



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

---

## Judgement on Behalf of the Republic of Latvia in Riga on 30 October 2015 in Case No. 2014-36-01

The Constitutional Court of the Republic of Latvia, comprised of: chairperson of the court hearing Aldis Laviņš, Justices Kaspars Balodis, Kristīne Krūma, Gunārs Kusiņš, Sanita Osipova, and Ineta Ziemele,

having regard to Maksims Kargins' and Viktors Krasovickis' constitutional complaints,

on the basis of Article 85 of the *Satversme* of the Republic of Latvia and Para 1 of Section 16, Para 9 of Section 17 (1), as well as Section 19<sup>1</sup> and Section 28<sup>1</sup> of the Constitutional Court Law,

at the court hearing of 16 September 2015 examined in written procedure the case:

**“On Compliance of Section 8 (1) of “Law on Control of Aid for Commercial Activity” with Article 105 of the *Satversme* of the Republic of Latvia”.**

### The Facts

1. On 19 June 2014, the *Saeima* of the Republic of Latvia (hereafter – the *Saeima*) adopted in urgent procedure “Law on Control of Aid for Commercial Activity”, which entered into force on 1 July 2014.

The purpose of the said law is to ensure the rule of law in the implementation of aid for commercial activity, to specify the national control competence of Latvia and procedures in the field of aid for commercial activity in order to reduce the negative effect of aid on competition.

Section 8 (1) of “Law on Control of Aid for Commercial Activity” provides: “If a commercial company which is facing financial difficulties receives aid in accordance with the laws and regulations governing aid for commercial activities, from the moment of granting aid for commercial activities until the end of the provision of aid, observing the provisions laid down in the decision of the European Commission or national laws and regulations on granting aid and irrespective of the effective legal obligations of a commercial company, the commercial company is prohibited from fulfilling subordinated obligations (including the prohibition to repay a loan, calculate, accumulate or pay out interest or other remuneration for such loan) irrespective of the moment when the subordinated obligations were established.”

Two cases regarding the compatibility of Section 8 (1) of “Law on Control of Aid for Commercial Activity” (hereafter – the contested provision) with Article 105 of the *Satversme* of the Republic of Latvia (hereafter – the *Satversme*) have been initiated at the Constitutional Court. On 19 February 2015, the decision was made to join cases No. 2014-36-01 and No. 2015-02-01. Joint case No. 2014-36-01 retained its previous title “On Compliance of Section 8 (1) of “Law on Control of Aid for Commercial Activity” with Article 105 of the *Satversme* of the Republic of Latvia”.

**2. Applicants Maksims Kargins and Viktors Krasovickis** (hereafter also – the Applicants) hold that the contested provision is incompatible with Article 105 of the *Satversme* and request recognising it as being void since the date of its adoption.

**2.1.** It follows from M. Kargins’ application that, on 17 October 2012, M. Kargins obtained, on the basis of an agreement on gift, the property right to regular monthly income – interest payment from joint stock company “Reverta” (hereafter – Reverta) – the successor in law of the joint stock company “Parex banka” (hereafter – Parex banka) The right to receive interest payment is said to be derived from the agreement, concluded between Tatjana Kargina and Parex banka on 12 May 2008, on accepting and servicing a fixed-term deposit (hereafter – the Agreement on Fixed-term

Deposit). It is noted additionally in the application that, on 13 May 2008, additional agreement to the Agreement on Fixed-term Deposit had been concluded, which provided that the fixed-term deposit would be used as the bank's subordinated capital, envisaging prohibition to terminate the agreement and withdraw the amount of fixed-term deposit prior to the term set in the agreement, except for the case of liquidation of the bank.

Applicant Viktors Krasovickis notes in his application that, on 26 September 2007 and 30 October 2008, he had concluded Agreements on Fixed-term Deposit. Pursuant to the said agreements, V. Krasovickis had deposited in Parex banka financial resources for the term of ten years. Additionally, the interest rates had been set in the Agreements on Fixed-term Deposit. *Inter alia*, Parex banka had undertaken to make monthly interest payments for the fixed-term deposit. Additional agreements to the said Agreements on Fixed-term Deposit had been concluded, providing that the fixed-term deposit would be used as the bank's subordinated capital, envisaging prohibition to terminate the agreement and withdraw the amount of fixed-term deposit prior to the term set in the agreement, except for the case of liquidation of the bank. On 4 December 2008, in turn, amendments to the Agreements on Fixed-term Deposit had been signed, changing, *inter alia*, the rate of interest payments to be disbursed to V. Krasovickis.

**2.2.** The Applicants note that, with the coming into force of the contested provision, not only the monthly disbursement of interest but also calculation and accumulation thereof had been discontinued.

The Applicants, referring to the case law of the Constitutional Court and the European Court of Human Rights (hereafter – ECtHR) state that Article 105 of the *Satversme* protects contractual rights of economic value and various economic interests, as well as various claims, the satisfaction of which can be demanded in the presence of clear legal grounds. Future income also should be regarded as property if it already has been earned or if a claim that can be satisfied exists. Hence, the right to interest income is said to be the right to property and fall within the scope of Article 105 of the *Satversme*.

The Applicants express the opinion that their property, i.e., the monthly interest payment, is being expropriated by the contested provision. Allegedly, it follows clearly

from the contested provision that the interest for the period when it is neither calculated nor accumulated will not be disbursed in the future.

The Applicants do not deny that property may be expropriated but only in compliance with the conditions regarding expropriation, included in Article 105 of the *Satversme*. Namely, property may be expropriated for public purposes only in exceptional cases on the basis of a specific law and in return for fair compensation.

The Applicants express the opinion that expropriation may take place only on the basis of a special law but the contested provision cannot be deemed as being such grounds for that reason alone that it is applicable to an undefined circle of persons. Moreover, it is “Law on Control of Aid for Commercial Activity” that should substantiate that expropriation is necessary for essential public needs and that this purpose cannot be reached by other, more lenient measures. The Applicants hold that such public needs that would justify expropriation of their property do not exist. Moreover, the issue of fair compensation, e.g., decreased interest rate, had not even been discussed with the Applicants.

**2.3.** The Applicants point out, *inter alia*, to shortcomings in the process of adopting the contested provision. I.e., the draft law, which comprised the contested provision, had not been prepared with care and had been adopted without sufficient discussions, moreover, in urgent procedure. The proposal regarding inclusion of the contested provision in the draft law had been submitted only for the second reading and, thus, the possibilities of the deputies, as well as the specialists of the Legal Bureau to review it had been limited. In the adoption of the contested provision, its purpose of public importance had not been discussed and whether the infringement on the Applicants’ rights was proportionate to the public benefit had not been assessed.

**2.4.** Upon familiarising himself with materials in the case, Uģis Grūbe, the Applicants’ authorised representative, notes that the *Saeima*’s opinion, expressed in its written reply, that legal proceedings should be terminated is not valid and requests the Constitutional Court to recognise that the contested provision unfoundedly infringes upon the Applicants’ fundamental rights, which are guaranteed by the fourth sentence of Article 105 of the *Satversme*, and that the procedure for restricting these rights, defined in the *Satversme*, has not been complied with.

3. The institution that issued the contested act – the *Saeima* – does not subscribe to the Applicants’ opinion and holds that the contested provision complies with Article 105 of the *Satversme*.

First and foremost, the *Saeima* requests the Constitutional Court to assess the expedience of continuing the legal proceedings with regard to M. Kargins’ constitutional complaint. The *Saeima* is of the opinion that there are doubts as to whether M. Kargins’ has the subjective right to receive interest payments in accordance with the Agreement on Fixed-term Deposit. I.e., the *Saeima* calls into question whether the contested provision infringes upon M. Kargins’ right to property.

3.1. The *Saeima* upholds the Applicant’s opinion that the right to receive interest payments might fall within the scope of Article 105 of the *Satversme*; however, it does not agree that the restriction on rights, envisaged in the fourth sentence of Article 105 of the *Satversme*, would apply to the Applicants. The *Saeima* notes that the fourth sentence of Article 105 of the *Satversme* regulates cases where the object of property to be expropriated has been individualised; moreover, the divestment of the title to property is irreversible. However, in the particular case, the legislator’s intention had not been expropriation of property but exercising the State’s right to restrict the use of property in public interests. Moreover, the contested provision is said to set out a restriction on exercising the right to property for a certain period, i.e., until the provision of the State aid is discontinued. An opinion is expressed in the *Saeima*’s written reply that, after provision of the State aid is discontinued, not only interest payments to the Applicant is continued but it is also possible to regain the interest payments that have not been received during the period while the State aid has been provided. Therefore, in the *Saeima*’s opinion, the compliance of the contested provision with the first three sentences of Article 105 of the *Satversme* should be examined.

3.2. The *Saeima* notes that the restriction on the right to property, included in the contested provision, has been established by a law, adopted in due procedure, has been established for a legitimate aim and complies with the proportionality requirements.

It is noted in the written reply that the legitimate aim of the contested provision, i.e., public welfare, is manifested as expedient use of the financial resources invested

in the commercial company in the form of aid for public needs and for ensuring national development, preventing, to the extent possible, the use of the received State aid for ensuring the interests of individual persons. Thus, the regulation, included in the contested provision, ensures that interests of the public and taxpayers are protected, *inter alia*, by stabilising business environment and strengthening fair competition.

The *Saeima* holds that the restriction on fundamental rights is proportionate. The *Saeima* notes that the measures, envisaged by the contested provision, are suitable for reaching the legitimate aim; moreover, there are no other measures that would allow reaching the legitimate aim in the same quality. The legitimate aim can be reached only if prohibition to fulfil a commercial company's subordinated obligations is established in the contested provision, as well as the obligation of applying it with immediate effect is included. The *Saeima* is also of the opinion that the benefit that society gains from the restriction, included in the contested provision, outweighs the restriction on the Applicants' rights.

**3.3.** The *Saeima* expresses the opinion that the contested provision fully complies with the burden-sharing principle that is in force in the State aid law of the European Union (hereafter – the EU) with respect to commercial companies facing difficulties. The said principle is said to envisage that the State aid for companies in difficulties should be the ultimate measure when all other resources have been exhausted, *inter alia*, when the subordinated creditors have covered fully the respective losses by their own resources.

The contested provision is said to prevent a situation where the State aid to commercial companies in difficulties is used in the interests of subordinated creditors of these companies because it makes the said creditors to assume responsibility for the company's previous operations and losses, thus, decreasing the risk of careless actions. The *Saeima* also notes that, with respect to the subordinated creditors of Reverta, *inter alia*, the Applicants, the contested provision introduces into the Latvian law those regulations that follow from the burden-sharing principle, the implementation of which Latvia has undertaken in accordance with the Commission Decision (EU) 2015/162 of 9 July 2014 on the State aid SA.36612 (2014/C) (ex 2013/NN) implemented by Latvia for Parex (hereafter – the EC Decision on the State aid). Latvia is said to have the

obligation to ensure that neither the principal sum of the loan, nor interest is disbursed to the subjects of Reverta's subordinated obligations.

The *Saeima* draws attention to the fact that provisions of the EU law are applicable in the present case, regarding interpretation of which, in the *Saeima's* opinion, there are no doubts. If, nevertheless, the Constitutional Court has doubts regarding it then the *Saeima* requests the Constitutional Court to request from the Court of Justice of the European Union (hereafter – CJEU) a preliminary ruling regarding the interpretation of the EU law provisions necessary in reviewing the case.

**3.4.** On 20 July 2015, the Constitutional Court received the *Saeima's* explanations, in which the *Saeima* notes additionally that the immediate effect of the provision is explained both by the obligations following from the EU law and the immediate need to prevent further use of the State resources contrary to public interests. Moreover, the introduction of a transitional period would not reach the aim of the contested provision because the use of the State resources solely in the public interests would not be ensured.

**4.** The summoned person – **the Ministry of Finance** – upholds the opinion expressed in the *Saeima's* written reply regarding the content and interpretation of the contested provision and is of the opinion that the contested provision complies with Article 105 of the *Satversme*.

The Ministry of Finance points out that its proposal of 16 June 2014 to add to the draft “Law on Control of Aid for Commercial Activity” had been elaborated on the basis of several documents, *inter alia*, the European Commission's (hereafter – the EC) Communications, and that, in the course of drafting it, the compliance of the contested provision with the *Satversme* had been examined, likewise, the objections expressed by the Ministry of Justice had been taken into account i.e., the need to assess, additionally, also the proportionality of the contested provision.

**4.1.** The Ministry of Finance notes, *inter alia*, that regulation that is similar to the contested provision exists in the Republic of Slovenia. It had been introduced to make implementation of measures aimed at reinforcing the stability of the banking system possible, complying with the regulation on the State aid, defined in the EU,

*inter alia*, measures for reorganising the banking sector, the implementation of which requires the State resources.

The Ministry of Finance holds that the contested provision complies with the EU legal regulation in the area of State aid. The regulation, included in the contested provision, is said to follow directly from the guidelines and frameworks, issued by the EU, which are the grounds for recognising State aid as being compatible with the internal market. In 2012, the EC had launched the process of modernising the regulation on State aid and several legal acts had been adopted in this area. *Inter alia*, the EC Communication “Guidelines on State aid for rescuing and restructuring nonfinancial companies in difficulty” (2014/c 249/01) (hereafter – Guidelines on State Aid) was adopted in 2014

**4.2.** The Ministry of Finance points out that shareholders and investors of a commercial company must participate in the restructuring of the company, taking into account that they had benefitted the most when the company was functioning well. The burden-sharing principle is said to ensure that also shareholders and investors of a company participate in covering the losses incurred prior to receiving the State aid.

The principle of burden-sharing must be respected in all cases where the State plans to provide aid to companies in difficulties, including banks. However, each state enjoys discretion in choosing the most suitable way for ensuring it. Adoption of the contested provision should be deemed to be the most suitable way for ensuring that the burden-sharing requirements are met in Latvia.

**5.** The summoned person – **the Ministry of Justice** – holds that the contested provision complies with Article 105 of the *Satversme*.

The Ministry of Justice consents that the Applicants’ right to claim with respect to interest payment falls within the scope of Article 105 of the *Satversme*. The Ministry of Justice holds that the Applicants’ opinion that the contested provision established expropriation of their property is unfounded. In the case of expropriation of property, the title to an object of property or part thereof is completely lost. However, in the present case, the Applicants’ still retain their property as the right of claim against Reverta in the amount of entire deposit, as well as the right of claim regarding the interest payment.

The Ministry of Justice subscribes to the opinion, expressed in the *Saeima's* written reply, that the contested provision restricts exercise of the right to property for a certain period of time. The contested provision restricts exercising the right to property only within a certain period of time, i.e., while aid for commercial activities is provided. The fact that the Applicants, in exercising their right to claim, possibly, will receive lower income than forecasted does not mean that expropriation of property has taken place in the amount not received in the meaning of the fourth sentence of Article 105 of the *Satversme*. Allegedly, the contested provision establishes a restriction on exercising the right to property; however, this should be assessed within the scope of the third sentence of Article 105 of the *Satversme*.

In assessing the restriction on the Applicants' fundamental rights, the Ministry of Justice points out that it has been established by a law, adopted in due procedure. The Ministry of Justice also consents that the said restriction has a legitimate aim – to ensure protection for substantive public interests and taxpayers. The contested provision is said to be suitable for reaching the legitimate aim and the legislator, in adopting it, has considered whether the legitimate aim could not be reached by alternative measures, restricting individuals' rights to a lesser extent.

The Ministry of Justice notes that the regulation, set out in the contested provision, is aimed at meeting the criteria envisaged in the EC Guidelines of State Aid. The fact that the measures for enforcing the burden-sharing principle, implemented and planned by Latvia, have been approved in the EC Decision on State Aid, attests to the compliance of the contested provision with the EU law.

The Ministry of Justice holds that also the said Guidelines do not envisage more favourable measures for restricting the subjects of subordinated commitments because they prohibit any disbursements to the subjects of subordinated commitments. The Ministry of Justice is of the opinion that there are no equivalent alternative measures that would restrict the Applicants' rights to a lesser extent and also the benefit gained by society outweighs the restriction on an individual's rights. I.e., this ensures that the public financial resources, obtained by a private commercial company in the form of State aid, are effectively repaid into the State budget rather than being used to ensure the interests of some persons.

6. The summoned person – **the Ombudsman of the Republic of Latvia** (hereafter – the Ombudsman) – holds that the contested provision complies with Article 105 of the *Satversme*.

The Ombudsman subscribes to the arguments expressed in the *Saeima*'s written reply and notes that the present case should be reviewed within the scope of the second and third sentence of Article 105 of the *Satversme*. In the Ombudsman's opinions, this is attested by the content of the contested provision. Neither the contested provision nor its preparatory documents prove that it had been adopted solely with respect to the subjects of Reverta's subordinated commitments. The contested provision is said to be abstract and apply to an extensive range of unidentifiable persons. The Applicants' are not deprived of the right to interest payments but this right is only temporarily restricted – from the moment when the aid for commercial activities is granted until this aid is discontinued.

The Ombudsman notes that the said restriction on fundamental rights had been established by a law. The Applicants are of the opinion that the draft law had been proceeded with in great haste; however, the Ombudsman holds that the urgency had not substantially influenced the adopted legal regulation, *inter alia*, also the contested provision. The contested provision is said to have a legitimate aim – to prevent a situation where commercial companies that have received or plan to receive aid and who have subordinated commitments primarily secure not the repayment of the received aid but fulfil the subordinated commitments. Thus, the contested provision is said to ensure, to the extent possible, the interests of society and taxpayers.

In assessing the proportionality of the restriction on fundamental rights, included in the contested provision, the Ombudsman underscores that the regulation set out in the contested provision is related to the EU law. CJEU has recognised that the EC Communications are to be considered legal acts that regulate the relations between the EC and Member States in the area of State aid. The Ombudsman notes that the measures, chosen by the legislator, are suitable for reaching the set aim because transposition of the principles, enshrined in the EC Communications, to the national regulatory enactments should be recognised as a lawful and effective action. Moreover, the legitimate aim cannot be reached by other measures, less restrictive upon a person's fundamental rights.

The Ombudsman holds that the benefit gained by society outweighs the damage inflicted upon a person because the contested provision protects an entire sector of commercial activities against the turmoil caused by the economic crisis. Thus, society as a whole is being protected. Moreover, the contested provision is aimed at recovering as soon as possible the financial resources invested by the State and, thus, promotes public welfare. Whereas, in assessing the losses caused to an individual, it should be taken into consideration that any person, in establishing subordinated commitments, should be aware of the risk related to such transactions, which includes potential restrictions on or even loss of the right to property as the result of commercial activities.

The Ombudsman holds that the Constitutional Court should consider the need of referring a question for preliminary ruling to CJEU.

**7. The summoned person – association “Association of Latvian Commercial Banks”** (hereafter – the Association of Commercial Banks) – holds that the contested provision complies with Article 105 of the *Satversme*.

The Association of Commercial Banks notes that the contested provision envisages a fixed-term restriction on a person’s right to property, i.e., it establishes prohibition to calculate, accumulate and disburse interest for the loan from the moment when the aid for commercial activities is granted until the aid is discontinued. Hence, the restriction on the right to property should be reviewed within the scope of the second and third sentence of Article 105 of the *Satversme*.

The Association of Commercial Banks subscribes to the *Saeima*’s opinion that the legitimate aim of the contested provision is protection of public welfare. The Association of Commercial Banks also notes that the contested provision fully complies with the burden-sharing principle, introduced in the EU law on State aid, and prevents a situation where the State aid to commercial companies in difficulties is used in the interests of the subjects of subordinated commitments of the said companies. Hence, the restriction on the right to property, included in the contested provision, is said to be proportional.

8. The summoned person – **the Financial and Capital Market Commission** (hereafter – the Commission) – holds that the contested provision complies with Article 105 of the *Satversme*.

The Commission notes that, on 15 March 2012, the Council of the Commission adopted a decision by which the licence of a credit institution of Parex banka was annulled. Following the annulment of the licence, Parex banka had become a commercial company, which was no longer subject to supervision by the Commission and the requirements set out in the Credit Institution Law and subordinated regulatory enactments no longer were applicable to it.

The Commission draws attention to the fact that, in accordance with the Credit Institution Law, subordinated commitments, substantially, should be considered as loans of monetary resources to a credit institutions with special statutory provisions. Such a loan, which provides for early repayment only in the case of liquidation of the credit institution and satisfaction of the lender's claims only after the satisfaction of all other creditors' claims, is comparable to an investment in the capital and reserves of the credit institution.

The Commission, referring to the Constitutional Court's case law in case No. 2010-60-01, notes that in the area of credit institutions' operations, the level of protection for the subjects of subordinated commitments is much lower compared to the other clients of a credit institution, e.g., depositors. The Commission holds that the statements made regarding subordinated commitments are equally applicable not only to credit institutions but to the protection and fulfilment of contractual obligations of any creditor of a commercial company that receives State aid, *inter alia*, the Applicants. The Commission holds that any subject of subordinated commitments, also such that makes investments not in a credit institution but in a regular commercial company should be aware of the possible risks related to such investments and the fact that in the case where the commercial company experiences financial difficulties the level of protection for them would be lower than the level of protection for other clients.

The Commission subscribes to the opinion expressed in the *Saeima's* written reply that the creditors of subordinated commitments are not protected against the risk of commercial activities and must assume responsibility for the results and losses

incurred during the previous operations of the commercial company. This responsibility cannot be achieved otherwise but only by establishing restriction for creditors of subordinated commitments. The Commission points out that the restriction on the right to property, established in the contested provision, does not mean actual deprivation of the property because only the calculation and payment of interest, related to monetary resources lent through the subordinated commitments, are restricted during the period while the State aid is provided.

The Commission subscribes to the opinion expressed by the *Saeima* regarding the legitimate aim of the contested provision and points out that the restriction on the Applicants' rights, included in the contested provision, is proportional.

9. The summoned person – **Dr. iur. Māris Onževs** – notes that the *Saeima*, in adopting the contested provision, had the right to apply the prohibition to fulfil subordinated commitments also to persons who had concluded an agreement on fixed-term deposit before the adoption of the contested provision, *inter alia*, the Applicants. In such a situation, the contested provision is said to have immediate rather than retroactive effect.

Restriction of the rights of creditors, *inter alia*, the Applicants due to such interests that are related to recovery of monetary resources, invested in salvaging commercial companies in financial difficulties and preventing of insolvency, is said to be a proportionate measure. Moreover, the adoption of the contested provision and its application to the Applicants had been favourable to them because it had allowed, for several years during the period when State aid was provided, to receive interest from the subordinated loan, irrespective of the total financial investments made in the framework of State aid.

In view of the stability of the legal regulation that existed prior to the adoption of the contested provision and the general legitimate expectations, created by the State, regarding the right to receive interest also during the period when State aid is provided, the *Saeima* had to define a reasonable and proportional transition period, allowing the addresses of this provision to adapt to the changes in legal regulation. However, this conclusion might be different if the *Saeima* had adopted the contested provision due to immediate necessity or by fulfilling an EU requirement.

M. Onževs expressed the opinion that, although the contested provision had been adopted within a very short period of time, there were no doubts that the statutory order and procedure had been complied with. However, several circumstances that can be established in the process of adopting the contested provision prove that the requirements of good legislation and the right of the addressees of the contested provision, *inter alia*, the Applicants, to be timely and duly informed about the adoption of such legal regulation that significantly affects their right to property, could have been infringed upon.

10. The summoned person – **Dr. iur. Aivars Lošmanis** –, assessing the Applicants' right to receive interest payment, concludes that, pursuant to the concluded agreements, the Applicants have this right because the concluded agreements should be recognised as being valid.

A. Lošmanis notes that the main function of interest as compensation for the provision of foreign capital for use or the delay in return is to ensure the equivalence characteristic of a market economy, which includes the assumption that capital usually bears fruit.

A. Lošmanis subscribes to the opinion, expressed in the *Saeima's* written reply, that the concluded Agreements on Fixed-term Deposit, substantially, may be qualified as loan agreements, however, does not agree that T. Kargina no longer has the right to property with respect to the transferred monetary resources. Likewise, the claim to return the loaned principal amount cannot be considered as a claim related to the person of the creditor within the meaning of Section 1799 of the Civil Law. The law does not prohibit ceding such a claim to another person. Such a prohibition is not found in the Agreement on Fixed-term Deposit either.

A. Lošmanis points out that the prohibition, established in the contested provision, to calculate, disburse and accumulate interest should be considered as a restriction on the right to property in the scope of Article 105 of the *Satversme*. The Applicants had acquired claims regarding payment of interest, which have economic value, and the procedure for satisfying thereof has been clearly and unambiguously defined in the agreements. Interest should not be considered as being future income or

prospects but as existing right to claim, established by a civil law transaction, the exercise of which is prohibited by the contested provision.

Interest payment cannot be disbursed during the period while the State aid is provided because the contested provision comprises clear prohibition not only to disburse interest during this period but also to calculate and accumulate it. Hence, the statement made in the *Saeima's* written reply that after the period when the State aid is provided has ended the Applicants have legal remedies at their disposal for recovering the interest not received comes into direct contradiction with what is stipulated in the contested provision.

**11.** The summoned person – *Mg. iur. Solvita Harbaceviča* – points out that Latvia's obligation to adopt the contested provision had followed from the commitments that it had undertaken by the EC Decision on State Aid, which allowed Latvia to implement the intended additional State aid measures with respect to Parex banka.

S. Harbaceviča noted that the EC could include in its decision requirements the conditions, in case of compliance of which the State aid was considered compatible with the internal market, and determine the obligations that ensured the supervision of the execution of the decision. Para 5.5.3. of the EC Decision on State Aid is said to include Latvia's commitment to improve the burden-sharing measures, to prevent flow of money to Reverta's legacy subordinated creditors. To ensure that the additional measures of aid, identified by the EC, were compatible with the internal market, in the meaning of the EU rules on State aid, Latvia initiated several commitments, *inter alia*, undertook to improve the burden-sharing obligation, i.e., to ensure that no third party gained unfounded benefit from the additional State aid provided to Parex banka and Reverta. The contested provision had been proposed as one of the measures for involving into internal recapitalisation such creditors that had granted subordinated loans.

Latvia's commitments, included in the EC Decision on State Aid, cannot be considered as being Latvia's autonomous will. Most probably, they originated as the result of demands set by the EC. In order for a State to provide aid to a commercial companies in financial difficulties, it has to assume certain commitments.

S. Harbaceviča holds that the restriction on the right to property, established in the contested provision, should be analysed within the scope of the third sentence of Article 105 of the *Satversme*. Allegedly, the contested provision ensures that the State's property, i.e., the State aid provided, is used in public interests, to the extent possible. Moreover, it should be taken into account that the granting of State aid is aimed at preservation of property, although restricts the possibility to gain fruit from this property.

### **The Findings**

**12.** In the present case, the constitutional review has been initiated on the basis of constitutional complaints submitted by two persons. In its written reply, the *Saeima* requests the Constitutional Court to terminate legal proceedings in the part of the case that has been initiated on the basis of M. Kargins' constitutional complaint. The *Saeima* is of the opinion that the contested provision does not infringe upon M. Kargins' right, established in Article 105 of the *Satversme*.

To decide on continuing or terminating legal proceedings in this case, the Constitutional Court must examine separately the conditions pertaining to Applicant M. Kargins.

Pursuant to the Constitutional Court's case law, matters of procedural nature, *inter alia*, matters related to termination of legal proceedings, must be decided on before reviewing the constitutionality of a legal provision on its merits (*see, for example, Judgement by the Constitutional Court of 19 October 2011, Case No. 2010-71-01, Para 11, and Judgement of 27 June 2013. gada in Case No. 2012-22-0103, Para 10*).

**Thus, the Constitutional Court will examine, first and foremost, the *Saeima's* arguments regarding termination of legal proceedings in the part of the case that has been initiated on the basis of M. Kargins' constitutional complaint.**

**13.** Pursuant to Para 11 of Section 17 (1) of the Constitutional Court Law, a person may submit an application regarding initiation of a case, envisaged in Para 1 of

Section 16 of the Constitutional Court Law, in the case where their fundamental rights have been infringed upon, i.e., in the form of a constitutional complaint. Section 19<sup>2</sup>(1) of the Constitutional Court Law provides that “a constitutional complaint (application) may be submitted to the Constitutional Court by any person who considers that their fundamental rights as defined in the Constitution are infringed by legal norms that do not conform to the norms of higher legal force”, whereas Para 1 of the sixth part requires justifying the allegation that the fundamental rights of the applicant, defined in the *Satversme*, have been infringed upon. Hence, in the case of a constitutional complaint it is important to ascertain whether the Applicant’s fundamental rights, defined in the *Satversme*, have been infringed upon.

The *Saeima* holds that Applicant M. Kargins does not have the right to claim to interest payments, which follow from the concluded Agreement on Fixed-term Deposit. Namely, M. Kargins’ could not have acquired this right through the concluded agreement on gift (*see Case Materials, Vol. 1, pp. 182 – 185*).

Objections regarding the legality of the concluded agreements on gift and the rights and obligations of the parties that follow from them should be examined by a court of general jurisdiction. It follows from the materials in the case that Reverta continued disbursing interest payments to M. Kargins pursuant to the stipulations made in the Agreement on Fixed-term Deposit until the contested provision entered into force. Reverta has not contested the legality of the concluded agreements, i.e., it has not turned to a court of general jurisdiction. Whereas assessment of whether agreements, on the basis of which M. Kargins has acquired the right to receive interest payments, does not fall within the Constitutional Court’s jurisdiction.

The Constitutional Court will analyse, within the framework of its jurisdiction, the agreements concluded by the Applicants, *inter alia*, M. Kargins, insofar it is necessary for clarifying the content of the contested provision.

Hence, the *Saeima*’s arguments may not serve as the grounds for terminating legal proceedings in the present case.

In the presence of doubts whether the contested provision infringes upon the Applicant’s rights, established in Article 105 of the *Satversme*, the Constitutional Court usually examines this matter by clarifying the scope of Article 105 of the *Satversme*, as well as the content of the contested provision (*see, for example,*

*Decision by the Constitutional Court of 20 April 2010 on Terminating Legal Proceedings in Case No. 2009-100-03*). The Constitutional Court examines in its judgement whether the contested provision envisages a restriction on an applicant's fundamental rights and whether it complies with the *Satversme*.

**Hence, legal proceedings in the case shall be continued, examining both applications.**

14. The *Saeima* also points out in its written reply that, in the present case, the content that has been included into the EU legal provisions on granting State aid to commercial companies in financial difficulties should be clarified and that also the EC Decision on State Aid should be analysed. The *Saeima* is of the opinion that there are no doubts regarding correct interpretation and application of the EU legal provisions; however, if the Constitutional Court were to have such doubts the *Saeima* request the Constitutional Court to consider whether a questions should not be referred to CJEU regarding interpretation of the EU legal provisions (*see Case Materials, Vol. 1, p. 195*).

Article 267 of the Treaty on the Functioning of the European Union (hereafter – TFEU) provides that CJEU has jurisdiction to give preliminary rulings concerning the interpretation of the Treaties and the validity of legal acts of the Union. If such a question is raised in a case initiated at a court of Member State and this court considers that a ruling by CJEU is necessary to enable it to give judgement the court may request CJEU to give a ruling thereon. Where such a question is raised in a case reviewed by a court of a Member State whose rulings, in accordance with national legal acts, are not subject to appeal, this court must turn to CJEU.

The Constitutional Court's rulings are not subject to appeal, therefore, in case where the outcome in the case depends upon interpretation of the EU legal acts, the Constitutional Court must ascertain whether the particular matter has not been already explained by CJEU, whether the provisions of the respective legal acts are so clear that do not cause reasonable doubts and decide whether a preliminary ruling by CJEU is necessary (*see, for example, Judgement by the Constitutional Court of 28 May 2009 in Case No. 2008-47-01, Para 15.2.*).

The EU legal provisions on granting State aid and compatibility with the EU internal market, in the meaning of Article 107 and Article 108 of TFEU, as well as the EC Decision on State Aid are applicable in the present case. The Constitutional Court has already examined in its case law the EU legal provisions on granting State aid to commercial companies (credit institutions) in financial difficulties, as well as the principles derived from these provisions (*see Judgement by the Constitutional Court of 30 March 2011 in Case No. 2010-60-01 and Judgement of 19 October 2011 in Case No. 2010-71-01*). Moreover, several persons, summoned in the case, point out that the content of legal regulation on State aid is clear and unambiguous.

Thus, it follows from the materials in the present case that the content of the applicable legal provisions is clear.

**Thus, there is no need for the Constitutional Court to request a preliminary ruling.**

**15.** In clarifying whether the contested provision infringes upon the rights, included in Article 105 of the *Satversme*, the Constitutional Court will examine the arguments included in the constitutional complaints of both Applicants.

The Constitutional Court has recognised that Article 105 of the *Satversme* envisages a comprehensive guarantee for the right of financial nature and is not limited solely to the right to property. “The right to property” should be understood as all rights of financial nature that the eligible person has and may use on their own behalf and may handle as they wish. The right to property includes also contractual rights with economic value (*see Decision by the Constitutional Court of 20 April 2010 on Terminating Legal Proceedings in Case No. 2009-100-03, Para 8.2.*). Very different claims can be deemed to be property, i.e., such claims the satisfaction of which could be demanded if clear legal grounds exist. Likewise, future income should be deemed to be property if it has been earned already or if a claim that could be satisfied exists (*see Judgement by the Constitutional Court of 27 October 2010 in Case No. 2010-12-03, Para 7, and Judgement of 3 November 2011 in Case No. 2011-05-01, Para 15.2.*).

The contested provision prohibits a commercial company from meeting subordinated liabilities while receiving aid for commercial activities, *inter alia*,

accumulate, calculate and disburse interest for a loan, which gives the right to the lender, on the basis of the transaction concluded with the commercial company, to demand repayment of the loan pre-term only in the case of its insolvency or liquidation and after the claims of all other creditors have been satisfied but before the claims of the members or shareholders have been satisfied.

The amount of money that has been deposited in accordance with the Agreements on Fixed-term Deposit should be considered as being a loan in the meaning of “Law on Control of Aid for Commercial Activity”. The contested provision, in turn, prohibits the Applicants, during the period while the State aid is provided, from exercising the right to claim income from the said loan.

Participants in the case and the summoned persons agree that claims regarding receipt of interest in accordance with the Agreements on Fixed-term Deposit is to be considered as being object of the right to property in the meaning of Article 105 of the *Satversme* if there are clear legal grounds for it. In the present case, such is the Agreement on Fixed-term Deposit.

**15.1.** The Applicants hold that they are coercively deprived of their property, i.e., monthly income as interest, or it is being expropriated by the contested provision and request the Constitutional Court to recognise the contested provision as being incompatible with the fourth sentence of Article 105 of the *Satversme*.

The Constitutional Court has concluded that Article 105 of the *Satversme* envisages both exercise of the right to property without interference and the State’s right to restrict the use of property in public interests. Whereas the fourth sentence of the same article provides for the State’s right, in certain cases, to deprive of the right to property *de jure* (see, for example, *Judgement by the Constitutional Court of 20 May 2002 in Case No. 2002-01-03, The Findings*). These provisions envisage different criteria for reviewing the legality of a restriction, therefore it should be determined which of these provisions apply to the contested provision (see *Judgement by the Constitutional Court of 6 October 2010 in Case No. 2009-113-0106, Para 15*).

If the fourth sentence of Article 105 of the *Satversme* is applicable in the present case then the *Satversme* sets out special requirements that might influence also the existence and nature of the available legal remedies. Namely, expropriation of property is admissible only on the basis of such “a specific law”, which the legislator

adopts in exceptional cases (*see Judgement by the Constitutional Court of 16 December 2005 in Case No. 2005-12-0103, Para 22.2.*).

**15.2.** The contested provision determines a restriction on the use of property for the period from the granting of the aid for commercial activities until it is discontinued. Hence, the contested provision does not substantially deprive of the right to property but restricts for some time the Applicants' right to receive interest. As noted by summoned person A. Lošmanis, interest *per se* comprises the assumption that capital usually bears fruit (*see Case Materials, Vol. 3, p. 82*). Persons undertook the risk that in the case where the commercial company experienced financial difficulties the meeting of subordinated commitments could be restricted at the moment when the subordinated commitments were established, i.e., by agreeing to become the subjects of subordinated commitments.

The fact that possible income from interest for the use of capital decreases or even it is impossible to receive the remaining interest payments does not mean that the Applicants would be substantially deprived of the right to receive interest. The Applicants retain the respective property, i.e., the right to claim interest, because, by adopting the contested provision, the State does not take it in its ownership as would be in the case where the property were to be expropriated for public needs.

Hence, the restriction on fundamental rights, envisaged in the contested provision, does not fall within the scope of the fourth sentence of Article 105 of the *Satversme* because it cannot be considered as being expropriation of property for public needs. The contested provision prohibits a commercial company to fulfil the commitments that follow from the Agreements on Fixed-term Deposit for the period while it receives the State aid and, pursuant to this provision, the Applicants cannot exercise their right to claim interest. Thus, the contested provision restricts the Applicants' right to property.

The *Saeima* and persons summoned in the case agree that the restriction on fundamental rights should be reviewed within the scope of the first three sentences of Article 105 of the *Satversme* because the contested provision sets out a restriction on the exercise of the right to property.

**Thus, the restriction on fundamental rights, envisaged in the contested provision, should be reviewed within the scope of the first, the second and the third sentence of Article 105 of the *Satversme*.**

16. To review the constitutionality of the restriction on fundamental rights, established in Article 105 of the *Satversme*, it should be verified whether it has been defined by law, whether it has been set for a legitimate aim and whether it complies with the proportionality principle (*see, for example, Judgement by the Constitutional Court of 8 June 2007 in Case No. 2007-01-01, Para 22*).

17. To assess whether the restriction on the Applicants' right to property was established by a law, adopted in due procedure, the Constitutional Court must verify whether the contested provision had been adopted in compliance with the procedure defined in regulatory enactments (*see, for example, Judgement by the Constitutional Court of 8 April 2015 in Case No. 2014-34-01, Para 14*).

The Applicants' objections against the adoption of the contested provision, substantially, are linked to its adoption in urgent procedure and insufficient discussions about it.

At its sitting of 12 June 2014, the *Saeima* unanimously recognised the draft law as urgent (*see Transcript of the sitting of the Saeima of the Republic of Latvia of 12 June 2014 <http://www.saeima.lv/lv/transcripts/view/247>*). Adoption of the draft law in urgent procedure was linked to the need to adopt new regulation on aid for commercial activities that would be compatible with the EU legal acts in the area of State aid that were binding upon Latvia. The Constitutional Court points out that, pursuant to Article 75 of the *Satversme* and Section 92 of the Rules of Procedure of the *Saeima*, the legislator has the right to consider the expedience of examining a draft law in urgent procedure.

By the letter of 16 June 2014 No. 17-1-01/3343, addressed to the *Saeima* Budget and Finance (Taxation) Committee, the Minister for Finance submitted for the second reading a proposal to include the contested provision in the respective draft law (*see Case Materials, Vol. 2, pp. 192 – 202*). The Constitutional Court already has concluded that the *Saeima* has the right to adopt in the second reading also provisions

pertaining to a matter, which was not intended to be regulated in the initially submitted draft law (*see Judgement by the Constitutional Court of 16 December 2008 in Case No. 2008-09-0106, Para 6.5.*). Moreover, it follows from the preparatory materials of the draft law that the Ministry of Finance previously already had examined the need to adopt regulation similar to the contested provision. Likewise, already since 2009, discussions had continued in the *Saeima* about the need of regulation, similar to the contested provision, with respect to the subjects of subordinated commitments of credit institutions that receive State aid and, on 22 October 2009, the law “Amendments to Credit Institution Law” was adopted.

Assessment of the need for the contested provision, as well as of its compliance with the *Satversme* and Latvia’s international commitments had been annexed to the proposal submitted by the Minister for Finance to the responsible Committee. It also follows from the materials in the case that the responsible Committee had reviewed the documents, submitted by the Ministry of Finance, and had heard representatives of the Legal Bureau of the *Saeima* and experts of the sector.

Although the contested provision had been discussed within a very short period of time, it follows from the materials in the case that it had been adopted in compliance with the order and procedure set out in regulatory enactments.

**Hence, the restriction on fundamental rights has been established by law.**

**18.** Any restriction on fundamental rights should be based upon circumstances and arguments regarding the necessity for it, i.e., the restriction is established due to important interests – for a legitimate aim (*see, for example, Judgement by the Constitutional Court of 22 December 2005 in Case No. 2005-19-01, Para 9.*)

The letter by the Minister for Finance, submitted to the responsible Committee of the *Saeima*, by which the proposal to include the contested provision in the second reading of the draft law was submitted, provided extensive substantiation of the need for the contested provision and the following aim was defined: “[..] to prevent commercial companies that have received or plan to receive aid, which is granted to commercial companies in financial difficulties, and that have subordinated commitments from primarily not repaying the received aid but fulfilling subordinated commitments, which is contrary to the interests of society and taxpayers. [..] Pursuant

to the provisions set out in the draft law, it is presumed that the aid provided to commercial companies primarily will be used to ensure functioning of the commercial companies rather than realising the financial interests of some individuals ” (*see Case Materials, Vol. 1, p. 186*).

The *Saeima* states in its written reply that the aim of the contested provision is to ensure that commercial companies, which, while experiencing financial difficulties, had received aid for commercial activities, which pursuant to the EU or national regulatory legal acts on granting of the aid should be repaid before fulfilling subordinated commitments, would repay it first. It would ensure that the public financial resources, invested in the form of aid, would return to the State budget as soon as possible. This aim is compatible with the interests of entire society (*see Case Materials, Vol. 2, p. 193*).

The *Saeima* and several summoned persons noted additionally that the purpose of the contested provision was implementation of the burden-sharing principle, which exists in the EU law on State aid, the compliance with which is an essential pre-requisite for receiving the State aid.

If the State has become involved in salvaging and restructuring of such a commercial company, which without the State aid, most probably, would become insolvent, and as the direct result of the State aid the commercial company is able to continue functioning successfully, a situation where those subjects who benefited the most when the commercial company was doing well would not participate in its salvaging and reconstruction would not comply with the principle of justice. The contested provision ensures that the subjects of subordinated commitments do not receive unfounded benefits from the State aid, provided to the commercial company, and assume commensurate burden compared to the burden undertaken by taxpayers in the case when the said aid is provided to the commercial company (*see, for example, Judgement by the Constitutional Court of 19 October 2011 in Case No. 2010-71-01, Para 19.3.*). Thus, the restriction on the right to property, included in the contested provision, is aimed at ensuring public welfare.

**Hence, the legitimate aim of the restriction on fundamental rights, included in the contested provision, is ensuring public welfare.**

19. To examine the proportionality of a restriction on fundamental rights, it must be verified: 1) whether the chosen measures are suitable for reaching the legitimate aim; 2) whether measures that restrict persons' fundamental rights to a lesser extent (are more lenient) do not exist; 3) whether the benefit that society gains outweighs the damage inflicted upon an individual's rights and lawful interests (*see, for example, Judgement by the Constitutional Court of 30 March 2011 in Case No. 2010-60-01, Para 23*).

20. In examining whether the chosen measures are suitable for reaching the legitimate aim, the Constitutional Court must verify whether it is possible to reach the legitimate aim by the chosen measures.

Several summoned persons note that the need to adopt the contested provision followed from the measures that Latvia had undertaken to introduce in accordance with the EC Decision on State Aid.

Adoption of the decision on State aid falls within the competence of the EU. Pursuant to Sub-para "b" of Para 1 of Article 3 of TFEU, the EU has the exclusive competence to adopt rules on competition that are needed for the functioning of its internal market and comprise, *inter alia*, also the State aid. This means that only the EU may define legally binding measures in this area.

To grant State aid to a commercial company, pursuant to Para 1 of Article 107 of TFEU, it must be compatible with the EU internal market. I.e., it follows from Para 3 of the respective article that the State aid for salvaging and restructuring a financial or non-financial company can be considered as being compatible with the EU internal market if it facilitates specific economic activities or the development of specific economic areas and if this aid does not have unfavourable impact on the market, which would be contrary to the common interests. Article 108 of TFEU grants extensive mandate to the EC to decide on the compatibility of the State aid with the EU internal market.

The EC may, in adopting a decision on the State aid, include in this decision also measures that the State must take to ensure that such aid would be recognised as being compatible with the EU internal market. Para 6.3.5. of the EC Decision on State Aid includes compensatory measures to decrease distortion of competition and

reinforce burden-sharing. It includes several measures aimed at fairer burden-sharing, *inter alia*, Latvia's commitment to ensure that third parties do not benefit from additional amounts of the State aid that Reverta has received. It is noted in the 72<sup>nd</sup> recital of Para 5.5.3. of the EC Decision on State Aid, *inter alia*, that Reverta exceeded the previously authorised liquidity amounts exactly because interest payments were still made to subjects of subordinated commitments after the State aid had been received [see *Commission Decision of 9 July 2014 on the State Aid SA.36612 (2014/C) (ex 2013/NN), implemented by Latvia for Parex*”, *EU Official Journal*, 3 February 2015, No. L 27/12, or <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015D0162&from=LV>]. Such a situation, which had evolved at the time when the commercial company was receiving the State aid, was contrary to the burden-sharing principle.

The legislator must select such means for implementing the said measure that would comply with the *Satversme* and Latvia's international commitments. The contested provision should be considered such a measure. Latvia has transposed successfully the principles and conditions that it had to meet so that the EC would recognise the granting of additional State aid as being compatible with the internal market. Summoned person S. Harbaceviča points out that the contested provision should be considered as the most appropriate way for applying the burden-sharing principle (*see Case Materials, Vol. 3, pp. 96 – 102*). Restricting the fulfilment of subordinated commitments at the time when the State aid is provided to a commercial company has positive impact on the process of restructuring the State aid because it ensures compliance with the EU legal acts on sharing the burden between the State as the provider of aid for commercial activities and other beneficiaries, moreover, eliminates the possibility that third persons would benefit from the State aid provided.

Thus, the contested provision has been derived from the requirements that Latvia has undertaken in order to ensure that the EU legal provisions are complied with in providing State aid to a commercial company in financial difficulties.

The Constitutional Court has recognised that the restrictions defined for the State aid are aimed not only at complying with the commitments that Latvia has as an EU Member State but also at abiding by the principle of justice and principle of

equality, enshrined in the *Satversme* (see *Judgement by the Constitutional Court of 19 October 2011 in Case No. 2010-71-01, Para 19.2.*).

The State aid protects the entire society against the adverse consequences that could be caused by unsuccessful management of a commercial company and the following insolvency. By providing aid for commercial activities, the State acquires controlling influence on the financial resources of the commercial company, therefore the State must ensure such management of the commercial company that would ensure the best possible protection for public interests. Restriction on the commercial company's right to fulfil subordinated commitments ensures that the State aid is used in the interests of the commercial company, i.e., for restructuring the commercial company and restoration of normal commercial activity, thus, ensuring that the State financial resources, invested in the commercial company, are used, to the extent possible, in public interests, moreover, facilitating recovery of the financial resources, invested by the State. The contested provision helps to ensure protection for the interests of society and taxpayers.

**Hence, the contested provision is suitable for reaching the legitimate aim.**

**21.** In assessing whether the legitimate aim could be reached by other means, the Constitutional Court has concluded that a more lenient measure is not just any other measure but only such that allows reaching the legitimate aim in at least the same quality (see *Judgement by the Constitutional Court of 13 May 2005 in Case No. 2004-18-0106, Para 19 of the Findings*). To clarify whether the legislator had less restrictive means at its disposal, the Constitutional Court must examine whether the legislator had considered alternatives to the contested provision (see, for example, *Judgement by the Constitutional Court of 26 November 2009 in Case No. 2009-08-01, Para 21, and Judgement of 21 December 2009 in Case No. 2009-43-01, Para 30.2.*). The *Saeima* and the summoned persons have pointed to several alternative measures for reaching the legitimate aim.

It follows from the preparatory materials of the contested provision that the *Saeima* had examined alternative measures that would ensure that the maximum amount of the financial resources, invested in the commercial company, would be recovered. Predominantly, two alternative measures to the legal regulation, included in

the contested provision, were examined – unilateral withdrawal from the fulfilment of subordinated commitments and initiation of the insolvency process of the commercial company (*see Case Materials, Vol. 1, p. 187*).

There are no materials in the case that would allow concluding that any of these alternative measures would reach the legitimate aim, i.e., public welfare, in the same quality because they would not only endanger the functioning of the commercial company and, thus, society as whole but would even cause more adverse situation for the Applicants and other subjects of subordinated commitments.

The task of the Constitutional Court is to review the compatibility of the contested provision with the fundamental rights, established in the *Satversme*, and not to substitute the legislator's discretion by its opinion on the most rational solution (*see Judgement by the Constitutional Court of 30 March 2010 in Case No. 2009-85-01, Para 19*). The *Saeima* has conducted appropriate review and has chosen the most lenient measure for reaching the legitimate aim.

**Hence, other measures that would allow reaching the legitimate aim in the same quality do not exist.**

22. To examine the proportionality of a restriction on fundamental rights, it must be verified whether the adverse consequences, caused to a person as the result of restricting their fundamental rights, do not outweigh the benefit that society as a whole gains from this restriction. Thus, the Constitutional Court must identify the interests that must be balanced in the present case and determine, which of these interests should be given priority.

The contested provision restricts the right to property of the Applicants, i.e., subjects of subordinated commitments, therefore, in assessing the proportionality of the said restriction in the present case, the nature of subordinated commitments should be taken into account.

Interest payments, which are directly received from such subordinated commitments, depend upon successful operation of the commercial company (*see Judgement by the Constitutional Court of 30 March 2011 in Case No 2010-60-01, Para 17.3*). Hence, the very nature of subordinated commitments allow concluding that the Applicants have undertaken, together with them, considerable risk related to

commercial activities, which includes also potential restrictions on the right to property or even its loss in the case of unsuccessful commercial activities.

The Applicants, as the subjects of subordinated commitments, have provided by contract that they have the right to demand pre-term repayment of the loan only in the case of insolvency or liquidation of the commercial company and only after the claims of all other creditors have been satisfied but before satisfying the claims of members and shareholders. Hence, the Applicants must assume co-responsibility in a situation where the commercial company is experiencing financial difficulties. Moreover, the contested provision allows the Applicants to retain their right of claim.

The State, in providing aid to a commercial company in financial difficulties, must take into account the requirements set in the *Satversme* and provisions of the EU law, *inter alia*, in the requirements set in the EC Decision on State Aid, and must control how the financial resources are used and recovered. The contested provision must be considered as being a measure that allows the State to ensure that the invested resources, to the extent possible, are used to provide for public interests, as well as that the subjects of subordinated commitments, who themselves have assumed the risk related to commercial activities, do not benefit unfoundedly from the aid provided by the State. Expedient use of the State budget resources and as fast the recovery of these resources as possible are in the interests of the entire society.

Hence, the public benefit ensured by the contested provision outweighs the damage inflicted upon the Applicants' rights.

**The contested provision complies with Article 105 of the *Satversme*.**

### **The Substantive Part**

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

**held:**

**to recognise Section 8 (1) of the “Law on Control of Aid for Commercial Activity”  
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 enters into force on the date of its publication.

Chairperson of the court hearing

Aldis Laviņš