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. 2013-13-01

19 March 2014, Riga

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

having regard to the application submitted by the Department of Administrative Cases of the Supreme Court Senate,

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 19^1 and Section 28^1 of the Constitutional Court Law

at a court sitting of 21 February 2014 examined in written procedure the case

"On the Compliance of Para 8 of Transitional Provisions of Law on the Conservation of Species and Biotopes with Article 1 and Article 105 of the Satversme of the Republic of Latvia."

The Facts

1. On 16 March 2000 the Saeima adopted Law on the Conservation of Species and Biotopes, which came into force on 19 April 2000. Section 10 of this Law provided:

"Owners and permanent users of land have the right to receive compensation from the resources of the Latvian Environmental Protection Fund regarding the significant damages caused by animals of the specially protected non-huntable and migratory species."

On 15 September 2005 the Saeima adopted law "On Amendments to Law on the Conservation of Species and Biotopes", which came into force on 11 October 2005. Section 6 of this Law provided that the previous text of Section 10 of Law on the Conservation of Species and Biotopes were to be considered as the first part of this Section and the second and third part were added to this Section, expressed as follows:

"(2) Landowners have the right to receive the compensation specified in regulatory enactments regarding the restrictions on economic activities in micro-reserves.

(3) A landowner may receive compensation only in such amount as is not covered by other State, local government or European Union payments that are already granted to him or her and that are directly or indirectly provided for the same restrictions on economic activities or significant damages caused by animals of the specially protected non-huntable and migratory species, for which compensation is provided for in regulatory enactments."

Whereas the law of 12 June 2009 "Amendments to Law on the Conservation of Species and Biotopes" added Para 8 to Transitional Provisions of Law on the Conservation of Species and Biotope", expressed as follows:

"Compensations regarding the significant damages caused by animals of the specially protected non-huntable and migratory species shall not be calculated and disbursed in 2009, 2010 and 2011."

This norm came into force on 1 July 2009.

2. The applicant – the Department of Administrative Cases of the Supreme Court Senate (in accordance with the law of 13 June 2013 "Amendments to the law "On Judicial Power", since 1 January 2014 the Department of Administrative Cases of the Supreme Court; hereinafter – the Applicant) – has submitted to the Constitutional Court an application regarding the compatibility of Para 8 of Transitional Provisions of Law on the Conservation of Species and Biotopes (hereinafter – the contested norm) with the principle of legal certainty enshrined in Article 1 of the Satversme of the Republic of Latvia (hereinafter – the Satversme) , as well as Article 105 of the Satversme.

It is noted in the application that the Department of Administrative Cases is examining Case No. 42967209 SKA-112/2013, which has been initiated on the basis of a cassation complaint by Ltd. "Sātiņi-S" regarding the judgement of 18 June 2012 by the Administrative Regional Court, rejecting the request to revoke the decision of 28 August 2009 by the Environment State Bureau No.35-s and pass a favourable administrative act. Ltd. "Sātiņi-S" allegedly owns immoveable property, the largest part of which is located within the borders a nature territory under special protection (hereinafter – protected territory) – nature reserve "Sātiņu dīķi". The Applicant has been engaged in commercial activities since 1994 – in fish farming.

The Applicant noted that the owners of land located in nature reserves had limited right to manage their property in accordance with their intentions and economic interests. Likewise, changing the category of land use was allegedly prohibited. The management of land located in the nature reserve "Sātiņu dīķi" was subordinated to the safeguarding of ornithological values found in it. Continuation of active commercial activities in the pond management was said to be one the main pre-conditions for preserving these values.

Whereas due to the restrictions placed upon commercial activities the owner has the right to receive compensations envisaged in law. Section 29 of the law "On Specially Protected Nature Territories" defines the general right to receive compensation for restrictions upon commercial activities. These rights have been specified in Section 10 of Law on Conservation of Species and Biotopes and the Cabinet Regulation adopted on the basis of the law. Compensation replaces material benefit, which the landowner could not gain because the territory has been granted a special protection and restrictions upon commercial activities linked to it. The basis for not gaining material benefits or of losses is allegedly inseparably linked with the permitted type and procedure of using the respective property.

The contested norm allegedly prohibits landowners and their permanent users (hereinafter – landowners) receiving compensation for the significant damages caused by animals of the specially protected non-huntable and migratory species (hereinafter – animals of the protected species). Such damage allegedly is unavoidably caused as the result of the permitted use of the property or the activities aimed at maintaining the protected values. The restriction that follows from the contested norm has been adopted by law and it has a legitimate aim – saving the State budget resources under the conditions of economic crisis. However, the restriction is said to be disproportional, since it prohibits receiving any compensation at all for the damages caused by animals of the protected species (hereinafter also – compensation). Thus, the contested norm allegedly places excessive restrictions upon the right to own property, which is guaranteed in Article 105 of the Satversme.

The Applicant holds that the restriction also is incompatible with the principle of legal certainty enshrined in Article 1 of the Satversme. I.e., the contested norm came into force on 1 July 2009, but the restriction was applied also to the damage that had been caused to landowners during the year before the contested norm came into force.

In those cases, when restrictions have been placed regarding the commercial activities of a property, the compensation for damages should

provide counter-balance to these restrictions. The Applicant holds that it is important for the landowner, when planning commercial activities in the particular property, to know the guarantees established by the State and to take these into account. In this particular case such possibility had been denied, since the legislator had established a restriction regarding receipt of compensation also with regard to the previous period, i.e., the first half of 2009. Moreover, in accordance with later amendments to Law on Conservation of Species and Biotopes the compensation was not been calculated and disbursed also in the following years. Thus, the restrictions have lasted already for five years. Hence, the legislator has not taken the most lenient actions and has not taken into considerations landowners' interests.

The following is noted in the Application: in assessing, whether the principle of legal certainty in this case should be protected as opposed to the interests of society to save budget resources under the conditions of economic recession, it cannot be concluded that the public benefit exceeds the restriction upon the landowner's rights and legal interests. On the national scale, the damages caused by fish-eating birds allegedly are relatively small, and the undisbursed compensation for these cannot constitute significant savings of the State resources. Whereas for the landowner these losses can be substantial.

3. The institution, which adopted the contested act, – the Saeima – notes in its written reply that the contested norm complies with Article 1 and Article 105 of the Satversme.

The Saeima holds that only the compatibility of the contested norm with the first sentence of Article 105 of the Satversme should be assessed and upholds the Applicant's opinion that compensation falls within the content of the concept "property" referred to in this provisions of the Satversme. I.e., the contested norm, by not envisaging calculation and disbursement of compensation, restricts the landowners' right to own property. However, the Saeima also draws attention to the fact that this right is not absolute, as it contains also the landowner's social responsibility before society. Moreover, the right to own property may be

restricted, if the restrictions have a legitimate aim and are proportional to this aim.

Allegedly the case does not comprise a dispute, whether the restriction has been established by law, and it also has a legitimate aim – safeguarding public welfare. In assessing the proportionality of the restriction, it should be taken into consideration that the contested norm was adopted under complicated economic conditions, and the adoption of it was one of the measures for overcoming the crisis. Therefore the constitutionality of the contested norm should be "verified in the framework of measures for overcoming the economic crisis."

The Saeima notes that the draft law "Amendments to Law on Conservation of Species and Biotopes", elaborated by the Cabinet of Ministers, was submitted for reviewing by the Saeima as part of the package of draft laws amending the State budget of 2009 and envisaged, instead of adopting the contested norm, deleting the first part of Section 10. The Saeima considers that a more lenient solution was chosen, by providing that the compensation would not be calculated and disbursed only during a specific period of time – in 2009, 2010 and 2011. Thus, the State's obligation to renew disbursement of compensation after overcoming the economic crisis was retained. Because of these reasons, the restriction to the right to own property envisaged by the contested norm allegedly had been justified and substantiated.

The Saeima expresses the opinion that the contested norm also complies with the principle of legal certainty enshrined in Article 1 of the Satversme. Even though the contested norm came into force on 1 July 2009, the legal relationships connected with the disbursement of compensation regarding the first half of 2009 continued. It is noted in the written reply that in accordance with Para 30 of the Cabinet Regulation of 20 November 2007 No. 778 "Procedure for determining the a amount of losses to land users, caused by the significant damages caused by the animals of protected non-huntable and migratory species (hereinafter – Regulation No. 778), the Council of the Latvian Environmental Protection Fund adopts the decision on compensation for losses until 30 November of

the current year. A person does not receive a certain amount of compensation for each month, but the compensation is calculated once per year and for the whole year. Therefore the legislator could have revised the legal relationships by the contested norm, envisaging that the compensation for 2009 would not be paid.

4. The summoned person – the Ministry of Environmental Protection and Regional Development (hereinafter – MEPRD) – informs that landowners have the possibility to prevent or decrease the damages caused by animals of the protected species by implementing preventive measures, they can also apply for support measures financed by the European Union funds. I.e., allegedly in the framework of measure of the European Fisheries Fund – "Investments into Aquaculture Companies", it is possible to receive support for purchasing and installing equipment for protecting aquaculture animals against predatory wild animals. Allegedly, it is also possible to receive support for the fishpond areas, which are used to breed aquaculture animal products for sale.

MEPRD informs that compensation for the damages caused by wild animals is disbursed in a number of European Union member states. The terms and procedure for granting the compensation differ. For example, in Estonia compensation regarding the damages caused by animals and migratory birds of a number of species is paid. Whereas in other countries, for example, in the United Kingdom and Denmark, the damages caused by migratory birds is not compensated for.

5. The summoned person – the State Environmental Service (hereinafter – SES) – informs that on 26 June 2009 Ltd. "Sātiņi-S" submitted an application No. 288 to the Liepāja Regional Environmental Board, requesting that calculations of significant damage to the company's fish-farms by animals of the protected species were made regarding the period from 9 April to 1 July 2009.

On 9 July 2009 the Liepāja Regional Environmental Board of SES adopted the decision No. 123 "On refusal to make calculations of the losses caused by significant harm to the fish-farm caused by specially protected animals of non-huntable and migratory species", on the basis of

the contested norm. The Liepāja Regional Environmental Board of SES had considered the expediency and decided not to conduct on-site inspection.

This decision was appealed against to the Environment State Bureau, which on 28 August 2009 adopted decision No. 35-s, by which the contested decision was left unchanged. The decision adopted by the Environment State Bureau was appealed against before the administrative court.

SES notes that the procedure, according to which SES regional environmental board assesses damages and calculates the amount of losses, is regulated by Regulation No. 778.

6. The summoned person – the Latvian Environment Protection Fund (hereinafter – LEPF) **administration** – informs the Constitutional Court about the number of received requests of compensation and the compensations granted for the significant damages caused by animals of the protected species from the State budget sub-programme 21.02.00 "Environment Protection Projects" (2004 – 2006) and sub-programme 21.16.00 "Compensation for damages caused by migratory birds and non-huntable animals" (in 2007 and 2008) until the moment when the contested norm came into force. In 2009 this sub-programme of the State budget had been liquidated due to lack of resources. Pursuant to Para 11 of Transitional Provisions in the Law on Conservation of Species and Biotopes the compensation was not calculated and disbursed also in 2012 and 2013. At the moment of providing the opinion the budget of LEPF administration had no resources for disbursing compensation also in 2014.

Administration of LEPF notes that in accordance with Regulation No. 778 LEPF Council must take the decision on disbursing compensation by 30 November of the current year. LEPF administration must disburse compensation within five days following the adoption of the decision.

The Findings

7. The Applicant holds that the contested norm is incompatible with the principle of legal certainty enshrined in Article 1 of the Satversme and also infringes upon the right to own property enshrined in Article 105 of the Satversme.

7.1. Article 1 of the Satversme provides that Latvia is an independent democratic republic. The State's obligation to abide by a number of principles of a judicial state follows from the concept of democratic republic included in this Article, *inter alia*, the principles of proportionality and legal certainty *[see Judgement of 10 June 1998 by the Constitutional Court in Case No. 04-03(98), Findings, and Judgement of 24 March 2000 in Case No. 04-07(99), Para 3 of the Findings].*

The Constitutional Court has concluded that in amending legal regulation the institutions of public administration must be consistent in their actions with regard to regulatory enactments adopted by them and must abide by legal certainty, which persons might have developed in connection with a particular legal norm. The principle of legal certainty, *inter alia*, demands protecting certainty that a person might have developed with regard to retaining or implementation of his or her rights, and comprises the obligation of the State to meet the commitments that it has assumed *vis-à-vis* persons. Otherwise persons' trust in the State and law could decrease. However, in order to ensure the State's ability to respond to changing circumstances of life this principle does not exclude the possibility for the State to amend the existing legal regulation. The principle of legal certainty also requires the State, in amending legal regulation, to ensure a reasonable balance between a person's certainty and those interests of society that will be ensured by amending the regulation *(see Judgement of 19 March 2002 by the Constitutional Court in Case No. 2001-12-01, Para 3.2 of the Findings, and Judgement of 15 March 2010 in Case No. 2009-44-01, Para 15).*

7.2. Article 105 of the Satversme provides: "Everyone has the right to own property. Property shall not be used contrary to the interests of the public.

Property rights may be restricted only in accordance with law. Expropriation of property for public purposes shall be allowed only in exceptional cases on the basis of a specific law and in return for fair compensation."

It follows from the application that the Applicant requests the Constitutional Court to examine the compatibility of the contested norm with the first sentence in Article 105 of the Satversme.

The Constitutional Court has concluded that Article 105 envisages guaranteeing comprehensive material rights and is not limited only to the right to own property. The "right to own property" is to be understood as all rights of material character, which the person, who has this right, may use in his or her favour and use them according to one's own will, *inter alia*, for various economic interests. Likewise, the Constitutional Court has noted that in the meaning of the European Convention for the Protection of Human Rights and Fundamental Freedoms different claims can be regarded as property, i.e., such, the implementation of which could be demanded due to obvious legal grounds (*see Decision of 20 April 2010 by the Constitutional Court on Termination of Legal Proceedings in Case No. 2009-100-03, Para 8.2, and Judgement of 7 June 2012 in Case No. 2011-19-01, Para 9.1).*

To establish, whether in the particular case the principle of legal certainty has been abided by, the Constitutional Court must, first of all, establish, whether compensation for the significant damages caused by animals of the protected species falls within the content of the concept "property", referred to in Article 105 of the Satversme.

8. The species under special protection and biotopes are under special protection of the State. Moreover, Section 8(4) of the Law on Conservation of Species and Biotopes, provides that this protection applies also to species of migratory birds, which are not included in the lists of species under special protection.

8.1. Section 9 of the Law on Conservation of Species and Biotopes imposes the duty upon landowners, *inter alia*, to promote preservation of the diversity of species and biotopes, as well as to ensure to migratory animals undisturbed rest and feeding during the migration season and to introduce ecologically sound methods.

Whereas Section 24 of the law "On Specially Protected Nature Territories" envisages the obligation of the landowner to ensure that the regulations on the protection and use of the protected territories are observed and to carry out protection and maintenance measures in the relevant territories, as well as to notify administrative body of the protected territory or the local government about existing or possible changes in the natural formations, as well as about violations of regulations regarding protections and use. The Cabinet Regulation of 16 March 2010 No. 264 "General Regulation on the Protection and Use of Specially Protected Nature Territories" defines, what kind of activities are allowed and prohibited in each type of protected nature territory. *Inter alia*, Para 16.16 of this Regulation provides that, expect for particular cases, the category of land use cannot be changed in nature reserves.

8.2. In accordance with the first and the second part of Section 29 of the law "On Specially Protected Nature Territories" landowners in protected territories have the right to tax concessions specified in regulatory enactments, as well as the right to compensations regarding restrictions on economic activity specified by law, *inter alia*, in cases specified by law – the right to receive compensation or to request exchange of the land belonging to them for land of equivalent value owned by the State or local government. Section 30 of this Law provides that the conditions and procedures for granting the compensation are determined by a separate law. In 30 June 2005 the Saeima adopted the law "On the Rights of Landowners to Compensation for Restrictions on Economic Activities in Specially Protected Nature Territories and Microreserves".

Whereas Section 10(1) of the Law on Conservation of Species and Biotopes, envisages that landowners have the right to receive compensation from the resources of the Latvian Environmental Protection

Fund regarding the significant damages caused by animals of the specially protected non-huntable and migratory species. In accordance with the third part of this Section a landowner may receive compensation only in such amount as is not covered by other State, local government or European Union payments that are already to him or her and that are directly or indirectly provided for the same restrictions on economic activities or significant damages causes by animals of the specially protected non-huntable and migratory species, for which compensation is provided for in regulatory enactments.

The procedure for calculating and disbursing compensation is regulated by Regulation No. 778, adopted in accordance with Section 4 and Section 6 of the law On Conservation of Species and Biotopes. In accordance with Para 3 of Regulation No. 778, the owner, within seven days after identifying damages, submits to SES Regional Environmental Board application, requesting compensation for the damages inflicted upon fruit growing, aquaculture, cattle farming or apiculture by animals of the protected species. It follows from Para 28 of Regulation 778 that compensation is not calculated and disbursed if the application has not been submitted in time, when it is no longer possible to assess the nature of damages, if the requirements set in the regulatory enactment governing the particular field have not been abided by, if measures for scaring off fish-eating birds or controlling their numbers have not been implemented in aquaculture, if the requirements established by regulatory enactments regarding environment protection have not been met, if an unsubstantiated or intentionally increased amount of damages has been identified, if it is established that the causing of damages has been allowed intentionally or even furthered. Thus, landowner is entitled to receive compensation for significant damages caused by animals of the protected species only if he or she has abided by all requirements set out in regulatory enactments.

8.3. Thus, on the one hand, the law "On Specially Protected Nature Territories", Law on Conservation of Species and Biotopes, and other regulatory enactments in the field of environmental protection restrict a person's – landowner's – right to freely handle his or her immoveable property and to choose the kind of economic activity to engage in.

However, on the other hand, the Law on Conservation of Species and Biotopes and Regulation No.778, established on the basis of it, envisage landowners' right to receive compensation from the State budget for significant damages causes by animals of the protected species after concrete conditions have set in and certain requirements have been met. In this way damages, which a landowner suffers because the territory has been granted special protection and restrictions on economic activities have been imposed with the aim of conserving animals of the protected species, are compensated for. This compensation has an economic value; therefore the right to claim has the nature of property rights.

Hence, compensation for significant damages caused by animals of protected species falls within the content of the term "property" referred to in Article 105 of the Satversme.

9. Landowners' right to receive compensation for significant damages caused by animals of the protected species has been enshrined in Law on Conservation of Species and Biotopes already in 2000. It is noted in the application that Ltd. "Sātiņi-S" received compensation for significant damages caused by animals of the protected species in 2006, 2007 and 2008 (*Case Materials, Vol.1, p.6*). Consequently, landowners could have developed legal certainty that this compensation would be calculated and disbursed also in the future.

With the adoption of the contested norm, this compensation was not calculated and disbursed in 2009, 2010 and 2011. Moreover, this restriction was applied also to six months before the contested norm came into force, i.e., the first half of 2009.

Thus, the contested norm not only restricts landowners' right to receive compensation for significant damages caused by animals of protected species within a concrete period of time, but also affects legal certainty they have developed.

Thus, in the case under examination, the compatibility of the contested norm with Article 105 must be examined in interconnection with Article 1 of the Satversme.

10. Article 105 of the Satversme envisages both exercise of the right to own property without interference, and the rights of the State to restrict the use of property in public interests. I.e., the general principle – the use of property without interference – must be always examined in interconnection with the State's right to restrict the use of property. Hence, the right to own property is not absolute.

The right to own property may be restricted, if the restriction is justified, i.e., the Constitutional Court must examine:

1) whether the restriction upon fundamental right has been established by law;
2) whether the restriction has a legitimate aim;

3) whether the restriction is proportional to its legitimate aim (*see Judgement of 20 May 2002 by the Constitutional Court in Case No. 2002-01-03, and Judgement of 25 October 2011 in Case No. 2011-01-01, Para 13).*

11. The contested norm is included into the Law on Conservation of Species and Biotopes with the law of 12 June 2009 "Amendments to the Law on Conservation of Species and Biotopes". It is not disputed in the case that the contested norm has been adopted and promulgated in accordance with the procedure set out in the Satversme and the Saeima Rules of Procedure.

Thus, the restriction to fundamental rights, which follows from the contested norm, has been established by law.

12. Any restriction on fundamental rights must be based upon circumstances and arguments regarding its necessity, i.e., the restriction is imposed because of important interests – a legitimate aim (*see Judgement of 22 December 2005 by the Constitutional Court in Case No. 2005-19-01, Para 9, and Judgement of 27 October 2010 in Case No. 2010-12-03, Para 14).*

The Applicant notes that the contested norm has a legitimate aim – saving the State budget resources under the conditions of economic crisis.

The Saeima also holds that the protection of society's welfare is the legitimate aim of the contested norm, i.e., the adoption of this norm in 2009 had been one of the measures for overcoming the economic crisis.

The Constitutional Court has concluded in a number of its judgements that in 2009 Latvia, under the conditions of economic recession in the state, had to reduce significantly budget expenditure in all sectors. Prevention of economic crisis, when the State is in a complicated financial situation, is to be recognised as an action aimed at the protection of other persons' rights and public welfare. Moreover, under such conditions, in order to minimise the adverse consequences to the extent possible, the state institutions must act in as fast, concerted and decisive manner as possible. They need reasonable discretion to introduce the appropriate measures. However, the economic situation in the State or the need to decrease budget deficit cannot serve as a general justification to justify the State's deviation from the rights previously granted to persons (*see Judgement of 21 December 2009 by the Constitutional Court in Case No. 2009-43-01, Para 27.2, and Judgement of 18 January 2010 in Case No. 2009-11-01, Para 15*).

To balance the resources available from the State budget with the needs and interests of society, the contested norm temporarily suspended calculation and disbursement of compensation.

Thus, the restriction to fundamental rights established by the contested norm has a legitimate aim – protection of public welfare by balancing the revenue and expenditure of the State budget.

13. To establish, whether the restriction is proportional to the legitimate aim, which the State wanted to achieve by establishing this restriction, it must be verified, whether reasonable balance is ensured between the restriction upon a person's fundamental rights and public interests. In other words, it must be assessed:

1) whether the measures chosen by the legislator are appropriate for reaching the legitimate aim:

2) whether the legislator's action is necessary, i.e., whether the aim cannot be reaches by other means, less restrictive upon a person's rights and legitimate interests;

3) whether this action is appropriate, i.e., whether the benefit gained by society exceeds the damages caused to a person's rights and legitimate interests.

If it is recognised that a legal norm is incompatible with even one of these criteria, then it is incompatible with the principle of proportionality and 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*).

14. Until the contested norm came into force, the following amounts were allocated from the State budget for disbursing compensation:

1) In 2004 – LVL 51 972.92 (24 applications for compensation received);

2) In 2005 – LVL 40 651.00 (18 applications for compensation received);

3) In 2006 – LVL 140 063.00 (53 applications for compensation received);

4) In 2007 – LVL 98 000.00 (43 applications for compensation received);

5) In 2008 – LVL 356 272.70 (109 applications for compensation received), envisaging disbursement of compensation in two stages: in the amount of LVL 298 000.00 in 2008, and in the amount of LVL 58 272.70 in the first quarter of 2009 *(see Case Materials, Vol. 1, p. 28).*

The law "On the State Budget for 2009" initially envisaged LVL 298 000 for disbursing compensation in the respective year *(see http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/858C34ED21F204DBC225 7513003231F1?OpenDocument, accessed on 21 February 2014).* Whereas the law adopted by the Saeima on 12 June 2009 "On Amendments to the

Law "On the State Budget for 2009"" no longer envisaged this expenditure *(see http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/98F083A8CD 3E8A9EC22575E00036236E?OpenDocument, accessed on 21 February 2014).*

Thus, by providing that in 2009, 2010 and 2011 compensation for significant damages caused by animals of the protected species would not be disbursed, saving of the State budget resources was achieved.

Hence, the contested norm is appropriate for reaching the legitimate aim – protection of society's welfare.

15. The Applicant holds that the legislator did not act in the most lenient way and failed to take into consideration the landowners' interests. Whereas the Saeima holds that the most lenient solution with regard to a person's fundamental rights has been chosen, since the landowners were not deprived of the right to receive compensation for significant damages caused by animals of the protected species for ever, but the rights were only restricted for a definite period of time

15.1. The Constitutional Court in its judgement must not indicate all possible more lenient measures. If it is established that there is at least one less restrictive measure, there are also grounds to recognise that the contested norm places disproportional restrictions upon fundamental rights. However, a more lenient measure is not any other measure, but only such that allows 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, and Judgement of 9 January 2014 in Case No. 2013-08-01, Para 14).*

The Constitutional Court has repeatedly examined legal norms decreasing funding of a sector under the condition of economic recession in 2009 and 2010. It is possible to uphold the opinion by the Saeima that in the case under examination the same considerations should be taken into account, which the Constitutional Court considered when deciding on other measures for overcoming economic crisis. However, in assessing, whether in the particular situation the legislator chose the most lenient measure, it

must be taken into account that in the previously examined cases regulation, which decreased by certain per cent the funding envisaged for a specific aim or postponed the disbursement for a definite period time, was examined (*see, for example, Judgement of 21 December 2009 by the Constitutional Court in Case No. 2009-43-01, Para 1, and Judgement of 27 October 2010 in Case No. 2010-12-03, Para 1.2).*

The Saeima, examining the draft law by which the contested norm was included in the Law on Conservation of Species and Biotopes, rejected the proposal by the Cabinet to exclude from the Law its Section 10, which envisaged the right of landowners to receive compensation for significant damages caused by animals of the protected species. Thus, formally, landowners' right to receive compensation for significant damages caused by animals of the protected species was retained and is still retained. However, by establishing with the contested norm a period, when the compensation was not calculated and disbursed, and extending this period several times in the coming years, in fact the landowners were prohibited from exercising this right.

15.2. It is possible to judge about alternative solutions in the case under examination by amendments to legal regulation that were introduced into other sectors under the conditions of economic recession.

For example, the law "Amendments to law "On the Rights of Landowners to Compensation for Restrictions on Economic Activities in Specially Protected Nature Territories and Microreserves"" was adopted simultaneously with the contested norm, which envisaged that compensation for restrictions on economic activities would not be disbursed only in 2010 *(see http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/769CC6C80878A0FAC22575D8002F9F9A?OpenDocument, accessed on 21 February 2014).* Later this restriction on rights was applied also to 2011 and 2012.

Whereas the members of the Saeima, deciding on the adoption of the contested norm, did not support the proposal not to calculate and disburse compensation for significant damages caused by animals of the protected species only in 2010 and 2011. Instead, the proposal by the Cabinet of

Ministers not to calculate and disburse compensation also in 2009 was supported (*see Case Materials, Vol.1, p. 112).* Thus, one of the possible alternative solutions in the particular situation was introducing restrictions on calculating and disbursing compensation as of a moment in the future, for example, as of the moment when the amendments came into force, applying this restriction to the remaining part of 2009 or starting with 2010.

The Saeima refers to the procedure for granting compensation for significant damages caused by animals of the protected species as the justification for applying restrictions to the whole year 2009 (*see Case Materials, Vol. 1, p. 20*). I.e., in accordance with Para 30 and Para 32 of Regulation No. 778, the decision on granting compensation to landowners is taken once a year – until 30 November, but compensation is disbursed with 10 business days after the decision has been adopted. The Constitutional Court holds that the aforementioned argument is inessential, since Para 3 and Para 19 of Regulation 778 envisage that landowner must inform SES regional environment board about significant damages caused by animals of the protected species within seven days after damages have been identified. Whereas a commission, within 14 days following the receipt of the application, must conduct on-site inspections to identify the damages caused and to assess measures that had been taken to prevent it. Thus, damages are identified throughout the year, and it is possible to calculate losses more frequently than once per year.

The Constitutional Court holds that in the case under examination one more possibility existed – to continue calculating compensation for damages caused by animals of the protected species as before, but postpone disbursement of this compensation for an indefinite period. For example, the Cabinet Regulation of 15 April 2008 No. 280 "Regulation for Financially Supportable Quotas for Bio-fuel" on 13 October 2009 was supplemented with Para 30, envisaging that the State would disburse the payments to producers of biofuel, granted in the framework of direct support by the State, for biofuel produced in the second half of 2008 by 2019, in accordance with the funding available in the particular subprogram of the State budget. The Constitutional Court, in its turn,

recognised this regulation as necessary for reaching the legitimate aim (*see Judgement of 27 October 2010 by the Constitutional Court in Case No. 2010-12-03, Para 17).*

Likewise, it was possible to establish a temporary decrease of certain percentage or other compensatory mechanisms to landowners, who suffer losses due to damages caused by animals of the protected species.

Thus, it can be concluded that at the time when the contested norm was adopted the legislator had the possibility to choose a solution more lenient towards a person's fundamental rights. However, whether any of the aforementioned alternative solutions would allow reaching the legitimate aim in the same quality as the restriction established by the contested norm, should be determined in interconnection with whether the legislator, in adopting the contested norm, acted appropriately, i.e., whether the benefit gained by society exceeds the damages caused to a person's rights and legal interests.

16. The Applicant holds that the public benefit provided by the contested norm does not exceed the damages caused to a person's rights and legal interests. Whereas the Saeima holds a contrary view to this.

16.1. In verifying the compatibility of the restriction upon fundamental rights with the legitimate aim, it must be established, whether the adverse consequences that a person experiences as the result of restriction to fundamental rights do not exceed the benefit, which society as a whole gains from this restriction.

The Constitutional Court has concluded that under conditions of fast economic recession the principle of legal certainty requires balancing a person's legal certainty with the interests of society. On the one hand, prevention of infringement of interests of public importance should be given priority compared to the principle of legal certainty. On the other hand, in assessing the compatibility of the contested norm with the principle of proportionality, it must also be taken into consideration, whether a possibility for a person to exercise the rights that the State once granted to him or her was envisaged simultaneously with amendments to

regulatory enactments. Therefore it is important, whether lenient transition to the new legal regulation was envisaged, which, *inter alia*, can manifest itself as setting of a reasonable term for transition or envisaging compensation. The State should meets its obligation of envisaging a reasonable transitional period mainly because persons have relied upon the particular legal regulation and the rights envisaged in it, and the transitional period is needed so that persons would reorient themselves to the procedure established by the new legal regulation (*see Judgement of 6 July 2009 by the Constitutional Court in Case No. 2008-38-03, Para 13, Judgement of 26 November 2009 in Case No. 2009-08-01, Para 25, and Judgement of 27 October 2010 in Case No. 2010-12-03, Para 18).*

16.2. Restrictions regarding the use of immoveable property and economic activities may be imposed in the interests of environmental conservation and protections. Landowners, as members of society, must tolerate these restrictions on behalf of these interests. By envisaging to landowners compensation for significant damages caused by animals of the protected species, they are given guarantees that the Sate will compensate the damages caused, if they fulfil the obligations imposed with the aim of environment conservation and protections and abide by the restrictions to economic activities that have been imposed. Such guarantees balance the restrictions to the right to own property imposed by the State.

As noted in the application, the protection of values present in natures reserves is aimed not only at landowners abstaining from economic activities that do not comply with restrictions, but also at implementing actions or measures that ensure conservation and maintenance of the natural environment (*see Case Materials, Vol.1, p.5*). Thus, landowners must continue economic activities, even if these cause losses. For example, 92 per cent of the immoveable property owned by the applicant in the administrative case – Ltd. “Sātiņi-S” – is located within the territory of nature reserve “Sātiņu dīķi”. The diversity of bird species and ponds, which create favourable conditions for ornithology, is the greatest value of the territory for society and in the context of environmental. To preserve this value, Ltd. “Sātiņi-S” must continue active economic activities in the fish farm.

In mid-2009, with the adoption and application of the contested norm, calculation and disbursement of compensation for significant damages caused by animals of the specially protected species was discontinued. The Constitutional Court finds that by suspending calculation and disbursement of this compensation and not releasing landowners from the duty to ensure favourable conditions for animals of the protected species, the costs of damages caused is totally placed upon the shoulders of landowners.

Thus, by adopting the contested norm, no possibility was envisaged for landowners to exercise the right that was once granted to them by the State, nor other mechanisms, which would fully or partially compensate damages caused to them. Neither was a transitional period established, during which landowners could adjust to the new circumstances.

16.3. The Constitutional Court notes that society and the State are interested not only in saving the State budget resources, but also in conservation and protection of environment. The report on the initial impact assessment (annotation) to the draft law "Amendments to the Law on Conservation of Species and Biotopes", submitted by the Cabinet of Ministers to the Saeima in the autumn of 2013, recognises that the conservation of biological diversity is one of the pre-requisites for ensuring human wellbeing and existence of economic activities, that animals of particular species are protected in the interests of the whole society and, thus, it is important to retain compensation system, to avoid dissatisfaction of landowners and the whole of society with uncompensated for significant damages caused by animas of the protected animals (*Case Materials, Vol. 1, p. 117).* Moreover, the commitments of the State in this field follow not only from the national legal norms, but also international treaties binding upon Latvia, for example, the Convention on the Conservation of Migratory Species of Wild Animals of 1979.

Even though the contested norm allowed within the particular period of time saving all resources envisaged for the specific purpose, in the long-term society would have benefited more if the legislator had chosen a solution more lenient towards landowners' rights. If the total costs of

damages caused by animals of the protected species had not been transferred to landowners, it would have been ensured that they continue their economic activities in a more successful way, at the same time taking care of environment protection and conservation. Moreover, it must be taken into consideration that until 2008 the sums that were allocated for compensation were relatively small, and, consequently, the savings of the State budget resources were also small. Whereas for landowners this compensation may turn out to be essential for successful continuation of their economic activities.

The Constitutional Court concludes that the legislator could have chosen a solution more lenient towards a person's fundamental rights, moreover, the benefit that society gains from the restriction to fundamental rights established by the contested norm does not exceed the damage causes to a person's rights.

Thus, the restriction to fundamental rights that follows from the contested norm is compatible with the principle of proportionality and legal certainty and the contested norm is incompatible with Article 1 and Article 105 of the Satversme.

17. Pursuant to Section 32(3) of the Constitutional Court Law, a legal norm, which has been recognised by the Constitutional Court as being incompatible with a legal norm of higher legal force, is to be considered invalid as of the day when the judgement by the Constitutional Court is published, unless the Constitutional Court has ruled otherwise.

Whereas in accordance with Para 11 of Section 31 of the Constitutional Court Law, if the Constitutional Court recognises a legal norm as being incompatible with a norm of higher legal force, it must define the date as of which the respective norm becomes invalid.

In defining the exact date, as of which the contested norm becomes invalid, the Constitutional Court examines, whether in the administrative case under examination it is necessary to recognise the contested norm invalid retroactively to protect the fundamental rights of the person, whose rights had been infringed upon, or whether any considerations exist due to

which the contested norm should be recognised as being invalid retroactively only with regard to a particular person (*see Judgement of 7 June 2012 by the Constitutional Court in Case No. 2011-19-01, Para 20).*

The law grants to the Constitutional Court not only the mandate, but also imposes the responsibility to see to it that its judgement would ensure legal stability, clarity and peace in the social reality. The Constitutional Court, to the extent possible, should refrain from adopting decisions, which would be hard to implement financially or organisationally (*see Judgement of 21 December 2009 by the Constitutional Court in Case No. 2009-43-01, Para 35.1, and Judgement of 24 October 2013 in Case No. 2012-23-01, Para 20.2).*

In the Case under examination the Applicant, in examining an administrative case, in order to prevent violation of a private person's – the applicant's in the administrative case – rights, submitted to the Constitutional Court an application regarding compatibility of the contested norm with Article 1 and Article 105 of the Satversme. The Constitutional Court concludes that recognising the contested norm as being invalid as of the date of its adoption is the only possibility with regard to the applicant in the administrative case – Ltd. "Sātiņi-S" in order to protect its fundamental rights.

In accordance with the contested norm compensation for significant damages caused to landowners by animals of the protected species in 2009, 2010 and 2011 not only was not disbursed, but even was not calculated. Thus, the Constitutional Court holds that in this case the contested norm cannot be declared invalid with general retroactive force. Thus, revoking of the contested norm only with regard to Ltd. "Sātiņi-S" is a suitable solution for maintaining legal stability and clarity.

18. The state power has the obligation to abide by the principles of a judicial state in its activities. This, first and foremost, means that the legislator has the obligation to review regularly, whether the legal regulation continues to be effective, appropriate and necessary, and whether it should not be improved. Moreover, the principles of a judicial state require the Constitutional Court to ensure, in accordance with its

mandate, existence of such legal system, which to the extent possible would prevent legal regulation incompatible with the Satversme and other norms of higher legal force (*see Judgement of 9 January 2014 by the Constitutional Court in Case No. 2013-08-01, Para 18.2)*.

In a number of sectors the measures for preventing economic recession have already been completed. For example, compensation for restrictions to forest management activities was not calculated and disbursed only in 2010 – 2012. Whereas landowners are unable to exercise their right to compensation for significant damages caused by animals of the protected species for five years already. I.e., on 15 December 2011 Para 11 was added to Transitional Provisions of Law on Conservation of Species and Biotopes, and on 6 November 20133 – Para 14, providing that compensation would not be calculated and disbursed also in 2012, 2013 and 2014.

The report in the initial impact assessment (annotation) to the law of 6 November 2013 "Amendments to the Law on Conservation of Species and Biotopes" noted that in 2014 compensation could not be disbursed because the State budget had not resources for it. Moreover, the law was adopted in the procedure for urgent laws, together with other laws of the State budget package, without consulting experts and without involving society in the creation of the draft law (*see Case Materials, Vol.1, pp. 116 – 120)*.

The Saeima Legal Affairs Committee in its Opinion of 15 October 2013 No. 12/13-1-203-11/13 regarding draft law "Amendments to the Law on Conservation of Species and Biotopes" requested the Budget and Finance (Taxation) Committee to assess, "whether sufficient grounds exist for postponing the term for calculating and disbursing compensation and whether a more lenient solution was not available (*see Case Materials, Vol.1, p. 87*). Moreover, the Legal Affairs Committee submitted for the second reading a proposal to add to Transitional Provisions of Law on Conservation and Species and Biotopes a paragraph envisaging that the compensation, which was not disbursed in 2009-2014, would be disbursed

in 2015 (*see Case Materials, Vol. 1, p. 87*). The committee in charge and the Saeima rejected this proposal.

The Constitutional Court draws the attention of the Saeima to the necessity to review the restriction included in Para 14 of Transitional provisions of the Law on Conservation of Species and Biotopes, which already for the fifth year denies landowners the possibility to receive compensation for significant damages causes by animals of the protected species.

The Substantive Part

Pursuant to Section 30 – 32 of the Constitutional Court Law the Constitutional Court

held:

1. **To recognise Para 8 of Transitional Provisions of the Law on Conservation of Species and Biotopes with Article 1 and Article 105 of the Satversme of the Republic of Latvia.**
2. **To recognise Para 8 of Transitional Provisions of the Law on Conservation of Species and Biotopes with regard to Ltd. "Sātiņi-S" as being incompatible with Article 1 and Article 105 of the Satversme of the Republic of Latvia as of the date of its adoption.**

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 A. Branta