.

The law of 1923 that was formerly in force "On Expropriation of Immovable Property for the Needs of the State and Society", which was reinstated by the decision of 15 September 1992 by the Supreme Council of the Republic of Latvia, regulated only the procedure of expropriating immovable property. This law did not define the procedure of voluntary expropriation. The Expropriation Law, however, regulates the procedure for voluntary expropriation of immovable property for public needs. Voluntary expropriation does not guarantee to the owner the possibility to keep the

property; however, in the process of voluntary expropriation the owner may have better opportunities for reaching mutually acceptable terms of expropriation.

Regulation on expropriation of immovable property for public needs was included in the law to ensure a transparent procedure of expropriation, which comprises also setting of fair compensation. This equally applies both to voluntary expropriation of immovable property and to expropriation thereof for public needs. Thus, the Institution has not been prohibited from, but, quite to the contrary, has been encouraged to take other actions, in particular, with respect to engaging, to the extent possible, the owner of immovable property in the procedure of expropriation, if that is necessary to ensure as swift and effective as possible procedure of expropriating immovable property (*see annotation to the draft law No. 1613/Lp9 “On Expropriation of Immoveable Property for Public Needs”, submitted to the Saeima on 1 December 2009*).

The Applicant maintains that she had agreed to voluntary alienation of immovable property, therefore there had been no need to initiate expropriation of immovable property on the basis of the contested law (*see Case Materials, Vol. 1, pp. 5–6*).

By the Cabinet’s order of 25 August 2014 No. 445 “On Purchasing Immoveable Property for the Implementation of Reconstruction Project of the State Road P E22 in Section Rīga (Tīnūži)–Koknese” the Ministry of Transport was allowed to buy the immovable property to be expropriated for implementation of the said project (*see Case Materials, Vol. 1, p. 121*).

On 27 August 2014m the Institution sent to the Applicant a notice, requesting to provide an answer within 30 days regarding the possibility to conclude a purchase agreement regarding the immovable property (*see Case Materials, Vol. 2, p. 23*).

Upon receipt of this notice, on 1 September 2014, the Applicant had informed the Institution that she had reached an agreement with the local government of Ogre county on possible exchange of immovable properties (*see Case Materials, Vol. 2, p. 24*). However, the local government of Ogre county had informed the Institution that such an agreement with the Applicant had not been reached and was impossible, because, pursuant to Para 2 of Section 14(1) of the law “On Local Governments”, a local government had the right to acquire in its possession only such immovable property that is necessary for the performance of its functions, but the local government of

Ogre county did not need immovable property located on the territory of Lielvārde county for the performance of its functions (*see Case Materials, Vol. 2, p. 26*).

On 2 October 2014, the Institution had repeatedly invited the Applicant to provide an answer within 30 days on concluding a purchase agreement and at the same time explained why the exchange transaction with the local government of Ogre county was not feasible (*see Case Materials. Vol. 2, p. 27*). The Applicant did not respond to this notice.

Pursuant to Section 13 of the Expropriation Law, if the owner of immovable property does not provide an answer regarding voluntary expropriation of immovable property or an agreement on the terms of voluntary expropriation is not reached within a reasonable term, the Institution is obliged to prepare a draft law on expropriation of immovable property. This regulation was created with the purpose of ensuring an effective procedure for expropriation of immovable property.

The Ministry of Transport failed to reach an agreement with the Applicant on voluntary expropriation of immovable property, therefore, pursuant to Section 13 of the Expropriation Law; in the first months of 2015 it began the procedure for expropriating immovable property, preparing the respective draft law on expropriation of immovable property. At the sitting of 7 April 2017, the Cabinet approved the draft law regarding expropriation of immovable property owned by the Applicant and decides to submit it to the *Saeima* for examination.

On 24 September 2015, the *Saeima* adopted a specific law on expropriating parts of immovable property owned by the Applicant for public needs. Thus, the prerequisite included in the fourth sentence of Article 105 of the *Saeima* that expropriation is admissible only on the basis of a “specific” law was met.

14.2. The legislator’s obligation to ensure to a person the right to be heard prior adopting the legal act follows from the requirement included in the fourth sentence of Article 105 of the *Satversme*. The State may not adopt its decision by ignoring the owner’s right to be heard.

The right to be heard is of great importance in comprehensive rights protection and in balancing the interests of involved parties. The right to be heard does not mean only a formal possibility to express one’s opinion. It must be linked to examination the objections that have been expressed and to taking

these into account, to the extent possible, or to rejection of these by providing appropriate reasoning. The principle of reasoning is one the most significant measure for ensuring procedural fairness (*see Judgement of 21 October 2009 by the Constitutional Court in Case No. 2009-01-01, Para 11.3*).

The Applicant notes in her application that her proposal regarding a fair form of compensation, which had been repeatedly made to the Ministry of Transport throughout the stage of voluntary expropriation, had been ignored. This opinion is upheld also by the Ombudsman, who is of the opinion that in the particular case expropriation of immovable property had not been legal. I.e., the *Saeima*, in adopting the contested law, had relied upon information provided by the Ministry of Transport that it had been impossible to reach an agreement on voluntary expropriation of immovable property. However, no confirmation can be found that the Institution itself had been looking for possibilities to offer to the Applicant equivalent immovable property as fair compensation (*see Case Materials, Vol. 2, p. 34*).

However, the Applicant's statement that during the procedure of expropriation of immovable property she had repeatedly turned to the Ministry of Transport, requesting that another immovable property of equal worth would be granted to her as fair compensation is not proven by the case materials. It follows from the case materials that the Ministry of Transport had commenced negotiations with the Applicant regarding voluntary expropriation already on 24 October 2012, when it had sent her a notice on expropriation. However, only in her letter of 1 September 2014 to the Ministry of Transport the applicant had requested to be granted as fair compensation concrete immovable property located in another county, i.e., in Ogre county. Prior to that she had not expressed any other proposal to the Institution regarding the preferred type of compensation awarded (*see Case Materials, Vol. 2, p. 3 and pp. 9–30*). The Ministry of Transport had examined this proposal made by the Applicant and had provided reasoning why such proposal was not feasible (*see Case Materials, Vol. 2, pp. 25- 27*).

However, an assessment made by another state institution, for example, the line ministry, does not release the *Saeima* from its obligation to examine the particular issue (*see Judgement of 7 April 2009 by the Constitutional Court in Case No. 2008-35-01, Para 20*). The *Saeima*, in adopting the contested law, was obliged to hear all involved parties and also assess the procedure for

expropriation of immovable property until then, as well as the reasoning for the decision adopted by the Institution.

It follows from the audio recordings of sittings of the *Saeima* Legal Committee that were submitted to the Constitutional Court, that the Applicant had been invited to attend sittings of the Committee, however, she did not come to the sittings of 13 May and 27 May 2015, as well as to the sitting of 10 June. The Applicant had informed the *Saeima* Legal Committee that neither she, nor her representative would be able to attend the sitting of 13 May 2015. To ensure the Applicant's right to be heard, the sitting of the Committee for examining the draft law before the first reading was postponed to 27 May 2015. However, the Applicant attended neither the sitting of 27 May, nor that of 10 June. In the sitting of the Legal Committee before the third reading of the draft law on 2 September 2015, representatives of both the Applicant and the local government of Ogre county and the Ministry of Transport were present. At the sitting of the Legal Committee, arguments of all involved parties were heard regarding the possibility to expropriate the immovable property owned by the local government of Ogre county and then to grant it as fair compensation to the Applicant. Since the local government of Ogre county expressed readiness to alienate the immovable property owned by it, all involved parties were given time to reach an agreement on voluntary expropriation of immovable property. However, at the sitting of the Legal Committee on 16 September 2015 it was established that such an agreement had not been reached. At the sitting the opinion of the Ministry of Justice was heard that the local government had no right to expropriate for the State immovable property owned by it, because that would be contrary to the law "On Alienation of Property of a Public Person". The Applicant's arguments as to why, in her opinion, monetary compensation was not a fair type of compensation were also examined by the *Saeima* Legal Committee (*see audio recordings of the sittings of the Saeima Legal Committee of 13 May, 27 May, 10 June, 2 September and 16 September 2015*).

Thus, the *Saeima*, in adopting the contested law, has examined the Applicant's objections regarding the type of compensation awarded. The Applicant's proposal regarding the type of compensation was duly assessed and reasoning has been provided as to why this proposal could not be satisfied in the particular case.

Hence, expropriation of immovable property had been done on the basis of a specific law.

15. The Constitutional Court has already recognised that Article 105 of the *Satversme* grants to the legislator broad discretion to determine, which are the general needs that must be satisfied to attain particular public aims (*see Judgement of 16 December 2005 by the Constitutional Court in Case No. 2005-12-0103, Para 22.1*).

However, there are a number of restrictions upon the legislator's discretion in defining such public needs, the meeting of which requires expropriation of immovable property. In examining a case that has been initiated with regard to a person's constitutional complaint, the Constitutional Court is obliged to verify whether expropriation of immovable property for public needs is valid (*see Judgement of 21 October 2009 by the Constitutional Court in Case No. 2009-01-01, Para 12.2*). It has been recognised also in the case law of ECHR that the decision on expropriation of immovable property for public needs must comprise substantiation proving that the property, indeed, is expropriated for public needs (*see Judgement by the Grand Chamber of ECHR of 23 November 20 in case "Case of the former king of the Greece and others v. Greece", Application No. 25701/94, Para 87*).

Thus, to verify, whether expropriation of immovable property owned by the Applicant had been legal, the Constitutional Court must establish that it complied with public needs.

Those interests of the State and society, for the ensuring of which expropriation is admissible, are defined in Section 2 of the Expropriation Law. I.e., immovable property is expropriated for the needs to ensure national security, environment protection, health protection or social security, for construction of culture, education and sports facilities needed by society, as well as for building engineering structures and communication lines, or for the development of transport infrastructure, as well as to ensure other public needs, if this objective cannot be reached by other means.

Expropriation of immovable property owned by the Applicant was substantiated by the need to implement reconstruction project of the state road E22 section Rīga (Tīnūži) –Koknese. I.e., as noted in the annotation to the draft law, the immovable property to be expropriated was needed to attain particular public interests and objectives – construction of transport

infrastructure that would ensure traffic safety and effective total transport flow in the Western-Eastern corridor of the network of main state roads (*see annotation to the draft law No. 237/Lp12 submitted to the Saeima on 14 April 2015 “On Expropriation of Part of Immoveable Property “Kaktiņi” in Lēdmane Parish, Lielvārde County for Public Needs to Implement Reconstruction Project of State Road E22 in the Section Rīga (Tīnūži) – Koknese”*)

Ensuring development of transport infrastructure, *inter alia*, construction of new roads of national importance, clearly is one of the State’s tasks. The Applicant does not contest that expropriation of immoveable property owned by her serves public needs, i.e., development of transport infrastructure.

Therefore, expropriation of parts of immoveable property “Kaktiņi” complies with public needs.

16. It has been recognised in the case law of the Constitutional Court: “The precondition that a real estate can be expropriated only in an exceptional case means that the aim of such expropriation cannot be reached and appropriately implemented by applying other measures. Consequently, this means that coercive expropriation of real estate cannot become a usual practice for meeting the needs of the State. Each property expropriation should be regarded as an exceptional case, and such approach can only be ensured by observance of the respective procedure” (*see Judgment of 21 October 2009 by the Constitutional Court in Case No. 2009-01-01, Para 13*).

Expropriation is one kind of restrictions upon the right to property. Therefore the general principle is applicable to cases of expropriation that a restriction upon the right to property can be legal only if it is proportionate to the attainable aim (*compare: Judgement of 21 October 2009 by the Constitutional Court in Case No. 2009-01-01, Para 13*). A fair balance between public interests and the interests of the owner of a particular immoveable property can be ensured by fair compensation that has been defined in a clear and predictable procedure. Therefore the Constitutional Court, in verifying, whether the prerequisite that property can be expropriated only in an exceptional case has been met, will also establish whether immoveable property had been expropriated for fair compensation.

To assess, whether in coercive expropriation of the Applicant’s immoveable property, proportionality had been complied with, the Constitutional Court must establish:

1) whether the contested law is appropriate for reaching the legitimate aim;

2) whether the contested law is necessary; i.e., whether the aim cannot be reached by other measures, less restrictive upon a person's rights;

3) whether a fair balance has been ensured between public interests and the interests of the owner of immovable property.

16.1. The Applicant does not contest that the contested law allows reaching the set aim – reconstructing state road E22 in the section Rīga (Tīnūži)–Koknese. Also the summoned person – the local government of Lielvārde county – notes that expropriation of the immovable property owned by the Applicant was necessary for reconstructing the section of the state road (*see Case Materials, Vol. 2, p. 59*).

It is noted in the annotation to the contested law that the reconstruction project of state road E22 in the section (section 5.12–40.6 kilometre) aims to reconstruct the state road P80 in section Tīnūži–Koknese from Tīnūži to road P32, connecting it with state road A6, and thus relieve state road A6. Traffic intensity in the road P80 Tīnūži–Koknese is growing annually. It is envisaged, as part of the project, to liquidate level connections and ensure access to road only through two-level traffic connecting points. Immovable property to be expropriated is needed for constructing a siding, to close two existing connections to E22, thus implementing the construction project and improving traffic safety, including the traffic of Lēdmane parish school bus (*see annotation to draft law Nr. 237/Lp12 submitted to the Saeima on 14 April 2015 “On Expropriation of Part of Immovable Property “Kaktiņi” in Lēdmane Parish, Lielvārde County for Public Needs to Implement Reconstruction Project of State Road E22 in the Section Rīga (Tīnūži) – Koknese”*).

Thus, by expropriating the Applicant's immovable property the aim to reconstruct state road 22 in section Rīga (Tīnūži)–Koknese can be reached.

16.2. It follows from the fourth sentence of Article 105 of the *Satversme* that only immovable property that is required for public needs may be expropriated. This means that coercive expropriation of land property is admissible only within such area that the State actually needs to meet public needs. The legislator must be convinced that there are no other solutions for meeting public needs and that expropriation is, indeed, an exceptional case (*see Judgement of 21 October 2009 by the Constitutional Court in Case No. 2009-01-01, Para 13.2 and 13.3*).

Part of the immovable property owned by the Applicant (parts of the land parcel in the size of 0.71 and 0.25 hectares of the total area of property—13.47 hectares) is expropriated for public needs by the contested law.

Therefore the Constitutional Court must examine, whether the legislator has substantiated the necessity to expropriate for public needs both parts of the land parcel in the size of 0.71 and 0.25 hectares.

Pursuant to the project for land utilisation, approved by the Council of Lielvārde county on 26 September 2010, the area of 0,71 hectares is required for construction of a local road (*see Case Materials, Vol. 1, pp. 130 –131*). Neither does the Applicant contest that expropriation of this part of land unit is necessary.

Whereas the land unit in the size of 0.25 hectares was expropriated in accordance with Section 6 of the Expropriation Law. It follows from the case materials that initially expropriation of this part of land unit had not been planned. The size of immovable property to be expropriated was changed upon the Applicant's proposal (*see Case Materials, Vol. 2, pp. 14, 16 and 17*). I.e., by assessing possibilities of utilising this land unit in the future it was concluded that due to location, configuration, encumbrances and insufficient size, it will no longer be possible to utilise it in compliance with the binding regulation of the Council of Lielvārde county of 26 September 2009 No. 3 "Spatial Planning of Lielvārde County" (*see Case Materials, Vol. 1, pp. 132 – 133*). Section 6(2) of the Expropriation Law grants a person the right to contest the need to expropriate a larger area of immovable property than is required for public needs in procedure established by the Civil Procedure Law. The Applicant did not object to the decision to expropriate in addition a part of the land parcel in the size of 0.25 hectares.

Likewise, a possibility to change the reconstruction project of the state road E22 in section Rīga (Tīnūži)–Koknese so that it would not affect the immovable property to be expropriated at all had been examined. However, it was found that in such a case technically more complex and sizeable solutions would be required that would considerably increase the project costs (*see Case Materials, Vol. 1, p. 84*).

Thus, the legislator has verified the necessity to expropriate parts of immovable property owned by the Applicant to meet particular public needs.

16.3. The fourth sentence of Article 105 of the *Satversme* imposes an obligation upon the State to create a fair balance (proportionality) between the

interests of society and those of a particular owner with the help of fair compensation that has been set in a clear and predictable procedure (*see Judgement of 16 December 2005 by the Constitutional Court in Case No. 2005-12-0103, Para 22.3*).

ECHR also has recognised that an interference with the right to the peaceful enjoyment of property right must strike a “fair balance” between the demands of the general interests of the community and the requirements of the protection of the individual’s fundamental rights [*see Judgement by the Grand Chamber of ECHR of 29 March 2006 in Case “Scordino v. Italy (no. 1)”, Application No. 36813/97, Para 93*]. Compensation is an essential condition, which must be taken into consideration in assessing, whether the State has balanced the interests of an individual and those of society in a fair and proportionate way. Depriving of property without compensation that is reasonable linked to the value thereof usually would be considered as being disproportionate and unjustified interference into exercise of rights envisaged in Article 1 of the First Protocol to the Convention (*see Judgement by the Grand Chamber of ECHR of 25 October 2012 in Case “Vistiņš un Perepjolkins v. Latvia”, Application No. 71243/01, Para 110*). Thus, the compensation that a person is entitled to in connection with expropriation of its property for public needs must be, first of all, fair. The State’s obligation to ensure that a person is granted a fair compensation for expropriation of immovable property follows from the fourth sentence of Article 105 of the *Satversme*.

With respect to the amount of compensation, the Constitutional Court already has found: “Although the amount of compensation must be reasonably linked to the value of property to be expropriated, Article 1 of the First Protocol to the Convention, as repeatedly underscored in the case law of ECHR, does not provide for the owner’s right to full compensation for the value of property, in particular, in those cases, where such expropriation is done for public interests of particular importance. The basic criterion for assessing the amount of compensation for property to be expropriated, unanimously recognised in the case law of ECHR, is fair balance between public interests referred to in Article 1 of the First Protocol to the Convention and the need to protect the owner’s interests, which are guaranteed in this Article” [*see Judgement of 30 April 1998 by the Constitutional Court in Case No. 09-02(98), Para 3 of the Findings*].

ECHR has noted in a number of judgements that compensation should be reasonably linked to the market value of property; however, Article 1 of the First Protocol to the Convention does not guarantee the right to full compensation in all circumstances [*see, for example, Judgement by the Grand Chamber of ECHR of 21 February 1986 in Case “James and others v. the United Kingdom”, Application No. 8793/79, Para 54, and Judgement of 29 March in Case “Scordino v. Italy (no. 1)”, Application No. 36813/97, Para 95*].

The Constitutional Court has recognised that in setting the amount of fair compensation it should not be considered in abstraction from the specific features and the use of the property to be expropriated (*see Judgement of 16 December 2005 by the Constitutional Court in Case No. 2005-12-0103, Para 23.3.3*).

Pursuant to Section 20(1) of the Expropriation Law, the Institution sets compensation for the property to be expropriated by taking into account the assessment provided by a certified surveyor of immovable properties and the losses caused to the owner of immovable property. Whereas in Section 21 of this Law the principle has been enshrined that compensation should ensure to the former owner of immovable property such financial status that would be equivalent to his former financial status. As noted in Section (22) of the Expropriation Law, compensation is constituted by the highest of the following two values – market value of the immovable property or the remaining replacement costs – and compensation for damages inflicted upon the owner of immovable property, and if a part of immovable property is expropriated, also losses that are linked to the utilisation of immovable property to be expropriated.

The Expropriation Law and Regulation No. 204 also refer to criteria that must be taken into consideration in valuing immovable property. These regulatory enactments define also the procedure, which allows involving the owner of immovable property in setting a fair compensation. I.e., to obtain information that is needed to set a fair compensation, the Institution is obliged to send a request to the owner of immovable property, inviting him to submit all information and documents that characterise immovable property, as well as information of losses that might occur as the result of expropriation of immovable property. The Institution is also obliged to invite the owner of immovable property to participate in surveying the immovable property.

Regulation No. 204 also provides for the right of the owner of immovable property to be expropriated to participate in the sitting of the commission, where the calculated compensation is assessed, and to put questions to experts, the commission, and also to express his own opinion on the amount of compensation.

16.4. On the basis of Section 9 of the Expropriation Law and Sub-para 36.1 of Regulation No. 204, the Ministry of Transport by its decision of 2 June 2014 approved the amount of fair compensation to be disbursed for the expropriated immovable property – 9105.53 *euro* (*see Case Materials, Vol. 2, p. 21*). The Applicant notes that she has no objections to this amount; however, she emphasizes that in the particular case fair compensation should not have been set in monetary terms, but another immovable property of equal worth should have been granted to her to replace the immovable property to be expropriated. She maintains that her right to choose the type of compensation and the Institution's duty to ensure it follow from Para 1 of Section 12(1) and Section 26 of the Expropriation Law (*see Case Materials, Vol.1, p. 2*).

The *Saeima*, however, notes in its written reply that neither the fourth sentence of Article 105 of the *Satversme*, nor Section 26 of the Expropriation Law grants to the owner of immovable property to be expropriated the right to choose and to receive compensation in a particular way (*see Case Materials, Vol. 1, p. 59*).

Para 1 of Section 12(1) of the Expropriation Law provides that the Institution and the owner of immovable property agree in the contract on voluntary expropriation of immovable property on the type and procedure of awarding compensation. Pursuant to Section 26 of this Law, the Institution disburses compensation in the form of cashless transfer or may use another type of fair compensation, for example, offer another immovable property of equal worth.

As noted by Elīna Grigore-Bāra, a person summoned in the case, monetary compensation as the general principle and the primary kind of compensation on the case of coercive expropriation exists in a number of European states. Monetary compensation, compared to compensation by an equivalent immovable property, is said to be less infringing upon an individual's freedom. An individual is granted assets in the most flexible form, which can be easily used for the most diverse purposes. If compensation were

granted in kind, then, in using this form of assets, the individual, probably, could not exercise his free will duly (*see Case Materials, Vol. 2, pp. 47–48*).

As explained also in the annotation to the draft Expropriation Law, according to the general principle, fair compensation is disbursed as monies; the amount of compensation is transferred into a bank account. If the owner of immovable property wishes to receive fair compensation in another form and the Institution is able to ensure it, then Institution may agree with the owner of immovable property on disbursement of fair compensation in another form. This regulation is said to be applicable not only to voluntary expropriation, but also to disbursement of fair compensation if the immovable property is expropriated on the basis of the law on coercive expropriation, but after adoption of this law the Institution concludes an agreement with the owner of immovable property regarding the amount of fair compensation and the type of disbursement (*see annotation to the draft law No. 1613/Lp9 submitted to the Saeima on 1 December 2009 “On Expropriation of Immoveable Property for Public Need”*).

As noted by Jānis Rozenfelds, a person summoned in the case, the type of fair compensation depends upon the agreement between the parties. In the process of reaching an agreement both parties have the right to make proposals regarding the type of compensation awarded. This follows from the need to reach a mutually beneficial, feasible and fair agreement on the terms of expropriating immovable property, *inter alia*, also the type of compensation awarded (*see Case Materials, Vol. 1, p. 137*).

Compensation in the form of another immovable property of equal worth is permissible in the case of voluntary expropriation, agreeing with the owner of immovable property. However, even if immovable property has been coercively expropriated on the basis of a specific law and the specific law on expropriation of particular immovable property has entered into force, the parties still may agree on the type of compensation awarded. It follows from Section 29 (1) of the Expropriation Law, which obliges the Institution, after the law has entered into force, to send to the owner an offer to conclude an agreement on accepting the amount of compensation set by the Institution and the type of compensation within six months after the law has entered into force.

Equivalent immovable property may be a type of fair compensation not only in those cases, when the owner of immovable property to be expropriated wishes it and the Institution agrees to it, but also in cases, where the Institution

itself offers as fair compensation another immovable property of equal worth and the owner of immovable property to be expropriated accepts this form of compensation.

16.5. Although the fourth sentence of Article 105 of the *Satversme* ensures to a person the right to fair compensation if immovable property is expropriated, it does not guarantee the possibility to receive this compensation in a particular way, preferred by the person. The fourth sentence of Article 105 of the *Satversme* does not impose an obligation upon the Institution to offer to the owner of immovable property another immovable property of equal worth as fair compensation. The Institution is not obliged to satisfy any request made by the owner of immovable property to be expropriated with respect to the type of compensation awarded.

Whether an Institution will agree to a fair compensation in the form of another immovable property of equal worth also depends upon the resources at its disposal and the possibilities that it has. The Ministry in Transport, in handling immovable property owned by the State, must abide both by the law “On Prevention of Squandering of the Financial Resources and Property of a Public Person” and the law “On Alienation of Property of a Public Person “. Likewise, neither the State, nor the Institution responsible for expropriation procedure is obliged to acquire another immovable property to offer it to the owner of immovable property to be expropriated as fair compensation.

The Applicant objects to the type of compensation awarded, however, neither the Applicant’s subjective right to a fair compensation in away that she prefers, nor the obligation of the State to ensure such compensation follow from the fourth sentence of Article 105 of the *Satversme*. In abiding by provisions of Article 105 of the *Satversme*, in the procedure for expropriation of immovable property for public needs established in the Expropriation Law and Regulation No. 204, fair compensation has been set for the Applicant, and she does not object to the amount thereof. Moreover, pursuant to Section 26 and Section 29 of the Expropriation Law, even after the law on expropriation of particular immovable property has entered into force, the Institution and the owner of immovable property may agree on the type of compensation awarded by the Institution. Thus, also after the contested law has entered into force the type of compensation can be changed, if the parties reach an agreement.

Thus, expropriation of immoveable property for public needs has occurred in an exceptional case for fair compensation and the contested law complies with Article 105 of the *Satversme*.

The Substantive Part

On the basis of Section 30 –32 of the Constitutional Court Law the Constitutional Court

held:

to recognise law “On Compliance of Law “On Expropriation of Part of Immoveable Property “Kaktiņi” in Lēdmane Parish, Lielvārde County for Public Needs to Implement Reconstruction Project of State Road E22 in the Section Rīga (Tīnūži) – Koknese” as being compatible with Article 105 of the *Satversme* of the Republic of Latvia.

The Judgement is final and not subject to appeal.

The Judgement shall enter into force on the day of its publication.

Chairman of the court hearing

A. Laviņš