THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

J U D G E M E N T

On Behalf of the Republic of Latvia

Riga, 28 November 2011

Case No. 2011-02-01

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

having regard to an application of the Administrative Case Department of the Senate of the Supreme Court of the Republic of Latvia (hereinafter – the Applicant) to initiate a case,

according to Article 85 of the Satversme [*Constitution*] of the Republic of Latvia, Article 16 1st indent, Article 17 (1) 11th indent, and Article 19^1 and Article 28^1 of the Constitutional Court Law.

on 1 November 2011 in writing examined a case

"On Compliance of the Second Sentence of Section 22 (1) of the Law "On Land Reform in Rural Areas of the Republic of Latvia" with Article 91 of the Satversme of the Republic of Latvia".

The Facts

1. On 21 November 1990, the Supreme Council of the Republic of Latvia adopted the Law "On Land Reform in Rural Areas of the Republic of Latvia". Section 22 thereof provided that works related to the land reform are covered from the State budget.

1.1. Clause 1.1.2 of 26 October 1993 Cabinet of Ministers Regulation No. 16 "On the Land Reform and the Procedure for Financing Land Privatization Works"" (hereinafter – the Regulation No. 16) (wording effective from 26 November 1993 to 8 August 1995) provided that resources of the State budget would be used to cover establishment of land boundaries, elaboration of a land boundary establishment (allotment) act and a land boundary (land use) plan, as well as registration of land plot in the cadastre registry in respect to former land owners and their lawful heirs of the first rank, politically repressed persons, and disabled persons of the first group.

1.2. By adopting 1 August 1995 Cabinet of Ministers Regulation No. 237 "Amendments to the 26 October 1993 Cabinet of Ministers Regulation No. 16 "On the Land Reform and the Procedure for Financing Land Privatization Works" (hereinafter – the Regulation no. 237), the Regulation No. 16 was amended, and Clause 1.1.2 thereof established henceforth that resources of the State budget would be used to finance "establishment of land boundaries, elaboration of land boundary plan and registration of a land property into cadastre registry for natural persons – former land owners who owned land property in the Republic of Latvia as on 21 July 1940 and their outliving spouses, children or grand-children, as well as politically repressed persons, and disabled persons of the first group if the works are performed with the purpose to restore their former land property or to provide a compensation by granting land of an equivalent value only within such city (town), in which the former land property was located".

1.3. On 14 June 2007, the Saeima [*Parliament*] of the Republic of Latvia (hereinafter – the Saeima) adopted the Law "Amendments to the Law "On Land

Reform in Rural Areas of the Republic of Latvia"", wherein financing of land cadastral survey has been included from the outset. The first sentence of Section 22 (1) of the Law "On Land Reform in Rural Areas of the Republic of Latvia" provided that "the land cadastral survey shall be performed from the State budget funds, if it is related to restoration of land ownership right or compensation of a land property by land of an equivalent value, only within such administrative territory, in which the former land property is located" (hereinafter – the Contested Norm).

2. When examining the Case No. SKA-716/2010 initiated based on an application of Ms Inta Bogdānova (hereinafter – the Applicant in the Administrative Case) on cancellation of the 24 September 2008 Decision No. 1-12/109, the Applicant, the Administrative Case Department of the Senate of the Supreme Court adopted a decision to apply to the Constitutional Court regarding compliance of the Contested Norm with Article 91 of the Satversme of the Republic of Latvia (Satversme).

2.1. By means of the Decision of 28 May 2007, the Central Land Commission restored the ownership right of Ms I. Bogdānova to the land entitled "Zariņi" in Valka parish, Valka district as a land of value equivalent to that of an inherited homestead land in Plešanova village of Gauri parish of Abrene county. On 15 June 2008 Ms I. Bogdānova applied to a limited liability company "Latvijas Valsts mērnieks" by asking to include the above mentioned land property in the list to perform a land cadastral survey from the State budget funds.

According to the Contested Norm, the above mentioned institution refused to do so because ownership right has not been restored in the same administrative territory where the former land property was located.

2.2. The Applicant holds that the Contested Norm fails to comply with Article 91 of the Satversme. The principle of equality included in the first sentence of the above mentioned article prohibits State institutions issuing such norms that permit, without reason, a different attitude towards persons enjoying equal and, according to certain criteria, comparable conditions. The Contested Norm

establishes a different attitude towards two such groups of inhabitants. Both groups are constituted by persons who as former land owners owned property in the Republic of Latvia as on 21 July 1940, their ownership right has been restored or whose land property has been compensated by land of an equivalent value. Performance of land cadastral survey from State budget resources is assured only in respect to those persons who deal with restoration of ownership right or compensation of property by land of an equivalent value only within such administrative territory, in which the former land properties are located. Persons whose property is compensated by land in another administrative territory must perform land cadastral survey at their own expense.

The Applicant indicates that the Contested Norm deteriorates, without any objective and reasonable grounds, her situation in the administrative case. When restoring ownership right, persons who can not be granted land in the same administrative territory due to reasons that do not depend on the person enjoy worse circumstances if compared to persons who, being former land owners, can be restored their ownership right or be granted a compensating land in the same administrative territory. Consequently, one of the groups of the inhabitants has been forced to have considerably worse conditions. First, due to objective and independent reasons, her ownership right to a previously alienated immovable property have been restored in another place and immovable property located in another administrative territory has been granted. Second, due to this reason, the above mentioned persons must perform land cadastral survey at their own expense.

The Applicant holds that the duty of a person that follows from the Contested Norm, namely, the duty to cover expenses related to performance of land cadastral survey in case if he or she is allotted land in another administrative territory is evidently non-proportional and therefore it does not comply with the principle of legal equality that follows from Article 91 of the Satversme.

3. Saeima, the institution that adopted the contested act, holds that the Contested Norm does comply with Article 91 of the Satversme.

Normative regulatory framework of the land reform comprises a fundamental principle that this is the user or the owner of the land that would cover expenses related to land boundary establishment (allotment). The possibility to receive State funding for this action shall be regarded as an exception and as a State ensured financial support.

The purpose of the above mentioned financial support is to ensure, as much as possible, restoration of ownership right in places where the property was situated rather than to solve situations when restoration of ownership right in a certain territory is impossible due to subjective or objective reasons. Therefore the criterion "administrative territory" has been included into the Contested Norm. It establishes a different attitude towards persons whose property is compensated by land of an equivalent value in the same administrative territory where former land property was situated and persons who are allotted land of an equivalent value in another administrative territory.

The Saeima emphasizes that restoration of ownership right first of all is the right, a possibility and a historical and economic interest of a former land owner or his or her heir. The State is not committed to cover all expenses related to the land reform. Consequently, the legislator can establish certain criteria for disbursement of State budget resources. Such attitude does have a legitimate aim, which is ensuring of welfare of the society that is aimed at reasonable use of State budget resources and achievement of aims of the land reform at a high quality. When adopting the Contested Norm, the legislator has chosen to facilitate economic use of land, creation of grounds for development of agriculture by preventing, as much as possible, division of high value agricultural land into small parcels, as well as permitting citizens of Latvia to freely choose and implement ownership right to land pursuant to their interests and possibilities, and also preserving the procedure of land use planning and territorial development established in the State.

The Contested Norm that establishes the right to financial support in case if ownership right is restored in the place where former land property was situated balances various interests. Without the Contested Norm, it would be rather likely that persons would try to obtain land in regions that are considered better

according to certain criteria and in other more attractive places, which would eventually be supported by the State. The purpose of the land reform was to restore ownership right in order to ensure an indirect influence on revitalization of traditional rural lifestyle. The Contested Norm is appropriate for reaching of the legitimate aim.

The Saeima indicates that restoration of ownership right to land in another administrative territory but not the one where former land property was situated may take place due to different reasons. In case if land of an equivalent value is allotted in another administrative territory, then land cadastral survey for State budget resources is not prescribed. Consequently the only criterion permitting performance of land cadastral survey for State budget resources is location of a land plot. This also applies to every person, as well as to those whose property is situated in the former Abrene county.

In the frameworks of the land reform, the purpose of restoration of ownership right is reached in a way that former land owners who possessed land in the former Abrene county or their heirs were given the possibility to request land of an equivalent value in another place, like it was ensured to any other person pursuant to Section 12 of the Law "On Land Reform in the Rural Area of the Republic of Latia". It follows from normative acts that land property located in the former Abrene county are equated to property situated in the territory of Balvi district, and every person can apply for State budget funding to perform land cadastral survey in the above mentioned territory.

The Saeima emphasizes that attitude towards persons who owned land in Abrene county does not differ from the one towards persons who could not recover their land property in the same administrative territory due to objective reasons, like, the fact that no more free land was available in a particular administrative territory. In both cases, land cadastral survey should be performed at one's own expense. Consequently, no different attitude has been established towards persons whose property was situated in the territory of the former Abrene county.

The Saeima also draws attention to the fact that the Contested Norm should

be considered in conjunction with the Law on Administrative Territories and Populated Areas that came into effect on 31 December 2008. Pursuant to the above mentioned law, the term "administrative territory" has been amended and the territory, in the frameworks of which a certain group of persons has the right to performance of land cadastral survey from the State budget funds.

4. A summoned person, **the Ministry of Justice** indicates that according to what has been established in Section 1 of the Law "On Land Reform in Rural Areas of the Republic of Latvia", the land use relations and legal, social and economic relations of land property shall be subject to the objective of the land reform in order to promote the renewal of the traditional rural lifestyle of Latvia. In order to reach the above mentioned objective, restoration of ownership right in the frameworks of one and the same administrative territory has been facilitated during the land reform.

The Ministry of Justice holds that the Contested Norm does have a legitimate aim, which is to gradually restructure legal property relations by facilitating land consolidation in the frameworks of the land reform, optimising land allotment process, and preserving the role of local governments in territorial planning and development.

According to the Contested Norm, restoration of land ownership right in the same administrative territory where former property was situated in an obligatory precondition for performance of land cadastral survey from State budget resources. According to the Ministry of Justice, such precondition may not be regarded as restriction for restoration of former land property; it is rather a method for reaching the objective. The Law "On Land Reform in Rural Areas of the Republic of Latvia" does not prohibit persons to freely choose location of an equivalent land to be allotted. The legislator has established, however, that, if the process of land allotment would not be restricted to the territorial dimension, this would cause risk that the objective of the land reform, which is to restore ownership right in order to facilitate renewal of the traditional rural lifestyle in Latvia, would not be reached, whilst persons would be motivated to obtain an

equivalent land in “the best” regions.

The legislator wanted to balance interests of an individual with those of the State and the role of local governments, namely, to permit citizens of the Republic of Latvia to freely choose the right to own land and to exercise it in accordance with their interest and possibilities by preserving the State established territorial planning and development process. Establishment of territorial restriction is based on the will of the legislator to organize the reform in a reasonable and timely manner, which is in the interests of the entire society.

The Contested Norm has been established by law adopted and proclaimed according to proper proceedings. Beneficial conditions for land cadastral survey for State budget resources have been in force for 16 years already and they have remained unchanged after coming into force of the Contested Norm. Consequently, legal certainty is assured in the State. Land cadastral survey for State budget resources shall be considered as an advantageous act that the State ensures as an additional option or a measure of economic nature and applies in order to facilitate restoration of ownership, as well as to observe territorial division of local governments. In the frameworks of the above mentioned process, this is the society that benefits because this develops land of all local governments in an even way and thus the reform is brought to the close.

The Ministry of Justice emphasizes that the restriction included into the Contested Norm applies to all former land owners and their heirs whose property right has been restored in another administrative territory either due to objective circumstances (lack of land in a particular parish) or based on subjective will of the former land owner.

5. A summoned person **the State Land Service** [*Valsts zemes dienests*] (hereinafter – the Land Service) holds that the Contested Norm does comply with Article 91 of the Satversme.

The Land Service is of the opinion that the legitimate aim of the Contested Norm is facilitation of restoration of ownership right in the frameworks of the same administrative territory where the former property was situated. The aim is

mentioned in Section 1 of the Law "On Land Reform in Rural Areas of the Republic of Latvia".

The State is committed to create appropriate legal instruments to reach the legitimate aim. By establishing the right to perform land cadastral survey for State budget funds in case if ownership right has been restored or land as compensation has been allotted in the same administrative territory where the former property was situated, the legislator has motivated land owners to return to their region, if possible, and restore and develop traditional rural lifestyle therein.

The Land Service holds that the State could not ensure performance of land cadastral survey for State budget resources to all former land owners or their heirs. In order to eliminate, as much as possible, the historical consequences, which the State can not be blamed for, it has to consider the way of determination of the group of persons who could be granted aid for performance of land cadastral survey based on certain criteria. The decision of the legislator to support a certain group of persons is based on objective criteria and is aimed at reaching of the legitimate aim.

On 1 September 1992, the Law "On Land Privatization in Rural Areas" came into effect. Section 6 (4) thereof provided: If the land or a part thereof may not be returned in actual fact to the former owners of land or the heirs thereof, they have the right to receive in ownership land of an equivalent value in another place or a compensation. By adopting the 4 November 1992 Law "On the Procedure of Coming into Force of the Law of the Republic of Latvia "On Privatization Certificates"", the Peoples' Deputy Council of Balvi district was committed to decide on granting of compensation to former land owners or their heirs (based on the situation as on 21 July 1940) who owned land in Abrene county.

In the initial normative acts on restoration of ownership right, the possibility to request land in another place (another parish) was not established to land owners or their heirs whose lands were situated in Abrene county; they only had the right to receive compensation. In order to calculate the amount of the compensation for the land situated in Abrene county, on 22 November 1994, the Cabinet of Ministers adopted Regulation No. 214 "On Amendments to the

10 February 1993 Council of Ministers Decision No. 66 "On Confirmation of Normative Acts for Privatization of Land in Rural Areas"" by supplementing the above mentioned decision by the average evaluation of one hectare of land in the former Abrene county in points, and units of rye. Consequently, only the mechanism of compensation, i.e. compensation certificates has been established in respect to land situated in the former Abrene county.

The Land Service indicates that later the Latvian State introduced certain measures to ensure that those land owners and their heirs whose property was situated in the former Abrene county could obtain land of an equivalent value in another place when restoring their ownership right. Consequently, former land owners and their heirs have been established equal conditions for restoration of their ownership right also in case if the restoration can not be effected within historical boundaries. Therefore, the Contested Norm shall be regarded as compliant with Article 91 of the Satversme.

6. A summoned person, **the Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) indicates that due to certain considerations the legislator can adopt a decision on granting of a special financial aid to a certain group of persons. However, the legislator may not infringe the principle of equality by, for instance, failing to include certain persons into the group of persons having the right to a benefit.

The Ombudsman holds that both, persons whose property has been restored in the frameworks of the former administrative territory and persons whose property could not have been restored in the frameworks of the former administrative territory due to objective reasons (for instance, no free land available in the respective administrative territory or the territory has ceased to pertain to the Latvian State) enjoy equal and comparable conditions.

The purpose of the legislator was to restore the situation that was in force as on 21 July 1940. If this could not have been done due to certain reasons, the legislator has regulated that the land would be allotted as close as possible to the land plot that pertained to a person as on 21 July 1940. Therefore the Ombudsman

holds that the regulatory framework of the Contested Norm has facilitated reaching of the purpose, namely, persons have selected land of an equivalent value in the same administrative territory or situated as close as possible to the former property. Performance of cadastral survey of land of an equivalent value in another administrative territory at the expense of the persons has been established with the purpose to reduce the number of cases when persons choose land plots based on considerations of advantageousness.

The Ombudsman, however, draws attention to the fact that in case if a persons could not even select land in the same administrative territory due to objective reasons, no legitimate aim can be established in the Contested Norm. Consequently, in the latter case, the Contested Norm fails to comply with Article 91 of the Satversme.

The Findings

7. Article 91 of the Satversme provides that "all human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind".

The Applicant holds that the Contested Norm fails to comply with the first phrase of Article 91 of the Satversme since it establishes a different attitude towards two groups of the inhabitants enjoying equal and comparable conditions. Both groups are constituted by persons, their survived spouses, children and grand-children, politically repressed persons and disabled persons of the first group, to whom former land property has been compensated with a land of an equal value based on the fact that as on 21 July 1940 they were land owners in the territory of the Republic of Latvia. However, performance of land cadastral survey for State budget resources is provided only to those persons whose case is related with compensation with a land of an equivalent value in the administrative territory where the former land property was situated. The second group of persons has to perform land cadastral survey at their own expense.

The principle of equality shall guarantee the existence of a single legal

procedure. Namely, its task is to ensure that the demand of the law-governed state of an all-embracing influence of the law on all persons, as well as securing of applying the law without any privileges is realized. It guarantees complete effect of the law, objectivity and impassiveness of its application as well as the fact that nobody is allowed not to observe the instructions of the law. However, such a unity of legal procedure does not mean levelling, as equality permits a differentiated approach, if it is justifiable in a democratic society (*see: Judgment of 14 September 2005 of the Constitutional Court in the case No. 2005-02-0106, Para 9.1*).

When assessing compliance of the Contested Norm with the first sentence of Article 91 of the Satversme, it should first of all be taken into account that the norm may not be considered separately from recovery of nationalized land properties that took place and still takes place in the frameworks of the land reform.

8. The land reform as a complex and permanent procedure comprising the entire national economy of Latvia was determined by historical, socio-economical and legal circumstances. Since the time of land nationalization, a long time has passed. When performing land reform in rural areas, its objective is to reorganise the legal, social and economic relationships of land property and the use of land in the countryside during a gradual privatisation in order to promote the renewal of the traditional rural lifestyle of Latvia, to ensure the economic use and protection of natural and other resources, preservation and raising of soil fertility, increase of qualitative agricultural product production (Section 1 of the Law „On Land Reform in Rural Areas of the Republic of Latvia").

8.1. When restoring the legal system of the independent Latvia, the legislator was committed to take all necessary measures to eliminate losses caused by the previous regime and restore justice.

The legislator has established the return of land unlawfully alienated by the occupational power to former owners or their heirs as one of the main measures to restore social justice by implementing the land reform. However, due to objective

reasons, it was not possible, in all cases, to restore the situation that was effective before the nationalization; therefore the law did not establish complete land denationalization. Section 4 (2) of the Law "On Land Privatization in Rural Areas" provides that the ownership right to land shall be restored to the former owners of land or to the heirs thereof by returning in actual fact the former land property thereof or a part thereof or by transferring into ownership land of an equivalent value within the borders of the relevant parish or district or in other parishes of the Republic with the decision of a parish land commission from the non-requested land or the State or local government land.

8.2. Pursuant to Section 4 of the Law "On Land Reform in Rural Areas of the Republic of Latvia", the land reform shall be performed in two rounds. Within the scope of the first round of the land reform land was allocated for an independent use. During the second round of the land reform, ownership right to land for an independent use was restored to former owners of land or their heirs, whilst others could obtain land for certain remuneration. The issue of restoration of ownership right and allocation of land (the second round of the land reform) was regulated by the Law "On Land Privatization in Rural Areas".

Section 6 (4) of the above mentioned law provided: if the land or a part thereof may not be returned in actual fact to the former owners of land or the heirs thereof, they shall have the right to receive in ownership land of an equivalent value in another place, or a compensation.

9. Section 22 of the Law "On Land Reform in the Rural Aras of the Republic of Latvia" initially provided that the land reform is implemented from the State budget resources. In 1993, its wording was concretized by establishing that works of the land reform shall be performed for State budget funds, except for performance of land cadastral survey. It was only on 28 September 2006 when, by amending the above mentioned Section of the law, the Saeima conferred the Cabinet of Ministers the right to establish works of the land reform and land privatization that would be performed for State budget funds, as well as to elaborate the procedure, according to which the works would be performed.

Before the above mentioned amendments were introduced, the kinds of works of the land reform and the settlement procedure have never been concretized by any law.

On 9 August 1005, amendments to the Regulation No. 16 came into force; they established that land cadastral survey shall be performed for State budget funds only in case if the land allotted for restoration of ownership right or for compensation of property is located in the same territory of a parish or a city (town) where the former property was situated. Before the above mentioned regulatory framework was adopted, land allotment works were covered from the State budget. Consequently, by means of the above mentioned amendments, the principle that, in certain cases, and land boundary establishment (allotment) expenses shall be covered by the land user or owner has been established. Later the same principle has been included in Section 22 of the Law "On Land Reform in Rural Areas of the Republic of Latvia" by adopting the Contested Norm.

Consequently, the Contested Norm overtakes such normative regulatory framework that has been effective in legal relations since 9 August 1995.

10. In the present case, the dispute is related to the procedure of payment of land allotment works rather that the restriction to restore ownership right. The Constitutional Court shares the opinion of the Saeima that the possibility to receive State budget funding for performance of cadastral survey of land should be regarded as financial aid rather than fundamental right of a person. There is no doubt that the legislator may adopt a decision regarding provision of a special financial support to a certain group of persons. However, such action may not contradict the principle of equality enshrined in Article 91 of the Satversme.

When interpreting Article 91 of the Satversme, the Constitutional Court has recognized that the principle of equality permits and even requires a differentiated attitude towards persons who are in different circumstances, as well as permits a differentiated attitude towards persons who are in equal circumstances, if there is an objective and reasonable basis for it (*see, e.g.: Judgment of 3 April 2001 by the Constitutional Court in the case No. 2000-07-0409, Para 1 of the Findings, and*

judgment of 29 December 2008 in the case No. 2008-37-03, Para 7). A differentiated attitude is discriminating if it does not have an objective and well-grounded reason, i.e. – a legitimate aim, or if the chosen means and the advanced objectives are not proportionate (*see: Judgment of 23 December 2002 by the Constitutional Court in the case No. 2002-15-01, Para 3*).

When assessing whether the Contested Norm complies with the first sentence of Article 91 of the Satversme, the Constitutional Court shall first investigate whether the norm includes such legal regulatory framework that establishes a different attitude towards persons enjoying equal and comparable conditions, namely:

1) whether and what persons (groups of persons) enjoy equal and, according to certain criteria, comparable conditions;
2) whether the Contested Norm establishes an equal or a different attitude towards these persons;
3) whether such attitude has an objective and reasonable grounds, namely, whether it has a legitimate aim and whether the principle of proportionality has been observed.

11. Normative acts on restoration of ownership right in the initial phase of the land reform did not provide the possibility to former land owners or their heirs whose property was situated in the former Abrene county to request land of an equivalent value in another pace. The above mentioned persons only had the right to receive compensation.

On 4 November 1992, the Supreme Council of the Republic of Latvia adopted the Decision "On the Procedure of Coming into Force of the Law of the Republic of Latvia "On Privatization Certificates"". Section 15 thereof provided the following: "to commit the Peoples' Deputy Council of Balvi district to decide on granting of compensation for land in Kaceni, Upmale, Linava, Purvamal, Augspils and Gauri parish". Section 14 of the Law "On Privatization of Land in Rural Areas" provided that the amount of compensation shall be determined on the basis of the total area of land and the evaluation thereof at the moment of

nationalisation and the compensation shall be disbursed in certificates. In order to implement the above mentioned requirements and be able to calculate the amount of the compensation, on 22 November 1994 the Cabinet of Ministers adopted Regulation No. 214 "On Amendments to the 10 February 1993 Council of Ministers Decision No. 66 "On Confirmation of Normative Acts for Privatization of Land in Rural Areas"" by providing that one hectare of land situated in the former Abrene county would be measured in points and units of rye at the moment of land nationalization.

Neither laws effective at that time, nor the above mentioned decision *expressis verbis* established the possibility to land owners or their heirs to request land of an equivalent value in another place to compensate lost property in the former Abrene county. Consequently, the Latvian State had established a different procedure of restoration of ownership right in respect to those persons whose property was situated in the former Abrene county as on 21 July 1940, namely, only compensation certificates could be granted without giving the possibility to obtain land of an equivalent value in another place.

However, later Latvia took measures and gave opportunity to former land owners and their heirs, whose property was situated in the former Abrene county as on 21 July 1940, to restore their ownership right and obtain land of an equivalent value in another place. The aforesaid is reflected in 13 February 1995 Central Land Commission Order No. 5, wherein it is indicated that persons should be given the possibility to be allotted land of an equivalent value because disbursement of compensation would be ceased due to lack of means for their calculation, whilst there is still free land. Para 7 of 16 December 2008 Cabinet of Ministers Regulation No. 1030 "Procedure on Reviewing Requirements Submitted to the Central Land Commission" provides that "persons whose land property as on 21 July 1940 was located in the territory of the Republic of Latvia – Kaceni, Upmale, Linava, Augspils, Gauri and Purvmale parishes – have the right to claim land in any administrative territory of Balvi parish local government envisaged for completion of the land reform". Consequently, all land properties situated in the Abrene county were considered as equal to those situated in the territory of Balvi

district.

When performing land reform, the purpose of restoration of ownership right was reached in a way that former land owners or their heirs who had land property in the former Abrene county had the possibility to claim land of equal value in another place, as any other persons did according to Section 12 of the Law "On Land Reform in Rural Areas of the Republic of Latvia". Consequently, the legislator has established equal conditions in respect to former land owners of their heirs to be able to restore their ownership right to land in those cases whet it was impossible to be done, including case when property was situated in the former Abrene county.

Consequently, persons whose property was located in Abrene county and who were allotted land of equal value in another administrative territory do not constitute a separate group of persons.

12. Before coming into force of 14 June 2007 Law "Amendments to the Law "On Termination of the Land Reform in Rural Areas"", the Central Land Commission had the right to restore ownership right of former land owners or their heirs to land allotted to them for independent use or to a free State owned land in case if a written application on restoration of ownership right and documents certifying land ownership or hereditary right have been submitted to the Central Land Commission before 1 September 2008. The law did not establish any criteria, according to which a person could be granted land of an equivalent value. Consequently persons could be granted lands of an equivalent value disregarding the fact, in which administrative territory the former property was situated. The Contested Norm establishes a differentiated attitude towards groups of inhabitants by providing that performance of land cadastral survey for State budget funds shall be available only to persons who have obtained land of an equivalent value in the same administrative territory.

Land of an equivalent value was granted to former land owners or their heirs due to the fact that certain restrictions did not permit restoration of ownership right to the former land property. In order to assess whether the

administrative territory, in which land property is situated can be regarded as an objective criteria for performance of land cadastral survey for State budget funds in case of granting of land of an equivalent value, it is necessary to distinguish between the following three groups of beneficiaries:

1) persons whose ownership right has been restored by allotting land in the same administrative territory;
2) persons whose ownership right has been restored by granting land of an equivalent value in another administrative territory based on the choice of the persons (taking into account subjective considerations);
3) persons whose ownership right has been restored by allotting land of an equivalent value in another administrative territory since there is no free land in a particular administrative territory (taking into account objective considerations).

Groups of persons whose property has been compensated by allotting land of an equivalent value enjoy equal and comparable conditions. However, performance of land cadastral survey for State budget funds is ensured only to those persons (the first group above) whose land has been allotted in the same administrative territory where the former property was situated. All other groups of persons (the second and the third group above) must perform land cadastral survey at their own expense.

Consequently, a different attitude towards different groups of persons has been established based on the fact, in which administrative territory land of an equivalent value has been allotted.

13. In order to find out whether a differentiated attitude has a legitimate aim, one should take into account the purpose of the land reform and the possible aim of the Contested Norm.

When renewing the legal system of independent Latvia, the legislator had the duty of undertaking measures to renew fairness and redress the losses inflicted by the previous regime by observing the principles of a law-based state *(see: Judgment of 25 March 2003 by the Constitutional Court in the case*

No. 2002-12-01, Para 1 of the Findings). Consequently, the purpose of the land reform has always been restoration of justice as far as it is possible.

In order to reach the above mentioned purpose, the legislator has envisaged restoration of ownership right by giving back former land properties or by allotting lands of an equivalent value in the territory of a particular parish. In case if the latter was impossible, land of an equivalent value would be granted in the territory of a particular district or that of another district (Section 13 of the Law "On Land Reform in Rural Areas of the Republic of Latvia"). Namely, in case if it was not possible to restore ownership right in another way, the legislator has had provided that land would be allotted as close as possible to the former land property as on 21 July 1940.

The Saeima indicates that the legitimate aim of the Contested Norm was to facilitate restoration of ownership right in the framework of one and the same administrative territory for land owners to be able to return to the region, restore and develop its traditional rural lifestyle. The above mentioned aim complies with what has been established in Section 1 of the Law "On Land Reform in Rural Areas of the Republic of Latvia, namely: "The objective of the land reform is to reorganise the legal, social and economic relationships of land property and the use of land in the countryside during a gradual privatisation in order to promote the renewal of the traditional rural lifestyle of Latvia, to ensure the economic use and protection of natural and other resources, preservation and raising of soil fertility, increase of qualitative agricultural product production."

Consequently, the respective attitude had a certain legitimate aim – to facilitate restoration of ownership right in the frameworks of one and the same administrative territory by reaching a uniform development of the entire territory of the Republic of Latvia, which is in the interests of the entire society.

14. In order to establish whether the principle of proportionality has been observed, the following should be investigated:

1) whether measures selected by the legislator are appropriate for reaching of the legitimate aim;

2) whether other more lenient measures for reaching of the aim exist;

3) whether the benefit gained by the society is greater than the detriment caused to rights and legal interests of a person.

Should the Court recognize that the Contested Norm fails to comply with any of the above mentioned criteria, it shall be declared as non-compliant with the principle of proportionality and unlawful (*see: Judgment of 19 March 2002 by the Constitutional Court in the case No. 2001-12-01, Para 3.1 of the Findings*).

15. The State is committed to establishing proper legal instruments to reach the legitimate aim. Introduction of numerous amendments to normative acts regulating the land reform has resulted in the fact that, in certain periods, persons had the right to choose land of an equivalent value also outside the administrative territory where the former property was situated.

By granting the right to performance of land cadastral survey from State budget expenses in case if ownership right has been restored or property has been compensated by allotting land of an equivalent value in the same administrative territory where the former property was situated, on the one hand the legislator has facilitated observance of the principle of justice and, on the other one, motivated land owners to return to their region as far as possible, restore and develop traditional rural lifestyle therein. Namely, in case if a person chose to be granted a land of an equivalent value in the same administrative territory, the aim of the legislator was reached – the selected land plot was situated as close as possible to the property that the person possessed before 21 July 1940. However, if persons chose land of an equivalent value in another administrative territory due to subjective reasons (for instance, wanting to have land plot situated as close as possible to their present domicile), then they themselves had to cover expenses for performance of land cadastral survey. Such procedure has been introduced with the purpose to reduce the number of those cases when those are persons themselves to choose the location of land plot to be allotted.

Consequently, in case when it was possible to restore ownership right in the same administrative territory where the former property was situated, though a person chose to be granted land of an equivalent value in another administrative territory due to subjective reasons, the selected measure was appropriate for reaching of the legitimate aim.

However, in case if a person cannot be allotted land of an equivalent value in the same administrative territory due to objective reasons (for instance, no more free land is available in a particular administrative territory, or the administrative territory is no more pertaining to Latvia), then the selected measure fails to reach the legitimate aim – it does not restore the pervious legal status and does not interdict a person from choosing land to his or her discretion. Consequently, as to persons whose ownership right has been restored by granting land in another administrative territory due to objective reasons, the Contested Norm fails to comply with the principle of proportionality because it is not appropriate for reaching the legitimate aim.

Consequently, the differentiated attitude towards persons whose ownership right has been restored by allotting land of an equivalent value in another administrative territory due to objective reasons has no objective and reasonable grounds, and it contradicts Article 91 of the Satversme.

16. Pursuant to Article 32 (3) of the Constitutional Court Law, a legal norm (act) that the Constitutional Court has declared as non-compliant with the norm of a higher legal force, shall be regarded as not in effect from the day of publication of the Constitutional Court judgment, if the Constitutional Court has not determined otherwise.

Pursuant to Article 31 (11) of the Constitutional Court Law, in case if the Constitutional Court recognizes a norm as non-compliant with a norm of a higher legal force, the Court shall determine the moment with which it shall cease to be in force. In the present case, when examining an administrative case to prevent infringement of the fundamental rights of a private persons acting as plaintiff in the administrative case, the Applicant has applied to the Constitutional Court in

respect to compliance of the Contested Norm with Article 91 of the Satversme and asked to recognize it as non-compliant as from the date it was adopted.

Determining the exact moment from which the impugned provisions lose validity, the Constitutional Court, on the basis of its previous practice, would consider the following issues:

– whether the invalidation of the impugned provisions with retrospective effect is required for the protection of fundamental rights of the Applicants;

– whether there are any considerations due to which the impugned provisions would have to be invalidated with retrospective effect only in relation to the Applicants (*see: Judgment of 21 December 2009 by the Constitutional Court in the case No. 2009-43-01, Para 34*).

Recognition of the Contested Norm as null and void as from the moment it was adopted in respect to the plaintiff of the administrative case is the only solution to ensure protection of his fundamental rights. However, it may not be neglected that some other person has also applied to the court to protect his or her rights infringed by the Contested Norm. Therefore the Contested Norm shall loose its effect in respect to all those persons who have started litigation.

However, recognition of the Contested Norm as null and void as from the date of its adoption in respect to all persons who have been allotted land of an equivalent value in another administrative territory to compensate the loss of property due to objective reasons is no more possible. Four years have passed since the adoption of the Contested Norm. Moreover, the Contested Norm includes a legal regulatory framework that has been in effect since 1995. At present, it is no more possible to restore the right to financial aid of the State when performing cadastral evaluation of land properties to all those persons who obtained land in another administrative territory due to objective reasons and paid expenses related to performance of cadastral evaluation of land themselves since such solution would considerably infringe the rights of other persons.

The Constitutional Court

Based on Article 30-32 of the Satversme of the Republic of Latvia

h o l d s :

1. The second sentence of Section 22 (1) of the Law "On Land Reform in Rural Areas of the Republic of Latvia" insofar as it applies to persons whose ownership right has been restored by grating land of an equivalent value in another administrative territory due to objective reasons shall not comply with Article 91 of the Satversme of the Republic of Latvia.

2. The second sentence of Section 22 (1) of the Law "On Land Reform in Rural Areas of the Republic of Latvia" insofar as it applies to Ms Inta Bogdānova and other persons, whose ownership right has been restored by granting land of an equivalent value in another administrative territory due to objective reasons and who have not been assured performance of cadastral survey of the land due to the fact that they have started litigating shall not comply with Article 91 of the Satversme of the Republic of Latvia and shall be declared as null and void as from the date of its adoption.

The Judgment is final and not subject to appeal.

The Judgment shall come into force on the date of its publishing.

The Presiding Judge G. Kūtris

Translated by E. Labanovska, translator of the Constitutional Court