THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

DECISION
ON TERMINATING JUDICIAL PROCEEDINGS
IN CASE NO. 2012-03-01
Riga, 19 December 2012

The Constitutional Court of the Republic of Latvia, composed of the Chairman of the Court hearing Gunārs Kūtris, Justices Kaspars Balodis, Aija Branta, Kristīne Krūma, Uldis Ķinis and Sanita Osipova,

with the secretary of the Court hearing Ms. Elīna Kursiša,

with the participation of the authorised representatives of the Applicant – thirty members of the 11th Saeima: Raivis Dzintars, Kārlis Krēsliņš, Raivis Blumfelds, Vineta Poriņa, Inese Laizāne, Ilmārs Latkovskis, Romāns Naudiņš, Jānis Dombrava, Iveta Grigule, Einārs Cilinskis, Dāvis Stalts, Ināra Mūrniece, Dzintars Kudums, Imants Parādnieks, Ilma Čepāne, Dzintars Zaķis, Edvards Smiltēns, Lolita Čigāne, Ojārs Ēriks Kalniņš, Arvils Ašeradens, Jānis Reirs, Janīna Kursīte-Pakule, Ina Druviete, Rasma Kārkliņa, Andris Buiķis, Ingmārs Čaklais, Ingūna Rībena, Ainars Latkovskis, Atis Lejiņš and Dzintars Rasnačs – sworn attorneys Ms Annija Kārkliņa and Mr Jānis Kārkliņš, and

with the participation of the representative of the institution, which passed the contested act, Mr Gunārs Kusiņš, the head of the Saeima Legal Bureau,

according to Article 85 of the Satversme [Constitution] of the Republic of Latvia and Para 1 of Section 16 and Para 3 of Section 17(1) of the Constitutional Court Law,

on 13 and 20 November 2012, in a public hearing, examined the case

"On the Compliance of Section 11(1) and Section 25(1) of the Law "On National Referendums and Legislative Initiatives" with Article 1, 77 and 78 of the Satversme of the Republic of Latvia".

The Facts

1. The Saeima [Parliament] of the Republic of Latvia (hereinafter – the Saeima) on 31 March 1994 adopted the law "On National Referendums and Legislative Initiatives" (hereinafter also – the National Referendums Law), which entered into force on 4 May 1994.

At the time of adopting the National Referendums Law, Section 11(1) of it was worded as follows: "If the Saeima has not adopted without change as to its content a draft law or a draft amendment to the Constitution submitted by at least one-tenth of the electorate, this draft law or draft amendment to the Constitution must be put to a national referendum." Section 25(1) of this Law, in its turn, provided: "If the draft law or the draft amendment to the Constitution has been signed by not fewer than one-tenth of Latvian citizens who were eligible to vote in the previous Saeima elections, the President of Latvia shall submit to the Saeima the draft law or the draft amendment to the Constitution."

The legislator has amended the National Referendums Law several times. As of 20 September 2012 the name of this law was amended, currently it is "Law on National Referendums, Legislative Initiatives and European Citizens' Initiative" *(see: Law "Amendments to the Law "On National Referendums and Legislative Initiatives"". Latvijas Vēstnesis, 10 October 2012, No. 160).* The most recent amendments to the National Referendums Law were introduced on 8 November 2012 *(see: Law "Amendments to "Law on National referendums, Legislative Initiatives and European Citizen's Initiative"". Latvijas Vēstnesis, November 27, 2012, No. 186).* However, thus far neither Section 11(1), nor Section 25(1) of this Law (hereinafter jointly – the contested norms) has been amended.

2. The Applicant – **thirty members of the 11th Saeima** (hereinafter – the Applicant) – holds that the contested norms are incompatible with Article 1, 77 and 78 of the Satversme, insofar as these, firstly, do not envisage the right and obligation of state institutions, involved in the process of implementing the electorate's legislative initiative rights, to assess the compliance of the draft amendments to the Satversme and draft laws, submitted by electorate, with the Satversme of the Republic of Latvia (hereinafter – the Satversme) and the international commitments of the Republic of Latvia. Secondly, the contested norms do not envisage a mechanism for assessing the legality of decisions adopted by the aforementioned institutions.

To substantiate the incompatibility of the contested norms with Article 77 of the Satversme the Applicant expresses the opinion that the Satversme has a conceptual foundation, which determines the content and text of the Satversme. This base contains general principles of law, the ideas of establishing the state and restoring its independence and documents, as well as other significant elements, inter alia, values enshrined in Article 1, 2, 3, 4, 6 and 77 of the Satversme. The conceptual foundation of the Satversme is unalterable and cannot be altered also by the sovereign – the people of Latvia. Therefore matters, which envisage amending this base and thus changing significantly the whole foundation of the state, cannot be put to referendum.

Article 77 of the Satversme should be construed in a way that it allows amending the text of the Satversme Articles referred to in it only to the extent such amendments do not contradict the conceptual base of the Satversme enshrined in these Articles. Therefore the legislator has a positive duty to include in the National Referendums Law also norms, which prohibit putting to a referendum draft laws submitted by the electorate, which are incompatible with the Satversme.

The Applicant holds that the procedure set out in Article 78 of the Satversme should be applied only in those cases, when it has been established that the draft law submitted by electorate complies with the requirements of this Article. The mechanism included in the contested norms, in its turn, should be applied in all cases, when a draft law, prepared electorate, is submitted, independently of the content of this draft law.

The Saeima, in adopting the contested norms, had unfoundedly broadly construed Article 78 of the Satversme, applying grammatically the regulation included

in them also to cases, which are not at all regulated by Article 78. Since the contested norms do not envisage actions of state institutions in cases, when the draft law submitted by electorate proposes to alter the foundations of the state, they are incompatible also with Article 78 of the Satversme.

At the Court hearing the Applicant's representative sworn attorney Jānis Kārkliņš pointed out in addition that pursuant to Article 78 of the Satversme draft amendments to the Satversme or a draft law submitted by electorate should be fully elaborated. In the practice of applying this norm of the Satversme the term "fully elaborated" is understood in a way that it must be assessed, whether the submitted draft law is not incompatible with the Satversme and the essence of nation's self-determination. The words used in Article 78 of the Satversme "fully elaborated" are a general clause, the content of which has been insufficiently revealed in practice. Moreover, this term is not included in the contested norms.

Mr J. Kārkliņš does not agree to the grounds for terminating judicial proceedings, presented in the reply of the Saeima, and notes that in case the Constitutional Court decided to terminate judicial proceedings in the part of the case on the compliance of the contested norms with Article 77 and 78 of the Satversme, nevertheless, the compliance of the contested norms with Article 1 of the Satversme would have to be assessed, which includes the requirement of legal certainty also in the legal regulation of electorate's rights to legislative initiative.

3. The institution that adopted the contested act – **the Saeima** – does not agree with the Applicant's opinion and holds that the contested norms comply with Article 1 of the Satversme, but the compliance of the contested norms with Article 77 and 78 of the Satversme is unexaminable.

The Saeima declares that the contested norms do not pertain at all to Article 77 of the Satversme, since two separate procedures should be distinguished. Article 77 of the Satversme envisages the so-called mandatory referendum, in case amendments to Article 1, 2, 3, 4, 6 or 77 of the Satversme are initiated by the Saeima. However, Article 78 of the Satversme and the contested norms envisage the so-called automatic

referendum, the procedure of which is to be applied to amendments to the Satversme also in case these have been proposed by at least one-tenth of the electorate.

The Saeima notes that the text of the contested norms actually duplicates Article 78 of the Satversme and holds that essentially the Applicant has contested potential deficiencies in the wording of Article 78 of the Satversme. During the Court hearing the Saeima representative Mr Gunārs Kusiņš asserted: if the Satversme regulation is duplicated in a law, it does not mean that such a legal norm has solely the legal force of a law. If a norm of the Satversme is re-written into a law, then the respective regulation maintains its constitutional order.

Article 78 of the Satversme requires the electorate, in exercising its right to legislative initiative, to submit fully elaborated draft amendments to the Satversme or a draft law. This requirement imposes the duty to draw up the respective draft law in compliance with the requirements of legal technique, as well as to assess its compliance with the Satversme and the international commitments of Latvia. In those cases, when electorate submits a draft law, which is incompatible with the aforementioned requirements, Article 1 of the Satversme, the principle of the rule of law, which follows from it, Article 78 of the Satversme, the National Referendums Law and other regulatory enactments envisage several institutions obliged to conduct appropriate assessment.

First of all, the assessment of a draft law submitted by electorate falls within the competence of the Central Election Commission (hereinafter – also CEC), defined in several norms of the law "On the Central Election Commission". Moreover, at the Court hearing G.Kusiņš noted that CEC has the right to select the procedure for assessing the draft law submitted by electorate. Secondly, draft amendments to the Satversme or a draft law initiated by one-tenth of electorate is submitted to the President of the State, who presents it to the Saeima for hearing. If CEC has allowed advancing of a draft law incompatible with the Satversme, the President of the State, having established such a fact, even has no right to advance such a draft law. I.e., the President of the State may not submit a draft law, which does not comply with the requirements of Article 78 of the Satversme, to the Saeima.

The Saeima emphasizes: the fact that Article 78 of the Satversme or the contested norms do not contain regulation preferred by the Applicant does not mean that appropriate regulation were non-existent within the legal system. Likewise, the fact that the contested norms do not indicate *expressis verbis* that a draft law submitted by electorate should be fully elaborated, does not mean that the National Referendums Law does not set out this requirement – it is included in Section 22 of this law. Incorrect application of the contested or other norms in concrete cases should be verified by general jurisdiction courts, assessing the decisions adopted in the concrete case, not by submitting an application to the Constitutional Court. Moreover, the Constitutional Court Law does not envisage assessing the compatibility of legal norms with equal legal power. Therefore, the Saeima requests terminating the judicial proceedings in the case.

4. The representative of the summoned person – **the Saeima Legal Affairs Committee** (hereinafter – Legal Affairs Committee) – member of the legal Affairs Committee, Member of the Saeima Gaidis Bērziņš – indicated during the Court hearing that CEC has the obligation to assess, whether the draft law submitted by electorate is to be recognised as fully elaborated, however, pointed to the varying CEC practice in this respect. The Legal Affairs Committee holds that similar rights of the President of the State to assess the compliance of such a draft law with the Satversme should be also recognised.

Mr G.Bērziņš admitted that the Legal Affairs Committee had not considered possibilities to specify the role of the aforementioned institutions. However, similar mandate of CEC and the President of the State should be recognised, moreover, the President of the State could also function as a mechanism for controlling incorrect actions or lack thereof by CEC.

5. The summoned person – **the President of the State of Latvia** (hereinafter – the President of the State) – holds that neither the regulatory enactments, nor the case-law or legal literature confirm the Saeima's statements about the President's discretion in the context of Article 78 of the Satversme.

The President of the State asserts that in a situation when he receives from CEC draft amendments to the Satversme or a draft law prepared by one-tenth of electorate, the only action available to him is presenting the received draft law to the Saeima. The assessment, whether a draft law like that is to be regarded as a fully elaborated draft law in the meaning of Article 78 of the Satversme, is not within the competence of the President of the State. Finally, the President of the State holds the opinion that CEC has the obligation to assess, whether the draft law is fully elaborated.

The President of the State emphasizes that he represents the State of Latvia as a united whole, therefore action against a part of the totality of citizens would contradict his pledge to treat all citizens equally. Moreover, currently the electorate has no right to contest an act passed by the President of the State not to present a draft law submitted by the electorate to the Saeima, thus the action of the President of the State would collide with Article 92 of the Satversme.

The representative of the President of the State, Mr Edgars Pastars, the legislative and legal advisor to the President of the State, noted that the President of the State holds that this is a case of a dispute about the absence of an appropriate procedure. The "end point" of the electorate's legislative initiative procedure is a decision of the nation. Defining too high criteria in regulatory enactments might testify that an institution is using its authorisation incorrectly. In assessing, whether a draft law submitted by electorate is fully elaborated, all doubts should be interpreted for the benefit of those submitting the draft law.

Currently, especially in view of the amendments to the National Referendums Law, adopted on 8 November 2012, the total procedure for assessing and presenting draft amendments to the Satversme or a draft law submitted by people has become clearer. However, it had been sufficiently clear also prior to this. Therefore, the contested norms comply with the Satversme.

6. The summoned person – **the Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) – notes that the right of one tenth of the electorate to submit fully elaborated draft amendments to the Satversme or a draft law is one of the ways, in which the people can exercise its legal initiative right. However, the said right

cannot be considered to be unlimited. The provisions of Article 78 of the Satversme point to it, i.e., that the draft law submitted by electorate shall be fully elaborated.

The Ombudsman holds that the usage of the term "fully elaborated" in Satversme has a concrete aim, which can be identified by considering the provisions of other Satversme articles. Article 1 of the Satversme sets out that Latvia is a democratic republic. Article 89 of the Satversme, in its turn, provides that the State shall recognize and protect fundamental human rights in accordance with the Satversme, laws and international agreements binding upon Latvia. It means that Latvia has a judicial, democratic order of the state, which recognises the principles of a democratic and law-governed state. The people, exercising the legislative initiative right granted to it, may not abuse it, for example, to undermine the democratic foundations of the state. Democratic system *per se* does not guarantee at all that the people can exercise the legislative initiative right. Simultaneously, the restriction of the legislative initiative rights of the people cannot be interpreted broadly.

The Ombudsman does not agree with the Applicant's point that the contested norms do not envisage a procedure according to which state institutions assess a draft law submitted by electorate. He holds that the verification, whether such a draft law complies with the criterion "fully elaborated", as well as whether the respective draft law does not contradict fundamental human rights, is in the competence of the state institutions directly involved in advancing the draft law – CEC, the President of the State and the Saeima.

At the Court hearing the representative of the Ombudsman – Ms Gundega Bruņeniece, the Deputy Head of the Division of Civil and Political Rights – emphasized that electorate, exercising the legislative initiative right envisaged in the Satversme, may not turn against the fundamental human rights guaranteed in the Satversme, since the principle of democratic order contains also the element of abiding by fundamental human rights. In this regard, it is important that the decisions of state institutions can be appealed against. The practice linked with appealing against the CEC decisions at administrative court is only evolving. In case the President of the State or the Saeima decides not to advance a draft law submitted by electorate, those submitting the draft law would have no possibility to appeal against this decision.

Therefore the current mechanism for rights protection cannot be regarded as being effective and, thus, the contested norms, insofar as they do not envisage an appropriate mechanism for appealing against the decisions taken by state institutions, are incompatible with Article 1 of the Satversme.

7. The summoned person – **the Central Election Commission** – in its written opinion holds that the requirements applied to the electorate's legislative initiative may not differ from the requirements set to other subjects with legislative initiative right. Therefore the wording included in Article 78 of the Satversme "fully elaborated draft amendments to the Satversme or a draft law" should be understood as a draft law, which is elaborated in compliance with the requirements of legal technique. I.e., the submitted draft law should indicate the name of the law, content of its sections, parts and paragraphs, which has to be comprehensible and cannot collide with legal norms of higher legal force. When setting the requirement to electorate to submit a fully elaborated draft law, a mechanism for verifying compliance with the requirement should be created.

CEC holds that it has the competence to verify only the compliance of the submitted draft law with formal requirements. If the draft complies with these requirements, it must be advanced. Until now the draft laws submitted by electorate had been prepared in compliance with the meaning of the first sentence of Article 78 of the Satversme and the first sentence of Section 22 of the National Referendums Law.

If CEC were to identify that the submitted draft law cannot be recognised as fully elaborated, it would have to adopt a substantiated decision on not advancing such a draft law, but the electors, in their turn, could turn to court to protect their infringed rights. However, neither the National Referendums Law, nor other regulatory enactments set out a procedure according to which CEC could return the submitted draft law to the submitting party for rectifying deficiencies.

At the Court Hearing the CEC representative, the Deputy Chairman Kārlis Kamradzis expressed the opinion, which differed from the one expressed in the written reply of CEC, emphasizing that CEC had always assessed, whether the submitted draft

laws were fully elaborated both as to their form and content. I.e., it is assessed, whether the draft law has been elaborated in compliance with the requirements of legal technique and whether its content was unambiguous, clear and did not contradict regulatory enactments of higher legal force. If the submitted draft law complies with all requirements, then a decision on starting the second stage of collecting signatures is taken. CEC abides by the principles of administrative procedure in decision taking. The parties, who have submitted the draft law to be assessed, are invited to the respective meeting and are heard.

Mr K. Kamradzis noted that CEC uses its own resources to assess the submitted draft laws and also the assistance of invited lawyers. He admitted that CEC did not have written and uniform criteria, in accordance with which these draft laws were assessed. However, the draft laws submitted by electorate are always assessed, and it is possible to perform such assessment also within the framework of the existing legal regulation. Therefore CEC holds that the contested norms comply with the Satversme.

8. The summoned person – **the Council of Sworn Notaries of Latvia** (hereinafter also – the Council of Notaries) – holds that neither the Satversme, nor any other regulatory enactment grants to a sworn notary the right to intervene in the legislative process. In the procedure of submitting a draft law initiated by the people a sworn notary, ensuring neutral and quality certification of signatures, has only support function. However, at the same time a sworn notary, as a representative of state power, has the obligation not only to perform his direct duties but also to see to it that illegal actions are not committed with his assistance or collaboration.

9. The summoned person – doctoral candidate in the science of law, sworn attorney **Inese Nikuļceva** – in her written opinion notes that the compliance of the contested norms with Article 1 and 77 of the Satversme is to be assessed, however, the compatibility of the contested norms with Article 78 of the Satversme, insofar as the text of these norms does not differ, is not to be assessed.

Ms I. Nikuļceva disagrees with the opinion of the Saeima that in this case essentially the intercompatibility of two norms of equal legal force is being disputed.

She points out that not all norms of the Satversme have equal legal force. In assessing the compatibility of the contested norms – insofar their text is identical with the text of Article 78 of the Satversme – with Article 1 and Article 77 of the Satversme, the Constitutional Court is conducting the vertical control of legal norms, not the horizon control. Therefore the Constitutional Court has the jurisdiction to assess the compliance of the contested norms with Article 1 and 77 of the Satversme, even though the text of the contested norms contains the same provisions as Article 78 of the Satversme .

At the Court hearing Ms I. Nikuļceva emphasized that CEC had both the right and the obligation to assess, whether draft amendments to the Satversme or a draft law was fully elaborated both as to its content and form. In practice, until the moment when the draft law on amendments to the Citizenship Law was submitted CEC only assessed, whether the necessary number of voters had signed the legislative proposal, but had not assessed compliance with the requirement included in Article 78 of the Satversme concerning fully elaborated draft law, nor the admissibility of a referendum. However, it should be taken into consideration that CEC is an institution of public administration and as such it should not been granted too large discretion and the right to take decisions within the framework of legislative procedure. Therefore, the procedure, according to which advancing of a draft law initiated by electorate could be rejected, should be clearly regulated in legal acts.

The President of the State has similar rights to CEC. It follows from the concept of democratic republic, included in Article 1 of the Satversme, that all state institutions have the obligation to abide by the rule of law, the principle of division of power in their work and to conduct reciprocal supervision, abiding by the subordination of the public power to the law and other principles of a judicial state. All state institutions, also the President of State, have this obligation. However, electorate has no right to appeal against an act issued by the President of the State on not submitting draft amendments to the Satversme or a draft law submitted by electorate to the Saeima, and this contradicts Article 92 of the Satversme.

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Ms I.Nikuļceva is of the opinion that it might be possible that draft amendments to the Satversme or a draft law is not fully elaborated as to its form or content. Firstly, draft amendments to the Satversme or a draft law is not fully elaborated as to its form if it dos not comply with the requirements set for drawing up a draft law. Secondly, draft amendments to the Satversme are not fully elaborated as to their content, if the draft is incompatible with those norms of the Satversme, which are not envisaged for amendments by this draft, but a draft law submitted by electorate should comply both with the norms of the Satversme and also those legal norms that it does not propose to amend.

It would be advisable, due to efficiency considerations, to specify the content of the concept "fully elaborated" in regulatory enactments. However, the fact that such an action would be efficient does not mean that the absence of respective regulation is incompatible with the Satversme. The concept "fully elaborated" is an open legal concept, and its use in no way contradicts the principle of legal predictability. Therefore the contested norms comply with Article 1 of the Satversme. Problem is caused by the absence of sufficient practice, and, thus, there are no known criteria, in accordance with which this open concept should be filled with content. Ms I. Nikuļceva is of the opinion that in the absence of judicature and sufficient practice in applying the law the legal doctrine should be followed.

10. The summoned person – Professor of the Faculty of Law, Turiba University, Dr. iur. **Aivars Endziņš** – at the Court hearing expressed the opinion that the judicial proceedings in this case should be terminated, as examination of the issues regarding the absence of legal regulation does not fall within the jurisdiction of the Constitutional Court. He noted that the arguments provided by the Applicant should be used to assess the compliance of the contested norms with Article 1 of the Satversme.

Mr A. Endziņš expressed the following opinion: even though the concept "fully elaborated" is a general clause, the legislator, nevertheless, should specify the National Referendums Law, referring in it to guidelines for assessing the compliance of a draft law submitted by electorate with this requirement, so that the parties submitting a draft

law and the assessors could gain understanding of what is to be considered a fully elaborated draft law.

Assessing the legal force of the contested norms, A. Endziņš noted that there was no need to rewrite a norm of the Satversme into a norm of the law. The Satversme has a higher legal force than the law, and if the words "fully elaborated" are clearly written in the Satversme, than the fact that the contested norms do not contain these words changes nothing.

A. Endziņš drew attention to the fact that CEC, assessing a draft law submitted to it, may invite experts, hear their opinion and, by analogy, apply the Saeima Rules of Procedure, which contain the basic requirements set for all draft laws. However, he does not consider the use of analogy to be a successful solution to the problem. If CEC decides to stop advancing the draft law, it has to substantiate its decision by using legal arguments and assess, why the respective draft should not be considered as being fully elaborated as to its form or content. However, in assessing a submitted draft laws, political arguments cannot be used. The President of the State, in his turn, has no right to stop advancing the draft law to the Saeima. If the President of the State has any doubts regarding the compliance of the submitted draft with the requirements of Article 78 of the Satversme, he, upon presenting the draft law to the Saeima, may attach his notes to it.

11. The summoned person – lecturer of the Faculty of Law, University of Latvia Dr. iur. **Jānis Pleps** – at the Court hearing noted that the National Referendums Law is a law, which elaborates the regulation of the Satversme. Essentially, the regulation of the Satversme of issues pertaining to national referendum is sufficient *per se*.

Mr J. Pleps noted that the law of 1922 "On National Referendums and Legislative Initiative" was drafted by the same persons, who prepared the Satversme. The analysis of the text of this law and the regulation of the Satversme shows that, to their mind, all procedures were already set out in the text of the Satversme. Therefore, the law of 1922 was very succinct. At the beginning of 1990s, when it was decided to restore this law, it was elaborated more.

The concept “fully elaborated”, used in the Satversme, is an indefinite legal term. Mr J. Pleps emphasizes that it is impossible to describe and enumerate in a law all possible cases covered by this term. A draft law, definitely, should be recognised as being fully elaborated, if it fits into Latvia’s legal system. This, in its turn, means that the draft law should be elaborated in compliance with the legal technique recognised in Latvia. Moreover, it should be taken into consideration that Latvia’s system of law is organised hierarchically and founded upon the principle that the constitution has the highest legal force. The same requirements, which are binding upon the Saeima, to a large extent should be applied also to a draft law prepared by electorate.

Mr J. Pleps holds the view that CEC is the institution, which should ensure organising a referendum in compliance with the Satversme and, thus, should also assess, whether the draft law submitted by electorate is to be recognised as being fully elaborated. This is a special function of CEC in Latvia’s legal order, and this function follows from the specific procedure for establishing this institution. In difference to many other states, in Latvia CEC is not an institution of executive power, i.e., it is not subject to the Government. The Constitutional Court, likewise, has recognised that CEC, as an independent institution, not subject to executive power and implementing a specific function, which has been taken out of control of the executive power, holds a special status.

The Constitutional Court establishes

12. The Saeima and the summoned persons have expressed a number of arguments in the submitted documents and during the Court hearing aimed at terminating the judicial proceedings in the case or in a part thereof. It has been noted that the judicial proceedings should be terminated as regards:

1) the whole claim, as it does not fall within the jurisdiction of the Constitutional Court and because norms, which are not included in the law, have been contested;

2) in the part of the claim, which envisages assessment of the inter-compatibility of legal norms of equal legal force;

3) in the part of the claim regarding compliance with a norm of the Satversme, which is not affected by the contested norms.

If arguments, substantiating the termination of judicial proceedings in a case, are provided, the Constitutional Court has to examine them *(see: for example, Judgement of 19 October 2011 by the Constitutional Court in case No. 2010-71-01 Para 11).*

Besides, the Constitutional Court verifies, whether the Applicant in the application or during the Court hearing has noted the incompatibility of the contested norms with concrete norms of the Satversme and provided respective legal substantiation. If the Applicant's statements regarding the incompatibility of the contested norms with a norm of the Satversme lack legal substantiation, judicial proceedings in the part of the claim cannot be continued (*see: Judgement of 30 March 2011 by the Constitutional Court in case No. 2010-60-01, Para 9 and Para 14).*

Thus, the Constitutional Court will first of all examine, whether such conditions are present, due to which the judicial proceedings in the case under review should be terminated.

13. Pursuant to Para 5 of Section 18(1) of the Constitutional Court Law, the Application shall contain a claim to the Constitutional Court. Pursuant to Para 5 of Section 83 of the Constitutional Court Rules of Procedure the subject of the case (the title of the contested act and the normative act of higher legal force, compliance with which is contested) is indicated in the decision on initiating the case.

13.1. However, the recognition has been enshrined in the practice of the Constitutional Court that, abiding by certain terms, it is allowed or even necessary to specify the Applicant's claim.

The case under review was initiated, specifying in its title the compliance of which concrete norm with which article of the Satversme was contested. However, in the decision on initiating the case the Panel of the Constitutional Court has concluded that "these norms are contested, insofar they do not envisage the right and obligation of the President of the State and the Saeima to assess the compliance of the submitted draft law with the Satversme and the fundamental principles enshrined therein, as well

as to decide on not advancing further the draft law submitted by the electorate in cases, when it is established that the draft law does not comply with the Satversme" *(The Decision of 20 January 2012 by the 2nd Panel of the Constitutional Court on initiating a case and to request convening the assignment sitting of the Constitutional Court, Para 2.4).*

At the Court hearing the Applicant's representative noted the considerations, why these norms, possibly, do not comply with the respective norms of the Satversme. Consequently, it follows from the opinions expressed during the Court hearing and the case materials, that as to their merits the following of the National Referendums Law is being contested:

1) Section 11(1) and Section 25(1), insofar they:

a) do not envisage requirement "fully elaborated" with regard to a draft law elaborated by electorate,

b) do not contain criteria for assessing, whether the draft law can be regarded as a fully elaborated draft law in the meaning of Article 78 of the Satversme (hereinafter – a fully elaborated draft law),

c) do not envisage the right and obligation of any of the state institutions involved in the procedure of electorate's legislative initiative to assess the compliance of the draft law submitted by electorate with the Satversme requirements,

d) do not envisage an effective mechanism for assessing the legality of decisions adopted by state institutions involved in the procedure of electorate's legislative initiative;

2) Section 25(1), insofar as it imposes a duty upon the President of the State to advance for hearing in the Saeima also a draft law, the compliance of which with the Satversme has not been assessed;

3) Section 11(1), insofar at it envisages putting to national referendum a draft law, the compliance of which with the Satversme has not been assessed.

Thus, the Constitutional Court will examine, whether the deficiencies of the contested norms indicated by the Applicant exist and whether legal substantiation has

been provided showing that because of these deficiencies the contested norms are incompatible with Article 1, 77 and 78 of the Satversme.

13.2. The Applicant asks the Constitutional Court to examine a number of legal issues, the definition of which is broader than the text of the contested norms.

Thus, the Constitutional Court has to establish, whether it is possible to assess the Applicant's claim within the framework of the case under review.

Article 85 of the Satversme and Section 1 and 16 of the Constitutional Court Law provide exhaustive regulation of the Constitutional Court jurisdiction. I.e., the Constitutional Court examines cases on the compliance of laws and other regulatory enactments with the Satversme. Consequently, the Constitutional Court may examine only those legal norms, which are defined in regulatory enactments, and cannot examine the compliance of a non-existent norm with a norm of higher legal force (*see: Judgement of 26 June 2001 by the Constitutional Court in the Case No. 2001-02-0106, Para 5 of the Findings).*

However, this does mean that the only the text, which is *expressis verbis* included in the law under review, should be assessed as part of the constitutional control. The content of a legal norm may be broader than its worded text, therefore the Constitutional Court in concrete cases assess the contested norm as a whole, taking into consideration not only the grammatical wording of the norm, but also its content, context and aim. For example, the Constitutional Court has assessed a prohibition, which was not directly defined in the contested norm, but could be deducted from it *(see: Judgement of 12 June 2002 by the Constitutional Court in case No. 2001-15-03, Para 1 of the Findings)*, as well as has examined the contested norms, insofar they did not envisage concrete procedural or substantive rights to a person *(see: Judgement of 9 May 2008 by the Constitutional Court in case No. 2007-24-01, Judgement of 30 March 2010 in case No. 2009-85-01, Judgement of 4 October 2010 in case No.2010-15-01 and Judgement of 18 March 2011 in case No. 2010-50-03).*

Within the framework of each case under review the claims to be examined must be connected with the text of the contested norm at least to the extent allowing to meet the requirements of Para 10 and Para 11 of Section 31 of the Constitutional Court Law.

Thus, the Constitutional Court will examine the arguments provided by the Applicant, insofar they are closely linked with the contested norms.

13.3. In the case under review the Applicant, inter alia, asks the opinion of the Constitutional Court on several constitutional law issues, which are not directly linked with the compliance of the contested norms with the Satversme and the clarification of which is not necessary for hearing this case. I.e., whether the Constitutional Court should examine the intercompatibility of the Satversme norms *(see: the transcript case materials of the sitting of the Constitutional Court of 20 November 2012, Vol. 3, p.143)*, on the content of the people's self-determination right and the content of the fundamental constitutional values of the State of Latvia.

It must be taken into account that the legislator, defining the jurisdiction of the Constitutional Court, has unequivocally indicated that the Constitutional Court shall not provide abstract interpretation of legal norms. In 2000 a proposal was submitted for the second reading of the draft law "Amendments to the Constitutional Court Law", which envisaged expanding the jurisdiction of the Constitutional Court by adding the obligation to provide official explanation in case of uncertainty in applying a regulatory enactment in an institution of public administration. This proposal was not supported by the Saeima (*see: the draft law No. 591 prepared for the second reading "Amendments to the Constitutional Court Law", http://helios-web.saeima.lv/saeima7/reg.likprj, acceded on 19 December 2012).*

Article 85 of the Satversme and the Constitutional Court Law do not include in the jurisdiction of the Constitutional Court the provision of explanation of the Satversme norms, insofar this is not connected with the hearing of a case, which has been initiated in connection with a claim falling within the jurisdiction of the Constitutional Court.

13.4. The Applicant in the application and at the Court hearing expressed considerations on most appropriate law policy ways for solving the issues of safeguarding and developing Latvia as a nation state.

The Constitutional Court examines an issue within its jurisdiction, insofar legal arguments can be applied to it, separating them from law policy arguments.

Democratically legitimised political state bodies, first of all – the legislator, should decide on issues to be solved by political means.

Thus, in the case under review the Constitutional Court will examine only arguments of legal nature.

13.5. Opinions on the draft laws submitted by electorate were expressed in the application and during the Court hearing, noting both that a concrete draft law had been put to national referendum unfoundedly *(see: transcript case materials of the Constitutional Court sitting of 13 November 2012, Vol. 3., pp. 22 and 23)* and that CEC had unfoundedly refused to mover forward another draft law (*see: transcript case materials of the Constitutional Court sitting of 20 November 2012, Vol.3, pp.100 and 101).*

Pursuant to Article 85 of the Satversme and Section 1 and 16 of the Constitutional Court Law, it is not within the jurisdiction of the Constitutional Court to assess the compatibility of a concrete draft law submitted by electorate with the Satversme, therefore the Constitutional Court will not examine arguments, containing statements about a concrete draft law submitted by electorate or the legality of concrete CEC decisions.

14. The Applicant asks, first of all, to examine the compliance of the contested norms with Article 77 of the Satversme, but the Saeima, in its turn, notes that assessing the compliance of the contested norms with this Article of the Satversme is impossible.

The Constitutional Court has already established: "The Constitution provides for four ways how the citizens can implement their will, namely:

1) direct election of their representatives into the State legislative organ – the Saeima (Article 6 – 9 and Article 14 of the Satversme);

2) the people can function as legislators, except when adopting laws and amendments to the Satversme (Article 64, 65, 78 - 80 of the Satversme);

3) deciding upon laws or amendments to the Satversme adopted by the Saeima (Article 72 - 75, 77, 79, 80 of the Satversme);

4) deciding upon other issues provided for by the Satversme that are submitted to a national referendum (Article 48 and the third and the fourth part of

Article 68 of the Satversme).

There are two procedures for the ways of implementing the will of the citizens: Saeima elections take place according to the election procedure, whilst the rest three ways of implementation of will are carried out in the frameworks of a national referendum" (*Judgment of 19 May 2009 by the Constitutional Court in case No. 2008-40-01, Para 11).*

Thus, the fundamental rules for exercising the electorate's legislative initiative are included in Article 78 – 80 of the Satversme. Article 77 of the Satversme, in its turn, applies to those cases, when the citizens can implement their will, deciding on the laws adopted by the Saeima or amendments to the Satversme.

In the national referendum envisaged in Article 77 of the Satversme or the so-called mandatory referendum the people express their support or rejection of the amendments to the Satversme initiated by the Saeima. Article 77 of the Satversme provides that Article 1, 2, 3, 4, 6 or 77 of the Satversme may be amended only if at least half of all Latvian citizens having the right to vote agree to amendments adopted by the Saeima.

Since Article 77 of the Satversme does not regulate a referendum on a draft law initiated by electorate, the contested norms do not pertain to it.

Thus, it is impossible to continue judicial proceedings in the part of the claim concerning the compatibility of the contested norms with Article 77 of the Satversme.

15. Article 78 of the Satversme provides: "Electors, in number comprising not less than one tenth of the electorate, have the right to submit a fully elaborated draft of an amendment to the Constitution or of a law to the President, who shall present it to the Saeima. If the Saeima does not adopt it without change as to its content, it shall then be submitted to national referendum."

The Saeima notes that the contested norms both grammatically and substantially set out the same provisions as Article 78 of the Satversme. Thus, the contested norms are of constitutional order. Which, in its turn, means that the assessment of the compliance of the contested norms with the Satversme does not fall

within the jurisdiction of the Constitutional Court, since its jurisdiction does not include assessing the intercompatibility of legal norms of equal legal force.

Article 85 of the Satversme and Para 1 of Section 16 of the Constitutional Court Law *expressis verbis* establish the right and the obligation of the Constitutional Court to assess the compliance of a law with the Satversme. The term "law" in this norm is to be understood first of all as a law in formal sense. Since the Saeima adopted the contested norms in compliance with the procedure envisaged for adopting a law, these cannot be considered to be norms of constitutional order.

The content of a legal norm cannot be identified only with the verbal meaning of this norm. The same wording can acquire different content, when being interpreted, for example, within the framework of regulatory enactment of different legal force or with one elaborated to a different level of particularization.

The Satversme and the law have different aims and objectives, therefore these regulatory enactments have different level of generalisation. The Satversme, being the fundamental law of the State, has a high level of generalisation, but the aim of the law is to implement the provisions of the Satversme. The Member of the Constitutional Assembly Fēlikss Cielēns has noted: "The Saeima is the legislative body, which can add to and specify the respective concrete laws in one or another direction, of course, not contradicting our Satversme, neither its letter, nor the spirit" *(Transcript of the 20th sitting of IX session of the 2nd Saeima of the Republic of Latvia of 6 June 1928. In: Latvijas Republikas II Saeimas stenogrammas. IX sesija. 1928. gads. Rīga: Latvijas Republikas Saeimas izdevums, 1928, 784. sl.).*

The Constitutional Court has the jurisdiction to verify, whether the legislator, in providing concrete and detailed provisions on the procedure for exercising the rights of the people envisaged in Article 78 of the Satversme, has not exceeded the limits of its discretion. The fact that the text of the contested norm *prima facie* duplicates the wording of a Satversme norm does not prohibit the Constitutional Court to assess the legal arguments regarding the compatibility of this text with the Satversme, if such arguments have been voiced.

The text of the contested norms in the case under examination is not identical with Article 78 of the Satversme, since it does not contain the words "fully elaborated".

Thus, the arguments mentioned in this paragraph are not sufficient for terminating the judicial procedures in the part of the case regarding the compatibility of the contested norms with Article 78 of the Satversme.

16. At the Court hearing the Applicant's representative emphasized that the contested norms did not comply with Article 78 of the Satversme exactly because their text "does not identically coincide" with the text of the Satversme *(see: transcript case materials of the sitting of the Constitutional Court of 13 November 2012, Vol. 3, p.13).* I.e., the contested norms do not set out the requirement "fully elaborated", which is envisaged in Article 78 of the Satversme.

Even though the text of the contested norms does not *expressis verbis* contain the words "fully elaborated", this does not mean that these norms establish the right of the President of the State or the Saeima to advance "every" and "any" draft law submitted by electorate. The grammatical method of interpretation is only one of interpretation methods, and it is not correct to follow only the verbal meaning of a legal norm *(see: Decision of 22 April 2005 by the Constitutional Court on terminating judicial proceedings in case No. 2004-25-03, Para 6).*

Thus, the Constitutional Court has to verify, whether the considerations noted in Para 13.1 of this ruling exist also if the contested norms are assessed as uniform regulation in interconnection not only with the norms of the National Referendums Law, but also with other laws, inter alia, the law "On the Central Election Commission".

The Constitutional Court has already concluded that concrete procedure has been elaborated in the National Referendums Law for implementing the right envisaged in Article 78 of the Satversme *(see: Judgement of 19 May 2009 by the Constitutional Court in case No. 2008-40-01, Para 9).* This procedure specifies the rights of the legal subject envisaged in Article 78 of the Satversme – one tenth of

electorate, also defining the rights and obligations of CEC in the process of implementing these rights.

The legislator enjoys discretion also in establishing the procedure of national referendum, to the extent it is not restricted by the norms of the Satversme. Likewise, the Saeima has broad discretion both in choosing, in which laws among several to include the relevant regulation *(see: Decision of 16 April 2008 by the Constitutional Court on terminating judicial proceedings in case No.2007-21-01, Para 17),* and in issues linked with the legislative technique within the framework of one law *(see: Judgement of 19 June 2010 by the Constitutional Court in case No. 2010-02-01, Para 9.4.2).*

Section 22 of the National Referendums Law unequivocally indicates that a specific number of voters have the right to submit to CEC fully elaborated draft amendments to the Satversme or a draft law. Even though the wording of the norms in Chapter IV of the National Referendums Law has been amended following the initiation of the case, the basic procedural principle has remained unaltered. Electorate can submit a draft law to the President of the State only with the mediation of CEC. The Sections of the National Referendums Law, subsequent to Section 22, thus, also Section 25, refer only and solely to the advancement of such a draft law, which initially has been submitted to CEC, – thus, to a draft law, the submission of which to CEC would be inadmissible, if it did not comply with the criterion "fully elaborated".

Thus, establishing the meaning of Section 25 of the National Referendums Law in interconnection with Section 22 of this Law allows concluding that the words "draft law" in Section 25 mean a fully elaborated draft law, which has been submitted to CEC in compliance with the set procedure.

Establishing the meaning of Section 11 of the National Referendums law in interconnection with Chapter IV of this law allows concluding that "a draft law or draft amendments to the Satversme submitted by at least one tenth of electorate" is only a draft law, which complies with all provisions of the said Chapter, – thus, a fully elaborated draft law, which was submitted to CEC.

Thus, the Applicant's assumption that the contested norms do not envisage requirement "fully elaborated" is unfounded.

17. The substantiation provided by the Applicant regarding the incompatibility of the contested norms with Article 1 of the Satversme is based upon assumption that the contested norms are unclear and, thus, collide with the principle of legal certainty.

The obligation of the state to abide by the principles of a judicial state, inter alia, the principle of legal certainty, in its actions follow from the concept of democratic republic enshrined in Article 1 of the Satversme *(see, for example, Judgement of 19 June 2010 by the Constitutional Court in case No. 2010-02-01 Para 4).* The requirement that a legal norm, which defines restrictions to a persons fundamental rights, should be clear and precise follows from the principle of legal certainty *(see: Judgement 20 December 2010 by the Constitutional Court in case No. 2010-44-01, Para 11),* i.e., the Saeima has the obligation to see to it that legal norms are defined so unambiguously that they can be interpreted correctly *(see: Judgement of 19 June 2010 by the Constitutional Court in case No. Nr. 2010-02-01, Para 9.4.2)* and a person, if necessary, seeking appropriate advice, could regulate his or her actions *(see: Judgement of 11 May 2011 by the Constitutional Court in case No. 2010-55-0106, Para 13.1).*

However, when assessing the compliance of a legal norm with the principles of a judicial state defined in Article 1 of the Satversme, the fact that the manifestation of these principles in different fields of law may differ, must be taken into consideration (*see: Judgement of 8 November 2006 by the Constitutional Court in case No. 2006-04-01, Para 15.2 and 15.3).* The Constitutional Court has noted that the right of the totality of citizens to participate in the legislative procedure must be regarded as the right belonging to the institutional field of constitutional order. The rights of the totality of citizens and a person's fundamental rights have different functions. The first ones aim to ensure direct democratic participation of the people in legislative procedure, but the second – to protect the individual freedoms against interference by the state, as well as to guarantee certain material or immaterial benefits *(see: Judgement of 19 May 2009 by the Constitutional Court in case. 2008-40-01, Para 12).*

Thus, the requirements, which in the case under review follow from the principle of legal certainty, must be established in interconnection with the legislator's constitutional obligations that follow from Article 78 of the Satversme.

The Constitutional Assembly, deciding on the wording of Article 78 of the Satversme, emphasized that the electorate's legislative intiative should not be only theoretical, it must be feasible in practice *(see: transcript case materials of IV session of the Constitutional Assembly of Latvia, Vol. 1, p.109 and subsequent).*

Thus, the legislator's constitutional obligation to define sufficiently clear regulation on electorate's legislative initiative and the implementation of national referendum follows from Article 78 of the Satversme in interconnection with the principle of legal certainty.

18. The Applicant holds that the contested norms do no comply with the requirements of Article 1 and 78 of the Satversme, insofar they do not contain criteria, in accordance with which state institutions should assess compliance of draft laws submitted by electorate with the requirement "fully elaborated", included in Article 78 of the Satversme. The meaning of the group of words "fully elaborated" has not been revealed in the practice of applying legal norms. The fact that the legislator has not specified the content of this concept in the contested norms causes incompatibility of the contested norms with Article 1 of the Satversme.

18.1. The Constitutional Court has noted that a legal norm must be recognised as unclear, if its true meaning cannot be established using methods of interpretation (*see: Judgement of 30 March 2011 by the Constitutional Court in case No. 2010-60-01, Para 15.2).* The fact *per se* that in order to establish the meaning of a legal norm it must be interpreted does not cause its incompatibility with the Satversme.

On the one hand, the principle of legal certainty imposes the obligation upon legislator to adopt sufficiently clear legal norms. On the other hand, the principle of justice requires ensuring that those applying law may solve all real life cases with the help of legal norms. Considering the changeability of legal relations or particular facts of a concrete case, exceedingly casuistic legal regulation may be unfair. Such a

situation would become even more possible, if the legislator, instead of defining the most essential provisions, applicable in a longer period of time, were to provide detail description of the legal content of each norm (*see: Judgement of 16 December 2008 by the Constitutional Court in case No. 2008-09-0106, Para 7.2).*

Concepts of high degree of juridical abstraction are essential element in the system of law. Their usage allows the legislator to avoid the possible burden caused by detailed regulation, at the same time without limiting the field of application of the said legal norm. Concepts of high degree of juridical abstraction make the legal norm more flexible and more appropriately applicable in various situations.

18.2. The Applicant, essentially, is not asking the Constitutional Court to assess the compliance of the contested norms with the Satversme, but to provide explanation of the term "fully elaborated draft law". As the Constitutional Court has concluded before (*see: Para 13.3. of this Decision*), the provision of such explanation does not fall within its jurisdiction.

Clarification of the contents of any legal norm – first of all, using the methods for interpreting legal norms, but, if necessary, also by, for example, evolving the law further or assessing the intertemporal or hierarchic applicability, –is within the competence of those applying the law.

The Constitutional Court, in compliance with the jurisdiction defined by the Satversme and the Constitutional Court Law, has not been granted the right to assess the application of legal norms by the institutions of public administration, nor the legality of rulings made by general jurisdiction courts *(see: for example, Judgement of 23 April 2003 by the Constitutional Court in case No. 2002-20-0103 Para 7 of the Findings and Judgement of 3 June 2009 in case No. 2008-43-0106, Para 12).* Decisions on principal issues regarding interpretation of legal norms are made by the cassation instance court, which also ensures uniform application of legal norms *(see: Judgement of 4 January 2005 by the Constitutional Court in case No. 2004-16-01, Para 16).* The analysis of problematic issues and interpretation of legal norms provided by the cassation instance court is a significant tool for creating uniform judicature, as well as ensuring evolvement of legal norms (*see: Judgement of 2 June 2008 by the Constitutional Court in case No. 2007-22-01, Para 18.2).*

Thus, it is exactly the obligation of general jurisdiction courts and administrative courts to verify, whether the one applying the law has revealed the content of concepts with high degree of juridical abstraction used in regulatory enactments and whether the result of applying this legal norm complies with the basic principles of a judicial and democratic state.

18.3. The Constitutional Court has recognised the predictability of legal consequences as an important criterion, which testifies that a legal norm has been defined clearly, i.e., "the norm should be worded in a way, which allows persons to predict its accurate field of application and meaning" *(Judgement of 3 May 2012 by the Constitutional Court in Case No. 2011-14-03, Para 16.2).* The legislator would not have fulfilled its duty to define sufficiently clear regulation on the implementation of the electorate's legislative initiative and national referendum, if the voters, even after receiving advice of a legal assistance provider, were unable to form sufficient understanding of the requirements set out by the contested norms.

The Applicant holds that the contested norms should have defined appropriate guidelines, since such are absent. The invited person Ms I.Nikulčeva, in her turn, notes that until sufficient practice and judicature has evolved, it is possible to use insights expressed in legal doctrine as guidelines (*see: case materials, Vol. 1, pp. 85 – 88).*

To establish, what should be considered to be a fully elaborated draft law or draft amendments to the Satversme as to its form, the party submitting the draft law can follow the requirements set for presenting a draft law. For example, the second sentence of Para 5, Article 79(1) of the Saeima Rules of Procedure sets out that the draft law submitted by electorate must be "drawn up in the form of a draft". Thus, draft amendments to the Satversme or legislative initiative, which has not been drawn up in the form of a draft, should be recognised as not being fully elaborated as to its form.

To establish, what are the requirements that a draft law or draft amendments to the Satversme should meet in order to be recognised as being fully elaborated as to its content, the party submitting the draft law may follow the norms of the Satversme and the interpretation of these norms provided by the Constitutional Court.

For example, the Constitutional Court has concluded that legislation is adoption of laws, i.e., the right to regulate an issue by a law. The Satversme grants the said right to the Saeima, as well as to the people according with the procedure and in the scope defined in the Satversme (*see: Judgement of 14 March 2011 by the Constitutional Court in case No. 2010-51-01, Para 11.3).* Thus, the party submitting the draft law can predict that draft amendments to the Satversme or a draft law, which envisages deciding on issues, which are not to be regulated by a law at all, cannot be recognised as being fully elaborated.

The voters, exercising the right of legislative initiative, participate in the legislative process and not only enjoy the legislator's right established in the Satversme, but also assume the obligations set for the legislator. Thus, in exercising the right to legislative initiative, the same limits to discretion, which the norms and principles of the Satversme set for the legislator, have to be complied with. The Constitutional Court initially noted: "[..] the principle of legality provides that law and rights are binding to all institutions of state power, including the legislator itself" [*see: Judgement of the Constitutional Court of 1 October 1999 in Case No. 03-05(99)]*. Consequently, not only the legislator, which exercises the legislative rights permanently, – the Saeima, but also the legislator, who exercises the legislative right on separate occasions, – the people –, are obliged to comply with the norms of higher legal force and respect the constitutional values enshrined in them. Thus, a party submitting a draft law can predict that a draft law, which, in case it were adopted, would collide with the norms, principles and values contained by the Satversme, cannot be recognised as being fully elaborated. None of the constitutional institutions, also people, in exercising the rights granted to it, has the right to violate the Satversme.

The Constitutional Court has concluded that the Constitutional Assembly of Latvia, by putting Article 68(1) into the Satversme, has not allowed the possibility that the State of Latvia could breach its international commitments. The Constitutional Assembly was guided by the presumption that international commitments "solve" issues and that these should be met (*see: Judgement of 7 July 2004 by the Constitutional Court in case No. 2004-01-06, Para 6 of the Findings).* Thus, the party submitting a draft law can predict that a draft law, which, if it were adopted, would

collide with Latvia's international commitments, cannot be recognised as being fully elaborated.

Thus, the Applicant's assumption that the contested norm is so unclear that the voters, who submit the draft law, are unable to predict the consequences of their action is unfounded.

19. The Applicant contests Section 11 (1) and Section 25(1) of the National Referendums Law, insofar none of the state institutions involved in the procedure of electorate's legislative initiative has been granted the right and the obligation to assess the compatibility of a draft law submitted by electorate with the Satversme requirements.

The Saeima, in its turn, expresses the opinion that the regulatory enactments make it sufficiently clear, which institutions are obliged to assess the draft laws submitted by electorate.

19.1. The legislator's constitutional duty, which follows from Article 1 and Article 78 of the Satversme, to define sufficiently clear regulation on the implementation of electorate's legislative initiative and national referendum contains also the requirement to establish a mechanism for verifying compliance with the conditions set out in Article 78 of the Satversme. At the Court hearing Mr E. Pastars noted it: "[..] after certain procedures have been started, the draft law submitted by electorate can no longer be amended, the assessment of such a draft law is mandatory" (*see: transcript case materials of the sitting of the Constitutional Court of 13 November 2012, Vol. 3, p. 68).* Mr J.Pleps also admitted that a person, wishing to solve an issue using the path of electorate's legislative initiative, should be able to draw up a draft law of adequate quality and it cannot be presumed that such a draft law is "fully elaborated" (*see: transcript of case materials of the sitting of the Constitutional Court of 20 November 2012, Vol.3, p.120).*

19.2. However, the legislator's constitutional obligation, which follows from Article 1 and 78 of the Satversme, to define sufficiently clear regulation for the implementation of electorate's legislative initiative and national referendum, does not mean that these mechanisms should be envisaged directly in the contested norms. To

verify, whether the requirements that follow from the principle of legal certainty are met, the contested norms must be assessed as uniform regulation in interconnection with other norms of the National Referendums Law, especially with the Sections that regulate the CEC actions.

The contested norms do not define *expressis verbis* the rights and obligations of state institutions to assess the draft laws submitted by electorate and do not contain a mechanism for verifying the legality of decisions adopted in this procedure.

The Constitutional Court has noted that the Satversme exhaustively divides the competence of the State of Latvia among the constitutional institutions of state power – the totality of Latvia's citizens, the Saeima, the Cabinet of Ministers, the State Audit, courts and the Constitutional Court. The constitutional institutions of state power may implement the competence of the State of Latvia themselves or may establish for this purpose, for example, institutions of public administration (*see: Judgement of 16 October 2006 by the Constitutional Court in case No. 2006-05-01, Para 10.3, 10.4 and 11).* Thus, in all issues of public and state life, insofar as their legal regulation is based upon Satversme requirements, one of the constitutional institutions of state power or an institution of public administration, established by them, has the jurisdiction to act and to solve the relevant issue.

Thus, only such legal situation, when at least one constitutional institution of state power or an institution of public administration established by it has the obligation to ensure compliance with the Satversme requirements, is compatible with the Satversme.

19.3. The concrete state institutions, which have the obligation to assess the draft laws submitted by electorate, as well mechanism for controlling the legality of decisions taken in connection with this, are defined in the Satversme, the law "On the Central Election Commission" and the National Referendums Law.

Section 4 of the law "On the Central Election Commission" envisages that CEC ensures the implementation of the National Referendums Law, as well as consistent and correct application of this law. Para 9 of Section 6 and Section 8 of this law, inter alia, provide that CEC has the right to examine all issues linked with preparing and managing the legislative initiative and the CEC implements its mandate in compliance

with the provisions of the National Referendums Law. Section 3(1) of the National Referendums Law, in its turn, provides that the national referendum is prepared and managed by CEC in accordance with the procedure set out in the National Referendums Law.

Examination of the aforementioned legal provisions in interconnection with the first sentence of Section 22 of the National Referendums Law leads to the conclusion that the Applicant's opinion is unfounded, since the legislator has envisaged the duty of the state institutions to ensure that the procedure of electorate's legislative initiative complies with the Satversme requirements.

Likewise, the science of law originally recognised that CEC "is not an office of technical work or an intermediary institution, which would quite mechanically advance any submitted draft, but is a higher governing institution, which has to see to it strictly that all laws pertaining to the Saeima election, legislative initiatives by the people and the national referendums were correctly applied and implemented" *(Dišlers K. Vai Centrālajai vēlēšanu komisijai ir tiesība pārbaudīt iesniegtos likumprojektus. Jurists, 1928. gada oktobris, Nr. 5, 135.–136. lpp.).*

It follows from the information included in case materials and established at the Court hearing that CEC jurisdiction includes assessment, whether the draft law complies with the requirement "fully elaborated", and also that such assessment is conducted in practice (*see: transcript case materials of the sitting of the Constitutional Court of 13 November 2012, Vol. 3, p. 92*). It also follows from what was established above (*see: Para 18.3 of this Decision*) that the requirement "fully elaborated" set out in Article 78 of the Satversme contains also the requirement to verify the compliance of the draft law submitted by electorate with the Satversme.

Thus, the Applicant's assumption that none of the state institutions involved in the procedure of electorate's legislative procedure has been granted the right and obligation to assess the compliance of a draft law submitted by electorate with the Satversme requirements is unfounded.

20. The Applicant contests Section 11(1) and Section 25(1) of the National Referendums Law, insofar as these do not envisage an effective mechanism for assessing the legality of decisions taken by the state institutions involved in the procedure of electorate's legislative initiative.

As regards appealing against the decisions adopted by CEC, Section 13 of the law "On the Central Election Commission" provides that CEC decisions, for which the appeal procedure is not defined in the respective law, as well as actual CEC actions can be appealed at court pursuant to the procedure set out in the Administrative Procedure Law. Moreover, the amendments to the National Referendums Law of 8 November 2012 introduced to the Law Section 23^1, which provide that electorate's initiative group may appeal a decision of CEC to refuse registration of draft amendments to the Satversme or a draft law to the Department of Administrative Cases of the Supreme Court Senate, which hears the case as the first instance court. The Court adopts a decision in shortened term, within one to two months from the date of receiving the application, and the Court decision is not subject to appeal.

Thus, the Applicant's assumption that the contested regulation does not envisage a mechanism for assessing the legality of decisions adopted by the state institutions involved in the procedure of electorate's legislative initiative is unfounded.

21. The Applicant holds the opinion that Section 25(1) of the National Referendums Law imposes the obligation upon the President of the State to advance for review in the Saeima also a draft law, the compliance of which with the Satversme has not been assessed.

The first sentence of Article 78 of the Satversme provides that "electors, in number comprising not less than one tenth of the electorate, have the right to submit a fully elaborated draft of an amendment to the Constitution or of a law to the President, who shall present it to the Saeima." I.e., the Satversme envisages that the President of the State has the right and obligation to present to the Saeima only a draft law, which

1) has been submitted by at least one tenth of the electorate;
2) is fully elaborated.

There are no grounds to consider that the requirement included in this norm should be given narrowly grammatical interpretation. As the Constitutional Court has already concluded, the legislator may define a procedure, when other institutions are involved in implementing the constitutional requirement linked with the number of electors – election commissions and sworn notaries *(see: Judgement of 19 May 2009 by the Constitutional Court in case No. 2008-40-01).*

Also as regards verification the compliance with the second requirement referred to – that a draft law should be fully elaborated – the legislator has the right to establish a procedure, involving other institutions, CEC in the concrete case. As mentioned above, the first sentence of Section 25(1) of the National Referendums Law, examined in interconnection with Section 22 of tis Law, allows concluding that the President of the State may present to the Saeima only a draft law, which previously has been submitted to CEC, i.e., a draft law, which has been recognised by CEC as being fully elaborated.

If the President of the State disagrees with the CEC opinion regarding the compliance of the draft law prepared by electorate with the criterion "fully elaborated", he, pursuant to the functions of the President of the State defined in the Satversme and by employing the lawful means at his disposal must see to it that the norms and principles of the Satversme are complied with.

Thus, the Applicant's opinion that Section 25(1) of the National Referendums Law imposes a duty upon the President of the State to advance to the Saeima for reviewing also a draft law, the compliance of which with the Satversme has not been examined, is unfounded.

22. The Applicant contests Section 11(1) of the National Referendums Law, insofar it envisages putting to national referendum a draft law, the compliance of which with the Satversme has not been examined.

Article 78 of the Satversme envisages: "If the Saeima does not adopt it without change as to its content, it shall than be submitted to national referendum." Interpretation of the word "it" in interconnection with the first sentence of the Article allows concluding that the said norm provides: if the Saeima does not adopt without

change as to its content a draft law fully elaborated by at least one tenth of electorate, then it shall be submitted to national referendum.

As concluded above, "a draft law submitted by electorate" is to be understood as a draft law that was submitted to CEC, and the compliance of which with the requirement "fully elaborated draft law" has been already examined and which has been submitted to the Saeima by the President of the State. Thus, in this procedure a draft law, obviously incompatible with the norms of higher legal force, could not be submitted to the Saeima at all.

The aforementioned contested norm does not regulate the parliamentary procedure, in the framework of which the Saeima decides, whether the draft law should be adopted "without change as to its content." Article 21 of the Satversme provides that "The Saeima shall establish rules of order to provide for its internal operations and order." I.e., the Saeima sets its own agenda. The purpose of the Saeima Rules of Procedure is to set such an agenda or the parliamentary procedure, which, implementing the will of majority, at the same guarantees also the minority rights and ensures effective work of the Saeima (*see: Judgment of 30 October 2009 by the Constitutional Court in case No. 2009-04-06, Para 11).* Pursuant to Article 81 of the Saeima Rules of Procedure, a draft law, which has been submitted to the Saeima in accordance with the procedure set out in the National Referendums Law, shall be submitted to national referendum, if the Saeima rejects submitting it to committees, rejects it as a whole or adopts if with changes as to its content.

The Saeima Rules of Procedure do not prohibit assessing a draft law submitted in this procedure. If a decision is adopted to submit the draft law to committees, all members of the parliament have the right to express their opinion on this draft law during the meetings of the respective committees or during the Saeima sitting.

The members of the Saeima have limited possibilities to express their opinion on this draft law only in case if the Saeima does not pass a decision on submitting the draft law to committees. Pursuant to Article 54 of the Saeima Rules of Procedure only two members are to be given the floor before a vote – one member in support of the proposal and the other against it – for not longer than five minutes for each speaker.

However, it does not mean that the deputies have been denied the right to assess the submitted draft law.

The Saeima decides, to what extent each concrete draft law, also a draft law submitted to the Saeima according to the procedure set out in the National Referendums Law, shall be assessed in the framework of the parliamentary procedure. The norms regulating this procedure are not contested in the case under review.

Thus, the Applicant's assumption that Section 11(1) of the National Referendums Law prohibits the Saeima to assess a draft law submitted by electorate is ungrounded.

23. The Constitutional Court has noted already before that the principles of a democratic and judicial state mean that a balance between fundamental values and exercise of rights exists in society [*see Judgement of 24 March 2000 by the Constitutional Court in case No. 04-07(99), Para 3 of the Findings*].

"The core of the concept of democracy is the implementation of the will of majority in society. It is closely linked with the principle of the sovereignty of people. Article 2 of the Satversme provides that the sovereign power of the State of Latvia is vested in the people of Latvia. The bearer of sovereign power of the Sate – the people – should have the possibility to influence decision taking in the State. The power of the State should be founded upon the will of the people, it should be the source of the State power" (*Judgement of 19 May 2009 by the Constitutional Court in case No. 2008-40-01, Para 11)*. Thus, the principle of the unity of the Satversme requires examining Article 78 of the Satversme in interconnection with the principle of the sovereignty of the people.

The sovereign itself – the people – decides, whether a draft law or draft amendments to the Satversme can become a law, according to the procedure set out in the Satversme and the law. The people, in expressing their opinion, decide themselves, whether the submitted draft law is compatible with the values of a democratic and judicial state. The contested norms regulate the procedure, defining, which institutions and in what sequence participate in the process of implementing the procedure of national referendum and the electorate's legislative initiative. The implementation of

the sate power is founded upon the presumption that every state institution complies with the Satversme and its jurisdiction, as well as duly fulfils its obligations. Issues connected with possible errors of the institutions, as well as disputes, whether the state institutions have or have not fulfilled their obligations duly and abided by the procedure is a subject regulated by other laws – the law "On the Central Election Commission" and laws regulating the judicial procedure, not the subject of the contested norms.

In a democratic and judicial state every state institution has the obligation to abide by the norms and principles of the Satversme. Moreover, the issue of law applied by any state institution is subject to the control exercised by the judicial power, which guarantees the application of legal norms in conformity with the Satversme.

As concluded before (*see: Para 16-23 of this Decision)*, the Applicant's assumption that the contested norms have the deficiencies referred to in Para 13.1. of this ruling is ungrounded. Since the Applicant's arguments regarding the incompatibility of the contested norms with the norms of higher legal force are founded upon this argument or are linked with the application of the contested norms, it is impossible to continue judicial proceedings in the case.

Thus, pursuant to Para 6 of Section 29(1) of the Constitutional Court Law, the judicial proceedings in the case shall be terminated.

The Substantive Part

In view of the aforementioned and under Para 6 of Section 29(1) of the Constitutional Court Law, the Constitutional Court

h o l d s :

terminate judicial proceedings in the Case No. 2012-03-01 "On the Compliance of Section 11(1) and Section 25(1) of the Law "on National Referendums and Legislative Initiatives" with Article 1, 77 and 78 of the Satversme of the Republic of Latvia".

The Decision is not subject to appeal.

The Presiding Judge G. Kūtris