THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT
ON BEHALF OF THE REPUBLIC OF LATVIA
in Case No. 2012-20-03
5 April 2013, Riga

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

having regard to the constitutional complaint submitted by the limited liability company "Nygaard International",

pursuant to Article 85 of the Satversme of the Republic of Latvia and Para 3 of Section 16, Para 11 of Section 17(1), Section 19^2 and Section 28^1 of the Constitutional Court Law,

at the court sitting on 8 March 2013 examined in written procedure the case "On the Compliance of Para 407.16.3, 434.23 and 572.6 of Aizpute Regional Council Binding Regulations No. 7 of 28 March 2012 "The graphic part and the regulation on the use of the territory and building of Aizpute Regional Spatial Planning for 2012 – 2023" with Article 105 of the Satversme of the Republic of Latvia."

The Facts

1. The Regional Council of Aizpute (hereinafter – the Aizpute Council) on 28 March 2012 adopted the binding regulation No. 7 "The graphic part and the regulation on the use of the territory and building of Aizpute Regional Spatial Planning for 2012

– 2023" (hereinafter – the Binding Regulation No. 7). The notification on issuing the Binding Regulation No.7 was published in the official gazette "Latvijas Vēstnesis" on 3 April 2012. In accordance with Section 25(1) of Spatial Development Planning Law, the binding regulation of a local government, which approves the spatial plan, comes into effect on the day following the relevant notification in the newspaper "Latvijas Vēstnesis" – 4 April 2012.

Subparagraph 407.16.3 of the Binding Regulation No. 7 envisages that the immoveable property in the zone of production and technical constructions can be used for a large-scale farm, but before constructing it a detailed plan must be developed. Para 434.23 of the Binding Regulation No. 7 envisages that the allowed use of immoveable property located in a rural territory can be a large-scale pig farm, but before constructing it a detailed plan must be developed. Whereas Subparagraph 572.6 of the Binding Regulation No. 7 envisages that before constructing or re-constructing a large-scale farm a detailed plan must be developed.

2. The limited liability company "Nygaard International" (hereinafter – the Applicant) requests the Constitutional Court to recognise Subparagraph 407.16.3, 434.23 and 572.6 of the Binding Regulation No. 7 (hereinafter also – the contested norms) as being incompatible with Article 105 of the Satversme of the Republic of Latvia (hereinafter – the Satversme).

The Applicant is engaged in commercial activity, which is connected with pig rearing, in Aizpute region, Laža rural territory. In 1999 and 2003 the Applicant, for the purpose of commercial activities, purchased two immoveable properties – the land plot "Apriķu bekons", cadastre No. 6472 004 0145, on which a farm (pig rearing complex) is located, and the land plot "Āboliņi", cadastre No. 6472 004 0085, on which a farm (pig rearing complex) "Apriķi Breeding" is located (hereinafter also – the Land Plots).

The Applicant is planning to develop its commercial activities, i.e., to expand the farm "Apriķi Bacon" up to approximately 3.8 annual production cycles, and the farm "Apriķi Breeding" up to approximately 2.4 annual production cycles. Therefore the Applicant, on the basis of Law on Pollution, on 29 July 2004 received from the State Environment Service, Liepāja Regional Environment Board a permission to

perform A category polluting activities No. LIT-13-009 A, and on 1 June 2004 – permission to perform B category polluting activities No LIT-13-068 B.

The contested norms allegedly have changed the legal regulation of the Binding Regulation of 26 September 2007 by the Council of Laža Rural Territory No. 6 "Spatial Planning of Laža Rural Territory of Liepāja Region for 2007 – 2019" and envisaged a new restriction to the rights of the real estate owners set out in Article 105 of the Satversme – the obligation to develop a detailed plan before constructing or reconstructing a large-scale farm. The Applicant maintains that the receipt of permission to transform the Land Plots and the permissions to perform polluting activities have led to certainty that it would be able to expand the already existing large-scale farms to develop its commercial activities.

The Applicant assumes that the necessity to develop a detailed plan might be linked with the environmental impact of a large-scale farm. This is allegedly confirmed by Subparagraph No. 2.6.1 of Vol. I of the Binding Regulation No. 7 "Environmental Quality", which concludes that in Aizpute Region air pollution is caused by the operations of pig rearing complexes, i.e., handling, storing, removing and application of manure in agriculture. However, allegedly, this cannot serve as the basis for establishing restrictions on the Applicant's fundamental rights, since Subparagraph 572.6 of the Binding Regulation No.7 contains the requirement to develop a detailed plan, but does not define the reasons why this is necessary.

The Applicant underscores that the Council of Aizpute allegedly had no right to define the obligation to develop a detailed plan before reconstructing or constructing a large-scale farm. Section 28 (2) of Spatial Development Planning Law provides that for a part of a rural territory of a local government, for which the functional zoning has not been developed, a detailed plan must be developed in compliance with the sustainable development strategy of the local government. Section 7 of this Law envisages that the Cabinet defines the general requiements with regard to the spatial development planning of local level territory, the use of the territory and construction thereof. Para 57 of the Cabinet regulation of 6 October 2009 No. 1148 "Regulation on the Spatial Planning of Local Government Territory" (hereinafter – Regulation No. 1148) allegedly contains an exhaustive enumeration of those cases, when a

detailed plan must be developed. Allegedly, Para 572 of the Binding Regulation does not comply with any of the cases referred to in Para 57 of the Regulation No. 1148.

The Applicant holds that a detailed plan should be developed only for a territory, but not for construction. Para 10 of Section 1 of Spatial Development Planning Law provides that a detailed plan is detailed planning of a part of local government territory. A detailed plan is used to define concrete planned types of use of concrete territories. Thus, for each landowner the scope of exercising the right to use immoveable property is defined by the type of use allowed in the territory, where the immoveable property is located. The contested norms allegedly envisage restrictions on construction and do not define the use of the territory. Hence, the restriction upon the Applicant's right to own property allegedly is incomptbile with the definition of a detailed plan included in Spatial Development Planning Law.

The Council of Aizpute, in elaborating the Binding Regulaiton No. 7, has allegedly also failed to comply with the principles defined in Section 3 of Spatial Development Planning Law: the principle of succession, the principle of coherence and the principle of equal opportunities. The Applicant holds that the Binding Regulation No.7 has not been coordiated with the Spatial Plan of Laža Rural Territory for 2007– 2019 and with the rulings of the Judgement of 12 November 2008 by the Constitutional Court in Case No.2008-05-03 (hereinafter – Judgement in Case No.2008-05-03).

The definition of a large-scale farm, included in Subparagraph 8.53 of the Binding Regulation No. 7, allegedly does not comply with Law on Pollution, since the term "large-scale farm" is not used in this law. The Council of Aizpute, allegedly, had not been authorised to introduce this definition and provide that is applicable only to intensive rearing of pigs or poultry.

Judgement in Case No. 2008-05-03 allegedly sets out that a local government, in envisaging restrictions upon a person's right to own property, must conduct appropriate research, to establish the environmental impact of large-scale farms and provide scientific grounds for the restriction. Whereas the Council of Aizpute, in developing the Binding Regulation No.7, did not conduct scientific research. Thus, the

finding included in Judgement No.2008-05-03 that a restriction upon fundamental rights can be established only following scientific research, proving that less restrictive means do no exist, has not been complied with.

In accordance with Para 48 of the Cabinet Regulation of 7 July 2009 No. 743 "Requirements on Pig Welfare", on 1 January 2013 the transitional period, which allowed deviations with regard to pig housing constructed prior to 26 March, 2004, ends. Since the development of a detailed plan requires a rather long period of time, this Cabinet Regulation cannot be complied with.

The Council of Aizpute allegedly could have reached the aim – ensuring that requirements with regard to environment protection are meat - with means less restrictive upon a person's rights, which are already defined in laws – Law on Pollution and Law on Environmental Impact Assessment. Thus, the Applicant holds that the contested norms are incompatible with regulatory enactments of higher legal force and place disproportional restrictions upon its fundamental rights.

3. The institution, which adopted the contested act, – **the Council of Aizpute** – in its written reply and in additional explanations noted that the constitutional complaint was ungrounded and that the contested norms complied with Article 105 of the Satversme.

The definition of a large-scale farm, included in the Binding Regulation No. 7, as to its content complies with Para 6 in Part 6, Annex 1 of Law on Pollution, indicated the polluting activities, the performance of which requires A category permission. The term "large-scale farm" is identical to the concept "intensive pig and poultry rearing" used in the Law.

The Land Plots are located in a territory, where the permitted use is rural territory, but not a territory of production and technical construction. Thus, Subparagraph 407.163 of the Binding Regulation No. 7 cannot infringe upon the Applicant's fundamental rights.

The Applicant's argument that the contested norms place disproportional restrictions upon its fundamental rights allegedly is ungrounded. Spatial planning is

closely linked with environmental issues, since the implementation of the spatial planning leaves an impact upon the totality of nature, anthropogenic and social factors. The Council of Aizpute agrees that not all intentions to build should be considered as an issue of environmental law, however, the decisive factor is the significance of the impact caused by construction, and in this case it is proven by A and B category permissions to perform polluting activities, which had been issued.

On the basis of Subparagraph 57.1 of Regulation No. 1148, the detailed plan must be developed for territories indicated in the spatial planning of the local government. The Council of Aizpute holds that a detailed plan is an essential, necessary functional tool for implementing the spatial planning of a local government. Moreover, a detailed plan is one of the main instruments for ensuring that the interests of society and the State are harmonised with the Applicant's interests. Therefore the Applicant's argument that Regulation No. 1148 does not envisage the right for a local government to define those territories in its spatial planning with regard to which a detail plan must be developed is allegedly ungrounded. The contested norms had been adopted in compliance with the jurisdiction delegated to the local government and also with the norms that regulate the field of spatial planning. The legality of these norms had been acknowledged by the Ministry of Environmental Protection and Regional Development (hereinafter also – MEPRD).

Negative environmental impact is caused not by the farm or building itself, but by the waste and other substances created by its functioning. The expansion of the large-scale farm, planned by the Applicant, would leave an impact upon public interests in general, i.e., manure is removed via the local government's roads, through villages and settlements. The requirement to develop a detailed plan for the construction of large-scale farms had ben established with the aim to examine comprehensively the possible problems already during the stage of planning and designing, and find complex solutions to them. This, in its turn, imposes the obligation upon the local government to take into consideration the best available technical means with the most effective, progressive technologies and methods for exploitation. The Council of Aizpute holds that neither Law on Pollution, nor Construction Law

fully solve these issues, therefore the most effective way for reaching these aims is the use of detailed planning.

Para 38 and Para 109 of the Cabinet Regulation of 16 October 2012 No. 711 "Regulation on the Planning Documents for the Spatial Development of Local Governments" (hereinafter – Regulation No. 711) envisage that a person has the right to develop simultaneously the planning documents for spatial development – detailed planning, technical design for works and environmental impact assessment. Hence, the Applicant's argument that the development of a detailed plan would disproportionally delay construction allegedly is ungrounded.

The Council of Aizpute holds that its actions are proportional, i.e., the benefit to society exceeds the restrictions placed upon a person's rights. The contested norms allegedly do not prohibit construction or reconstruction of large-scale farms, but define the pre-requisites for implementing theses activities in order to balance the rights of society and those of the Applicant.

4. The summoned person – **the Ministry of Environmental Protection and Regional Development** – notes that the Council of Aizpute has not violated the principles of spatial planning, whereas the constitutional complaint is based upon erroneous interpretation of legal norms.

MEPRD holds that the Applicant could not have develop legal expectations that on the basis of received A and B category permissions to perform polluting activities it would be allowed to expand the existing large-scale farms in the future. Laws and Cabinet Regulations define the procedure, in which a person can receive a permission to perform polluting activities. However, the fact that such a permission has been received, does not prohibit a local government from defining in the spatial planning documents pre-requisites for performing certain activities.

Spatial Development Planning Law entered into force on 1 December 2001, whereas the Council of Aizpute started elaborating the Binding Regulation No. 7 on 26 January 2011. In elaborating the Binding Regulation No.7 the Council of Aizpute applied the regulatory enactments that were in force at the time, i.e., Spatial

Development Planning Law and Regulation No. 1148. Thus, the Binding Regulation No. 7 was developed on the basis of valid legal norms.

Para 21 of the Cabinet Regulation of 1 April 1997 No.112 "General Construction Regulation" defines that reconstruction is rebuilding of a building or its part, changing the size of the building or part thereof and changing or maintaining its function. MEPRD underscores that the Council of Aizpute, in adopting a decision on developing a detailed plan, had to assess, whether the reconstruction of large-scale farms would leave an impact upon the surrounding territory.

In accordance with Para 57 of Regulation No. 1148, it was necessary to develop a detained plan for a territory envisaged in the local government spatial plan, and this norm had granted to the local government the right to define these territories. Whereas in accordance with Para 58 of Regulation No.1148, the local government had the right to define in the regulation on the use of territory and construction in its spatial plan those cases, when it was necessary to develop a detailed plan for territories to be used in agriculture.

MEPRD notes that the requirement established in the contested norms to develop a detailed plan before construction or reconstruction of large-scale farms complies with the requirements of regulatory enactments and does not infringe upon the fundamental rights defined in Article 105 of the Satversme.

The Findings

5. On 6 March 2013 the Constitutional Court received an application from the Applicant requesting termination of legal proceedings in the case. It is generally noted in the application that the Applicant and the Council of Aizpute have reached a conceptual agreement on future cooperation.

Para 1 of Section 29 (1) of the Constitutional Court Law envisages that legal proceedings in a case may be terminated before a judgement is pronounced by the decision of the Constitutional Court upon the receipt of the Applicant's written request. The paragraphs in Section 29 (1) of the Constitutional Court Law grant the right to the Constitutional Court to terminate legal proceedings in a case, but do not

establish an obligation to do so (*see, for example, Decision of 12 June 2007 by the Constitutional Court on termination of legal proceedings in Case No. 2007-06-03, Para 11).* In deciding on the possibility to terminate legal proceedings, the Constitutional Court takes into consideration, *inter alia*, the reasoning included in the Applicant's request.

The proceedings before the Constitutional Court take place in public law interests. The agreement reached by the parties to the case, unless other important circumstances exist, *per se* cannot serve as sufficient grounds for terminating legal proceedings that have been initiated before the Constitutional Court.

When considering termination of legal proceedings in a case, which has been initiated on the basis of a constitutional complaint, the Constitutional Court has the obligation to ensure, in compliance with its jurisdiction, the existence of such legal system, which would, as fully and comprehensibly as possible, eliminate regulation that is incompatible with the Satversme or other legal norms (acts) of higher legal force, as well as to provide its assessment of issues having constitutional importance. A dispute regarding the compliance of a norm (act) of a lower legal force with the norms of a higher legal force is solved both if the contested norm is recognised as being incompatible and as being compatible with the norm of a higher legal force (*see, Judgement of 22 February 2002 by the Constitutional Court in Case No. 2001-06-03, Para 2.2. of the Findings, and Judgement of 7 April 2009 in Case No. 2008-35-01, Para 11).*

In deciding on terminating legal proceedings in a case the fact, whether the contested norm has become invalid, is decisive (*see, for example, Decision of 12 February 2013 by the Constitutional Court on termination of legal proceedings in Case No. 2012-11-01, Para 8.2).*

Neither the Applicant, nor the Council of Aizpute has informed the Constitutional Court that the contested norms have been amended or lost their legal force before the hearing of the case started. The Constitutional Court has not gained confirmation of this fact either.

The case deals with essential issues in spatial planning, and the constitutional complaint contests the compatibility of actions taken by the local government with the

Satversme. In such an instance, following the principle of legal certainty, it should be assessed, whether the actions taken by the local government comply with the Satversme, likewise, the constitutional requirements with regard to actions taken by the local government should be clarified.

The Constitutional Court also takes into consideration the fact that the Court rulings adopted thus far have not examined the issue of possible restriction upon persons' fundamental rights linked to the right of a local government to envisage in the spatial planning those cases when a detailed plan must be developed.

A situation, when a constitutional complaint contests the compatibility with the Satversme of a legal norm established by a legal person of public law, and the norm has not become invalid before the hearing of the case starts, but the Court terminates legal proceedings only on the basis of a general request defined by Applicant, would be incompatible with the principle of legal certainty.

Therefore the Constitutional Court holds that the legal proceedings in the case must be continued.

6. The constitutional complain contests the compatibility of three norms included in the Binding Regulation No. 7 with Article 105 of the Satversme.

It follows from the written reply of the Council of Aizpute that Subparagraph 407.16.3 of the Binding Regulation No.7 does not affect the Applicant's fundamental rights, since this norm allegedly applies only to such territory, the use of which (functional zone) is territory of production and technical constructions. The Land Plots are said to be located in a territory, the use of which is rural territory, and, thus, they are affected only by Subparagraph 434.23 and 572.6 of the Binding Regulation No.7.

Whereas the Applicant notes that Subparagraph 407.16.3 of the Binding Regulation No.7 could unfoundedly restrict its fundamental rights in the future.

The type of use defined in the spatial planning is the legal basis for the local government in adopting decisions that are binding upon a private person regarding the use of a territory and restrictions to it. Subparagraph 407.16.3 of the Binding Regulation is applicable only to immoveable property located in a territory of

production and technical constructions, but not to immoveable properties located in a rural territory.

In the spatial planning the type of use of the immoveable property owned by the Applicant is defined as rural territory, thus Subparagraph 407.16.3 of the Binding Regulation No.7 is not applicable to the Land Plots.

The Constitutional Court has also recognised that an infringement of fundamental rights can be expected to occur in the future or be potential. I.e., a potential infringement or an infringement to be expected in the future means that a well-founded and credible probability exists that the application of the contested norm could cause adverse consequences to the submitter of the constitutional complaint (*see Judgement of 22 February 2002 by the Constitutional Court in Case No. 2001-06-03 Para 2.4 of the Findings and Judgement of 22 November 2011 in Case No. 2011-04-01, Para 9)*.

The Constitutional Court holds that currently it is impossible to determine a sufficiently credible probability that in the future any territory of the Land Plots could be designated as a territory of production and technical constructions. The Council of Aizpute notes that the type of use – territory of production and technical constructions – is basically determined for the territory of Aizpute town and the villages of the region, with the aim of using and planning the necessary infrastructure with maximum efficiency. These territories predominantly consist of small land plots, which originated during the period of land reform, following the division of the production complexes of previous farms, and dense construction is allowed there with the purpose of economic use of the existing infrastructure (*see Case Materials, p.119)*. However, the Land Plots are located outside settlements.

Thus, Subparagraph 407.16.3 of the Binding Regulations No. 7 does not affect the Applicant's fundamental rights and legal proceedings in this part must be terminated.

7. 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."

7.1. Even though the case has been initiated with regard to the compatibility of the contested norms with the whole Article 105 of the Satversme, their compatibility with the fourth sentence of the aforementioned Article is not contested in the case. Thus, the Constitutional Court has no grounds to examine these norms from the vantage point of this sentence.

Article 105 of the Satversme envisages both unhindered exercise of the right to own property and the right of the State to restrict this right in the interests of society. The right to own property may be restricted, if such restrictions are justified, i.e., they have been established by law, they have a legitimate aim and are proportional (*see Judgement of 20 May 2002 by the Constitutional Court in Case No. 2002-01-03, the Findings).* This Article, on the one hand, comprises the State's obligation to promote and support the right to own property, i.e., to adopt such laws that would ensure the protection of this right, but also, on the other hand, also grants the State the right to interfere into exercising this right in a certain scope and in accordance with a definite procedure (*see Judgement of 16 December 2005 by the Constitutional Court in Case No. 2005-12-0103, Para 21).*

The right to own property, defined in the first sentence of Article 105, comprises also the right of the owner to use one's property in a way allowing gaining maximum economic benefit from it. Likewise, this Article of the Satversme also defines the limits in exercising this fundamental right, i.e., the right to own property cannot be used contrary to public interests.

7.2. To a certain extent the spatial plan can be considered to be a restriction on exercising the right to own property, since the spatial planning restricts free and unhindered use of real estate (*see Judgement of 26 April 2007 by the Constitutional Court in Case No. 2006-38-03, Para 10).*

Para 8 of Section 1 of Spatial Development Planning Law provides that local government spatial plan is a local government spatial development planning document, specifying the requirements for land use and building, including functional zoning, public infrastructure, regulations regarding land use and building, as well as

other conditions for land use, and which is developed for an administrative territory or a part thereof. Whereas the obligation of a local government to develop a spatial plan in accordance with the procedure established in law is envisaged in Para 1 of Section 14(2) of Law on Local Governments. Whereas Para 2 of Section 15(1) of Law on Local Governments defines as one of the local government functions the obligation to look after the public services and facilities and the sanitary cleanliness of its administrative territory, including building, reconstroction and maintenance of streets, roads and public squares).

Pursuant to Section 25 (1) of Spatial Development Planning Law, the spatial development plan of a local government is adopted as a bidning regulation of the local government. The spatial development plan of a local government is an external regulatory enactment, which is binding upon all natural and legal persons and serves as the basis for adopting concrete decsions, for example, on commencing construction. The local government, applyin the legal norms and principles of spatial planning, by the spatial plan defines the planned (permitted) use of conrete territories. Thus, the scope of the right to use immoveable property owned by each landowner depends, *inter alia*, from the permitted use of the territory. The restriction imposed by the spatial plan of the local government is direct, since the plan directly restricts private person's right to own property in the interests of society (*see Judgement of 26 April 2007 by the Constitutional Court in Case No.2006-38-03, Para 8.1).*

7.3. The Applicant notes that the Council of Aizpute, in adopting the contested norms, has unfoundedly restricted its fundamental right defined in Article 105 of the Satversme.

It follows from the materials of the case that the Applicant is planning to expand the large-scale farms located on the Land Plots. Para 8.53 of the Binding Regulation No. 7 defines the term "large-scale farm" as a farm for intensive pig or poultry rearing, with the capacity of rearing more than 40 000 poultry or more than 2000 pigs raised for meat, the weight of which exceeds 30 kilograms, or more than 750 sows. It is planned to build in the complex of the large-scale farm "Apriķi Breeding" in addition to the existing two one story production buildings 15 more pig

barns, where in 2.4 production cycles annually 2300 sows, 600 gilts and 15 700 piglets weighing from seven to 30 kilograms will be kept. Whereas in the large-scale farm "Apriķi Bacon" it is planned to build in addition to the existing three one-storey production buildings nine more pig barns to keep 17 280 fattening pigs with the planned productivity – 82 000 pigs annually *(see Case Materials, pp. 110 and 112).*

The Council of Aizpute notes that this kind of expansion of the existing large-scale farm is to be recognises as reconstruction, to which the contested norms apply, and these envisage the obligation of the Applicant to develop a detailed plan (*see Case Materials, p.120).*

Since the contested norms envisage an imperative prerequisite for exercising the Applicant's right to own property, they are to be regarded as a restriction to the fundamental right included in Article 105 of the Satversme.

8. To establish, whether the restriction on the right to own property, originating with the establishment of planned (permitted) use in the spatial plan, is justifiable, the Constitutional Court must establish, whether:

1) the restriction on the fundamental right has been established by law:

2) the restriction has a legitimate aim;

3) the restriction is proportional to its legitimate aim (*see, for example, the Judgement of 19 November 2009 by the Constitutional Court in Case No. 2009-09-03, Para 12).*

9. The Applicant notes that the restriction to the fundamental right has not been established by law, since neither law, nor Cabinet Regulation envisages the obligation of a person to develop a detailed plan before constructing a large-scale farm or reconstructing an existing one. Thus, the Council of Aizpute, allegedly, did not have the right to restrict the Applicant's fundamental right with a binding regulation.

Whereas the Council of Aizpute notes that its right to define in the spatial plan the cases, when before building a new large-scale farm or reconstruction an existing large-scale farm, a detailed plan must be developed, was envisaged by Subparagraph 57.1 of Regulation No. 1148. A local government, on the basis of this

norm, may define in the spatial planning those cases when a detailed plan must be developed.

The Constitutional Court has repeatedly recognised that the fundamental right envisaged in Article 105 of the Satversme may be restricted not only by law, which has been adopted by the Saeima or by the people, but also by another generally binding (external) regulatory enactment. A regulatory enactment of this kind must be adopted on the basis of law, must be published or made otherwise accessible and must be worded with sufficient clarity so that the addressee would understand his or her rights and obligations, moreover, this regulatory enactment must comply with the principles of a judicial state (*see, for example, Judgement of 20 May 2002 by the Constitutional Court in Case No. 2002-01-03, the Findings, and Judgement of 19 November 2009 in Case No. 2009-09-03, Para 13).*

Simultaneously, the local government has the obligation to abide by and not violate the imperative norms of the law. However, the actions of a local government, in developing spatial planning, are not limited only to a mechanical transfer into the spatial plan the legal norms or wishes expressed in the applications by private persons. A local government, in substantiating the adoption of regulations on the use of local government territory, may use also other argument, insofar it complies with the basic principles of spatial planning, has been sufficiently assessed and substantiated in the process of developing the spatial plan (*see, Judgement of 19 November 2009 by the Constitutional Court in Case No. 2009-09-03, Para 15).*

Hence, the word "law" used in the third sentence of Article 105 of the Satversme should not be interpreted grammatically, and its meaning is not limited to the laws adopted by the Saeima in a formal understanding of these. The fact that the Saeima and the Cabinet of Ministers have established a procedure, in which a person may receive permission for performing polluting activities, *per se* does not mean that a local government, in adopting a spatial plan, may not prohibit the performance of certain polluting activities within its territory. A local government has the right to establish various restrictions to the right to own property in the spatial plan in accordance with the development trends of the territory and the wishes of society with regard to the future development of the territory. In the field of spatial planning the

restriction of a person's fundamental rights, on the basis of binding regulations of local governments, is admissible (*see, for example, Judgement of 26 April 2007 by the Constitutional Court in Case No. 2006-38-03, Para 13 and Judgement of 12 November 2008 in Case No. 2008-05-03, Para 9.1, and Judgement of 19 November 2009 in Case No. 2009-09-03, Para 13).*

This is confirmed by Para 8 of Section 1 and Section 25(1) of Spatial Development Planning Law.

Thus, the Council of Aizpute had the right to include the contested norms in the spatial plan, and the restriction on the Applicant's right to own property has been established by law.

10. For a restriction on fundamental rights to be justifiable, it must serve a legitimate aim. The substantiation of the restriction to the fundamental right defined in Article 105 of the Satversme must be defined in accordance with the third sentence of this Article. I.e., restrictions on this right can be established only in cases and according to the procedure envisaged by law, moreover, they must serve a concrete legitimate aim – ensuring other constitutionally protected interests (*see, Judgement of 25 October 2011 by the Constitutional Court in Case No. 2011-01-01, Para 13.2).*

The Applicant's reasoning with regard to the legitimate aim of the restriction on the fundamental right is contradictory. On the one hand, it is noted in the constitutional complaint that the restriction on the fundamental right allegedly has no legitimate aim and that the contested norms had been included in the spatial plan with the sole purpose of delaying the decision on issuing building permit for the construction of a large-scale farm as much as possible, but, on the other hand, the legitimate aim of the restriction on the fundamental right is to ensure that requirements regarding environmental protection are met.

The Council of Aizpute notes that the requirement of the contested norm to develop a detailed plan has been established in the interests of sustainable development of the territory. A large-scale farm is to be recognised as an object that has the nature of a complex installation, and also as one having adverse environmental

impact, therefore a detailed plan should be developed before constructing or reconstructing a large-scale farm.

Section 28(1) of Spatial Development Planning Law envisages that the types and restrictions for land use provided for in the functional zoning specified in a spatial plan or local plan must be detailed and specified in a detailed plan according to the scale precision, specifying the requirements for land use and building for each land unit. Whereas the third part of this Section provides that a detailed plan must be be developed before commencing new construction or subdivision of land units, if it creates a necessity for complex solutions and unless regulatory enactments provide otherwise.

The Constitutional Court has repeatedly recognised: in certain cases it is not sufficient that a spatial plan has been developed and adopted for a person to implement certain commercial activities in the immoveable property he or she owns, for example, to commence new construction or to subdivide or merge immoveable properties. In such a case, in accordance with the law and the valid Cabinet Regulations, the local government has the obligation to define a concrete territory for which a detailed plan must be developed.

If in accordance with the requirements of regulatory enactments a detailed plan must be developed for a territory, this means that the planning process has not been finalised with the adoption of the spatial plan. In such cases a valid detailed plan is a mandatory prerequisite for commercial activities, also – realisation of construction plans (*see, for example, Decision of 28 November 2007 by the Constitutional Court on the termination of legal proceedings in Case No. 2007-16-03, Para 5, and Decision of 11 November 2008 on termination of legal proceedings in Case No. 2008-24-03, Para 8.2).*

In this case the legitimate aim of restricting the fundamental rights follows form the autonomous functions of a local government included in Law on Local Governments and Spatial Development Planning Law. The obligation of a local government to develop such spatial planning for its administrative territory, which, in the interests of territorial sustainability, envisages, *inter alia*, also the prerequisites for

the allowed use of a particular immoveable property, is to be recognised as such legitimate aim.

It follows from the case materials that the Applicant has envisaged a complex construction in a territory, which thus far had no buildings on it. Namely, it is planned to construct additional 15 barns to the already existing production buildings at the large-scale farm "Apriķi Breeding", whereas at the large-scale farm "Apriķi Bacon" – nine more barns. It is planned to expand each large-scale farm by approximately 10 hectares. The Applicant notes that this complies with the term "large-scale farm" used in the spatial plan of Aizpute region (*see Case Materials, pp. 110 and 112*).

The Constitutional Court has recognised: if the envisaged construction has the nature that requires a complex solution of the transport infrastructure or construction of utilities, then a detailed plan should be developed before implementation of such construction (*see Decision of 11 November 2008 by the Constitutional Court on the termination of legal proceedings in Case No. 2008-24-03, Para 10).* The Concept Paper for the Development of the System of Spatial Planning, approved by the Cabinet Order of 15 July 2009 No. 474, (hereinafter – the Concept Paper for the Development of the System of Spatial Planning) also sets out that a detailed plan of a rural territory should be developed for a complex construction on a territory, i.e., for construction with multiple purposes of use, complex solutions for utilities provision and transport infrastructure. Likewise, a detailed plan must be developed before constructing such objects, with regard to which the initial environmental impact assessment has established predictable impact and which need environmental impact assessment (*see The Concept Paper for the Development of the System of Spatial Planning*, pp. 55 and 56).

MEPRD also noted that Subparagraph 57.2 of Regulation No. 1148, which were in force at the moment of developing spatial plan, is applicable to such complex construction in a territory: a detailed plan must be developed, if the planned subdivision of a land plots or construction require complex solutions for transport infrastructure or construction of utilities. Likewise, Subparagraph 35.2 of the valid Regulation No. 711 also provides that a detailed plan in a rural territory must be developed both in the cases envisaged in the spatial plan, as well as in those cases if

subdivision of land units is planned or the construction requires complex solutions for transport infrastructure or construction of utilities *(see Case Materials, p. 162).*

Thus, the requirement to develop a detailed plan ensures that in determining the use of a particular territory the public interests are harmonised with the private law interests of some real estate owners. The fact that the owners of immoveable property located in the territory with regard to which the detailed plan is developed, as well as of the adjacent immoveable properties and the community stakeholders participate in the development of a detailed plan and assessment of alternative solutions for the spatial development constitutes the legitimate bases for the implementation of the planning process.

Hence, the contested norms comply with the legitimate aim – the protection of other persons' rights.

11. To establish, whether the restriction is commensurate with the legitimate aim, which the State had wanted to reach by establishing this restriction, it must be verified, whether a reasonable balance between the restriction on a person's fundamental rights and public interests is ensured. I.e., it musts be assessed, whether the restriction included in the legal norms adopted by the legislator complies with the principle of proportionality:

first, whether the measures used by the legislator are appropriate for reaching the legitimate aim;

secondly, whether such action is necessary, i.e., whether the aim cannot be reached by other means, less restrictive upon a person's rights and legitimate interests;

thirdly, whether the legislator's actions are appropriate, i.e., whether the benefit gained by society exceeds the damage caused to a person's rights and legitimate interests.

If it is recognised that the restriction established by a legal norm is incompatible with even one of these criteria, then the restriction is incompatible with the principle of proportionality and is unlawful (*see Judgement of 26 April 2007 by the Constitutional Court in Case No. 2006-38-03, Para 16).*

11.1. The chosen measures are appropriate for reaching the legitimate aim, if this aim is reached by the particular regulation.

The development of a spatial plan, including the detailed plan, is not a formal procedure. It is regulated, in order to identify and assess various interests and decide, which of them should be granted priority in the planning. Balance between the interests of all stakeholders and ensuring as extensive public interests as possible should be reached in this process (*see, for example, Judgement of 9 March 2004 by the Constitutional Court in Case No.2003-16-05, Para 5.1 of the Findings, and Decision of 11 November 2008 on the termination of legal proceedings in Case No. 2008-24-03, Para 8).*

The Constitutional Court finds that in the case under examination an obvious causal relation exists between the contested norms and the legitimate aim of these norms. On the one hand, the main objective of a detailed plan is to substantiate the conditions for the architectonic spatial development of a particular territory, which are subject to the concrete function of using the territory and to ensure that the territory, for which the plan is developed, would fit into the existing environment (*see The Concept Paper for the Development of the System of Spatial Planning, p. 29).* Thus, a detailed plan is one of the means for ensuring sustainable development of a territory.

On the other hand, the public discussions regarding the detailed plan are held with the purpose to ensure that the interested community, which has the best knowledge of the local circumstances, helps the local government to find such solutions that are most suitable for the sustainable development of the territory and to find a fair balance between the interests of the real estate owner and society (*see Decision of 28 November 2007 by the Constitutional Court on the termination of legal proceedings in Case No. 2007-16-03, Para 6).*

The Council of Aizpute, in adopting the contested norms, has chosen an appropriate measure to balance the interests of various persons – those of the Applicant, the owners of immoveable property adjacent to the Land Plots and the interested community.

Thus, the contested norm is appropriate for reaching the legitimate aim.

11.2. The restriction established by the contested norm is necessary, if no other means exist that would be as effective and the choice of which would allow restricting the fundamental rights to a lesser extent. In assessing, whether the legitimate aim can be reached by other means, the Constitutional Court has underscored a number of times that a more lenient measure cannot be just any other measure, but only such measure that would allow reaching the legitimate aim of the restriction at least in the same quality (*see, for example, Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 19 of the Findings, and Judgement of 25 October 2011 in Case No. 2011-01-01, Para 14.2).*

The Applicant has not indicated that even one effective alternative measure existed, which would allow reaching the legitimate aim of the restriction on fundamental rights established in the contested norms as effectively. There are no other materials in the case pointing to an alternative solution that would allow reaching the legitimate aim in the same quality.

The contested norms ensure both to the community and the local government, as well as the owners of concrete immoveable property the possibility to decide on the issues of sustainable development and planning of the particular settlement. The state institutions, which in accordance with Subparagraph 102.4 of Regulation 711 are indicated in the terms of reference for developing the detailed plan, are involved in dealing with these issues via the defined terms, provided opinions or granted approvals.

It is noted in The Concept Paper for the Development of the System of Spatial Planning that the creation of public open space is an important part in the implementation of spatial planning and that the detailed plan is its main tool. The conditions for the architectonic spatial development of a particular territory must be substantiated in the detailed plan, which guarantees that the territory, for which the plan is being developed, will fit into the already existing environment *(see The Concept Paper for the Development of the System of Spatial Planning, pp. 27 and 29).*

At the same time legal regulation ensures that the rights of persons involved in the spatial planning process are legally protected in those cases when the local government, in connection with the development of a detailed plan, has unfoundedly

adopted a decision that is unfavourable for a person. For example, in those cases, when taking of a decision or issuing of a document is unfoundedly refused, because a detailed plan must be developed before implementing an intended construction, this person has the right to appeal against the refusal in administrative procedure. Likewise, if the terms of reference for developing a detailed plan contain any unfounded conditions, the addressee of these conditions has the right to appeal against them in administrative procedure (*see Opinion provided by MEPRD, Case Materials, pp. 164 – 165).*

Thus, the legitimate aim of the restriction on the fundamental rights is ensuring sustainable development of a territory and protection of the interests of other persons – owners of immoveable property adjacent to the territory for which a detailed plan is being developed and of the interested community.

Thus, the contested norm is necessary for reaching the legitimate aim.

11.3. In assessing the compatibility of the restriction on fundamental rights with the legitimate aim, it must be verified whether the adverse consequences that the restriction on fundamental rights causes to a person do not exceed the benefit that the society in general gains from this restriction. I.e., the Constitutional Court must establish the interests to be balanced in this case and which interests should be granted priority.

The Constitutional Complaint does not contain a legal substantiation, why the restriction of the Applicant's right to own property should be considered as being incompatible with the legitimate aim. The Applicant only notes that the restriction on its right to own property is disproportional, since the Council of Aizpute, in developing and adopting the spatial plan, has violated the principles of succession, equal opportunities and coherence. Moreover, the Council of Aizpute allegedly has not abided by Judgement in Case No. 2008-05-03, since a local government may state that the legal norms to be included in the spatial plan restrict the rights of private persons to the least possible extent only following a scientifically based research.

Section 3 of Spatial Development Planning Law refers to some principles of spatial planning that must be complied with in elaborating a development planning document. These principles must be taken into consideration to reach a fair balance

between the interests of various persons, both in facilitating the economic development of a territory and in ensuring that the requirements with regard to environment protection are abided by. Thus, in assessing the compatibility of a restriction upon fundamental rights with the principle of proportionality in the field of spatial planning it must be examined, whether the principles of spatial planning have been abided by.

In the particular case, taking into consideration the arguments included in the constitutional complaint and in the written reply, the compliance of the contested norms with the principles of spatial planning referred to in the constitutional complaint must be examined.

11.3.1. Para 2 of Section 3 of Spatial Development Planning Law envisages that in spatial development planning the principle of succession must be taken into account, which requires that new spatial development planning documents are developed, evaluating the existing spatial development planning documents and their implementation in practice. In accordance with the aforementioned principle, the local government has the obligation within a certain period following the implementation of the development vision approved in the spatial plan to develop a new vision for development and embed it into a new spatial plan (*see Judgement of 17 January 2008 by the Constitutional Court in Case No. 2007-11-03, Para 23.1).* This means that the existing spatial plan can be amended, if its substantiation has changed (*see Judgement of 9 March 2004 by the Constitutional Court in Case No. 2003-16-05, Para 7 of the Findings).*

As regards the principle of succession in the field of spatial planning, the Constitutional Court has recognised that if the substantiation of the valid planning changes, the spatial plan must be amended, retaining those parts of its spatial planning, where the substantiation has not changed. The principle of succession allows revoking the spatial planning of a local government only if it is being replaced by a new spatial plan. A situation, where no spatial plan regulates the use of immoveable property, is inadmissible (*see Judgement of 26 April 2007 by the Constitutional Court in Case No. 2006-38-03, Para 14.1).*

Thus, the aim of the principle of succession in the field of spatial planning is to facilitate legal certainty and, to the extent possible, not to permit cases when the type of use has not been defined for a particular territory.

The Constitutional Court notes that the contested norms do not regulate the way the permitted or planned type of use for a territory is defined or changed, but envisage pre-requisites for carrying out respective activities. The type of use of the Land Plots in Applicant's ownership is defined in the spatial plan – rural territory, and this issue has not been contested before the Constitutional Court.

Moreover, it follows form the information provided by the Council of Aizpute that before the Binding Regulation No. 7 was adopted, the type of use for the Land Plots had not been defined at all. I.e., the Council of Laža Rural Territory, in implementing the Judgement in Case No. 2008-05-03, on 21 January 2009 adopted the Binding Regulation No. 6 "Amendments to the Binding Regulations of the Council of Laža Rural Territory no. 6 "Spatial Planning of Liepāja Region Laža Rural Territory for 2007 – 2019"", which revoked the planned permitted use of the Land Plots defined in the spatial plan for the rural territory. At the time, when the implementation of the spatial plan of Aizpute region for 2012-2023 commenced, no valid regulation with regard to the planned and permitted use of the Land Plots existed (*see Case Materials, p. 123*).

Thus, the Constitutional Court has no grounds to recognise that the contested norms would affect the principle of succession included in Para 2 of Section 3 of the Spatial Development Planning Law.

11.3.2. The Applicant holds that the principle of equal opportunities is being infringed because the Binding Regulation No. 7 does not define the obligation to develop a detailed plant before constructing other facilities, similar to large-scale farms, for example, biogas production facilities or co-generation stations.

Whereas the Council of Aizpute notes that the Binding Regulation No. 7 does not permit the construction of such facilities as, for example, biogas production facility, in a rural territory. Hence, the Applicant's argument regarding violation of the principle of equal opportunities allegedly is ungrounded.

The principle of equal opportunities is defined in Para 3 of Section 3 in Spatial Development Planning Law, providing that sectoral and territorial interests, as well as interests of private individuals and public interests are assessed in interconnection to promote sustainable development of the relevant territory.

The Constitutional Court notes that the obligation to develop a detailed plan first and foremost follows from the law and valid Cabinet Regulations. Thus, Subparagraph 35.2 of Regulation No. 711 envisage that in a rural territory a detailed plan is envisaged if there are plans to subdivide land plots or if the construction creates necessity for complex solutions with regard to transport infrastructure or construction of utilities.

If the prerequisites envisaged in law or Cabinet Regulations materialise, then, irrespectively of the fact, whether this regulations has been or has not been transposed into the spatial plan of a local government, a person has the obligation to develop a detailed plan before commencing the respective activities. For example, if there are plans to construct a biogas production facility or a co-generation station, mentioned by the Applicant, and thus, a need for complex solution to transport infrastructure or construction of utilities arises, then the need to develop a detailed plan follows directly form Subparagraph 35.2 of Regulation No. 711, even if it is not regulated *expressis verbis* in the spatial plan.

Subparagraph 35.1 of Regulation No. 711 also, in compliance with the principles of spatial planning, grants to the local government broad discretion to envisage in the spatial plan the cases when the development of a detailed plan is required (*see also Opinion of MEPRD in Case Materials, pp. 162 – 164)*. Thus, the Binding Regulation No. 7 envisages the obligation to develop a detailed plan, for example, prior to establishing wind power plants, fuel or gas filling stations, car sales or technical maintenance facilities, creating parks, various installations and facilities in territories, which are recognised as particularly protected EU or Latvian biotopes (*see Para 344, 393.18, 434.37.2., 434.37.3, 467 and 511 of the Binding Regulation No.7)*. Moreover, Subparagraph 572.2 of the Binding Regulation No. 7 envisages that a detailed plan must be developed for facilities that might have a negative environmental impact.

Hence, the Constitutional Court has no grounds to recognise that the contested norms were violating the principle of equal opportunities included in Para 3 of Section 3 in Spatial Development Planning Law.

11.3.3. The Applicant holds that the violation of the principle of coherence is manifested in the fact that the contested norms allegedly are incompatible with the rulings included in the Judgement in Case No. 2008-05-03.

Pursuant to Para 8 of Section 3 of Spatial Development Planning Law, the principle of coherence means that spatial development planning documents are developed by coherently co-ordinating them and evaluating other spatial development planning documents.

The Constitutional Court in its Judgement in Case No. 2008-05-03 recognised as being incompatible with Article 105 of the Satversme two paragraphs in the rules on the use of territory and construction of the Binding Regulation by the Council of Laža Rural Territory No.6 "Spatial Planning of Liepāja Region Laža Rural Territory for 2007 – 2019 . These paragraphs set out, firstly, a prohibition to build new and / or expand existing cattle farms (Part five in Para 3.10.6 of the rules on construction) and, secondly, the maximum admissible live weight of pigs per hectare of the land plot coverage (Subparagraph "d" of part five of Para 3.2.8. of the rules on construction).

In the Judgement in Case No. 2008-05-03 the Constitutional Court concluded that the restriction on the Applicant's fundamental rights had been established by law and that it had a legitimate aim, therefore the respective paragraphs in the rules on territory use and construction in the spatial planning of Laža rural territory for 2007 – 2019 were an appropriate measure for reaching the legitimate aim; however, the Council of Laža Rural Territory had not assessed, whether a measure that would be less restrictive upon the Applicant's rights existed. Therefore the Council of Laža Rural Territory had not selected the most lenient measure possible for reaching the legitimate aim (*see Judgement of 12 November 2008 by the Constitutional Court in Case No. 2008-05-03, the Findings).*

The Applicant notes that the conclusions reached in the Judgement in Case No. 2008-05-03 could be applied to the case under examination. I.e., that the Council of Aizpute could state that no other measures, which would restrict the rights of a

private person to the least possible extent, existed only after scientifically based research.

The Constitutional Court recognises that the arguments used by the Applicant cannot be applied to the case under examination, since the contested norms differ and the restrictions on fundamental rights that they establish cannot be compared to the ones that were examined in Case No. 2008-05-03.

The contested norms in Case No. 2008-05-03 established quantitative restrictions to the placement of live weight of pigs per one hectare of land plot coverage, as well as an imperative prohibition to build any new farms or to expand the existing ones. Whereas the norms that are contested in the case under examination establish a pre-requisite for implementing the intention to construct or reconstruct large-scale farms – the development of a detailed plan, in accordance with law and regulation included in the Cabinet Regulation. The contested norms do not prohibit the construction of new large-scale farms or the reconstruction of the existing ones; neither do they impose any quantitative restrictions upon the placement of cattle per unit of the particular territory.

Thus, the contested norms do not affect the principle of coherence included in Para 8 of Section 3 of Spatial Development Planning Law.

12. Article 105 of the Satversme grants broad discretion to a local government in setting priority activities in spatial planning, lines of development and aims to be reached, in the interests of which pre-requisites for exercising the right to own property must be defined. In examining the constitutional complaint, the Constitutional Court is obliged to verify, whether the local government, in exercising its discretion, has not placed disproportional restrictions on persons' fundamental rights to enjoy without interference their right to own property, enshrined in the Satversme.

It can be concluded in the case under examination that the public interests cannot be protected by other measures, less restrictive upon a person's rights. The cases when a detailed plan must be developed, envisaged in the contested norms, in interconnection with the regulation set out in law and Cabinet Regulations, harmonise the different interests of various persons involved in the process of spatial planning.

The restrictions envisaged in the contested norms do not prohibit the owners of the immoveable property to enjoy the right to own property, but only define pre-requisites for balancing this right with the rights of other persons. The contested norms are necessary in order to ensure, to the extent possible, balance between the interests of the local government, the interested community and some owners of immoveable property. The public benefit that the contested norms ensure exceeds the damage caused to the interests of an individual owner of immoveable property.

Thus, the contested norms comply with Article 105 of the Satversme.

The Substantive Part

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

held:

1. To recognise Para 434.23 and 572.6 of Aizpute Regional Council Binding Regulations No. 7 of 28 March 2012 "The graphic part and the regulation on the use of the territory and building of Aizpute Regional Spatial Planning for 2012 – 2023" as being compatible with Article 105 of the Satversme of the Republic of Latvia."
2. To terminate legal proceedings with regard to compliance of Para 407.16.3 of Aizpute Regional Council Binding Regulations No. 7 of 28 March 2012 "The graphic part and the regulation on the use of the territory and building of Aizpute Regional Spatial Planning for 2012 – 2023" with Article 105 of the Satversme of the Republic of Latvia."

The Judgement is final and not subject to appeal.

The Judgement comes into force on the day of its publication.

Chairperson of the court sitting G. Kūtris