



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

J U D G E M E N T

On Behalf of the Republic of Latvia

In Case No. 2011-19-01

Riga, 7 June 2012

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

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

on the basis of Article 85 of the Satversme of the Republic of Latvia and Para 1 of Section 16, Para 9 of Section 17, as well as Section 19¹ and Section 28¹ of the Constitutional Court Law,

on 8 May 2012 examined in written procedure the case

“On Compliance of Para 4 of Section 6 (2) of the Law on the Rights of Landowners to Compensation for Restrictions on Economic Activities in Specially Protected Nature Territories and Microreserves with the First Sentence of Article 91 and Article 105 of the Satversme of the Republic of Latvia”.

The Facts

1. The Saeima of the Republic of Latvia (hereinafter – the Saeima) on 30 June 2005 adopted the Law on the Rights of Landowners to Compensation for Restrictions on Economic Activities in Specially Protected Nature Territories and Microreserves (hereinafter – Law on Compensations), which entered into force as of 1 January 2006.

Para 4 of Section 6 (2) of the Law on Compensation (hereinafter – the contested norm) is contested, in the wording adopted by the Saeima with April 4 2007 Law “Amendments to the Law on the Rights of Landowners to Compensation for Restrictions on Economic Activities in Specially Protected Nature Territories and Microreserves”, which came into force on 18 April 2007.

The contested norm provides that compensations to landowners for restrictions on forestry activities are granted in accordance with the requirement referred to in Section 5 (1) of this Law, if the restrictions on forestry activities have been imposed after the title to land, acquired on the basis of a lawful transaction, has been registered in the Land Registry.

2. The Applicant – **the Department of Administrative Cases of the Supreme Court Senate** (hereinafter – the Applicant) , reviewing the case No. SKA – 648/2011, initiated following an application submitted by Sandis Cīrulis (hereinafter also – the Applicant in the Administrative Case) regarding the issuing of a favourable administrative act, adopted the decision to submit an application to the Constitutional Court regarding compliance of the contested norm with the first sentence of Article 91 and Article 105 of the Satversme of the Republic of Latvia (hereinafter – the Satversme).

The Applicant in the Administrative Case on 29 March 2006, by concluding a purchase agreement in the form of a notarial act, purchased a plot of land. With the decision of 22 February 2008 by Limbaži Regional Forestry Department of the State Forest Service a microreserve for specially protected species – the black stork – was

established on the aforementioned plot of land. The buyer had registered his title to land in the Land Registry on 23 October 2008, thus, after the microreserve was established.

2.1. The Applicant notes that the Applicant in the Administrative Case did not receive compensation for restrictions on forestry activities, as at the moment when the microreserve was established, he had concluded a purchase agreement, but the title to property had not yet been registered at the Land registry.

Section 6 (2) of the Law on Compensation contains the principle that compensation is due if the land has been acquired as a property, while being free from restrictions on economical activities. The Applicant in the Administrative Case bought the property without restrictions, thus, he is suffering losses caused by the restrictions on economic activities imposed later and the decrease of the economic value of the property.

2.2. The compensation is granted with a legitimate aim – to achieve that the recipient of the compensation for restrictions on economic activities is exactly the person, to whom material losses are inflicted, since the value of property decreases. The contested norm, insofar it aims to reach this objective, has a legitimate purpose. However, the Applicant finds no legitimate purpose in the regulation, which excludes from the circle of recipients of compensation those, who have acquired the land by lawful transaction before the restrictions on economic activities have been established, but recorded the title to property in the Land Register following it.

The Applicant doubts, whether the legislator aimed to follow the principle of the credibility of Land Register public information in the relations between a private person and the State. The other paragraphs of Section 6 (2) of the Compensation Law do not define as an essential the moment when the title to property is recorded in the Land Register. To reach the purpose of the law the State should take into consideration the date, on which the person has acquired the title to the land, i.e., on which a lawful transaction was concluded.

The contested norm established disproportional restrictions on property. As the result of restricting forestry activities, the real estate might lose its value

altogether. The legitimate purpose of the contested norm could be reached, for example, by introducing more accurate regulation on receiving compensation in cases, when the title to property has been acquired on the basis of lawful transaction. The Applicant notes such an alternative solution – to provide that the lawful transactions must be concluded at the notary before restrictions on the economic activities have been established.

2.3. Corroboration of the title to property in the Land Register has not been legally set as a person's obligation. The Applicant holds that those transactions, which have been concluded in the form of a notary act, ensure sufficient certainty that these transactions are not concluded retroactively in order to receive compensation.

2.4. The contested norm is incompatible with the principle of legal equality, enshrined in the first sentence of Article 91 of the Satversme, since the requirement to register one's title to property before the restrictions have been imposed, envisages differential treatment compared to other cases included in Section 6 (2) of the Compensation Law.

The Applicant in the Administrative Case is in comparable circumstances with other persons, who have acquired the title to property prior restrictions on forestry activities have been defined, but registered the title to property in the Land Register after the restrictions were established. The moment, when the title to property has been registered in the Land Register, is not important to none of the categories of persons referred to in Section 6(2) of the Compensation Law, except the persons, to whom the contested norm applies. Differential treatment like this could be justified in cases, when the real estate is registered in the Land Register for the first time.

3. The institution, which adopted the contested norm, – **the Saeima** – notes that the contested norm complies with the first sentence of Article 91 and Article 105 of the Satversme.

3.1. The aim of the draft law prepared by the Cabinet of Ministers had been to specify the norms of the Law on Compensation, defining the moment, when the legal

possession of land serves as the grounds for the right to receive compensation for the restriction on economic activities in a territory of nature under special protection.

The contested norm clearly envisages that the landowner has the right to request compensation for restrictions on forestry activities, if the restriction has been established after the title to land, on the basis of lawful transaction, has been registered in the Land Register. The right to request compensation for such restrictions can be evaluated as property; therefore it falls within the content of the rights envisaged by Article 105 of the Satversme.

3.2. The protection of person's property rights sets in as of the moment, when he has become the owner of real estate in accordance with the Civil Law (hereinafter – CL) provisions. In adopting the contested norm the Saeima included in the regulation this moment, when a person is to be recognised as the owner of real estate, which has been harmonised with other laws and principles defined by them. In the civil law understanding, a person acquires the right to real estate by corroborating it in the Land Register. Thus, starting from that moment, a person's property right to real estate in the civil law understanding is protected by Article 105 of the Satversme. However, up to this moment, Article 105 of the Satversme protects the right of a person as the legal possessor and the right to bring an action envisaged in Section 1478 of the CL.

The State has fulfilled its constitutional duty, which follows from Article 105 of the Satversme, by establishing a system of Land Registers. Entries into the Land Register are binding also to the State, not only to private persons, involved in civil law circulation.

3.3. The contested norm has been adopted to specify the moment, as of which a person obtains right to compensation for restrictions on forestry activities. The contested norm has the legitimate aim to achieve such functioning of Land Register system that would promote the protection of the rights of real estate owners, as well as safe and predictable civil law circulation. The contested norm ensures an order that in the course of civil law circulation of real estate, the person, whose title to land,

following a legal transaction, is registered in the Land Register, has the right to compensation for restrictions on forestry activities.

Allowing that in some cases the title to real estate is created by legal transactions, not by registering them in the Land Register, and persons right to property might be infringed and the civil law circulation of real estate might be hindered.

The benefit that society and every owner of real estate gains from the existence of the Land Registers system exceeds the obligation set for a person in certain cases to duly corroborate its title to property in the Land Register and linked exercise of rights with registering the title to property in the Land Register.

3.4. The cases regulated by Section 6 (2) of the Law on Compensation differ, since the persons, who have reinstated their title to real estate or obtained through land reform, are not in equal and comparable circumstances with persons, who have acquired real estate under the conditions of normal civil law circulation, from another person, who had already corroborated its title to property in the Land Register. The derogations from the system of Land Registers, which Section 6 (2) of the Law on Compensation contains, should be seen as a temporary solution.

4. The summoned person – **the Ministry of Justice** – notes that the contested norm complies with the first sentence of Article 91 and Article 105 of the Satversme.

4.1. The contested norm aims to define precisely the moment, when the right to compensation arises, to ensure legal clarity, as well as division of rights and obligations among the owner of real estate and the acquirer of legal estate. Until the real estate is registered in the Land Register, the acquirer of the real estate has no rights vis-à-vis third persons. However, he has the right to demand compensation not only for the actions of the previous owner conducted in bad faith, but also to require that all necessary measures are taken for registering the transfer of real estate in the Land Register.

In accordance with the principles enshrined in the Civil Law, a person acquires right vis-à-vis third persons with regard to real estate only after this fact has been

registered into the Land Register. The contested norm indirectly ensures the principle, defined in the Civil Law and other regulatory enactments, that the totality of rights and obligations is applicable to the acquirer of real estate as of the moment when his title to property has been corroborated in the Land Register.

4.2. That, which is not registered in the Land Register, does not exist in the form of property law. The need to register real estate and right linked with it in the Land Register follows from the essence and principles of property law, aimed at the protection of third persons. A person's obligation to corroborate the title to property in the Land Register in due time follows from Section 1, Section 993 (2) and Section 1477 (1) of the CL. Information on property law can be obtained only from the Land Registers, which are accessible to all and publicly credible. Thus, it is impossible to imagine relationship between the State and private persons being implemented without using the publicly credible information, which the Land Register contains.

4.3. The restriction to rights defined by the contested norm is commensurate to its aim.

The State does not need to have at its disposal information about the agreement between the contracting parties and the failure to meet it. The Ministry of Justice holds that the first registration of title to property in the Land Register and the transfer of title to property should be differentiated. The procedure for establishing a microreserve is longer than the procedure for corroborating rights.

In the case of transferring the title to real estate, the concluded purchase agreement is binding to the contracting parties on the basis of contractual law, but the acquired gets property right to the respective real estate by corroborating it in the Land Register. Section 6 of the Law on Compensation covers also those persons, who, within the framework of land reform because of reasons independent of them, have not been able to corroborate their title to property in the Land Register.

4.4. If the person, who has acquired land on the basis of a legal transaction, were granted the right to receive compensation also for such restrictions on forestry activities, which have been established before the transfer of the title to property has

been corroborated in the Land Registry, the legitimate aim of the contested norm would not be met.

4.5. The contested norm envisages differential treatment of persons, who have acquired land on the basis of a legal transaction, but have corroborated their title to land in the Land Registry after the restrictions on forestry activities were established, and persons, who have acquired land according to the procedure defined in Para 1, 2, 3 and 5 of Section 6 (2) of the Law on Compensation. This differential treatment has reasonable and objective grounds, since property reform cannot be implemented within a short period of time and the first recording of real estate in the Land Register requires certain amount of time.

The contested norm cannot be examined in isolation from other norms of the Law on Compensation. The contested norm and the other cases referred to in Section 6 (2) of the Law on Compensation defines as the dividing line the moment, when the restrictions were established, when the right to claim the respective compensation arises.

5. The summoned person – **the Ministry of Environmental Protection and Regional Development** – notes that the contested norm complies with the first sentence of Article 91 and Article 105 of the Satversme.

5.1. The contested norm should be examined in interconnection with Section 5 (1) of the Law on Compensation, since these two have the same aims. Two cumulative pre-conditions followed from the initial wording of both legal norms, a persons right to claim compensation arose when these were met: 1) the title to land has been corroborated in the Land Register; 2) the restrictions on forestry activities were established after the acquisition of land. The aim of Section 5(1) of the Law on Compensation aims to define such criteria for granting compensation that would allow identifying clearly the property and its borders. Its sub-aim is to facilitate the registration of real estate in the Land Registers.

5.2. Property not only gives rights, but also imposes obligations, inter alia, the obligation to make public information on owner, change of owner or the content of

the property. A person, who does not register the transfer of title in the Land Register, cannot gain all possible benefits from its property.

It follows from the legal regulation of the CL that a person acquires the right to gain benefit from its property, inter alia, compensation, only after registering the title to property in the Land Register.

5.3. two cases should be differentiated, when the restrictions are imposed within the period from the legal transaction until the moment when the respective entry is made into the Land Register. The first case, when registering the transaction into the Land Register has been delayed without justifiable reason due to the seller's or the purchaser's actions or lack thereof. In such a situation the legal consequences envisaged for the contested norm are proportional. Secondly, when there are objective reasons that do not depend upon the purchaser, why the decision has taken longer. The Ministry holds that the institution, when deciding upon compensation, should make evaluation on case-by-case basis. The institution is obliged to assess, whether there are no circumstances in the case that prohibit applying the contested norm and requires applying another principle of law.

6. The Summoned Person – the Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) – notes that the contested norm is incompatible with the first sentence of Article 91 and Article 105 of the Satversme.

6.1. The Ombudsman holds that the Saeima's considerations regarding the public credibility of corroboration and the inability of the State as third person to find the real owner as unfair and disproportional. Attempts to reach the aims should not place excessive burden upon a private person.

The State has the obligation to compensate for all material losses caused by an administrative act. The restriction included in the contested norm is not proportional, because it, in fact, prohibits a person from using his own property. Thus, the contested norm is incompatible with the principle of a judicial state.

6.2. The owners in cases referred to in Section 6 (2) of the Compensation Law are not in comparable situation, therefore the contested norm cannot be considered to

be discriminating. However, the legitimacy of the contested norm is dubious, if it is interpreted in such a way that the state is not paying compensation for the decrease of the value of property in the interests of society.

The Ombudsman notes that a transaction does not lose its force, if it has not corroborated in the Land Register. The landowner in the concrete administrative case is entitled to compensation, and the differential treatment of groups of persons included in Section 6 (2) of the Law on Compensation is ungrounded.

6.3. The Ombudsman supports the arguments provided by the Applicant, stating that the legitimate aim could be reached with more commensurate measures. The Ombudsman notes that it is important to ensure justice in society. The State's refusal to compensate for the restrictions on economic activities can be substantiated neither by the grammatical interpretation of the norm, nor the principle of public credibility.

7. The summoned person – **sworn notary M. iur. comp. Eduards Virko** – notes that the contested norm complies with the first sentence of Article 91 and Article 105 of the Satversme.

7.1. The aim of the contested norm is to create certainty in an institution that it is granting the compensation to the owner of real estate, not to a temporary or even unlawful user of it.

Until a person's right has been registered in the Land Register, the acquirer of real estate does not gain the title to property as an absolute right. Thus, the title to property is not effective vis-à-vis any third persons, including the State. The Land Registers operate to increase the stability of civil law circulation. If the date of concluding the transaction were to be made the point of reference, then it would be necessary to examine various aspects in the content of transaction, the neglecting of which might lead to unjust consequences.

7.2. The contested norm envisages differential treatment of persons, who acquire property on the basis of a legal transaction, and other groups of persons referred to in Section 6(2) of the Law on Compensation. Since the circulation of real estate cannot happen outside Land Registers, the owner is known from the moment

when denationalization or privatisation is initiated, because until his rights are corroborated in the Land Register, he cannot transfer these to anyone else. The same applies to a person, who has received property by court adjudication or who has inherited it. Thus, until the title to property of these persons has been corroborated in the Land Register, it is impossible to change the status of this person by alienation transaction.

E. Virko notes that until the legal transaction has been registered in the Land Register, the parties can revoke or renew the legal transactions, by which alienation has been performed, or the alienator can resell his property. Therefore it would not be suitable to make the legal transaction as the point of reference for compensation, as this might lead to difficulties in interpretation of its content.

The Findings

8. The Applicant requests the Constitutional Court to examine, whether the contested norm complies with the first sentence of Article 91 and Article 105 of the Satversme. The Applicant holds that the violation of the constitutional norms manifests itself in the fact that the contested norms denies compensation to a person, who has acquired land on the basis of a legal transaction and to whose land restrictions on forestry activities have been imposed before the title to property was corroborated in the Land Register.

The principle of legal equality enshrined in the first sentence of Article 91 of the Satversme is predominantly to be applied jointly with other fundamental rights. Especially because it is impossible, solely on the basis of this principle, to determine how to adjudicate a case. The right enshrined in Article 91 of the Satversme is “comparative”. It may request equal treatment, but as such cannot show what kind of treatment this should be, i.e., should it be favourable or unfavourable. To select one of the solutions, other considerations must be examined, which fall outside the scope of the concept of equality (*see, for example Judgement of 11 November 2005 by the*

Constitutional Court in Case No. 2005-08-01 Para 5 and 6.1. and Judgement of 8 November 2006 in Case No. 2006-04-01, Para 15).

In the case under review the principle of legal equality should be examined in interconnection with Article 105 of the Satversme, as it is necessary to establish, whether the compensation for restrictions on forestry activities falls within the scope of property law.

Thus, the Constitutional Court must establish, whether the contested norm restricts a person's right to property, established in Article 105 of the Satversme.

9. The Constitutional Court has found that Article 105 of the Satversme envisages comprehensive guarantee of right of material nature and is not limited only by the rights to property regulated by the Civil Law.

9.1. The “right to property” should be understood as all rights of material nature, which a person can use on his own behalf and which he can deal with according to his will (*see, Judgement of 30 March 2011 in Case No. 2010-60-01, Para 17.1*).

The State's obligation to take into consideration international commitments in the field of human rights follows from Article 89 of the Satversme, which establishes that the state shall recognise and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding upon Latvia. The aim of the constitutional legislator was to harmonise the norms of human rights included in the Satversme with the international human rights provisions (*see, for example, Judgement of 30 August 2000 by the Constitutional Court in Case No.2000-03-01, Para 5 of the Findings*). When establishing the content of fundamental rights included in the Satversme, Latvia's international commitments in the field of human rights must be taken into consideration. The international norms of human rights and their application on the level of constitutional law serves as a means of interpretation to determine the content and scope of fundamental rights and the principle of a judicial state, insofar it does not lead to decreasing or limiting the fundamental rights included in the Satversme (*see, for example, Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 5 of the Findings*).

The concept “property” has an independent meaning in the understanding of Para 1 of Protocol No.1 to the European Convention for the Protection of Human Rights and Fundamental Values (hereinafter – the Convention). It must be understood as both moveable property and real estate; moreover, this concept also includes contractual rights with economic value and various economic interests (*see, for example, Decision of 20 April 2010 by the Constitutional Court on terminating judicial proceedings in Case No. 2009-100-03, Para 8.2*). In accordance with the Convention various claims can also be regarded as property. However, there should be at least something that could be considered to be a legal claim (*see: Jacobs and White. The European Convention on Human Rights. Fourth edition. Oxford: Oxford University Press, 2006, p. 355*).

9.2. The Applicant in the Administrative Case submitted an application to court because the contested norm prohibited him to receive compensation for restrictions on forestry activities, which were imposed upon the plot of land that he had purchased, after the acquisition of real estate, but before his title to property had been registered in the Land Registry.

By establishing restrictions on forestry activities to real estate, the owner’s right to property is restricted. Compensation in the meaning of the Law on Compensation is a payment made from the state or the local government budget. It compensates for the material benefit, which the landowner does not gain because, in accordance with regulatory enactments, special protection and restrictions on economic activities linked to this have been established for a territory. Compensation is an economic value, hence, the right to claim it for the establishment of restriction, is material right.

Thus, compensation for restrictions on forestry activities, falls within the content of the concept “property” referred to in Article 105 of the Satversme.

10. The case under review is a dispute about the persons, who are entitled to receive compensation for the restrictions on forestry activities placed upon a plot of land.

The contested norm is included in Section 6 (2) of the Law on Compensation, which indicates five groups of persons, who are entitled to receive compensation for the restriction on forestry activities placed upon real estate. The following persons may receive compensation: 1) with regard to whom a decision regarding renewal of the land ownership right has been taken; 2) who have entered into an agreement with the State stock company “*Latvijas Hipotēku un zemes banka*” [Mortgage and Land Bank of Latvia] on buying out a land property; 3) with regard to whom a court adjudication regarding acquisition of the ownership right to the land has come into force; 4) whose property right to land, on the basis of a lawful transaction, has been registered in the Land Register; 5) who have accepted for inheritance the relevant land property.

The persons defined by the contested norm, in their turn, have the right to receive compensation for restrictions set on forestry activities only if the title to property has been corroborated in the Land Register before establishment of microreserve.

The Applicant in the administrative case acquired a plot of land on the basis of a lawful transaction (purchase agreement), however, corroborated his title to property in the Land Register only after the restrictions on forestry activities were established. Thus, he did not fall within the circle of persons referred to by the contested norm, as being entitled to compensation for restrictions on forestry activities.

A person, upon concluding a lawful transaction on the purchase of real estate, may also enter into an agreement with the owner, who is registered in the Land Register, that he shall be the holder and possessor of this property.

The registration of property in the Land Register requires a certain amount of time. The moment when the real estate is acquired does not coincide with the moment when the title to property is registered in the Land Register. Thus, by establishing restrictions on forestry activities within the time period between concluding the lawful transaction and corroborating the title to property in the Land Register, a person’s right to exercise the rights that follow from the lawful transaction is significantly

hindered. Moreover, restrictions on forestry activities leave an impact upon the value of real estate.

Thus, the contested norm restricts the right to receive compensation for the decrease of the real estate value of persons, who have acquired real estate on the basis of a lawful transaction, but have not registered the title to property in the Land Register before the restrictions on forestry activities are established.

11. The first sentence of Article 91 of the Satversme provides that “all human beings in Latvia shall be equal before the law and courts.” The principle of equality, which the first sentence of Article 91 of the Satversme contains, prohibits state institutions to adopt such norms, which, without reasonable grounds, allow differential treatment of persons, who are in similar and according to definite criteria comparable circumstances. Simultaneously, the principle of equality allows and even requires differential treatment of persons, who are in different circumstances, as well as allows differential treatment of persons, who are in similar circumstances, if there are objective and reasonable grounds for it (*see, for example, Judgement of 3 April 2011 by the Constitutional Court in Case No. 2000-07-0409, Para 1 of the Findings, and Judgement of 29 December 2008 in Case No. 2008-37-03, Para 7*). Differential treatment has no objective and reasonable grounds, if it has no legitimate purpose or if there is no proportionality between the selected means and the set aims (*see, Judgement of 23 December 2002 by the Constitutional Court in Case No. 2002-15-0, Para 3 of the Findings*).

To assess, whether the contested norm complies with the principle of equality included in the first sentence of Article 91 of the Satversme, it must be established:

- 1) whether and which persons (groups of persons) are in similar and according to definite criteria comparable circumstances;
- 2) whether the contested norm envisages equal or differential treatment of these persons;
- 3) whether this treatment has objective and reasonable grounds, i.e., whether it has a legitimate aim and whether the principle of

proportionality has been complied with (*see, Judgement of 2 February 2010 by the Constitutional Court in Case No. 2009-46-01, Para 7*).

12. The Applicant notes that a person, who has acquired real estate on the basis of a lawful transaction, but has not corroborated his right in the Land Register before restrictions on forestry activities have been imposed, is in similar and comparable circumstances with the other groups of persons referred to in Section 6(2) of the Law on Compensation (*see Case Materials, Vol.1, pp. 6 - 7*). The Saeima, in its turn, holds that the cases regulated by Section 6 (2) of the Compensation Law are different, therefore the persons noted are not in similar and comparable circumstances (*see, Case Materials, Vol. 1, pp. 61 - 62*).

In this case the common criterion for all groups of persons referred to in Section 6(2) of the Law on Compensation is the fact that if restrictions on forestry activities are imposed all these persons are entitled to receive compensation.

One can uphold the opinion of the Saeima that the legal basis for acquiring legal estate referred to in Section 6 (2) of the Compensation Law differs. However, the general precondition for granting compensations is applied to all groups of persons referred to in this legal norm, included in Section 5(1) of the Law on Compensation. I.e., the landowner, whose title to land has been corroborated in the Land Registry, has the right to receive compensation. Thus, only those persons, who have acquired real estate on one of the bases referred to in Section 6(2) of the Compensation Law and have corroborated their title to property in the Land Register, have the right to receive compensation for restrictions on forestry activities.

Thus, all persons referred to in Section 6 (2) of the Law on Compensation are in similar and comparable circumstances.

13. The right to claim compensation of the persons referred to in Para 1, 2, 3 and 5 of Section 6(2) of the Compensation Law arises at the moment, when they corroborate their title to property in the Land Register. Thus, one precondition for receiving compensation has been envisaged to all these persons – corroboration of the

title to property in the Land Register. The legislator has not imposed the obligation upon these persons to corroborate the title to property prior the establishment of restriction on forestry activities.

However, the persons referred to in the contested norm, who have acquired real estate on the basis of a lawful transactions, not only have been imposed the obligation to corroborate the title to property in the Land Register, but to do it prior the establishment of restrictions on forestry activities.

For example, a person, who has accepted a land property for inheritance, will be able to receive compensation for restrictions on forestry activities as of the moment when his title to property is corroborated in the Land Registry. This person will be able to receive compensations also in case the title to property is corroborated in the Land Register after the establishment of microreserve. However, the person, who has concluded a purchase agreement, will be able to receive the compensation only in case the title to property has been registered in the Land Register prior the establishment of restrictions on forestry activities.

Thus, an additional precondition for receiving compensation has been established for the persons referred to in the contested norm, the moment when the title of property is corroborated in the Land Register, i.e., before the establishment of restriction on forestry activities.

Thus, one group of persons has been imposed the obligation not only to corroborate their title to property in the Land Register, but also to do it before the establishment of restriction, however, the other groups referred to in Para 1, 2, 3 and 5 of Section 6 (2) of the Law on Compensation, can receive compensation, irrespectively of the fact, whether these persons have corroborated their title to property before or after establishment of restriction on forestry activities.

Thus, the contested norm envisages differential treatment of groups of persons, who are in similar and comparable circumstances.

14. The principle of equality does not prohibit the legislator to establish differential treatment of persons, who are in similar and comparable circumstances,

however, such differential treatment must have objective and reasonable grounds, or a legitimate aim for the differential treatment (*see Judgement of 11 December 2006 by the Constitutional Court in Case No. 2006-10-03, Para 17*).

To determine, whether the differential treatment has objective and reasonable grounds, it must be established, whether it has a legitimate aim and whether the principle of proportionality has been complied with.

15. Every restriction to fundamental rights must be based upon circumstances and arguments concerning its necessity, i.e., the restriction has been imposed due to significant interests – a legitimate aim (*see, for example, Judgement of 22 December 2005 by the Constitutional Court in Case No. 2005-19-0, Para 9*).

The aim of the Law on Compensations, included in Section 2 of this Law, provides *expressis verbis* that it must be ensured that a person, upon whose plot of land microreserve has been established, receives financial compensation for the restriction placed upon his property. The essence of disbursing compensations is aimed at compensating for the loss of value of the plot of land and thus protect a person's right to property, i.e., in those cases, when the state has restricted a person's right to property, the loss incurred by this persons is compensated for by paying compensation. The Applicant foundedly notes that the aim of the contested norm was to ensure that the person, who suffers material loss in connections with the decrease of the value of property, receives compensation for restriction on economic activities (*see Case Materials, Vol.1, pp. 5-6*).

The Saeima, however, notes that the legitimate aim of the restriction included in the contested norm is to ensure such functioning of the Land Registers system, which would ensure the protections of the rights of the real estate owners, as well as safe and predictable civil law circulation (*see Case Materials, Vol.1, p. 60*). The Ministry of Environmental Protection and Regional Development also notes that the legitimate aim of the restriction is the possibility to identify clearly the property and its borders, owners or co-owners, type of land use, encumberments and the like. Thus, registration

of real estate in the Land Registers is also promoted (*see Case Materials, Vol.2, pp. 66-67*).

Since legal transactions concerning acquisitions of property are concluded by private parties, it is not envisaged that these mandatorily have to take the form of a notarial deed, an entry in the Land Register allows ascertaining that the real estate is owned by a concrete persons – its owner. Thus, public credibility, legal clarity and certainty are ensured, as well as the possibility for any private person and also the State to identify clearly, who should be recognised as the owner of concrete real estate. The entry into the Land Register promotes security in business relations, and it conforms to the interests of all participants in civil law circulation.

Thus, the differential treatment included in the contested norm, envisaging the obligation to register in the Land Register the title to property acquired as the result of lawful transaction before the restriction on forestry activities are imposed, strengthen the public credibility of Land Registers, fosters legal certainty in the country and allows identifying clearly the property and its borders, as well as the person entitled to receive compensation for the imposed restrictions on forestry activities.

Thus, the legitimate aim of the differential treatment defined by the contested norm is promoting legal certainty and, thus, protecting the interests of other persons.

16. To examine the proportionality of restrictions to fundamental rights, the Constitutional Court verifies:

- 1) whether the chosen means are suitable for reaching the legitimate aim;
- 2) whether the legitimate aim can be reached with means less restrictive to a person's rights;
- 3) whether the benefit gained by society exceeds the damage inflicted upon a person's rights (*see, for example, Judgement of 18 March 2011 in Case No. 2010-50-03, Para 12*).

17. The State has the obligation to create appropriate legal tools for reaching the legitimate aim. The Constitutional Court must, first of all, verify, whether it is possible to reach the legitimate aim of the contested norm with the means chosen by the legislator, and whether these means do not restrict also the rights of such persons, whose rights the legislator had no intention to restrict.

Section 6 (2) of the Law on Compensation refers to Section 5(1) of the Compensation Law, which contains the general pre-condition for granting compensations, i.e., that those landowners, whose title to land has been corroborated in the Land Register, have the right to claim compensation. Thus, this norm already ensures that the principle of legal certainty is complied with, because the entries into the Land Register are publicly credible.

The corroboration of the title to property in the Land Register ensures that in case restrictions on forestry activities are established, the State can clearly identify the persons, who have acquired the title to real estate. Thus, the State can pay compensation to a person, who is to be recognised as the owner of the real estate.

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

18. The restriction to rights included in the contested norm is necessary, if no other means, which would be as effective and less restrictive to fundamental rights, exist. In assessing, whether the legitimate aim could be reached by other means, the Constitutional Court underlines that a more lenient means is not any other means, but only such that would allow reaching the legitimate aim in almost the same quality (*see Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 19 of the Findings*).

18.1. In drafting the contested norm, the Cabinet of Ministers aimed to specify the moment when the right to claim compensation for restriction on forestry activities arises. The Environmental and Regional Policy Committee of the Saeima drafted an alternative draft law (Reg. No. 276/Lp9), in which the contested norm was expressed in different wording, envisaging that compensation is granted, if the restriction on

forestry activity has been imposed after purchase, gift or other agreement on alienations has been concluded. However, there would be the right to receive compensation only if the compensation had not already been paid to the previous landowner (*see the alternative draft law prepared by The Environmental and Regional Policy Committee of the Saeima and its annotation in Case Materials, Vol.2, pp. 11 - 17*). However, during the Saeima debates on the draft law, editorial amendments were introduced to the contested norm and it was adopted in the wording currently in force (*see Case Materials, Vol.2. p.23*).

The Saeima in its written reply notes that until the moment, when a person corroborates the title to the acquired real estate in the Land Register, Article 105 of the Satversme protects its rights as the acquirer of real estate (*see. Case Materials, Vol.1, p. 59*). Thus, in some cases restriction to the property right to a person who has acquired real estate on the basis of a lawful transaction, but has not corroborated title to property in the Land Register before restriction on forestry activities is imposed, can occur.

A person, who has acquired real estate on the basis of a lawful transaction and has not registered its title to property in the Land Register prior to the establishment of restriction on forestry activities, is denied the possibility to use the property in accordance with the type if its use. Thus, since the type of use of the property is impacted, as well as its value, for which the property has been acquired at the moment of concluding the transactions, the acquirer of real estate may suffer loss.

18.2. The Constitutional Court already established in Para 15 of this Judgement that the legitimate aim of differential treatment established by the contested norm is promoting legal clarity. Thus, the State wants to ensure by the regulation included in the contested norm that persons corroborate their title to property in the Land Register.

Corroboration of title to property, which a person has acquired on the basis of lawful transactions, has not been defined as a mandatory obligation by law. The State has not set a term, within which a person must corroborate his title to property.

18.3. The registrations of the transfer of title to property in the Land Register is a process, demanding submitting to the Department of Land Register several documents, proving the validity of making such an entry. The process of corroboration demands a certain period of time, and its length may depend upon a number of objective and subjective circumstances. Therefore, the title to property cannot be corroborated in the Land Register on the day, when the lawful transaction is concluded. Thus, a situation may occur that within the period of time from the moment of concluding the lawful transaction until the title to property is registered in the Land Register, restrictions on forestry activities are imposed upon the real estate.

If restriction on forestry activity is imposed within this period, then the person, who incurs the loss primarily, is the person, who is the holder and the possessor of real estate on the basis of lawful transaction. Thus, the person, who is registered in the Land Register as the owner of the real estate, but as the results of lawful transaction, has already transferred this property into the possession of another person, does not incur loss in connection with the restriction.

The legislator has not identified the whole circle of persons, whose right to property is restricted and who therefore suffer loss. By denying compensation for restriction on forestry activities to a person, who has acquired real estate on the basis of a lawful transaction and is the possessor of this property at the moment when restriction is imposed, the State fails to reach the aim of the compensation – to compensate losses to a person, who suffers them because of this restriction.

Thus, the contested norm in the present wording does not ensure protection of the right to property for those persons, who are legal possessors of real estate, even though, for different reasons, have not corroborated their right in the Land Register.

18.4. The contested norm contains two pre-conditions allowing a person to receive compensation for restriction on forestry activities: the title to property must be corroborated in the Land Register and the entry must be made before restriction on forestry activities was imposed. Thus, compensation to a person for restriction on

forestry activities can be granted only if both pre-conditions included in the contested norm are met.

The State, imposing restriction on forestry activities, envisages the possibility to grant compensation to a person, whose rights are restricted by establishing this reserve. If the title to property is corroborated in the Land Register, the State can identify the person entitled to compensation for restriction on forestry activities. This pre-condition included in the contested norm motivates the person, who has acquired real estate on the basis of a lawful transaction, to corroborate his title to property. Thus, legal certainty in the State is promoted, moreover, if restriction on forestry activities is imposed, the State pays compensation to the person, whose rights are infringed by the established reserve.

Thus, the requirement to corroborate the title to property in the Land Register before receipt of compensation, i.e., after restriction on forestry activities has been imposed, must be recognised as lenient means for restricting a person's rights.

However, the requirement included in the contested norm to corroborate the title to property in the Land Register before restriction on forestry activities has been imposed, denies the persons, who have acquired real estate on the basis of a lawful transaction, but have not corroborated their title to property before the restriction on forestry activities was imposed, the possibility to claim compensation for decrease in the value of real estate and to receive this compensation. This measure chosen by the legislator fails to ensure the protection of the right of those persons, who, as the result of restriction imposed to forestry activities, suffer loss. Thus, the requirement to corroborate the title to property in the Land Register before the restriction on forestry activities was imposed, cannot be regarded as a measure imposing lenient restrictions on a person's rights.

If the assessment of a legal norm leads to the conclusion that it is incompatible with even one criterion of proportionality, then it is incompatible with the whole principle of proportionality and is unlawful (*see, for example, Judgement of 16 May 2007 by the Constitutional Court in Case No. 2006-42-01, Para 11*). The requirement to corroborate the title to property in the Land register before receipt of compensation,

i.e., after restriction on the forestry activity has been imposed, is a means allowing to reach the legitimate aim in the same quality. Moreover, this requirement is also included in Section 5(1) of the Law on Compensation.

Thus, with regard to persons, who have acquired land on the basis of a lawful transactions, but have corroborated their title to property in the Land Register after restriction on forestry activity has been established, the legitimate aim of the contested norm can be reached by less restrictive means. Hence, the contested norm is incompatible with the first sentence of Article 91 of the Satversme.

19. Finding that the contested norm is incompatible with the first sentence of Article 91 of the Satversme makes the assessment of its compliance with Article 105 of the Satversme unnecessary.

20. Pursuant to Section 32(3) of the Constitutional Court Law, a legal norm, which the Constitutional Court has found to be incompatible with a norm of higher legal force, is to be regarded as invalid as of the day when the Judgement by the Constitutional Court is published, unless the Constitutional Court has provided otherwise. Pursuant to Para 11 of Section 31 of the Constitutional Court Law, if the Constitutional Court has recognised a legal norm to be incompatible with a norm of higher legal force, it must set the term as of which the norm becomes invalid.

In the case under review the Applicant, hearing an administrative case, to prevent the infringement of the fundamental rights of a private person – the Applicant in an Administrative Case – submitted an application to the Constitutional Court regarding the compatibility of the contested norm with the first sentence of Article 91 and Article 105 of the Satversme and has requested to declare the contested norm invalid with regard to the Applicant in the Administrative Case - Sandis Cīrulis – as of the date of its adoption.

By defining a concrete date, as of which the contested norm becomes invalid, the Constitutional Court assessed, whether retroactive declaring of the norm invalid is necessary for the protection of the person's fundamental rights, infringed in the case under review, and whether any considerations exist, why the contested norm should be declared retroactively invalid only with regard to a concrete person (*see Judgement of 21 December 2009 by the Constitutional Court in Case No. 2009-43-01, Para 34*).

As regards the Applicant in the Administrative Case, declaring the contested norm invalid as of the date of its adoption is the only possibility to protect his fundamental rights. Simultaneously, the possibility that another person has applied to court in order to protect his fundamental rights infringed by the contested norm cannot be excluded. Hence, as regard all those persons, who have initiated such legal proceedings, the contested norm becomes invalid as of the date of its adoption.

The Substantive Part

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

held:

1. To recognise Para 4 of Section 6(2) of the Law on the Rights of Landowners to Compensation for Restrictions on Economic Activities in Specially Protected Nature Territories and Microreserves, insofar as it envisages the requirement that the title to property must be registered in the Land Register prior to the establishment of restriction on forestry activities as incompatible with the first sentence of Article 91 of the Satversme of the Republic of Latvia.

2. To recognise Para 4 of Section 6(2) of the Law on the Rights of Landowners to Compensation for Restrictions on Economic Activities in Specially Protected Nature Territories and Microreserves, insofar as it envisages the requirement that the title to property must be registered in the Land Register prior to the establishment of restriction on forestry activities with regard to Sandis Cīrulis and other persons, who have initiated judicial proceedings for the protection of their fundamental rights infringed by Para 4 of Section 6(2) of the Law on the Rights of Landowners to Compensation for Restrictions on Economic Activities in Specially Protected Nature Territories and Microreserves, incompatible with the first sentence of Article 91 of the Satversme of the Republic of Latvia as of the date of its adoption.

The Judgement is final and not subject to appeal

The Judgement comes into force as of the day of its pronouncement.

The Presiding Judge

G. Kūtris