THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

J U D G E M E N T

On Behalf of the Republic of Latvia

In Case No. 2013-17-01

7 July 2014, Riga

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

having regard to an application by the Panel of Civil Cases of Riga Regional Court and Didzis Azanda,

on the basis of Article 85 of the Satversme of the Republic of Latvia and Para 1 of Section 16, Para 9 and Para 11 of Section 17(1), as well as Sections 19^1, 19^2 and 28^1 of the Constitutional Court Law,

at the court sitting of 9 June 2014 examined in written procedure the case

"On Compliance of the First Sentence of Section 8 of Law "On Residential Tenancy" with Article 105 of the Satversme of the Republic of Latvia."

The Facts

1. On 16 February 1993 the Supreme Council of the Republic of Latvia (hereinafter – the Supreme Council) adopted the law "On Residential Tenancy", which came into force on 1 April 1993. The first sentence in Section 8 of the law "On Residential Tenancy" (hereinafter – the contested norm) provides: "If a residential house or apartment is transferred into the ownership of another legal or natural person, the rental contract entered into by the previous owner shall be binding to the new owner." The contested norm has not been amended and is in force in its initial wording.

Two cases regarding incompatibility of the contested norm with Article 105 of the Satversme of the Republic of Latvia (hereinafter – Satversme) were initiated before the Constitutional Court. On 10 March 2014 a decision was adopted to combine Case No. 2013-17-01 and Case No. 2014-01-01 in one. The previous title **"**On Compliance of the First Sentence of Section 8 of Law "On Residential Tenancy" with Article 105 of the Satversme of the Republic of Latvia" was retained for Case No. 2013-17-01.

2. The Applicant – the Panel of Civil Cases of the Riga Regional Court (hereinafter – the Applicant) requests examination of the compatibility of the contested norm with Article 105 of the Satversme.

The Applicant is adjudicating civil case No. C30655811. The civil case was initiated on the basis of an appeal complaint submitted by the joint stock company "GE Capital Latvia" (previous name – joint stock company "GE Money Bank") against the judgement of 27 December 20102 by the Riga City Vidzeme Suburb Court, which rejected the request made by the joint stock company "GE Capital Latvia" regarding termination of a rental contract and eviction from an apartment.

The Applicant notes that the joint stock company "GE Capital Latvia" as a creditor, following a failed auction, obtained in its property an apartment. However, it cannot exercise its right to own property, since the previous owner of

the apartment has rented the apartment on 10 January 2006. The joint stock company "GE Capital Latvia" allegedly had no knowledge of such a rental contract, since it had been concluded before the enforcement was entered into the Land Register and was not corroborated in the Land Register. The contested norm is to be applied in the case.

It follows from Article 927 of the Civil Law that ownership is the fullest right that a person can enjoy with regard to property. Moreover, the right to own property is also a fundamental human right. Thus, the restriction which makes the new owner of the apartment recognise as binding the rental contracts regarding residential premises, entered into by the previous owner, allegedly infringes upon the right of the property owner to unhindered use of the property in accordance with Article 105 of the Satversme. However, this restriction has been established by law and it has a legitimate aim – protection of tenants' rights in the context of denationalisation of buildings. But the legitimate aim of the restriction is no longer relevant. Moreover, allegedly it no longer complies with the contemporary social and economic situation, since the contested norm allows an owner, whose property is scheduled for enforced auction, to conclude a fictitious transaction and hinder the transfer of the property into the ownership of the acquirer.

The restriction to a person's right to own property allegedly does not comply with the principle of proportionality. This restriction, as a means for reaching a legitimate aim, had been appropriate under the conditions of property reform. The legislator, in adopting the contested norm, did not examine alterative means for balancing the interests of tenants and owners, but was predominantly concerned with the protection of one party – the pre-reform tenants. However, the legitimate aim can be reached by other means, less restrictive upon an individual's rights; for example, by establishing that the rental contracts regarding residential premises entered into by the previous owner are binding upon the new owner only if these have been corroborated into the Land Register. Legal regulation like this would be compatible with the principle of public credibility and would not decrease the protection of tenants' interests.

3. The Applicant – Didzis Azanda (*an entry into Riga City Land Registry Section No. 100000086938 shows that as of 23 April 2013 D.Azanda has changed his surname, the new surname – Kalniņš,* hereinafter – the Applicant D.A.) – holds that the contested norm is incompatible with Article 105 of the Satversme.

The Applicant D.A. since 2006 owns a residential building, where, in accordance with permanent rental contract concluded in 1989 an apartment has been rented out. The Applicant D.A. had offered to the tenant to terminate the permanent rental contract, on the basis of Section 1 and Section 2166 of the Civil Law, compensating the losses and expenditure linked with moving to another place of residence, as well as by paying compensation for pre-term termination of the rental contract. Since the tenant has refused to terminate the rental contract, the Applicant D.A.'s right to own property is restricted.

The contested norm was envisaged for implementing the property reform. The legal norms had given rise to conviction that the restrictions imposed upon owners of residential properties would be revoked within a reasonable time and in a reasonable way. The establishing of various guarantees to the tenants during the initial period of property reform complied with the norms and principles of higher legal force. However, more than 20 years after the reform was initiated and 15 years after Chapter 8 of the Satversme came into force, the existence of the contested norm allegedly no longer can be considered acceptable.

The right to own property comprises also the right to gain all possible benefits for the property, i.e., revenue and interest. Therefore, the right to own property, *inter alia*, comprises also the right to gain benefit from renting the property, which not only ensures maintenance of the respective property, but also brings profit to the owner.

The restriction to the fundamental right has been established by law. The legitimate aim of this restriction allegedly has been to ensure social protection of needy tenants under the conditions of prolonged absence of residential premises and concerns regarding setting of excessively high rent. Since the transitional

period, favourable to the pre-reform tenants, has lasted already 20 years and the supply in the rental market for several years already exceeds the demand, the legitimate aim of the restriction allegedly no longer exists. Moreover, the contested norm allows reaching the legitimate aim only partially.

The restriction allegedly is incompatible with the principle of proportionality, since the legislator had the possibility to establish regulation more lenient towards the owners of residential buildings, for example, by establishing tax exemptions for the part of building occupied by pre-reform tenants, other kinds of tax exemptions or compensations. The Applicant D.A. holds that the permanent rental contracts entered into by previous owners or possessors could be terminated by applying, by analogy, Section 2166 of the Civil Law.

4. The institution, which adopted the contested act, – the Saeima of the Republic of Latvia (hereinafter – the Saeima) **–** holds that the contested norm complies with Article 105 of the Satversme.

The compliance of the contested norm with the first sentence in Article 105 of the Satversme must be examined by the Constitutional Court. The Saeima upholds the Applicants' opinion in the part that the contested norm restricts the apartment owners' right to own property. However, the Saeima holds that the tenant also enjoys the protection of the first sentence in Article 105 of the Satversme, i.e., his or her legally obtained rental right is protected.

The Saeima has no information at its disposal that would allow doubting the legitimacy of the adoption of this norm. The Saeima does not uphold the definition of the legitimate aim of the restriction provided by the Applicant. The aim of the restriction is to protect the rights that are guaranteed to tenants by the first sentence of Article 105 of the Satversme, not only to protect tenants in the context of denationalisation of buildings.

The contested norm allegedly is appropriate for reaching the legitimate aim. It is used as a consistent recognition that the rental contract of residential premises remains valid in full scope with regard to the new owner of the

residential building or an apartment, irrespectively of the fact, whether the right to own property has been acquired as the result of denationalisation or a transaction. The contested norm allegedly fulfils a social function, imposing upon leasors a clear and precisely defined obligation. This obligation is known also to the successive owners. I.e., when acquiring residential premises, persons have the possibility to draw attention to the fact, whether a rental contract has not been concluded with regard to the use of the said residential premises.

The more lenient measure noted by the Applicant – to consider as binding upon the new acquirer only those rental contracts regarding residential premises that have been corroborated into the Land Register – cannot be recognised as more lenient. The mechanism currently envisaged by the contested norm is less cumbersome for both parties to the contract and, if the owner of the residential premises changes, ensures legal protection to all tenants.

Having familiarised itself with the materials of the case, the Saeima notes: the fact that the particular issue can be regulated differently *per se* does not mean that the existing regulation is incompatible with the Satversme. The Saeima holds that in view of the very diverse law policy opinions of summoned persons, the situation should be solved within the framework of legislative process.

5. **The summoned person – the Ministry of Economics** – holds that the contested norm places an excessive burden upon parties acquiring immoveable property.

The Ministry of Economics has been repeatedly informed about situations, where the new owner has been denied the possibility to use the acquired property, at his or her own discretion. This kind of situation mostly arises due to a concluded rental contract, the existence of which could not be verified before.

However, the person obtaining the property has at his or her disposal legal remedies. For example, an ostensible rental contract, in accordance with the Civil Law, can be recognised as being invalid. Whereas a rental contract that does not define the amount of rent, can be recognised as being a gift, and thus, the contested norm would not be applicable to it.

The Ministry of Economics has reviewed the norms of the law "On Residential Tenancy" and in co-operation with other institutions has elaborated a new draft law "On Residential Tenancy". It envisages that the rental contract regarding residential premises will be binding upon the new owner only if corroborated into the Land Register.

6. The summoned person – the Ministry of Justice – holds that the restriction to the right to own property included in the contested norm is not proportional to its legitimate aim – protection of tenants' rights.

The Ministry of Justice holds that the applicants request examining the compatibility of the contested norm with the first three sentences of Article 105 of the Satversme, not with the whole Article. The Ministry of Justice upholds the Applicant's opinion that the contested norm limits the rights of the apartment owner to use the property at his or her discretion. However, unhindered use of property should always be examined in the context of the State's right to restrict the use of property. Moreover, in accordance with regulation set out in Para 4 of Section 601(1) of the Civil Procedure Law, the particular restriction is applicable only to such legal relations, which, in case of an enforced auction, have been established prior the record on recovery was entered into the Land Register.

The restriction to the fundamental right included in the contested norm has been established by law. However, its legitimate aim is to protect the rights of all tenants renting residential premises, not the protection of tenants in the context of denationalisation of buildings.

In practice situations arise, when fictitious rental contracts or contracts with retrogressive date are concluded to hinder the transfer of the auctioned property into the possession of the new owner. The person obtaining the property has the possibility to protect his or her rights, by submitting a claim to court requesting to recognise the particular rental contract as being invalid. However, until a court judgement has come into force and has been enforced, the owner's rights are restricted.

The restriction upon the owner's right is allegedly larger, in particular, in those cases, when an apartment or a residential building has been auctioned, not as the result of other legal transaction. The person has no legal possibilities to obtain credible and indisputable information, whether an apartment with or without concluded rental contracts is being sold at an auction.

The Ministry of Justice holds that a more lenient measure for reaching the legitimate aim would be corroborating rental contracts regarding residential premises in the Land Register. Only contracts that are corroborated in the Land Register should be granted a binding force upon the new owner of residential premises.

However, if the contested norm were to be recognised as being invalid, a sufficiently long transitional period should be established, so that tenants, especially in denationalised houses, could make other legal arrangements with the owners.

7. The summoned person – the Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) – holds that the contested norm would comply with Article 105 of the Satversme, if the owner of real estate had the possibility to verify in a publicly accessible register the encumbrances upon the property.

The contested norm allegedly restricts the apartment owners right to own property. However, it must be taken into consideration that the renting of residential premises is a special kind of legal relations, the regulation of which in a modern, welfare state carries also a social function, linked with inhabitants' need to have housing. Two principles can be identified in the laws of other countries: 1) purchase breaks lease: 2) purchase does not break lease. Whereas in accordance with the Civil Law, the validity of a rental contract with regard to third persons is linked with corroboration in the Land Register.

The Ombudsman does not doubt that the restriction to fundamental rights has been established by law. In elaborating the law "On Residential Tenancy", the legislator had the aim to balance the interests of house owners and pre-reform tenants, and this aims is to be recognised as being legitimate. However, the

current reality shows that the contested norm protects all tenants (not only those of denationalised houses). Thus, in practice, the owner's right to free use of property is restricted and the development of a balanced market of apartments for rent is hindered. Moreover, the contested norm allows the owner, against whose property claims are enforced, to conclude fictitious transactions.

The legitimate aim can be reached by means that are less restrictive to an individual's fundamental rights, i.e., by adding to the contested norm provisions regarding registering rental contracts in a public register, which could be other, not the Land Register. However, the regulation that the new owner of the apartment has to recognise as binding the rental contracts entered into by the previous owners only if these are corroborated in the Land Register, would not be effective in protecting the rights of either parties. The Civil Law envisages corroboration of the rental contract into the Land Register as a voluntary agreement between the owner and the tenant, and none of the parties may impose it upon the other.

8. The summoned person – the Council of Sworn Bailiffs (hereinafter– the Council of Bailiffs) – holds that the contested norm creates an excessive burden upon the new owner of real estate.

The Council of Bailiffs has previously drawn the attention of responsible ministries and the Ombudsman to the fact that the contested norm is increasingly more extensively used to hinder the transfer of property sold at an auction to the new owner. Moreover, because of fictitious rental contracts the payments for maintenance, utilities and other services are not made. This leads to growing debts for utilities and other services.

The Council of Bailiffs had proposed amending legal acts, providing that in case, where a residential building or an apartment is transferred into the property of another person, only those rental contracts entered into by the previous owner that have been corroborated into the Land Register are binding for the new owner. The only exception could apply to those rental contracts that

have been concluded with regard to residential premises in denationalised buildings.

9. The summoned person – the Latvian Association of Certified Administrators of Insolvency (hereinafter – the Association of Administrators) – holds that the contested norm is incompatible with Article 105 of the Satversme.

Allegedly, in practice the contested norm is used in bad faith. Debtors conclude rental contracts fictitiously or with retroactive force, so as to continue using the real estate themselves even after it has been forcefully alienated. Often the person acquiring the property finds out about the existence of a rental contract only after acquisition of the property. The current regulation allegedly significantly restricts the debtor's, the creditors' and the person's who obtains the property right to own property, prohibiting from selling this property for a fair price and later use and utilise it in accordance with one's interests.

The restriction to fundamental rights has been established by law. It has a legitimate aim – to protect the rights of those tenants of denationalised real estate, who were using these residential premises before the ownership right to them was restored. With the change of the social situation also the legitimate aim of this restriction has disappeared. Indirect protection of tenants' rights in the context of denationalisation of buildings allegedly no longer has a legitimate aim. Moreover, allegedly, the contested norm unfoundedly protects not only the interests of the tenants of the denationalised buildings, but also the interests of other tenants, even though the protection of their rights cannot be considered to be more important compared to the protection of owners' and their creditors' rights.

The restriction is said to be disproportional, since the legitimate aim could be reached by other means, less restrictive to the owners. A measure of this kind could be a rule that the party obtaining the property must recognise as binding only such rental contracts entered into by the previous owner, which have been corroborated in the Land Register or another register. The legislator is said to

have the possibility to adopt legal norms promoting the introduction of such regulation.

10. The summoned person – *Dr. iur.* Erlens Kalniņš, lecturer at the Department of Civil Law, Faculty of Law, University of Latvia – upholds the opinion expressed in the written reply by the Saeima.

The issue whether the law should contain a norm, according to which the rental contract relations regarding residential premises would be binding for the new owner only following corroboration of the rental right in the Land Register is said to be of law policy nature.

From the point of view of civil law, the contested norm envisages only one case of exceptions, when the obligation law relationship, established by contract, are in force not only between the parties to the agreement (the principle of relativity of the relations of obligation law), but also *vis-à-vis* third persons. The contested norm envisages that the relations of the rental contract are binding for the new owner of real estate already on the basis of law and irrespectively of the fact, whether the particular rental right has been previously corroborated in the Land Register.

The Constitutional Court must assess, whether the possibility to use the existing legal regulation in dishonest purposes (for example, by concluding fictitious transactions) does not testify of the incompatibility of the legal regulation with the Satversme.

11. The summoned person – *Dr. sc. ing.* Raitis Kalniņš, chairperson of the board of the limited liability company "NEKUSTAMĀ ĪPAŠUMA MĀCĪBU ATBALSTA CENTRS" – holds that the contested norm complies with Article 105 of the Satversme.

However, the Constitutional Court should examine, whether the contested norm complies with the legal acts regulating the real estate market and with the fundamental right to own property. The right to own property has already been restricted for the public benefit both by the Civil Law and by other regulatory

enactments. However, changes in the real estate market do not at all mean that the contested norm would be incompatible with Article 105 of the Satversme.

R. Kalniņš' holds that the joint stock company "GE Capital Latvia" had the possibility to verify and prevent the encumbrances upon the apartment obtained at an auction. Whereas the fact that the rental contract is fictitious can be proven by verifying the revenue of the leasor and the payments made by the tenant, and a fictitious contract can be contested.

To establish, whether the acquirer's right to gain benefit from selling the real estate has been restricted, the conditions of the free market should be considered. I.e., assuming that the buyer and the seller are fully informed about the status of the property, *inter alia*, also the encumbrances upon it, the benefit gained from the obtained property should be compared to the market value of the real estate. Thus, the seller of real estate can hope for such price of the property, which is equal to the market value of this property.

Considering the current situation in the real estate market, the contested norm should be supplemented by providing that the rental contracts entered into by the previous owner of residential premises shall be binding to the new owner if corroborated in the Land Register.

12. The summoned person – I. Krauze, former member of the Rental Board of the Supreme Council – holds that the contested norm complies with Article 105 of the Satversme, since it fulfils its function in accordance with its initial meaning and objective.

At the time when the law "On Residential Tenancy" was drafted the relationship between owners and tenants had been very relevant, since the restitution of ownership of houses had started. The issue of the legal regulation of this relationship by the State had been foregrounded, since a maximum balance had to be found between the rights and obligations of the leasor and the tenant. The authors of the law "On Residential Tenancy" considered that this objective would be fulfilled, in particular, by the contested norm – that it would balance

the burden of the leasor and the tenant in their legal relations, which developed with the strengthening of the private property of residential housing.

The experience of the last 20 years allegedly shows that the contested norm successfully fulfilled its function not only with regard to the denationalised housing properties, but as regards the whole residential housing of Latvia.

I. Krauze does not uphold the opinion that the corroboration of the rental right to residential property in the Land Register, in order for them to acquire a binding force with regard to acquirer, would be a more lenient regulation. This solution could not be broadly applied, since the corroboration of the concluded rental contract into the Land Register requires the willingness of both parties – the leasor and the tenant.

13. The summoned person – ***Mg. iur.* Jānis Lapsa, lecturer at the Department of Civil Law, Faculty of Law, University of Latvia** – holds that in cases of permanent rental contracts the contested norm restricts the owner's right enshrined in Article 105 of the Satversme to own property and to use it freely.

Housing is one of the primary needs of people, and the right to it has been enshrined both in constitutions of states and acts of international law. In the majority of European states the residential tenancy is regulated by imperative norms, which are included in the special laws. Therefore the prohibition set out in Article 105 of the Satversme to use property contrary to public interest should be linked with the right to inviolability of home established in Article 96 of the Satversme.

A legitimate aim of the contested norm can be discerned – protection of tenants' rights. J. Lapsa does not uphold the Applicant's opinion that this aim has lost its relevance. Allegedly the contested norm applies to all types of tenancy relationships, not only to tenancy in the context of denationalisation.

J. Lapsa upholds the Saeima's opinion that the contested norm has been adopted in a legitimate way. However, the proportionality of the restriction to the current ownership relations should be examined. The legislator should ensure

such a legal regulation that would strike a balance between the rights of the owner and the tenant.

14. The summoned person – professor, *Dr. iur.* Jānis Rozenfelds, Department of Civil Law, Faculty of Law, University of Latvia – holds that the contested norm restricts the right to own property in the meaning of Article 105 of the Satversme. However, this restriction has a legitimate aim – protection of the tenants' rights and interests, which is likewise guaranteed by Article 105 of the Satversme.

J. Rozenfelds upholds the opinion expressed in the Saeima's written reply, that "the right to own property comprises also the owner' social obligations towards society". However, this is not restricted only with the obligation to ensure cheap housing, but also envisages the obligation to preserve the property, which is of special relevance, if it has the status of culture heritage. It is possible that the existing legal regulation might threaten the interests of sustainable development of culture heritage.

According to the existing regulation European states can be divided into two groups: first, states that recognise the rental contract as binding for the new owner, and, secondly, states, which do not envisage protection of the tenant if the property is alienated, i.e., they recognise the principle "purchase breaks lease". However, this principle in its pure form is seldom encountered in Europe. Thus, in the majority of European states the alienation of property does not terminate the rental contract.

There seems to be no obvious grounds for recognising the contested norm as being incompatible with Article 105 of the Satversme. Norms, which are similar to the contested norm, exists in a number of other European states, which Article 1 of Protocol I to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) is binding upon. Likewise, no argumentation in favour for revoking the contested norm is possible. Thus, the compatibility of the contested norm cannot be examined on the basis of solely legal arguments. I.e., the impact of the contested norm upon

the general sustainable development of society should be taken into consideration.

The Findings

15. In accordance with the case law of the Constitutional Court, procedural issues, *inter alia,* issues regarding termination of legal proceedings, are to be examined before examining the constitutionality of a legal norm as to its merits (*see, for example, Judgement of 19 October 2011 by the Constitutional Court in Case No. 2010-71-01, Para 11, and Judgement of 27 June 2013 in Case No. 2012-22-0103, Para 10).* In the case under review the constitutional control was initiated on the basis of a person's constitutional complaint and an application by a court. In the course of preparing the case such actual facts were established that influence further procedural advancement of the case.

To decide on continuation or termination of legal proceedings, the Constitutional Court in this case must differentiate between the facts of the case pertaining to the constitutional complaint and the facts of the case pertaining to the application by the court. Thus, the Constitutional Court will first of all examine the issue of continuing or terminating legal proceedings in that part of the case that was initiated on the basis of a constitutional complaint.

16. Pursuant to Para 11 of Section 17(1) and Section 19^2 of the Constitutional Court Law, any person, who considers that his or her fundamental rights enshrined in the Satversme are violated by a legal norm that is incompatible with a legal norm of higher legal force, may submit an application to the Constitutional Court. It follows from Section 19^2 (1) of the Constitutional Court Law that a well-founded possibility should exist that the contested norm infringes upon the applicant.

16.1. The Constitutional Court has recognised that situations may exist when a legal norm, which previously did not infringe upon a person's rights or the violation caused by it seemed insignificant, at a particular moment may

influence the fundamental rights of a person in such a way as to make him or her experience significant infringement. Hence, the person, by submitting substantiation and evidence of violation of fundamental rights due to changed legal or actual circumstances, has the right to submit an application to the Constitutional Court (*see Judgement of 27 June 2013 by the Constitutional Court in Case No. 2012-22-0103, Para 12.3).*

Several tenants reside in the housing property owned by the Applicant D.A. since 2006, among them also a tenant, who concluded a permanent rental contract before the housing property was denationalised. The Applicant D.A. has made a general note that the infringement had been caused to him more than six years after acquisition of the property, since in November 2013 the tenant did not agree to the proposal by the Applicant D.A. to terminate the rental contract regarding residential premises (*see Application in Case Materials, Vol.1, p. 83*). However, no documents proving this assertion have been appended to the application.

Moreover, it follows from the publicly accessible information from the State Uniform Digital Land Register that the particular property is jointly owned by the Applicant D.Z. and another person. The Applicant D.Z. has obtained the undivided share of this property by concluding a purchase agreement. A contract on divided use of joint property has not been corroborated in the Land Register. In accordance with the principle included in Section 1068 of the Civil Law the Applicant may act with the object of the joint property only with the approval of all other owners. Whereas an action to the contrary is not valid. The Constitutional Court, in assessing the compliance of the said norm of the Civil Law with the Satversme, concluded that it ensured justice in the relationships of joint owners. Section 1068 of the Civil defines such a model of action, which simultaneously both restricts and also protects the rights of each owner to the property held in joint ownership (*see Judgement of 25 October 2011 by the Constitutional Court in Case No. 2011-01-01, Para 13.2).*

Therefor the Constitutional Court has doubts, whether the actions taken by the Applicant D.A., aimed at terminating the rental contract regarding residential premises, were coordinated with the other co-owner.

16.2. Para 6 of Section 29(1) of the Constitutional Court Law provides that legal proceedings in a case may be terminated by a decision of the Constitutional Court in cases, when it is impossible to continue legal proceedings in a case.

No documents certifying that the co-owner agrees to terminate the rental contract and to submit an application to the Constitutional Court have been appended to the application. Likewise, while preparing the case the Constitutional Court did not become convinced that the Applicant DA had indicated all actual circumstances necessary for adjudicating the case, *inter alia*, circumstances that would allow establishing infringement of fundamental rights. Moreover, the Applicant has not responded to the request made by the Constitutional Court to provide additional explanations and documents, neither has otherwise demonstrated his interest in the proceedings initiated with regard to his application.

The status of the submitter of a constitutional complaint in the proceedings of the Constitutional Court must be interpreted so as to mean that after submitting the constitutional complaint he or she must participate in clarifying the facts of the case, *inter alia*, if requested by the Constitutional Court, submitting additional explanations and documents. The purpose of the institution of constitutional complaint is to protect a person's rights that are infringed upon. Therefore a person's right to turn to the Constitutional Court should be used only in accordance with the purpose. If a person's fundamental rights have been infringed, protection of his or her rights is expected of the person, understanding by it personal interest in the proceedings before the Constitutional Court, co-operation with the Court and abiding by the procedural rules of the Court.

Only the Constitutional Court has the right to determine the totality of facts or circumstances necessary for examining the case. The Applicant D.A. did

not cooperate with the Constitutional Court, therefore the fact of infringement upon his fundamental rights cannot be verified. Since the Constitutional Court had no possibility to establish and verify the facts of the case necessary for hearing the case, the Constitutional Court concludes that it is impossible to continue legal proceedings in the part of the case initiated on the basis of Applicant D.A.'s constitutional complaint.

Therefore, in accordance with Para 6 of Section 29.(1) of the Constitutional Court Law, legal proceedings regarding the possible infringement upon the Applicant D.A.'s (D.Kalniņš) fundamental rights shall be terminated.

17. The Constitutional Court must decide on continuing or terminating legal proceedings also in that part of the case, which has been initiated having regard to the application submitted by the court. It follows from the case materials that the joint stock company "GE Capital Latvia" on 10 September 2013 sold an apartment at Krišjānis Valdemārs Street in Riga. On 2 January 2014 the new owner of the apartment turned to the Applicant and the Constitutional Court with the request to terminate legal proceedings in the civil case No. C30655811 and the case to be examined by the Constitutional Court (*see Case Materials, Vol.1, p. 14*).

The request made by the new owner of the apartment has been appended to the case materials, and in connection with it the Constitutional Court requested information from the Applicant. The Applicant answered that the issue of renewing legal proceedings in the respective civil case, the possible takeover of a party's procedural rights and termination of legal proceedings would be examined after the ruling by the Constitutional Court has been announced (*see Case Materials, Vol. 1, p. 144*).

In view of the fact that the coming into force of a ruling by the Constitutional Court is a necessary pre-requisite for renewing legal proceedings in civil case No. C30655811 and that the pre-requisites defined in Section 19^1 of the Constitutional Court Law for submitting a court's application still exist, the

Constitutional Court has no grounds to decide on terminating the legal proceedings in the part of the case based upon the Applicant's request.

Hence, the examination of the case in the part that is based upon the Applicant's claim must be continued.

18. The Applicant requests the Constitutional Court to examine the compliance of the contested norm with the whole of Article 105 of the Satversme. A finding has been enshrined in the case law of the Constitutional Court that in those cases when the compliance of a legal norm with the whole of Article 105 of the Satversme is contested, but the contested norm does not envisaged enforced alienation of property, only the compliance of this norm with the first three sentences of Article 105 of Satversme must be examined (*see, for example, Judgement of 3 November 2011 by the Constitutional Court in Case No. 2011-05-01, Para 15.1).*

The Applicant holds that the restriction, which makes the new apartment owner to recognise as binding the rental contracts regarding residential premises entered into by the previous owner, infringes upon the right to unhindered use property (*see Case Materials, Vol.1., p. 2*). The facts of the case to be examined by the Applicant fall within the scope of the first three sentences of Article 105 of the Satversme, and the legal substantiation of the application does not pertain to forced alienation of property for public needs.

Thus, the Constitutional Court will examine the compatibility of the contested norm with the first three sentences of Article 105 of the Satversme.

19. In examining a case, which has been initiated on the basis of an application by a court, the Constitutional Court must abide by the requirements of the Constitutional Court Law and must assess the situation insofar it is necessary for adjudicating the particular civil case. At the same time the Constitutional Court must examine the situation of all those persons, who are under circumstances that are similar and comparable with the circumstances of the case under examination. By analogy with cases when the constitutional

complaint attributes the contested norm to a totality of widely divergent situations (*for example, Judgement of 28 May 2009 by the Constitutional Court in Case No. 2008-47-01, Para 6 and Judgement of 28 March 2013 in Case No. 2012-15-01, Para 9),* also in the case where an application has been submitted by a court, the Constitutional Court must specify the extent to which it will examine the contested norm.

The change of the owner of a residential building or an apartment can take place on various legal grounds (law, legal transaction, court judgement). If the apartment owner changes on the basis of a legal transaction, the situation may differ. Thus, in the case under review it must be specified to what extent and with regard to which persons the compatibility of the contested norm with the Satversme must be assessed.

In the case that is being adjudicated by the Applicant, the claimant has acquired in its ownership the residential building as the outcome of a failed enforced auction in accordance with Section 615(1) of the Civil Procedure Law. I.e., the claimant as a creditor exercised its right to keep in its property the real estate for the initial bidding sum of the enforced auction.

The enforced auction is a manifestation of a measure of compulsory enforcement regulated by the Civil Procedure Law – subjecting the debtor's property to recovery. The rights and obligations of the bailiff, debtor, collector and participants of the auction, as well as the process and consequences of an enforced auction are defined in Part E, Division fourteen of the Civil Procedure Law "Application of Compulsory Enforcement Measures".

As the result of an enforced auction, a person can obtain a residential building or an apartment in ownership in two ways: as the result of an auction that has taken place or as the result of a failed auction. In the first case the person bids the highest price, pays the full sum and the court decides on approving the deed of auction and corroborating the real estate in the name of the acquirer. In the second case the auction is recognised as having not taken place, since no bidders have come or none of the bidders offers a higher price than the initial price, then one of creditors or co-owners of the debtor acquires the real estate for

the initial price of the failed auction and, consequently, after the purchase price has been paid, the court decides on approving the deed of the auction and corroborating the sold property in the name of the acquirer.

A restriction to the right to own property could arise both to persons, who have acquired a residential building or an apartment at an auction, as well as to those, who have acquired property as the result of a failed auction. Therefore the Constitutional Court holds that the circumstances of persons, who participate in a compulsory auction with the aim of acquiring a residential building or an apartment and acquire it, are comparable to the circumstances of creditors or co-owners of the debtor, who acquire the residential building or apartment as the result of a failed auction. Hence, the compatibility of the contested norm with Article 105 of the Satversme must be examined, irrespectively of the fact, whether the enforced auction, as the result of which the residential building or an apartment has been acquired, has been recognised as having taken place or not having taken place.

Thus, the constitutionality of the contested norm in all cases, where persons acquire a residential building or an apartment as the result of an enforced auction, will be examined.

20. The first three sentences of Article 105 of the Satversme provide: "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."

The finding has been enshrined in the case law of the Constitutional Court that in establishing the content of the norms of human rights included in the Satversme, Latvia's international commitments in the field of human rights must be taken into consideration. Therefore the rights that follow from Article 105 of the Satversme first of all must be interpreted in interconnection with Article 1 of

Protocol I to the Convention (*see, for example, Judgement of 26 April 2007 by the Constitutional Court in Case No. 2006-38-03, Para 10).*

The Constitutional Court, in interpreting Article 105 of the Satversme in interconnection with the said norm of the Convention, has concluded that Article 105 of the Satversme envisages both unhindered exercise of the right to own property and the right of the State to restrict the use of property in the interests of the public (*see, for example, Judgement of 20 May 2002 by the Constitutional Court in Case No. 2002-01-03,Findings).* Social function is typical of property, its aim is to achieve a fair balance between the interests of the public and an individual's fundamental rights (*see, for example, Judgement of 19 June 2006 by the European Court of Human Rights [hereinafter – ECHR] in Case "Hutten-Czapska v. Poland", Application No. 35014/97, Para 164 – 165).*

Thus, even though the owner's right to freely use his or her property and gain benefit from it follows from Article 105 of the Satversme, this right can be restricted in the interests of the public.

21. The Constitutional Court has noted that in those cases, where the owner cannot freely use property, gaining possible benefits from it, his right to own property is restricted (*see Judgement of 8 March 2006 by the Constitutional Court in Case No. 2005-16-01, Para 10).*

The contested norm is an exception established by law to the general principle set out in Section 2174 of the Civil Law, which provides that in the case of alienating the subject matter of a rental contract, the acquirer must comply with the rental contract only if it has been corroborated in the Land Register. Therefore it has an impact upon the right of the owner of a residential building or an apartment to freely exercise his or her right to own property. I.e., when obtaining a residential building or an apartment as the result of enforced auction, the new owner must take into account that the property may be encumbered by the right to rent, which cannot be terminated unilaterally.

Thus, the contested norm restricts the right to own property of those persons, who have acquired a residential building or an apartment as the result of an enforced auction.

22. The finding has been enshrined in the judgement by the Constitutional Court that in a democratic and judicial state the right to own property is not absolute and can be restricted (*see, for example, Judgement of 8 March 2006 by the Constitutional Court in Case No. 2005-16-01, Para 12).*

The legislator has broad discretion with respect to the right to own property. ECHR has concluded that the States have "the right to enact such laws as they deem necessary to control the use of property in accordance with the general interest. Such laws are especially common in the field of housing, which in our modern societies is a central concern of social and economic policies. In order to implement such policies, the legislature must have a wide margin of appreciation both with regard to the existence of a problem of public concern warranting measures of control and as to the choice of the detailed rules for the implementation of such measures" *(see, for example, Judgement of 28 September 1995 by ECHR in "Scollo v. Italy", Application No. 19133/91, Para 28).*

Two principles with regard to the validity of rental contract in case of purchase are known in civil law: "purchase breaks lease" and " purchase does not break lease". Thus, the legislator has the discretion to enshrine in legal acts one principle or the other, as well as to define legal remedies that would decrease the negative impact of the particular principle upon subjects of law. The experience of other European countries regarding this issue also proves this. For example, the rental contracts are binding to the new owner in Austria, Belgium, Denmark, Estonia, France, Germany, Greece, Hungary, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia and Switzerland. Whereas in England, Sweden, Italy, Scotland and Lithuania the rental contract is not binding upon the new owner (*see Dr.iur. J.Rozenfeld's opinion in Case Materials, Vol. 1, p. 50).*

Each of these principles can create a restriction to persons' fundamental rights, in one case – restriction upon the owner's right to own property, but in the

other – restriction upon the tenant's right to inviolability of home. However, none of these principles *per se* can therefore be considered as being incompatible with the Satversme. In the legal relationship of residential tenancy the legislator has the task to balance the negative impact of one principle or the other upon subjects of law, i.e., to achieve a reasonable balance between all persons affected by the respective regulation.

By including the principle "purchase does not break lease" in the contested norm, the legislator has exercised its discretion. The Constitutional Court does not replace the legislator in cases of its discretion, but only examines the compatibility of the valid regulation and only within the scope of the case that has been initiated. Thus, in the case under review, it must be examined, whether: 1) the restriction to the fundamental rights of the owner of a residential building or an apartment has been established by law adopted in due procedure: 2) the restriction has a legitimate aim; 3) the restriction is proportional (*see, for example, Judgement of 20 May 2002 by the Constitutional Court in Case No. 2002-01-03, Findings).*

23. The restriction to the fundamental rights that follows from the contested norm has established by the law "On Residential Tenancy". The case does not contain dispute that the contested norm has been adopted and promulgated in due procedure. Neither does the Constitutional Court has at its disposal information giving grounds for doubting the procedure in which the contested norm was adopted.

Thus, the restriction to fundamental rights included in the contested norm has been established by law that was adopted and promulgated in due procedure.

24. Each restriction to fundamental rights must be based upon facts and arguments regarding its necessity, i.e., the restriction should be established because of significant interests – a legitimate aim (*see, for example, Judgement of 22 December 2005 by the Constitutional Court in Case No. 2005-19-01, Para 9).*

24.1. Divergent opinions have been expressed in the case regarding the legitimate aim of the restriction included in contested norm. An opinion has been expressed that the legitimate aim of the restriction is to protect the tenants of residential premises in the context of denationalisation of buildings and that it, perhaps, has lost its relevance. An opinion to the contrary has been expressed, i.e., that the legitimate aim of the restriction is to protect the interests of all tenants of residential premises. To establish, what the legitimate aim of the restriction included in the contested norm is, the historical context in which the norm was created should be examined.

In the inter-war period the relationship between the residents and owners of residential premises in Latvia was regulated by a number of regulatory enactments. In the period from 16 June 1924 until 6 September 1934 Section 27 of Law on Residential Tenancy provided: "When a building is transferred into the ownership of another person, the rental contracts concluded by the previous owner are transferred to the new owner." During the period from 7 September 1934 until 25 November 1939 the respective norm was expressed in a wording, according to which only those rental contracts, which had been corroborated in the Land Register, were binding to the new owner. On 1 January 1938 the Civil Law came into force and, hence, the reference made in Section 2112 that the special regulation on rental premises were to be found in Law on Residential Tenancy. Whereas the amendments of 25 November 1939 to Law on Residential Tenancy repeatedly introduced the principle "purchase does not break lease". Thus, the regulation of pre-war Latvia has been taken over into the contested norm.

On 22 December 1992 the Supreme Council adopted the law "On the Time and Procedure of Coming into Force the Part on Obligation Law of the reinstated Civil Law of the Republic of Latvia of 1937". Section 8 of the aforementioned law provides that in the cases indicated in the reference of Section 2112 of the Civil Law the regulation set out in laws of the Republic of Latvia should be applied. Thus, the legislator's aim was to indicate that "some other laws are to be applied" *(see Transcript of the Evening Sitting of the*

Supreme Council of 24 November 1992, http://saeima.lv/steno/AP_steno/1992/st_921124v.htm, accessed on 09.06.2014.).

The contested norm was adopted on 16 February 1993 and should be analysed in interconnection with other norms of the law "On Residential Tenancy" and Civil Law. Pursuant to Article 1 of the law "On Residential Tenancy", this law regulates the terms of renting residential premises, irrespectively of the fact, who owns the residential premises, and of the legal relationship between the leasor and the tenant that ensues. Likewise, an opinion has been expressed in legal literature that the contested norm is a consistent recognition that the rental contract of residential premises remains valid in full scope with regard to the new owner of a residential building of an apartment, irrespectively of the fact, whether property right has been restored in accordance with the law of 30 October 1991 "Law on the Denationalisation of Building Properties in the Republic of Latvia" and "On Returning Building Properties to Former Owners" or the ownership of a building (apartment) has been acquired as the result of a transaction (*see: Krauze R. Par dzīvojamo telpu īri. Likums ar komentāriem. Ceturtais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2008, 48. – 49. lpp.).* Thus, the contested norm regulates the legal relationship between the tenants of residential premises and owners, irrespectively of the fact, who owns residential premises.

Pursuant to Article 116 of the Satversme, fundamental rights can be restricted only in cases envisaged by law to protect the rights of other persons, the democratic order of the State, public safety, welfare and morals. The regulation included in the contested norm protects the rights of other persons, i.e., the right of all tenants of residential premises to unhindered use of residential premises.

24.2. The Applicant expresses the opinion that the law "On Residential Tenancy" should be recognised as being a temporary law and therefore the legitimate aim of the restriction included in the contested norm at present has disappeared (*see Case Materials, Vol.1., p.3).*

The legislator has the right, in accordance with the concrete circumstances, to define the permanent or temporary nature of a law or a part thereof, i.e., a fixed term of validity. When setting a fixed term of validity, the legislator must word the legal norms in such a way as to make it possible for the addressee to understand that the legal norms are of temporary nature. Usually the term of validity of such a legal act is indicated at the time when it is adopted.

The legislator has not defined a term of validity of the law "On Residential Tenancy" or a part thereof neither with the law "On Residential Tenancy", nor the decision of 16 February 1993 by the Supreme Council "On the Procedure for Coming into Force of the Law of the Republic of Latvia "On Residential Tenancy"". Likewise, upon introducing amendments to the law "On Residential Tenancy" a number of times, a temporary nature was not defined for it. Thus, the Applicant's assertion that the law "On Residential Tenancy" were a temporary regulatory enactment has no grounds.

Thus, the restriction included in the contested norm still has a legitimate aim – the protection of other persons' rights, i.e., those of the tenants of residential premises.

25. The arguments provided by the Applicant and the opinions of the summoned persons allow concluding that in the case under examination the dispute mainly concerns the issue, whether the restriction to persons' rights complies with the principle of proportionality. To verify the compliance of the restriction with the principle of proportionality, the following must be established: 1) whether the measures used by the legislator are appropriate for reaching the legitimate aim; i.e., whether the legitimate aim can be reached by the contested norm; 2) whether such action is necessary, i.e., whether it is not possible to reach the aim with other means, less restrictive to a person's rights and legal interests; 3) whether the legislator's action is adequate, i.e., whether the benefit gained by society exceeds the damage caused to a person's rights and legal interests.

If it is recognised that the restriction established by the legal norm is incompatible with even one of these criteria, then the restriction is incompatible with the principle of proportionality and is unlawful (*see, for example, Judgement of 19 March 2002 by the Constitutional Court in Case No. 2001-12-01, Para 3.1 of the Findings).*

26. To assess the compliance of the restriction with the principle of proportionality, first of all the nature and the legal consequences of the institution of auction should be established.

An auction is a procedure aimed at obtaining the most profitable price for an object by attracting as many buyers as possible. An auction is to be considered a proposal or an offer for a particular object *(see, for example: Čakste K. Civiltiesības. Lekcijas. Raksti. Rīga: Apgāds Zvaigzne ABC, 2011, 166. lpp.)*. Thus, an agreement is concluded in the framework of an auction as a procedure. Mot often purchase agreements are concluded in an auction, however, in accordance with the Note made in Section 2073 of the Civil Law, auctions can be held also to conclude agreements on rent, lease, employment and supply.

The consequences of the purchase agreement concluded in auction differ from the consequences of a purchase concluded in general procedure. Purchase at an auction, in the meaning of Section 1597 of the Civil Law, is a kind of risky contract. The contracts, where the buyer has to decide – to buy the object as it is or to abstain, are considered to be risky contracts. Upon agreeing to purchase at an auction an object, i.e., the object "as it is" , the acquirer must keep in mind that the Civil Law provisions on excessive loss are not applicable to a purchase at an auction and the alienator's liability for the deficiencies of the property is limited *(see, for example: Torgāns K. Saistību tiesības. Mācību grāmata. Rīga: Tiesu namu aģentūra, 2014, 285. lpp.).*

Participation in an auction in the status of a bidder is the manifestation of a person's free will. Each bidder accepts the rules of the auction and assumes a certain risk to purchase a property with limited possibilities for bringing a claim in connection with the deficiencies of the property in the future.

Thus, in the case under examination, the compliance of the restriction with the principle of proportionality should be assessed by taking into consideration the elements of risk, typical of auctions.

27. As concluded above, the contested norm protects the rights of all tenants of residential premises to unhindered use of the residential premises. This right is not influences by the fact that the owner of the residential premises has changed, and, in accordance with the Note of Section 2112 of the Civil Law, the provisions of the Civil Law is not applicable to it. An opinion has been expressed in legal literature that the leasor gives to the tenant part of his freedom to use a property, therefore the leasor no longer can transfer part of this freedom to other persons *(see: Luig K. Kauf bricht nicht Miete. In: Handwörterbuch zur deutschen Rechtsgeschichte. 2. Aufl. Schmidt: Berlin, 2012, Sp. 1679 – 1680)*. I.e., nobody can transfer to another more than he has itself *(see: Jüttner B. Zur Geschichte des Grundsatzes „Kauf bricht nicht Miete". Düsseldorf: Triltsch, 1960, S. 48)*. In the way the contested norm is applied in court practice, the rental contracts concluded by the previous owner are binding to the new owner *(see, for example, Judgement of 23 May 2007 by the Department of Civil Cases of the Supreme Court Senate of the Republic of Latvia in Case No. SKC – 441).*

The Civil Procedure Law does not envisage deviations from the contested norm in the case of an enforced auction. Pursuant to Section 601(3) of the Civil Procedure Law, the effect of those contracts, which the debtor has entered into regarding immoveable property before an entry has been made in the Land Register regarding recovery, shall be determined both as against the parties which participated in such agreements and as against the buyer of the immoveable property at auction in accordance with the Civil Law. In accordance with the Note of Section 2112 of the Civil Law, the rental contracts concluded before an entry has been made in the Land Register regarding recovery, the validity of the rental contract regarding residential premises must be determined in accordance with the law "On Residential Tenancy". The opinion of the summoned person – the Council of Bailiffs – allows concluding that a sworn

bailiff has no right to bring it into possession the acquirer of the property, if the residential premises have been rented to another person (*see Opinion of the Council of Bailiffs, Case Materials, Volume 1, p. 151*).

The Constitutional Court upholds the opinion expressed by the Saeima that the recognition of the contested norm as being incompatible with the Satversme *per se* would not allow the new owner of the residential premises to terminate freely the rental contract concluded by the previous owner (*see, Written Reply by the Saeima, Case Materials, Vol. 1., p. 20*). The second sentence in Section 8 of the law "On Residential Tenancy" provides that rental contracts may be amended only in accordance with the procedure set out in this law. Chapter IX of the law "On Residential Tenancy" provides exhaustive grounds for terminating the rental contract of residential premises. In the meaning of the law "On Residential Tenancy" the fact that the owner has changed cannot be the grounds for terminating a rental contract regarding residential premises. Thus, the contested norm protects the rights of all tenants to unhindered use of residential premises.

Thus, the measures used by the legislator are appropriate for reaching the legitimate aim.

28. To assess, whether the legislator's action has been necessary, it must be established, whether the legitimate aim of the restriction can be reached by other measures, less restrictive on a person's rights and legal interests (*see Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 19 of the Findings).*

28.1. To establish, whether the legislator had less restrictive measures at its disposal, the Constitutional Court must assess, whether the legislator considered alternatives to the contested norm (*see, for example, Judgement of 26 November 2009 by the Constitutional Court in Case No. 2009-08-01, Para 21, and Judgement of 21 December 2009 in Case No. 2009-43-01, Para 30.2).*

The Applicant expresses the opinion that the legislator, in adopting the contested norm, did not evaluate alternative measures that would balance the

interests of tenants and owners (*see Application in Case Materials, Vol. 1., p. 4*). At the same time, referring to the transcript of the evening sitting of the Supreme Council on 24 November 1992, it notes that the deputies of the Supreme Council had been able to reach a legal compromise (*see Annex to Case Materials, Vol. 1, p.3*).

The legislator, adopting legal acts, must ensure a procedure for debating proposals, including also alternative proposals. In accordance with the decision of 19 June 1990 by the Supreme Council "On the Procedure for Examining Draft Laws", the procedure of discussing draft laws at the Supreme Council envisaged a possibility to submit proposals. The law "On Residential Tenancy" was discussed in three readings" on 24 November 1994, 12 January 1993, 9 and 16 February 1993 (*see transcripts of the respective sittings, Case Materials, Vol.1., pp. 159 – 207 and Vol. 2, pp. 1 – 2).* The contested norm in its current wording was adopted already at the first reading of the law "On Residential Tenancy", and it reinstated the legal regulation, which was in force in Latvia on 17 June 1940. The discussion and assessment of alternatives is, first of all, ensured by the possibility to submit proposals for the second and third reading of the draft law. The deputies submitted proposals regarding the contested norm neither for the second, nor the third reading. As ECHR has recognised, the existence of alternative solutions *per se* does not make the norm under examination legally ungrounded (*see Judgement of 19 December 1989 by ECHR in Case "Mellacher and Others v. Austria", Application No. 0522/83, 11011/84, 11070/84, Para 53).* However, the principle that the validity of the restriction to the fundamental rights must be assessed is to be abided by, and, if necessary, it must considered, whether alternative measures exist that would allow reaching the legitimate aim by imposing lesser restrictions upon fundamental rights.

The members of the Saeima have introduced amendments to the law "On Residential Tenancy" a number of times, however, no alternative proposals regarding the contested norm have been submitted. However, the legislator did consider alternatives to the contested norm. For example, in 2010 the Cabinet of Ministers had submitted to the Saeima a draft law for expressing the contested

norm in a different wording, and it was assessed by the Public Administration and Local Government Committee of the Saeima (*see: Saeima Legislation Data Base, accessible: http://www.saeima.lv/lv/likumdosana/likumdosanas-datu-baze, accessed 09.06.2014.)*. Moreover, the Saeima has informed the Constitutional Court that the aforementioned Committee had tasked the Ministry of Economics and the Ministry of Justice to elaborate a new draft law regulating the legal relationship of residential tenancy *(see Written Reply by the Saeima, Case Materials, Vol. 1, p. 21).*

Thus, the legislator has taken care to assess the validity of the restriction to fundamental rights included in the contested norm.

28.2. The Applicant holds that a regulation, according to which only those rental contracts entered into by the previous owner that are corroborated in the Land Register were binding to the new owner, would be more lenient. Thus, in fact, an opinion is expressed that accessibility of public, credible information on the concluded rental contracts of residential premises, is a measure that would infringe less upon owners' rights.

The Constitutional Court has recognises that a more legitimate measure is not just any measure, but a measure that would allow reaching the legitimate aim in at least the same quality (*see, Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 19 of the Findings)*. Moreover, it is not the task of the Constitutional Court to replace the chosen solution with the alternative preferred by the Applicant (*see Judgement of 13 February 2013 by the Constitutional Court in Case No. 2012-12-01, Para 14.2.4)*. The creation of possible alternatives instead of the legislator does not fall within the jurisdiction of the Constitutional Court.

Corroboration of rights in the Land Register is a process that requires submitting a number of documents, which prove the validity of making the entry, to the Land Registry Office. The corroboration process takes time, and its length can depend upon various objective and subjective conditions (*see Judgement of 7 June 2012 by the Constitutional Court in Case No. 2011-19-01, Para 13.3)*. The corroboration of a rental contract regarding residential premises in the Land

Register and, if necessary, cancelling it, depends upon the willingness of both parties. I.e., if the tenant wants to corroborate the rental contract in the Land Register or to cancel the entry, he or she needs the owner's agreement and involvement in this process, and *vice versa*. Moreover, in accordance with Section 106 of Land Register Law, State and office fees must be paid for activities performed by Land Registry Office. Whereas in accordance with Section 60 of Land Register Law, persons' signatures on requests for corroboration must be certified by notary or Orphans' Court. The State fee and other payments must be paid for such certification, respectively.

Recognising only those rental contracts of residential premises that have been corroborated in the Land Register as binding for the new owner might create a group of legally less protected tenants. Less protected tenants could be those, who are unable to reach an agreement with the leasor on corroborating the rental contract, as well as those tenants, who have insufficient income for covering the costs of corroboration. Thus, granting binding power only to those rental contracts that have been corroborated in the Land Register, unless additional measures for protecting tenants' rights are introduced, will not allow reaching the legitimate aim of the restriction to the fundamental rights in at least the same quality.

Thus, the measure noted by the Applicant cannot be recognised as such that would allow reaching the legitimate aim in the same quality.

28.3. A number of summoned persons have expressed the opinion that accessibility of information on rental contracts regarding residential premises in another public, credible register could be a more lenient measure, for example, in a register of contracts maintained by each local government. A simple procedure for registering a rental contract regarding residential premises in a register maintained by a local government could be established, compared to the requirements set out for corroborating rental contracts in the Land Registry (*see, for example, Case Materials, Vol.1., pp. 63, 157*). Accordingly, only such rental

contracts regarding residential premises should be granted a binding force with regard to the new owner.

Establishing a new publicly credible register and defining the basic principles for its functioning is a legal policy choice of the legislator, which requires additional financial resources. In defining the legal framework for establishment and functioning of a publicly credible register, the legislator must take care to balance the interests of the owners and tenants of residential premises. Before the legislator has established the legal framework for creating such a register and for its functioning, it is impossible to assess, whether a publicly credible register, existing alongside the Land Register, should be considered a measure less restrictive upon fundamental rights. Therefore, in the framework of the case under examination, the accessibility of information about rental contracts regarding residential premises, cannot be considered to be as a more lenient measure for restricting fundamental rights.

Thus, more lenient measures that would allow reaching the legitimate aim of the restriction in at least the same quality have not been identified.

29. Finally, the Constitutional Court must assess, whether the legislator's actions are appropriate, i.e., whether the benefit that society gains by the restriction to owner's rights exceeds the damage caused to an individual's rights and legal interests.

The contested norm restricts the rights of an acquirer of a residential building or an apartment *vis-à-vis* the tenant's rights. Thus, the Constitutional Court must verify, whether a fair balance between the rights of the acquirer of a residential building or an apartment and of the tenant's of residential premises has been reached.

29.1. The legal relationship of residential tenancy is a socially important field. The State cannot ensure to all persons the right to own a housing property, however, the State must ensure the right to inviolability of private life and home.

This means that an individual has the right to one's own private space, the right to live according to one's own will, suffering minimum interference by the State or other persons (*see, for example, Judgement of 26 January 2005 by the Satversme in Case No. 2004-17-01, Para 10).* The loss of home is one of the most serious threats to the inviolability of home (*see, for example, Judgement of 22 October 2009 by ECHR in Case "Paulić v. Croatia", Application No. 3572/06, Para 43, and Judgement of 18 December 2012 in Case "Buckland v. the United Kingdom", Application No. 40060/08, Para 65).*

ECHR has recognised that in assessing the balance between the interests of society and an individual's right to own property, it must be taken into consideration whether the person new about the existing or possible further restrictions upon the use of this property, or if he or she should have, by showing reasonable care, found out about them (*see, for example, Judgement of 29 March 2011 by ECHR in Case "Potomska and Potomski v. Poland", Application No. 33949/05, Para 67).* The Saeima well-foundedly points out in its written reply that the contested norm imposes a clear obligation, which is also known to the future owners (*see Written Reply by the Saeima, Case Materials, Vol.1, p. 20*), i.e., to take into consideration and recognise as binding the rental contracts regarding residential premises entered into by the previous owner. Thus, the contested norm *per se* indicates to the persons that the acquired ownership rights may be restricted by a rental contract regarding residential premises entered into by the previous owner.

Thus, the contested norm gives to society legal order, which is important for the functioning of a democratic state and society. The legal order is ensured by guaranteeing to all tenants unhindered use of residential premises and by protecting tenants from ungrounded interference into their private lives.

29.2. A number of summoned persons have pointed to the possible abuse of the contested norm. However, the possible abuse of legal norm *per se* does not give grounds for recognising this norm as being incompatible with the Satversme. Neither the State, nor a private person can be fully protected from the

abuse of legal norms and using them contrary to their purpose. The task of the legislator is to envisage mechanism for protecting public interests in such cases. Whereas the executive power and the judicial power must apply these mechanisms to ensure that public interests are protected.

The Constitutional Court upholds the opinion of the Ministry of Economics that currently the acquirer of property has remedies to protect his or her rights (*see Opinion of the Ministry of Economics, Case Materials, Vol. 1, p. 116*). If the rental contract regarding residential premises has ben concluded to hinder the transfer of the property into the possession of the new owner and to allow the previous owner to continue using the apartment, then the acquirer of the property has the right to submit a claim requesting recognising such a contract as invalid.

The Constitutional Court does not uphold the Applicant's assertion that a participant of an enforced auction has no possibility to find out about the rental contracts regarding residential premises entered into by the previous owner. The cases, when the property is acquired by the highest bidder, and cases, when the creditor keeps the property following a failed auction, must be differentiated.

A person, who wishes to acquire property at an enforced auction, has the possibility to acquire information about encumbrance upon the property from the bailiff. Pursuant to Section 601(4) of the Civil Procedure Law, a debtor has a duty to notify a bailiff regarding the actual possessor and manager of the immoveable property, if any, as well as regarding rental, hiring and other agreements encumbering immoveable property entered into in respect of this immoveable property, submitting copies of the these contracts and concurrently presenting originals thereof. Thus, information about rental contracts should be at a bailiff's disposal.

There can be cases in practice, where the debtor does not provide to the bailiff information envisaged by law. The Council of Bailiffs notes that because of the contested norm the circle of persons, who participate in enforced auctions, narrows, which leads to decreased amount of recovered debts (*see Opinion by the Council of Bailiffs, Case Materials, Vol. 1, p. 153*). However, a bailiff has also

other possibilities to obtain information about property subject to recovery, and thus increase the awareness of the participants of the enforced auction about encumbrances upon the property to be alienated. For example, the bailiff can request information from the State or the local government about persons, who have declared this immoveable property as their official place of residence. The obtained information may point to the existence of encumbrances upon the immoveable property.

Thus, the Applicant's assertion that the participant of an enforced auction has no possibilities at all to acquire information about the encumbrances upon the property to be alienated is not grounded. If such information is not accessible, the person can abstain from buying the particular immoveable property. However, if a person purchases such property and has doubts about the legality of rental contracts entered into by the previous owner, he or she can submit a claim to court. I.e., the restriction upon the acquirer's rights can be prevented, if the acquirer shows due care at the time of concluding the transaction.

Another situation arises if in the case of a failed auction the immoveable property is acquired by the creditor (*see Appendix to Case Materials, Vol.1., p.2*). Usually the creditor, prior to concluding a credit or mortgage agreement, has the possibility to acquire comprehensive information about the immoveable property. Moreover, upon issuing credit, terms for the protection of creditor's rights can be included in the contract, for example, the debtor states that no encumbrances upon the mortgaged property exist, as well as the obligation to receive the creditor's approval to conclude any transactions with respect of this property. Thus, creditors have the possibility to acquire information about encumbrances and to protect themselves against them even before the immoveable property is subject to recovery.

In view of the abovementioned, it can be concluded that the legislator has envisaged mechanisms for protecting public interests against the abuse of the contested norm. Thus, there are no grounds to consider that the possibility of abusing the contested norm *per se* means that the contested norm is incompatible with the Satversme.

Thus, the benefit to the public created by the contested norm exceeds the damage caused to an individual's rights and legal interests. Therefore the contested norm complies with the principle of proportionality and is not incompatible with a person's right to own property, enshrined in Article 105 of the Satversme.

The Substantive Part

On the basis of Para 6 of Section 29 and Section 30 - 32 of the Constitutional Court Law, the Constitutional Court

h e l d :

1. **To terminate legal proceedings in the case in the part regarding Didzis Kalniņš' claim (Application No. 230/2013).**
2. **To recognise the first sentence of Section 8 of the law "On Residential Tenancy" 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 as of the day of its publication.

Chairperson of the court sitting Aldis Laviņš