



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT

On behalf of the Republic of Latvia;

Riga, 18 December 2018

Case No. 2016-04-03

The Constitutional Court is composed of: the Chair of the hearing Ineta Ziemele, Judges Sanita Osipova, Aldis Laviņš, Gunārs Kusiņš, Daiga Rezevska, Jānis Neimanis and Artūrs Kučs,

on application by the District Administrative Court,

based on Article 85 of the Constitution (*Satversme*) of the Republic of Latvia and Section 16(3), Section 17(1)(9), as well as Section 19¹ and 28¹ of the Constitutional Court Law,

held a hearing on 20 November 2018, in written procedure

"On Compliance of Cabinet of Ministers Regulation of 14 April 2015 No. 187 "Amendment to Cabinet of Ministers Regulation of 30 November 2004 No. 1002 "Procedure for Implementation of the Programme Document "Latvian Rural Development Plan for Implementation of the Rural Development Programme 2004-2006"" with Article 105 of the Constitution of the Republic of Latvia".

Declaratory part

1. On 7 April 2004, the Saeima adopted the Law on Agriculture and Rural Development (hereinafter – Rural Development Law), which entered into force on

24 April 2004. According to Section 2 of the Rural Development Law, the purpose of this Law is to provide legal basis for agricultural development and to specify a long-term agricultural and rural development policy in accordance with the Common Agricultural Policy and the Common Fisheries Policy of the European Union.

Section 5(7) of the Rural Development Law states: "The procedures by which State aid and European Union aid is administrated and supervised and the procedures by which State and European Union aid for rural and fisheries development is administrated and supervised shall be determined by the Cabinet."

On 30 November 2004, the Cabinet of Ministers issued Regulation No 1002 "Procedure for Implementation of the Programme Document "Latvian Rural Development Plan for Implementation of the Rural Development Programme 2004-2006"" (hereinafter - Regulation No 1002), which entered into force on 7 December 2004, in accordance with this provision of the Rural Development Law. These Regulations approve the programming document "Latvian Rural Development Plan for the Implementation of the Rural Development Programme 2004-2006" (hereinafter – the Rural Development Plan) and lay down the procedure for its implementation.

Chapter 9.3 of the Rural Development Plan contains the measure "Early retirement" (hereinafter referred to as "the Measure"), inter alia, stating that it creates the possibility for elderly farm owners who are unwilling or for various reasons unable to continue and develop their economic activity to give, sell or donate their farm or part of it to another, receiving early retirement support and retaining certain resources for food production for their own and their family's self-consumption. This chapter sets out the rationale, objectives, target audience, beneficiaries, eligibility conditions, type and amount of support, limitations, timing, administration, links with other measures and expected results of the Measure.

Chapter 9.3 of the Rural Development Plan also indicates that the legal basis for the Measure is Title IV of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations

(hereinafter 'Regulation No 1257/1999') (10).-12) and Chapter 4 (Articles 7to 10) of Commission Regulation (EC) No 817/2004 of 29 April 2004 laying down detailed rules for the application of Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) (hereinafter referred to as Regulation (EC) No 817/2004). These Regulations were in force until 31 December 2007.

Subsection 12.3.2 of the Rural Development Plan, "Specifics of the administration of each measure", includes, inter alia, a section on "Early retirement". By Cabinet of Ministers Regulation No 187 of 14 April 2015 "Amendment to Cabinet of Ministers Regulation No 1002 of 30 November 2004 "Procedure for Implementation of the Programme Document "Latvian Rural Development Plan for Implementation of the Rural Development Programme 2004-2006"" (hereinafter - the contested norm), the words of sub-paragraph "a" of the section "Early retirement" of subsection 12.3.2 of the Rural Development Plan "If the beneficiary dies during the period in which the concluded contract for receiving early retirement is valid, his monthly pension for the remaining period continues to be paid to the person who has the right of inheritance confirmed in accordance with the national legislation". This contested norm came into force on 30 April 2015.

2. Applicant – District Administrative Court (hereinafter – the Applicant) holds that the contested norm is incompatible with Article 105 of the Constitution of the Republic of Latvia (hereinafter – the Constitution).

The Applicant is the subject of administrative proceedings brought on the basis of an application by private individuals concerning the validity of a public contract. The Rural Support Service has terminated the obligations assumed by the public law contract (the contract on the granting of aid under the Measure) towards the applicants in the administrative case.

For the purposes of Article 105 of the Constitution, property may be: (1) existing property or assets, including claims, in respect of which the person can justify having at least a legitimate expectation of obtaining effective title; (2) all rights of a pecuniary nature which the person entitled may use for his own benefit

and dispose of at his will, including contractual claims; (3) pension rights, irrespective of the source of funding; (4) claims of a public law nature which have already been acquired and are enforceable; (5) future income if it has already been earned or there is a claim which can be satisfied. In the light of the above, the inheritable right to receive aid under the Measure is to be regarded as a right to property.

The contested norm contains a restriction on the right to property of the heirs of the beneficiaries of the aid provided for in Article 105 of the Constitution. It is established by a duly adopted normative act, however, the Applicant doubts the existence of the legitimate aim of this restriction and its compliance with the principle of proportionality.

Both Regulation No 1257/99 and the Rural Development Plan provide that the transferee of a holding is another natural or legal person who buys or receives as a gift the holding or land (in whole or in part) of the returning person. It follows from the above that the Measure was designed to promote the development of agriculture in general by attracting new farmers, while at the same time providing support to the transferor of the holding and thereby motivating him to transfer the holding to another person who would carry out the economic activity more efficiently.

It follows from the annotation to the draft contested norm that, in general, the beneficiary, or the transferor of the holding, makes a gift of the holding to his potential heir, who, after the death of the beneficiary, both receives a pension as an inheritance and has already acquired the holding itself. However, in this case the aid is not being used effectively and the objective of the measure – to promote the take-over and development of agricultural holdings by changing and improving their management and involving young and economically active people – is not being achieved.

It cannot be ascertained from the above that the Cabinet of Ministers has assessed at all cases where the transferee to the holding is not a relative of the transferor of the holding who, after the death of the transferor of the holding, is no longer entitled to inherit the property transferred and, after the contested norm enters

into force, can no longer inherit the right to aid payments under the Measure. Therefore, before the contested norm was adopted, no comprehensive assessment of the situation had been carried out. In particular, the contested norm has created a situation where heirs may lose both the right to inheritance in the form of the returned property and the right to receive support (compensation for the inheritance not received).

The Applicant also disagrees that the stated objective of the Measure is not achieved. If the farm's performance does not reach the target level, the transferor of the farm, and subsequently his heirs, would not be eligible for aid payments. Moreover, the fact that the transferee is a relative of the transferor does not necessarily mean that he will not be able to carry out economically efficient and innovative economic activities.

Neither Regulation No 1257/99 nor the Rural Development Plan prohibits the transferee to a holding from transferring the holding to a relative and thus also to a potential heir. Therefore, the State should have foreseen, when the administration of the Measure started, that the transferor of the farm could transfer the farm to a potential heir and should have assessed the purpose and usefulness of the Measure. The Cabinet of Ministers had guaranteed the right of persons to inherit aid, but then imposed a restriction on that right without even assessing its proportionality.

The Applicant draws attention to the fact that the annotation of the draft contested norm contains a reference to the draft audit report of the State Audit Office of 18 February 2015, where, inter alia, it is indicated that the procedure of inheritance of monthly pension included in the Measure does not comply with the Latvian policy on inheritance rights. Such an opinion of the State Audit Office is not justified, since it is not permissible to compare a State social insurance pension, which is not inheritable, with European Union aid, for the purpose of which a person must give up his holding. The aid in this case is to be regarded as compensation for the farm to the transferor, as well as compensation to his heirs for the inheritance they have not received in the event that the farm is transferred to a person who is not a relative of the transferor.

The conclusion of an early retirement pension agreement by the transferor of the holding could have created a legally protected expectation in his heirs that they would be entitled to inherit the specific aid payment under the Measure instead of the property to be inherited, provided that the contractual obligations were continued.

A situation where the heir and the transferee to the holding are the same person may be assessed separately, however, taking into account the purpose of the Measure and the need to implement it effectively, it would be necessary to assess compliance of the contested norm with Article 105 of the Constitution in relation to all persons affected by it.

3. The institution that issued the contested act, the Cabinet of Ministers, disagreed with the Applicant's opinion and held that the contested norm complied with Article 105 of the Constitution.

The Cabinet of Ministers notes that on 30 June 2004 the European Commission adopted a decision "On the approval of the Latvian rural development programming document for the programming period 2004-2006". This document, approved by the European Commission, is based on the Rural Development Plan in the same version as that introduced by Regulation No 1002 and includes a provision on the succession of aid granted under the Measure.

At the end of the relevant planning period, the Measure was found not to be achieving the desired results and objectives. It has therefore been decided not to continue the Measure, i.e. not to include it in future programming documents for rural development in Latvia. According to Article 93(1) of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) ('Regulation No 1698/2005'), for the planning periods 2007 to 2013 and 2014 to 2020, funding for the continuation of the relevant support until 2021 is limited to persons who participated in the Measure during the 2004 to 2006 planning period.

The meeting of the European Commission's Committee on Rural Development of 19 October 2011 concluded that the European Agricultural

Guidance and Guarantee Fund (hereinafter – the Agricultural Guarantee Fund') is not eligible for the inheritance of early retirement support. The Cabinet of Ministers considers that the inheritance of this aid is not in line with the purpose of Regulation (EC) No 1257/1999 and leads to a waste of European Union and public funds.

The State Audit Office stated in its audit report of 5 March 2015 that there is no economic growth of the transferred farms and the payment of the foreseen amount of money to the transferors until 2021 will not ensure the effectiveness of the Measure. The number of beneficiaries is disproportionately small compared to the funding foreseen for the Measure. In April 2015, 587 farmers continued to receive support under the Measure. It was found that 56 beneficiaries were deceased and in 48 of these cases the transferees to the holding were members of the family (child or spouse) of the transferor and in 15 cases – heirs. This has led to a situation where the farm remains in the same family, which additionally receives support. It is the succession cases which have revealed a failure to comply with the purpose of Regulation No 1257/99 and a misuse of financial resources.

The annotation mentions the linking of the heirs of the beneficiaries and the transferees of the holding in one person as a reason in favour of the adoption of the contested norm only as one of the most significant infringements of the conditions for receiving aid, which would allow unjustified benefit and overcompensation of aid. Since the heirs are not assessed, when they inherit, as to whether they meet the requirements of Article 11 of Regulation No 1257/99 (e.g. age, commitment not to continue in the agricultural business), there is no distinction between an heir who received only the aid and an heir who inherited both the aid and the holding, since the requirements imposed by the Regulation on the transferor of the holding cannot be applied to his heirs.

The decision to participate in the Measure is an expression of the free will of the transferor of the holding and other persons, including relatives, are prohibited from influencing it. A person's right to dispose of his property is enshrined in Article 927 of the Civil Code, which does not require him to account for his actions to potential heirs. The purpose of the aid is to ensure a regular income for the transferor, not to compensate for the inheritance.

The contested norm does not render the economic activity of the heirs of the beneficiaries economically impossible and does not create a credible threat of their insolvency. An entrepreneur cannot base his business solely on state aid. Farming is an open economic activity carried out by a farmer for profit. The legal framework in force prior to the adoption of the contested norm did not fully promote the economic and responsible use of financial resources in such a way as to ensure the satisfaction of the public interest. One of the legitimate aims of the restriction of fundamental rights contained in the contested norm is to prevent Regulation No 1002 from being incompatible with the requirements of Regulation No 1257/1999, as well as with the principle of efficient and effective use of funding.

The adoption of the contested norm is to be regarded as an appropriate means of achieving the legitimate aim, and there are no other means by which that aim could be achieved. The reason for not providing for a transitional period was both the requirements arising from European Union law and the need to immediately prevent further misuse of financial resources contrary to the public interest. The financial benefit to society – other workers in the agricultural sector – of participating in support measures with a higher participation rate and a more favourable economic impact on the sector outweighs the benefits that may no longer be available to individuals.

Farmers can only rely on receiving aid that complies with EU law. The contested norm does not infringe the legitimate expectations of the heirs of the beneficiaries, since any reasonable person could have foreseen that the conditions for receiving the aid might change. Moreover, the public law contracts concluded under the Measure also contained provisions on the suspension of aid payments in the event of a change in the legal framework, which should have been known to the heirs of the transferors of the holding. It should also be noted that the contested norm does not include a requirement to repay aid previously received as unjustified.

4. An invited person – the Ombudsman – holds that the contested norm is incompatible with Article 105 of the Constitution.

Since the right to receive aid was established for the heirs of the beneficiary by a public law contract, it is to be recognised as a right to property within the meaning of Article 105 of the Constitution. However, the contested norm restricts this right. The beneficiaries' heirs, whose succession rights were confirmed before the date of entry into force of the contested norm, could have had a legitimate expectation that they would be entitled to inherit the aid granted under the Measure by continuing their obligations under the public law contract.

The Ombudsman does not doubt that the public has benefited from the fact that Regulation No 1002 has been removed from further non-compliance with the provisions of Regulation No 1257/99 and additional funds have been allocated to other support measures. However, the Ombudsman considers that in the present case, the infringement of the property rights of an individual (in particular of an heir other than the transferee of the holding) caused by the failure to provide for a lenient transitional period or a compensatory mechanism outweighs the benefit to society.

5. An invited person – the State Audit Office – points to the conclusions of its audit, which indicate that the overall effectiveness of the Agricultural Development Fund Measure is questionable and that the Measure has not significantly contributed to the achievement of the objectives of the Agricultural Development Fund. This has meant providing irrational social support to a small number of farmers using EU funds. Moreover, in the context of Regulation No 1257/99, the aid granted to the transferor of the holding is to be regarded in substance as a pension and not as compensation.

The payment of the aid to the person returning the holding depends on the wishes and possibilities of the other person (transferee) to continue the economic activity on the transferred holding. Consequently, the legitimate expectation of the transferor of a holding to continue to receive European Union aid, even where the transferee has ceased to carry out economic activities on the holding or continues to do so only on a 'existence' or subsistence basis, is open to question. Moreover, such a procedure is not acceptable in view of the fact that other persons receiving aid under other measures of the Fund for Agricultural Development have to take into

account the risk that they may have to reimburse the aid funding received in the event that the predetermined indicators are not achieved during the implementation of the project.

6. An invited person – the Ministry of Welfare, points out that at all three levels of the Latvian pension system, the amount of the pension depends on the contributions made, which are accumulated by earning interest and building up the pension capital. The pension that a person can receive from all three pension tiers is therefore fundamentally different from the pension that a person receives by selling, giving away or gifting his or her farm or part of it, which is in effect an early retirement support. Although the term 'pension' is used, the aid to be paid under the Measure is not part of the State social insurance system and does not share any characteristics with a State social insurance pension, either in terms of granting, calculation and payment conditions. The Ministry of Welfare was not involved in the drafting of Regulation No 1002 and its amendments, it has no information on the purpose of the contested norm and the alternatives assessed during the drafting process.

7. An invited person – the Rural Support Service – joins the arguments indicated in the Cabinet of Ministers' reply and in particular points out that the contested norm does not affect the fundamental rights established in Article 105 of the Constitution.

The provision providing for the inheritance of aid was not consistent with the objective of the Measure. The right to assistance under the Measure is a personal right in nature, as it is limited in time and age. This is also confirmed by the provisions of Regulation No 1257/1999, which provide that when a transferor obtains a retirement pension, the aid received is reduced by a corresponding amount or may be limited if the prohibition on continuing commercial farming is infringed. The right to receive the aid as future income is limited to the individual returnee during his lifetime, as compliance with the conditions for receiving the aid is monitored. However, the beneficiaries' heirs are not subject to such control. Thus,

the entitlement to aid under the Measure would cease upon the death of the transferor and there would be no claim of the transferor's heirs that could be satisfied.

In the present case, the legal relationship between the State and a private party is governed not only by external laws and regulations but also by a public law contract, from which it follows that the aid to be granted is not fixed and unchangeable. The State was entitled to change the procedure for receiving the aid, so neither the beneficiaries nor their heirs could have had a protectable legitimate expectation. Although the economic growth of the farms taken over has not been detectable, the adoption of the contested norm was based on a compromise, since the State Audit Office has proposed to examine the possibility of completely discontinuing aid under the Measure.

8. An invited person – *Mg. iur. Anita Zikmane* – holds that the contested norm does not infringe the fundamental rights of persons established in Article 105 of the Constitution.

The conditions for early retirement support defined in Regulation No 1257/1999 indicate the personal nature of such rights. Although the application of the Regulations requires certain measures to be taken, it is not permissible to supplement the conditions for receiving aid laid down in Article 11 of Regulation No 1257/99. The personal nature of the aid is also confirmed by the fact that a person who has transferred his holding to another person may receive the aid, less the retirement pension paid by the Member State, for a maximum of 15 years or until his 75th birthday. However, under Article 7 of Regulation No 817/2004, the benefit payable is linked to a single holding and to the specific owners of that holding at the time of the transfer. Accordingly, under Section 704 of the Civil Code, the right of the transferor of the holding to receive the aid payment ceased with his life, and the legislation repealed by the contested norm was contrary to European Union law. According to the case law of the Court of Justice of the European Union, national law which is contrary to European Union law is not applicable.

A Member State's practice which is incompatible with EU law cannot create a legitimate expectation for the private party benefiting from that situation. Moreover, the contested norm is not related to the contribution of the returnee of the holding to the receipt of aid and thus does not constitute an infringement of the fundamental rights protected by Article 105 of the Constitution.

9. An invited person– Lecturer at the Department of Civil Law, Faculty of Law, University of Latvia *Mg. iur. Kristīne Zīle* – points out that the contested norm does not restrict the rights established in Article 105 of the Constitution for the heirs of the transferor.

Expropriating a farm on the basis of a purchase contract gives the person a compensation, whereas the farm owner can receive early retirement support for giving up his or her means of generating income. Property is the right of complete authority over a thing. In the case of a donation agreement, there is no monetary consideration for the property, but the donor is not necessarily left without any benefit. The purchase price from the alienation transaction would be refunded to the alienor and possibly go to the estate. However, in the case of a donation agreement, account must be taken of the possibility for the heirs to claim from the donee the inalienable parts of the estate which belong to them. Thus, the support for early retirement is neither a consideration for the alienated property nor property.

It is the farm owner's compliance with certain criteria that makes him eligible for support under the Measure. Consequently, that aid is closely linked to the farmer's own person and is therefore an inalienable right. The purely personal nature of the aid payment is also indicated by the provisions of Regulation No 1257/99 on the duration of the payment. Nor does it follow from the text of the Regulation that the aid in question is inheritable or that the regulation of the matter is left to the discretion of the Member States.

10. An invited person – *LL. M. Solvita Harbaceviča* – points out that public law contracts concluded on the basis of specific normative acts are relevant to the issue at hand. At the time these contracts were concluded, the European

Commission had already approved a Rural Development Plan providing for the inheritance of aid received under the Measure.

The interpretation given by the European Commission's Committee on Rural Development on 19 October 2011 formally refers only to Regulation No 1698/2005, whereas there is no interpretation of Regulation No 1257/99. It can therefore be considered that the public-law contracts were concluded between the Member State and the transferor on the basis of Regulation No 1257/99 and the national rules which had been agreed with the European Commission.

Decisions to return the holding may have been based on a particular set of circumstances, including awareness of the possibility of inheriting early retirement support. Accordingly, the persons who concluded the public-law contracts in question may have acquired a legitimate expectation.

11. An Invited person – Representative of the Cabinet of Ministers at the Court of Justice of the European Union (2011-2016) *Mg. sc. soc. Inguss Kalniņš* – points out that legislation providing for the inheritance of early retirement support may be compatible with Regulation No 1257/99, but in such a case the Member State would have to ensure compliance with a number of complex criteria.

The purpose of the early retirement support was to provide an economic incentive to older farmers to leave farming altogether earlier than they would normally have done, or perhaps would not have done at all. Having regard to the principles of subsidiarity and proportionality, Regulation No 1257/99 does not prohibit Member States from using additional economic incentives to encourage older farmers to apply for aid under the Measure. However, it should be borne in mind that the ineffectiveness of early retirement support has become apparent over time and is no longer included in the new Regulation.

Conclusions of the European Commission Committee on Rural Development of 19 October 2011 addressed to the Republic of Latvia concerning Regulation No 1698/2005 and commitments already established after 2007. The principle of the protection of legitimate expectations requires the State to continue to pay the aid in accordance with any commitments entered into before the aid was withdrawn. After

the specific date by which the European Union financing was foreseen, the Member State would have to cover the aid paid by it from its own budget.

12. An invited person – Representative of the Republic of Latvia before the Court of Justice of the European Union *Dr. iur. Irēna Kucina* – points out that the provision of the Cabinet of Ministers' Regulation providing for the inheritance of aid granted under the Measure is contrary to Regulation No 1257/99 and its purpose.

In accordance with the case law of the Court of Justice of the European Union on the purpose of Regulation No 1257/99, it must be borne in mind that early retirement support is not provided for in that regulation in order to ensure the supplementing of old-age pensions for social reasons. Nor is the direct purpose of this aid to provide additional income for older farmers. Regulation No 1257/99 is a measure chosen to achieve the primary objective of the early retirement scheme, namely to provide an economic incentive for older farmers to leave their economic activity earlier in specific circumstances where they would not normally do so.

Although Regulation No 1257/99 gives the State discretion in the choice of measures to be applied, it does not expressly provide for the possibility of inheriting early retirement support. Consequently, the extension of the conditions for receiving aid is not permissible contrary to the purpose of the Regulation. The invited person has no information as to the reasons why the European Commission in 2004 harmonised the Measure and found it to be in conformity with Regulation No 1257/99, but later, when assessing the same Measure plan, it was found to be not in conformity with the provisions of that Regulation.

13. An invited person – Attorney-at-law *M. Jur. (Oxon) Debora Pāvila* – points out that the Cabinet of Ministers has no legal basis or competence to claim that the inheritance of early retirement support is not in line with Regulation No 1257/99.

The European Commission approved the Rural Development Plan by decision of 30 July 2004, which provides for early retirement support to be

inherited. According to the case law of the Court of Justice of the European Union, such an approval implies that the entire programme in question is lawful, since it is the European Commission which is competent to assess the conformity of rural development programming documents with the provisions of the Regulation. That decision of the European Commission has not been amended or annulled. Regulation No 1257/99 also does not provide for a procedure whereby this decision could be changed.

The European Commission's Committee on Rural Development, which concluded on 19 October 2011 that early retirement support was not to be granted to the heirs of the farm leaver, was not entitled to take a final decision on the matter, since that was a matter for the European Commission alone. Moreover, the European Commission's Committee on Rural Development was established under subsequent European Union legislation and its remit was not to assess the provisions of Regulation No 1257/1999 but those of Regulation No 1698/2005.

14. An invited person – Associated Visiting Professor, Department of International and European Law, Faculty of Law, University of Latvia *Dr. iur. Christoph Johann Ulrich Schewe* – points out that the subjective entitlement of individuals to early retirement support is not linked to the interpretation of Regulation No 1257/99. They may be derived from Latvian national laws and regulations.

Regulation No 1257/99 did not originally provide for the possibility of inheritance of aid, but the European Commission made an error in harmonising the Member State's legislation which it subsequently had to correct. However, Latvian legislation provides for the protection of the rights of beneficiaries and their heirs. Regulation No 1002 has not been amended since the meeting of the European Commission's Committee on Rural Development of 19 October 2011, so that the beneficiaries and their heirs could still rely on the existence of their subjective rights.

In the present case, account must be taken of the particular circumstances in which the persons were granted early retirement support. In particular, it is

necessary to take into account the type of information on the Measure that was available to persons at the level of national law.

15. On 28 February 2017, the Constitutional Court, hearing the case in a hearing with the participation of the parties, adopted a decision to refer questions for a preliminary ruling to the Court of Justice of the European Union and to suspend the proceedings in the case until the ruling of the Court of Justice of the European Union enters into force.

The Constitutional Court asked the Court of Justice of the European Union the following questions:

1.1. In the light of the shared competence of the European Union and the Member States in the field of agriculture, are the provisions of Regulation No 1257/1999 to be interpreted, in conjunction with one of the objectives of that regulation – to involve farmers in an early retirement scheme – as precluding a Member State from adopting, within the framework of the measures for applying Regulation No 1257/1999, legislation which makes it possible to inherit early retirement support?

1.2. If the answer to Question 1 is affirmative, that is to say that the provisions of Regulation No 1257/1999 prohibit the inheritance of early retirement support, in a factual situation in which the legislation of the Member State was duly coordinated with the European Commission as complying with the provisions of Regulation No 1257/1999 and farmers took part in an early retirement measure in accordance with national practice, could a person have a subjective right to inherit aid granted under such a measure?

1.3. If the answer to the second question is in the affirmative, i.e. that the person could have acquired such a subjective right, can the conclusion of the European Commission's Rural Development Committee of 19 October 2011 that early retirement support is not applicable to the heirs of the transferor of the holding be regarded as a ground for the premature termination of that acquired subjective right?

16. On 7 August 2018, the Court of Justice of the European Union delivered its judgment in Case C-120/17 District Administrative Court v Cabinet of Ministers ("Judgment of the Court of Justice of the European Union").

The Court of Justice of the European Union has answered the first question referred by the Constitutional Court that Articles 10 to 12 of Regulation No 1257/1999 must be interpreted as precluding Member States, in implementing those Articles, from adopting measures which would allow the inheritance of early retirement support such as that at issue in the main proceedings.

On the other hand, to the second and third questions, the Court of the European Union has answered that the principle of legitimate expectations can be interpreted as follows: a national legal provision such as the one discussed in the main case, which provides for the possibility of inheriting early retirement support and which the European Commission approved as being in accordance with Regulation no. 1257/1999, has created legitimate expectations for the heirs of farmers who received this support, and the conclusion recorded in the minutes of the meeting of the Committee for Rural Development of the European Commission on 19 October 2011 and according to which the mentioned support is not inheritable, has not terminated this legitimate expectation.

17. At its discretionary hearing on 29 October 2018, the Constitutional Court decided to re-examine the case before the full court in a written procedure. The Constitutional Court concluded: in order to prevent that the interests of the proceedings in a given case could be jeopardised to the extent that during the examination of the case the composition of the court would be less than five Constitutional Court judges and the proceedings in the case would become impossible, the Constitutional Court must examine the case with a new composition of the court after the ruling of the Court of Justice of the European Union enters into force, if the composition of the Constitutional Court judges has changed during the suspension of the proceedings.

Conclusions

18. The Applicant requests to assess compliance of the contested norm with Article 105 of the Constitution. In order to establish whether the contested norm applies to the fundamental right included in this Article, namely the right to property, the Constitutional Court must first of all establish the content of this Article.

18.1. 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."

The contested norm does not provide for compulsory expropriation of property within the meaning of the fourth sentence of Article 105 of the Constitution. Therefore, in the framework of the present case, it is necessary to assess compliance of the contested norm with the first three sentences of Article 105 of the Constitution.

18.2. The Constitutional Court has concluded that Article 105 of the Constitution provides for both the unimpeded exercise of the right to property and the right of the State to restrict the use of property in the public interest (*see, for example, the conclusion part of the Constitutional Court's judgment of 20 May 2002 in Case No 2002-01-03*). Article 105 of the Constitution establishes a comprehensive guarantee of property rights. The "right to property" is understood to mean all rights of a property nature which the entitled person may use for his or her own benefit and which he or she may dispose of at his or her own will (*see, for example, Clause 7 of the judgment of the Constitutional Court of 27 October 2010 in case No. 2010-12-03 and Clause 15.2 of the judgment of 3 November 2011 in case No. 2011-05-01*).

Claims that could be enforced if there was a clear legal basis for them can be considered property. Also, future income shall be considered as property if it has already been earned or if there is a claim that can be satisfied (*see Clause 7 of the Constitutional Court's judgment of 27 October 2010 in Case No 2010-12-03 and*

Clause 15.2 of the judgment of 3 November 2011 in Case No 2011-05-01). In addition, the claim must be one that can be regarded as legitimate. The right to property also includes contractual rights with economic value (*see Clause 8.2 of the Decision of the Constitutional Court of 20 April 2010 on termination of proceedings in Case No 2009-100-03*). The right to receive payments provided for in a contract shall be considered as an object of property rights within the meaning of Article 105 of the Constitution (*see Clause 14.1 of the Constitutional Court's judgment of 3 July 2015 in Case No 2014-12-01*).

18.3. In accordance with the principle of unity of the Constitution, although the case under examination has been initiated on the incompatibility of the contested norm with Article 105 of the Constitution, the Constitutional Court must also take into account the general principles of law and the rights enshrined in other norms of the Constitution. In the present case, the principle of legitimate expectations, which is part of the scope of Article 1 of the Constitution and is derived from the fundamental norm of a democratic State governed by the rule of law, is of fundamental importance.

The principle of legitimate expectations protects the rights once acquired by a person, i.e., a person may rely on the fact that the rights acquired in accordance with a valid legal act will be preserved and actually implemented within a certain period of time (*see Clause 16.2 of the Constitutional Court's judgment of 8 March 2017 in Case No 2016-07-01*). However, this principle does not prevent the State from amending the existing framework in a legal manner. In such a case, the rights that the person may have a legitimate expectation of preserving or exercising must be taken into account. The principle of legitimate expectations requires that the State, when changing a normative regulation, observes a reasonable balance between a person's expectations and those interests for the sake of which the regulation is changed (*see paragraph 4 of the Constitutional Court's judgment of 6 December 2010 in Case No 2010-25-01 and paragraph 11 of the decision of 6 October 2015 on discontinuing proceedings in Case No 2014-35-03*).

18.4. Latvia is obliged to fulfil its obligations under the EU Accession Treaty upon accession to the European Union. In particular, with the ratification of the

Treaty on Latvia's accession to the European Union, European Union law has become an integral part of Latvian law. Under the Treaty, Latvia is also bound by laws and regulations adopted by the EU institutions. The interpretation of these acts established in the case law of the Court of Justice of the European Union is binding when applying national normative acts in order to prevent possible contradictions between the legal norms of Latvia and the European Union (*see Paragraph 24.2 of the Constitutional Court's judgment of 17 January 2008 in Case No 2007-11-03 and Paragraph 13 of the judgment of 11 April 2018 in Case No 2017-12-01*).

The case law of the Court of Justice of the European Union has recognised that when Member States adopt measures to implement European Union law, they must respect the general principles of that law, including the principle of legitimate expectations (*see paragraph 31 of the judgment of the Court of Justice of the European Union in Joined Cases C-181/04 to C-183/04 Elmeka, ECLI:EU:C:2006:563, 14 September 2006*). Anyone who has been given a legitimate expectation by a public authority, based on specific promises, is entitled to rely on this principle. In such a case, it must be examined whether the conduct of the institution in question has given rise to a legitimate expectation on the part of the right-holder and whether that expectation must be regarded as legitimate (*see paragraphs 44 and 45 of Case C-183/14 Salomie and Oltean, ECLI:EU:C:2015:454, judgment of the Court of Justice of the European Union of 9 July 2015*).

18.5. In clarifying the content of the human rights norms contained in the Constitution, Latvia's international human rights obligations must be respected. Article 105 of the Constitution is to be concretised and applied in conjunction with Article 1 of the Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - the Convention) (*see, for example, Paragraph 10 of the Judgment of the Constitutional Court of 26 April 2007 in Case No 2006-38-03 and Paragraph 9.1 of the Judgment of 7 June 2012 in Case No 2011-19-01*). Thus, as regards the content of Article 105 of the Constitution, the Constitutional Court takes into account the case law of the European Court of Human Rights on the application of Article 1 of Protocol No 1 to the Convention.

The European Court of Human Rights has recognised that the principle of legitimate expectations may be relevant in determining whether, in a particular case, there exists a right protected by Article 1 of Protocol No 1 to the Convention (*see, for example, paragraph 31 of the judgment of the European Court of Human Rights in Pressos Compania Naviera S.A. and Others v. Belgium, application No 17849/91, judgment of 20 November 1995*). "Property" may be either "existing property" or assets, including claims, in respect of which the applicant can establish that he has at least a legitimate expectation of obtaining an effective right to property (*see paragraph 57 of the judgment of the European Court of Human Rights of 22 January 2009 in Bulves AD v. Bulgaria, application No 3991/03*).

Thus, the principle of legitimate expectations may also be relevant in determining whether the contested norm affects such rights which are to be regarded as an object of property rights within the meaning of Article 105 of the Constitution. The scope of this Article also includes rights of a pecuniary nature in respect of which a person has a legitimate expectation.

19. In order to assess compliance of the contested norm with the fundamental right enshrined in Article 105 of the Constitution, i.e. the right to property, it is first necessary to establish what in the case under examination is to be regarded as an object of the right to property and whether the contested norm restricts such right.

19.1. Until the contested norm entered into force, the Rural Development Plan provided that, if a beneficiary died during the period in which the early retirement pension agreement was in force, his monthly pension for the remainder of that period continued to be paid to the person whose right of succession had been confirmed under national law. As set out in Chapter 9.3 of the Rural Development Plan, the legal basis for the measure is Title IV of Regulation No 1257/1999 (Articles 10–12) and Chapter 4 of Regulation No 817/2004 (Articles 7–10). In the case under examination, the Constitutional Court is required to assess the legal nature of inheritance of aid received under the Measure in the light of the legal framework contained in the European Union legislation and the case law of the Court of Justice of the European Union.

The judgment of the Court of Justice of the European Union concludes that Articles 10 to 12 of Regulation No 1257/1999 preclude Member States from taking measures which allow the inheritance of early retirement support such as that at issue in the present case. It follows from those Articles of Regulation No 1257/1999, when read in the light of the objectives of the measure, that the aid to be granted to the transferor is subject to conditions characterised by a strictly personal link with the transferor himself and that, consequently, those Articles must be interpreted as precluding Member States from providing for the inheritance of said support (*see paragraph 39 of the judgment of the Court of Justice of the European Union*). The main objective of this aid is to provide an economic incentive for older farmers to leave farming earlier (in circumstances where they would not normally do so), rather than to supplement the income of the transferor. Consequently, early retirement support, because of its personal nature, cannot be passed on to the heirs of the transferor on his death (*see paragraph 45 of the judgment of the Court of Justice of the European Union*).

However, the Court of Justice of the European Union has held that Articles 10 to 12 of Regulation No 1257/1999 cannot be regarded as provisions of European Union law which are sufficiently clear to enable persons to understand that Member States are prohibited from providing for the inheritance of early retirement support. Acting pursuant to Article 44(2) of Regulation No 1257/1999, on 30 July 2004 the European Commission approved a Rural Development Plan which provided that early retirement support was to be inheritable (*see paragraphs 55 and 56 of the judgment of the Court of Justice of the European Union*).

The heirs of the beneficiaries of the early retirement support based their succession rights on the Member State's legislation, the content of which had been approved by the European Commission and which did not manifestly conflict with Articles 10 to 12 of Regulation No 1257/1999. The early retirement agreements between the Rural Support Service and farmers who gave up their farms in exchange for early retirement support also provided for the right to inherit this support. In those circumstances, the Court of Justice of the European Union has concluded that the expectations which those heirs could reasonably have entertained as to the

legitimacy of their succession rights must be regarded as legitimate (*see paragraphs 64 and 65 of the judgment of the Court of Justice of the European Union*). However, the conclusions adopted by the Committee on Rural Development of the European Commission at its meeting of 19 October 2011 that the aid in question was not inheritable were addressed only to the Member States and did not lead to any amendment of the legal framework providing for the possibility of inheriting early retirement support until the contested norm was adopted (*see paragraph 70 of the judgment of the Court of Justice of the European Union*).

19.2. The scope of Article 105 of the Constitution includes the right to direct State support in the form of a specific sum of money established in a normative act, provided that certain requirements of normative enactments are fulfilled (*see, for example, paragraphs 8-10 of the 27 October 2010 Constitutional Court Judgment in Case No 2010-12-03*). The right of the transferor to receive payments under the Measure shall be considered as an ownership right in accordance with the provisions of Regulation No 1002 and Regulation No 1257/1999, as well as the contracts concluded with the Rural Support Service. Sub-section 12.3.2 of the Rural Development Plan, under the heading "Early retirement", point "a", explicitly stated that these rights were inheritable.

In accordance with the previous paragraph of this judgment, the provision of subsection "a" of subsection 12.3.2 of the section "Early retirement" of the Rural Development Plan 'If the beneficiary dies during the period in which the early retirement agreement is in force, his monthly pension for the remaining period shall continue to be paid to the person whose right of succession has been confirmed under national law' was duly agreed with the European Commission and thus created a legitimate expectation for the heirs of the farm leavers that the right to receive payments under the Measure is heritable.

However, the fact that contracts were concluded with the Rural Support Service for the granting of early retirement support could only have reinforced the confidence of both the farmers who signed those contracts and their heirs that the succession to the aid provided for in Regulation No 1002 was lawful (*see paragraph 59 of the judgment of the Court of Justice of the European Union*). The case

materials contain a certificate of inheritance in which the early retirement pension capital – a certain sum of money – is indicated as part of the accepted inheritance (*see Volume 1 p. 17 of the case file*). It also appears from the case-file that the aid granted to the transferor under the Measure continued to be paid to his heirs (*see Volume 1 p. 21 of the case materials*).

Taking into account the above, the Constitutional Court concludes that, when concluding an agreement on granting aid under the Measure, persons (both the farm transferor and his heirs) could rely on the transfer of payments granted under the Measure to the transferor's heirs. Thus, in the circumstances, the right of the heirs of the transferor to receive early retirement support payments under the Measure after his death is also an object of property rights. By adopting the contested norm, the Cabinet of Ministers has restricted the above-mentioned rights, preventing the heirs of the transferor from receiving aid payments under the Measure. Consequently, the contested norm restricts the rights of the heirs of the returning holdings which fall within the scope of the fundamental right to property.

Consequently, the contested norm restricts the fundamental rights of persons established in Article 105 of the Constitution.

20. The right to property is not absolute. Article 105(3) of the Constitution provides that they may be limited, but only in accordance with the law.

The Constitutional Court has concluded that the word "law" cannot be interpreted grammatically and covers not only laws adopted by the Saeima in their formal sense, but also other external normative acts, provided that they:

1) Are issued on the basis of the law and in accordance with the procedure laid down in the laws and regulations;

2) are published and made publicly available in accordance with the requirements of regulatory enactments;

3) are sufficiently clearly formulated to enable a person to understand the content of the rights and obligations arising therefrom and to foresee the consequences of their application, as well as these normative enactments ensure protection against their arbitrary application (*see the Conclusion Part of the*

Constitutional Court's Judgment of 20 May 2002 in Case No 2002-01-03 and Clause 14 of the Judgment of 8 December 2015 in Case No 2015-07-03).

Compliance with the procedure of adoption of a legal norm is a precondition for the validity of a legal norm (*see Clause 10.4 of the Constitutional Court's judgment of 21 November 2005 in Case No 2005-03-0306 and Clause 23 of the judgment of 21 December 2015 in Case No 2015-03-01*). The contested norm was adopted on 14 April 2015 with reference to Section 5(7) of the Rural Development Law, which empowers the Cabinet of Ministers to establish the procedure for the administration and monitoring of State and European Union support for agriculture and the procedure for the administration and monitoring of State and European Union support for rural and fisheries development (*see Minutes of the Cabinet of Ministers No 20 of 14 April 2015, item 41*). The contested norm was published in the official gazette *Latvijas Vēstnesis* on 16 April 2015 [*see: Latvijas Vēstnesis, 16 April 2015, No. 74 (5392)*] and entered into force on 30 April 2015.

The parties to the case and the invited persons to the proceedings agree and there are no materials in the case which would raise doubts that the contested norm has been adopted in accordance with the procedure established by normative enactments, published and publicly available in accordance with the requirements of normative enactments. The contested norm is sufficiently clearly formulated to enable a person to understand the content of the rights and obligations arising therefrom and to foresee the consequences of its application. However, whether the restriction of fundamental rights contained in the contested norm is permissible in substance must be assessed by ascertaining whether the restriction has a legitimate aim and whether the principle of proportionality has been respected.

Consequently, the restriction of the fundamental right contained in the contested norm is established by law.

21. Any restriction of fundamental rights must be based on circumstances and arguments why it is necessary, i.e., the restriction is imposed for the sake of important interests – a legitimate aim (*see, for example, Clause 9 of the Constitutional Court's judgement of 22 December 2005 in Case No 2005-19-01*).

21.1. If a restriction of the right has been established, then the obligation to present and justify the legitimate aim of such restriction in the Constitutional Court proceedings is first of all incumbent on the institution that has issued the contested act, in the particular case – the Cabinet of Ministers (*see, for example, paragraph 12 of the Constitutional Court's judgment of 1 November 2012 in Case No 2012-06-01 and paragraph 18 of the judgment of 11 December 2014 in Case No 2014-05-01*). The Cabinet of Ministers points out that the legitimate aim of the contested norm is to prevent Regulation No 1002 from being incompatible with the norms of Regulation No 1257/99, as well as to comply with the principle of efficient and effective use of the financial resources of the European Union and Latvia (*see the Cabinet of Ministers' reply in Volume 1 p. 83 of the case materials*). The reply also highlights the financial benefits for other workers in the agricultural sector of applying for support under other measures (*see the Cabinet of Ministers' reply in Volume 1 p. 84 of the case-file*).

However, the annotation to the draft contested norm mentions that, in practice, during the implementation of the Measure, situations have arisen in which, inter alia, the beneficiary has given away the farm to his heirs and, after his death, the transferees of the farm have also received the inherited aid or a part thereof within the framework of the Measure. In such cases, the aid has not been used efficiently and the objective of the measure – to promote the take-over and development of agricultural holdings by changing and improving their management and involving young and economically active people – has not been achieved.

21.2. Although the European Commission had recognised on 30 June 2004 that the inheritance of aid granted under the Measure was compatible with Regulation No 1257/1999, the meeting of the European Commission's Rural Development Committee on 19 October 2011 concluded that the Agricultural Guarantee Fund was not eligible for the inheritance of early retirement support (*see paragraph 10 of Minutes, Volume 1 p. 94 of the case-file*). The Court of Justice of the European Union has also answered the first question referred for a preliminary ruling that Articles 10 to 12 of Regulation No 1257/1999 must be interpreted as

precluding Member States, in implementing those Articles, from taking measures which would allow the aid granted under the measure to be inherited.

The unity of the legal system is an essential principle of a democratic state governed by the rule of law. That is, a country must have mutually consistent legal rules that work harmoniously within a single legal system. This applies equally to the compliance of the legal norms of Latvia, a Member State of the European Union, with European Union law, which is part of Latvian law.

The Constitutional Court has previously recognised that the legal norms of the European Union are compatible only with a national legal system which complies with the requirements of a democratic state governed by the rule of law (*see paragraph 6 of the Conclusions of the Judgment of the Constitutional Court of 5 March 2003 in Case No 2002-18-01*). In the present case, the Court of Justice of the European Union has held that a Member State, in the exercise of European Union law, has the discretion to amend its legal framework under which persons may inherit early retirement support (*see paragraph 66 of the judgment of the Court of Justice of the European Union*).

The principle of a democratic state governed by the rule of law requires the State to ensure that early retirement support is paid in a lawful manner that complies with European Union law. The restriction of the fundamental right provided for in the contested norm is established with the aim of eliminating the non-compliance of Regulation No 1002 with the provisions of Regulation No 1257/99. Thus, the restriction of fundamental rights contained in the contested norm has a legitimate aim – protection of the democratic state order.

21.3. The Constitutional Court has concluded that the aim to protect the well-being of the society may also be understood as the need to use the financial resources at the disposal of the State as efficiently and reasonably as possible (*see Clause 17.4 of the Constitutional Court's judgment of 3 May 2012 in Case No 2011-14-03*). The continuation of the economically unprofitable practice – payment of aid to the heirs of the transferors – may adversely affect other farmers by reducing their aid payments (*see Cabinet of Ministers' response letter, Vol. 1, p. 83, and Ombudsman's opinion, Vol. 1, p. 134*). Thus, taking into account the above, the

legitimate aim of the restriction of the fundamental right contained in the contested norm should also be recognised as the protection of the welfare of the whole society, including other farmers, by preventing the contradiction of Regulation No 1002 with the norms of Regulation No 1257/99, as well as the inefficient use of financial resources of the European Union and the Republic of Latvia.

Consequently, the restriction on fundamental rights included in the contested norm has legitimate aims – the protection of the democratic state order and the protection of the public welfare established in Article 116 of the Constitution.

22. The Constitutional Court has concluded that, when establishing the legitimate aim of a restriction on fundamental rights, it is necessary to assess the compliance of that restriction with the principle of proportionality and thus to ascertain:

1) whether the means used by the legislator are appropriate to achieve the legitimate aim, i.e. whether the contested norm is capable of achieving the legitimate aim of the restriction;

2) whether such action is necessary, i.e. whether the aim cannot be achieved by other means less restrictive of the person's rights;

3) whether the legislator's action is appropriate, i.e. whether the benefit to society outweighs the harm to a person's rights.

If it is recognised that the restriction established in a legal norm does not comply with at least one of these criteria, then the restriction also does not comply with the principle of proportionality and is unlawful (*see, for example, Clause 11 of the Constitutional Court's judgement of 16 May 2007 in Case No 2006-42-01 and Clause 12 of the judgement of 18 March 2011 in Case No 2010-50-03*).

23. When assessing whether the chosen measures are appropriate to achieve the legitimate aims, the Constitutional Court examines whether the chosen measures are capable of achieving the legitimate aims. Thus, the Constitutional Court must ascertain whether, by discontinuing payments under the Measure to persons who

inherit the aid in question, it is possible to prevent contravention of Regulation No 1002 with the provisions of Regulation No 1257/99, as well as wasteful use of European Union and State funds.

23.1. The adoption of the contested norm complies with the conclusions of the meeting of the European Commission's Committee on Rural Development of 19 October 2011. The contested norm is consistent with the finding in the judgment of the Court of Justice of the European Union that Articles 10 to 12 of Regulation No 1257/1999 preclude Member States from taking measures which allow the inheritance of early retirement support. Thus, the restriction of fundamental rights contained in the contested norm achieves the objective of safeguarding the democratic order of the State, since after the entry into force of the contested norm, early retirement support is paid in a manner compatible with the norms of European Union law.

23.2. It is evident from the case materials that the Measure was not sufficiently effective and did not contribute significantly to the achievement of its objectives (*see the opinion of the State Audit Office on p.121 of the case materials*). The contested norm prevents the wasteful use of European Union and State financial resources and enables savings of almost 2 million euro, i.e. an amount exceeding the amount already paid to the heirs of the transferors (*see the Cabinet of Ministers' reply in Vol. 1 p. 80 of the case materials*). In the present case, the means chosen by the Cabinet of Ministers are based on objective and rational considerations. Consequently, the restriction of the fundamental right contained in the contested norm also contributes to the well-being of society, since the funds saved after the entry into force of the contested norm can be used for other support measures.

Taking into account the above, the measures chosen by the Cabinet of Ministers are appropriate in order to achieve the legitimate aims.

24. When assessing whether the chosen measures are necessary to achieve the legitimate aims, the Constitutional Court examines whether the legitimate aims could not be achieved by other, less restrictive means which would be equally effective.

When assessing whether the legitimate aim could also be achieved by other means, the Constitutional Court emphasises that a more lenient measure is not any other measure, but only a measure which can achieve the legitimate aim at least in the same quality (*see Clause 19 of the Conclusion Part of the Constitutional Court's judgment of 13 May 2005 in Case No 2004-18-0106 and Clause 20.2 of the judgment of 28 November 2014 in Case No 2014-09-01*). The Constitutional Court cannot replace the discretion of the legislator with its opinion on the most rational legal regulation (*see, for example, Clause 20 of the Constitutional Court's judgment of 19 December 2011 in Case No 2011-03-01*).

The country has the right to determine its own agricultural policy, including by choosing which programmes to support as a priority and by balancing the support it gives to different farmers. The State is not entitled to continue to support farmers' heirs on the basis of a provision which is not in conformity with Articles 10 to 12 of Regulation No 1257/1999. The use of European Union funds and funds of the Republic of Latvia to support other workers in the agricultural sector to the extent that will not be paid to the heirs of the transferors until 2021 is not possible in any other way than by adopting the contested norm.

In view of the answer given in the judgment of the Court of Justice of the European Union to the first question referred for a preliminary ruling by the Constitutional Court, namely that Articles 10 to 12 of Regulation No 1257/1999 preclude Member States from taking measures which would allow the inheritance of aid under the Measure, any further conflict between the relevant provision of Regulation No 1002 and Articles 10 to 12 of Regulation No 1257/1999 could be eliminated only by adopting the contested norm. Therefore, the Constitutional Court agrees with the Cabinet of Ministers' indication that in the given case it was not possible to choose other means to achieve the legitimate aims, but only to suspend the payment of the aid to the heirs of its beneficiary.

Thus, there are no more lenient measures of achieving the legitimate aims of the restriction of a fundamental right at least in the same quality.

25. When assessing whether a restriction on a fundamental right contained in the contested norm is compatible with the legitimate aims, it must be ascertained whether the adverse consequences which a person suffers as a result of the restriction on his fundamental right do not outweigh the benefit which society as a whole derives from that restriction.

25.1. The heirs of the transferor are persons who are not parties to the contract granting aid under the Measure. This has also been pointed out by the Court of Justice of the European Union (*see paragraph 64 of the judgment of the Court of Justice of the European Union*). In contrast, the regulatory enactments impose a number of requirements on the transferor and transferee of the holding, who are the parties to the contract.

Thus, according to Article 11(1) of Regulation No 1257/99, a transferor of a farm shall: stop all commercial farming activity definitively; he may, however, continue non-commercial farming and retain the use of the buildings, be not less than 55 years old but not yet of normal retirement age at the time of transfer, and have practised farming for the 10 years preceding transfer. The conditions for granting support under the Measure to the transferor are also laid down in the Rural Development Plan. If the transferor meets the criteria set out in the Rural Development Plan, he can receive a monthly pension for 15 years from the date of the decision – approval – but no longer than until he reaches the age of 75.

However, in accordance with Article 11(2) of Regulation (EC) No 1257/99, the transferee of the farm shall succeed the transferor as the head of the agricultural holding or take over all or part of the land released. The economic viability of the transferee's holding must be improved within a period and in compliance with conditions to be defined in terms of, in particular, the transferee's occupational skill and competence and the surface area and volume of work or income, according to the region and type of production. The Rural Development Plan also sets specific criteria for the transferee farm.

It follows from the above that the support under the Measure is granted to the farm transferor for his early retirement and his personal decision to completely cease economic activity under conditions which are closely linked to the farmer himself

and not to any other persons. The main purpose of this aid is not to supplement the income of the transferor. This has also been pointed out by the Court of Justice of the European Union (*cf. paragraph 45 of the judgment of the Court of Justice of the European Union*). However, the persons whose fundamental rights are restricted by the contested norm, i.e. the heirs of the transferor of the farm, have not been related to the criteria provided for in the indicated normative enactments, nor have they proved their compliance with any requirements of these normative enactments.

Taking into account the above, the Constitutional Court disagrees with the Applicant's submission that the support under the Measure is equivalent to compensation for property, which is due to both the transferor of the farm and his heirs. This is also indicated by a specific purchase contract, where the amount of the sale of the property in question is much lower than the amount of the aid granted under the Measure (*see case materials, Vol. 1 p. 29 and p. 30*). It should be noted that the transferor has the right to dispose of his/her property as he/she sees fit and that the disposal is made on an independent basis. In the case of a gift of a holding, the heirs of the donor of the holding have the right to claim from the donee the inalienable portions of the estate that belong to them, subject to the provisions of the Civil Law.

25.2. It follows from the documents of elaboration of the contested norm and the Cabinet of Ministers' reply that the contested norm has been adopted in order to eliminate contradictions existing in the national legal framework with the legal acts of the European Union. If the European Commission finds that the payment of aid under the Measure does not comply with the requirements of Regulation No 1257/99, it may recover from the Member State the amount unduly paid and impose a surcharge (*see the Cabinet of Ministers' reply in Vol. 1 p. 83 of the case materials*).

The Court of Justice of the European Union has held that economic operators have no reason to rely on the fact that, in implementing European Union law, Member States will not modify the legal framework under which persons may inherit early retirement support (*see paragraph 66 of the judgment of the Court of Justice of the European Union and paragraph 45 of its judgment of 22 October 2009 in Case C-449/08 Elbertsen, ECLI:EU:C:2009:652*). The public law contracts

granting aid under the Measure also contain a provision on the State's right to modify the aid (*see case materials, Vol. 1, p. 15 and p. 16*). The Constitutional Court agrees with the Cabinet of Ministers' submission in the case under examination, namely: the legal regulation that is contrary to the European Union law must be amended in such a way that the payment of aid under the Measure is discontinued.

25.3. In the circumstances set out above, there is no legal basis for the heirs of the transferor of the holding, in whose possession the aid granted under the Measure has passed, to continue to receive payments of early retirement support granted to a person other than themselves, which are precluded by European Union law. The Cabinet of Ministers, by suspending the provision of aid under the Measure not in its entirety – although such a solution has been proposed by the State Audit Office due to the ineffectiveness of the Measure – but only in respect of one group of persons who are not party to the contract on the provision of aid under the Measure, and moreover by not requiring those persons to repay the aid previously received, has proportionately balanced the interests of various persons. Thus, the benefit which society derives from the restriction of the fundamental rights of the heirs of the transferors of the holding included in the contested norm outweighs the harm caused to the rights and legitimate interests of a person.

Consequently, the restriction on the fundamental rights of a person included in the contested norm is proportionate and complies with the first three sentences of Article 105 of the Constitution.

Decisions part

Pursuant to Sections 30-32 of the Administrative Procedure Law, the Constitutional Court:

resolved as follows:

**to declare Cabinet of Ministers Regulation No 187 of 14 April 2015
"Amendment to Cabinet of Ministers Regulation of 30 November 2004 No 1002**

"Procedure for Implementation of the Programme Document "Latvian Rural Development Plan for Implementation of the Rural Development Programme 2004-2006"" as compatible with Article 105 of the Constitution of the Republic of Latvia.

The judgment is final and non-appealable.

The judgment enters into force on the day of its publication.

Chair of the hearing

I. Ziemele