



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. 2010-48-03

24 February 2011, Riga

The Constitutional Court of the Republic of Latvia comprised of: the chairperson of the court sitting Viktors Skudra, Justices Kaspars Balodis and Vineta Muižniece,

having regard to the constitutional complaint submitted by Inita Vecbaštika, Vilma Dobeļe, Kristīne Preisa, Vilma Varna, Ilmars Varna, Armands Varna, Anna Sedola, Sandra Beņušē, Miķelis Sīklis, Mareks Mihailovs, Spodra Mudīte Kundziņa, Indra Vadeiķīte, Jānis Kundziņš, Ilgvars Sīklis, Marta Mame, Elmārs Kārlis Mame, Gatis Mame, Jānis Kūma, Ausma Līna Balode and Irma Alvīne Kapilinska and the constitutional complaint submitted by Inita Vecbaštika,

on the basis of Article 85 of the Satversme of the Republic of Latvia and Para 3 of Section 16, Para 11 of Section 17 (1), as well as Section 19² and Section 28¹ of the Constitutional Court Law,

at the court sitting of 25 January 2011 examined in written procedure the case

“On Compliance of the Binding Regulation of 3 November 2009 by the Council of Rucava County No. 27 “On Spatial Plans of Rucava County” in the Part of Establishing Wind Energy Zone in the Territory of Dunika Parish and the Binding Regulation of 17 December 2009 No. 41 “Detail Planning for the Immoveable Property “Šūķi” (Cadastre Reg. No. 6452 012 0156, Cad. No. 6452 011 0012), “Skrandas” (Cad. No. 6452 012 0007)” with Article 105 and Article 115 of the Satversme of the Republic of Latvia”.

The Facts

1. On 28 July 2004 the Council of Dunika Parish adopted the decision “On Elaborating the Spatial Plan of Dunika Parish” (Para 4 of Minutes No. 51), by which it decided to begin elaboration of the spatial plan for Dunika Parish and approved of the terms of reference. At that time the Cabinet Regulation of 13 January 2004 No. 34 “Regulations on the Spatial Plan of a Local Government” (hereinafter – Regulation No. 34) was in force.

On 4 November 2004 the Cabinet Regulation of 19 October 2004 No. 883 “Regulations on the Spatial Planning of a Local Government” (hereinafter – Regulation No. 883) entered into force. On 27 July 2005 the Council of Dunika Parish adopted the decision “On Approving the Specified Terms of Reference” (Para 1.1 of Minutes No. 8), which, *inter alia*, provided that the spatial plan should be elaborated in compliance with Regulation No. 883.

On 25 October 2005 the Council of Dunika Parish sent an application to the State Environmental Bureau (hereinafter also – the Bureau). On 14 November 2005 the Bureau, by the decision No. 175-p, decided not to apply the strategic environmental impact assessment (hereinafter – the strategic assessment) to the spatial plan of Dunika Parish.

On 10 November 2006 the Council of Dunika Parish adopted the decision “On the Final Draft of the Spatial Plan” (Para 3 of Minutes No. 13; hereinafter – the decision by the Council of Dunika Parish of 10 November 2006) and issued a

corresponding binding regulation. This draft of the spatial plan did not envisage zones for harvesting wind energy.

On 11 January 2007 the Ministry of Regional Development and Local Government (hereinafter also – MRDLG) in its opinion No. 1-22/14074226 pointed to deficiencies in the aforementioned spatial plan, for the elimination of which the decision of 10 November 2006 by the Council of Dunika Parish had to be revoked and the final draft of the spatial plan of Dunika Parish had to be elaborated anew, also ensuring a repeated public discussion of it.

On 26 January 2007 the Council of Dunika Parish revoked its decision of 10 November 2006 and envisaged “elaboration of the final draft of the spatial plan of Dunika Parish, taking into consideration objections referred to in the opinion by MRDLG” by 28 February 2007.

On 21 June 2007 the Council of Dunika Parish adopted the decision “On Approving the Spatial Plan of Dunika Parish and Issuing the Binding Regulation” (Para 3 of Minutes No. 7), by which it decided to issue the graphic part of the spatial plan and the regulations on use of territory and construction, as well as the binding regulation of the local government No. 3 “The Spatial Plan of Dunika Parish of Liepāja Region” (hereinafter – Binding Regulation No. 3).

The graphic part of the Binding Regulation No. 3 “The planned (permitted) use of the territory” envisages “Planned zone for harvesting wind energy”, whereas Para 3.15.5.1 and Para 3.15.5.2 of the part “Regulations on the use of the territory and construction” provide for the following:

“3.15.5.1. Definition

The planned zone for harvesting wind energy in the spatial plan of Dunika Parish has been established to indicate the territories that are appropriate and envisaged for harvesting wind energy. The planned zone for harvesting wind energy has been established on the basis of the assessment by the Latvian Ornithological Society on establishing parks for harvesting wind energy in the territory of Dunika Parish, which takes into consideration the location of specially protected nature territories and observations on bird migration.

3.15.5.2. Permitted use

Within the planned zone for harvesting wind energy the construction of farms for harvesting wind energy is permitted, abiding by the requirements defined in the regulatory enactments that are in force.

In designing farms for harvesting wind energy, approval of the responsible environmental institutions and the Latvian Ornithological Society must be ensured.

Complying with the following pre-requisites that allow reducing the possibilities of bird collisions with the constructions of wind turbines:

(1) colour of the elements of wind turbine construction (tower and rotor blades) must be light;

(2) possibility to light up the constructions of the turbine at night from below with diffused light must be ensured.”

It is noted in Section 3.1 in the explanatory notes to the Spatial Plan – “Vision of the Future” that one of the visions for the future of the parish is producing wind energy, and the section “Development Aims” notes that the aim, *inter alia*, is “to develop harvesting of wind energy”.

On 11 October 2007 MRDLG in letter No. 1-22/11436/8106 informed the Council of Dunika Parish that it had taken note of the Binding Regulation No. 3.

On 22 December 2008 the Council of Dunika Parish adopted the decision to start elaborating the detail planning for the immoveable property “Šuķi” (Cadastre No. 6452 012 0156, Cadastre No. 6452 011 0012), “Skrandas” (Cadastre No. 6452 012 0007) (Para 1.7 of Minutes No. 13; hereinafter also – the Detail Planning).

On 9 March 2009 the Council of Dunika Parish decided to forward the 1st draft of the Detail Planning for public discussion and for receiving an opinion (Para 1.6 of Minutes No. 3).

On 19 March 2009 “Meeting for the public discussion of the 1st draft of the Detail Planning of Wind Farm of Dunika Parish” was held. The list of participants annexed to the minutes of the meeting includes 38 persons.

On 14 April 2009 a letter with 182 signatures was submitted to the Council of Dunika Parish, stating, *inter alia*, that “scientists and researchers have long ago proved that no inhabited place may be located closer than 2000 meters from the

wind generators, this is even admitted by the sellers of generators, who, prior to selling wind generators, recommend complying with it,” it was indicated that the signatories of the document were “against any instalment of wind generators in Dunika Parish if their capacity exceeded 20 kilowatts”, and requested discontinuing “issuing any permits for construction of wind generators in Dunika Parish” (*Case Materials, Vol. 3, pp. 23 – 25*).

On 17 April 2009 “Informative meeting of the Wind Farm of Dunika Parish” was held, the list of participants appended to the minutes includes 61 persons.

On 22 April 2009 the Council of Dunika Parish, referring to, *inter alia*, letter of 14 April 2009 by the Ministry of Economics No. 422-4-3764, adopted the decision to improve the 1st draft of the Detail Planning.

As the result of the administrative territorial reform Dunika Parish became part of Rucava County and the Council of Rucava County became the successor in rights of the Council of Dunika Parish.

On 27 August 2009, referring to the letter of 15 July 2009 by the Ministry of Economics No. 422-2-7573, the decision of 22 April 2009 was revoked and the Council of Rucava County took note of “comments of residents regarding improved drafts of the detail planning.”

On 3 September 2009 the Bureau adopted the decision No. 395 on not applying the procedure for environmental impact assessment to the construction of a wind power station farm, *inter alia*, in the territory to which the Detail Planning applied.

On 15 September 2009 “Meeting on the improved drafts of the Wind Park of Dunika Parish” was held.

On the basis of provisions of Para 13 in the Transitional Provisions of the Spatial Planning Law that within three months following the first sitting of the newly established Council of a County the Council must approve the binding regulations, the spatial plans and detail planning of the former local governments (territorial units of a county) included in the territory of the local government, the Council of Rucava County on 3 November 2009 adopted binding regulation No. 27 “On Spatial Plans of Rucava County”.

On 17 December 2009 the Council of Rucava County approved of a number of detail plans and issued corresponding binding regulations. *Inter alia*, the binding regulation No. 41 “Detail planning for the immovable property “Šuķi” (Cadastre No. 6452 012 0156, Cadastre No. 6452 011 0012), “Skrandas” (Cadastre No. 6452 012 0007)”. It is noted in the explanatory note to the detail planning that “the proposal envisages to place on the land plots “Šuķi” and “Skrandas” “three wind generators (height of the tower until the axis – 108 m, total height – 149 m)”, i.e., “3 wind energy generators (ENERCON 82 or similar) (capacity of each generator – 2MW)”.

The Detail Planning was elaborated upon the applications by the owners of the respective immovable properties and the limited liability company “Energ Wind” (hereinafter – “Energ Wind”), concluding an agreement on the procedure for financing it between the Council of Dunika Parish, the initiator of the Detail Planning “Energ Wind” and the elaborator of the Detail Planning architect Ineta Butāne.

2. With the decision of 23 September 2010 by Justice V. Skudra, two cases that had been initiated with regard to two constitutional complaints were joined in the case under review:

1) Inita Vecbaštika, Vilma Dobeļe, Kristīne Preisa, Vilma Varna, Ilmars Varna, Armands Varna, Anna Sedola, Sandra Beņušē, Miķelis Sīklis, Mareks Mihailovs, Spodra Mudīte Kundziņa, Indra Vadeiķīte, Jānis Kundziņš, Ilgvars Sīklis, Marta Mame, Elmārs Kārlis Mamis, Gatis Mamis, Jānis Kūma, Ausma Līna Balode and Irma Alvīne Kapilinska (hereinafter also – submitters of the first application, the Applicants) contest the compatibility of the Binding Regulation of 3 November 2009 of Rucava County Council No. 27 “On the Spatial Plans of Rucava County” in the part on establishing a wind energy zone on the territory of Dunika Parish with Article 105 and Article 109 of the Satversme of the Republic of Latvia (hereinafter – the Satversme):

2) Inita Vecbaštika (hereinafter – the submitter of the second application, the Applicant) contests the compliance of the Binding Regulation of 17 December 2009 of Rucava County Council No. 41 “Detail Planning for the immovable

property “Šuķi” (Cadastre No. 6452 012 0156, Cadastre No. 6452 011 0012), “Skrandas” (Cadastre No. 6452 012 0007)” (hereinafter also – the Detail Planning) with Article 105 and Article 115 of the Satversme.

2.1. The submitters of the first application note that they are persons, who own real estate in Dunika Parish, or are persons residing in this parish. They hold that in the procedure of adopting the contested spatial plan substantial violations of substantive and procedural legal provisions had been committed, as the result of which irreversible damage to environment had been caused by the Contested Spatial Plan. The first application comprises a request to recognise the Contested Spatial Plan as being incompatible with Article 105 and Article 115 of the Satversme and invalid as of the date of its adoption.

The Applicants hold that the zone for harvesting wind energy, which is a conceptual issue of parish development, was included in the Contested Spatial Plan in the planning stage, when substantial changes no longer could be made. Thus, neither institutions, nor residents had expressed their opinion and conditions, and the strategic assessment was not performed. Pursuant to Subparagraph 8 of Paragraph 3 in Annex 2 to the Law on Environmental Impact Assessment” (hereinafter – Law on Assessment) strategic assessment should have been performed with regard to the Contested Spatial Plan. Moreover, the zone for harvesting wind energy has been established in the central region of Dunika Parish, which is a very extensive, populated territory, adjacent to a number of protected nature territories of European significance (*Natura 2000*, hereinafter – *Natura 2000* territories), thus, it could leave a substantive impact upon the environment. Likewise, it is alleged that the local government did not assess the selection of the location for harvesting wind energy, the type and scale of operations, the conditions and use of resources, possibility, duration and frequency of impact and irreversibility of consequences, threats upon human health and environment, the scope and spread of impact, as well as other factors. Hence, it is alleged that the adoption of the Contested Spatial Plan is incompatible with the precautionary principle.

The opinion that extensive studies and information about the impact of wind power stations (hereinafter – WPS) upon humans are unavailable in Latvia and

also in other countries is expressed in the application. It is stated that in other countries WPS are set up outside populated areas.

The Applicants underscore that in the process of adopting the Contested Spatial Plan, the rights of society to participation had been significantly violated. It is alleged that procedural violations had been committed in all stages of public discussion held in the framework of spatial planning.

It is emphasized in the application that in none of the initial stages in the public discussion the zone for harvesting wind energy in Dunika Parish had been discussed, since such a zone had not been envisaged in the spatial plan. It had been noted in the announcements of the public discussion of the final draft of the improved spatial plan that the spatial plan was improved in accordance with objections noted in the opinion by MRDLG; however, the fact that there were plans to add to the spatial plan a zone for harvesting wind energy had been concealed. Allegedly, the Parish Council misled society by these announcements, prohibiting it from full-fledged involvement in public discussion. The Applicants hold that the Council of Dunika Parish should have turned to residents individually to find out their opinion and ensure protection of their interests.

It is concluded in the application that substantial violations had been committed in the process of elaborating the spatial plan of Dunika Parish: strategic assessment was not performed, the principle of sustainable development and the precautionary principle were not complied with, the rights of society to participation had been violated. The decision that was adopted as the result of these violations allegedly differed from the one that would have been adopted if the aforementioned violations had not been committed.

The Applicants note that internal contradiction could be identified in the spatial plan of Dunika Parish: the wind energy zone, which has been envisaged in it later, is said to be incompatible with other parts of the spatial plan, *inter alia*, with the aim defined in the spatial plan – safeguarding environment favourable for residents.

The Applicants hold that their right to own property, provided for in Article 105 of the Satversme, has been infringed by the Contested Spatial Plan. As the result of constructing a wind farm, for example, property can no longer be used

for recreation or for starting a tourism business; likewise, new residential buildings cannot be constructed in territories, where the noise threshold would be exceeded. Industrial constructions also restrict the Applicants' possibility to engage in cattle-breeding and biological agriculture, whereas increased noise level, vibration and the constructed infrastructure decrease the territory that can be used in agriculture.

The Applicants, without denying the fact that restrictions can be placed upon the right to own property, underscore that the restriction upon their right to own property had been established by a legal act that was not adopted in due procedure because of the circumstances referred to above.

Allegedly, this restriction has no legitimate aim, since it does not serve for the protection of other constitutional values. The restriction is said to be aimed only at providing for the interests of some entrepreneurs and owners of land plots.

The Applicants hold that neither is the restriction proportional, since a reasonable balance between the interests of society and those of a person is not ensured. Allegedly, the local government did not assess alternative solutions for the development of the parish, neither had it assessed, whether the wind generators could be placed in such a way as to locate them as far as possible from the houses of those residents, who were dissatisfied with the project. It is alleged that the public benefit from the Contested Spatial Plan is significantly smaller compared to damage inflicted upon the Applicants' rights and interests.

2.2. The submitter of the second application owns real estate that borders on the territory, where the elaborated Detail Planning and the Contested Spatial Plan envisage the zone for harvesting wind energy. The application contains a request to recognise the Detail Planning as being incompatible with Article 105 and Article 115 of the Satversme and as being invalid as of the date of its adoption.

The Applicant holds that the Detail Planning is incompatible with Article 105 and Article 115 of the Satversme solely because it had been adopted on the basis of the Contested Spatial Plan that is said to be incompatible with the norms of higher legal force due to the circumstances referred to in the first application. A detail planning, which is based upon illegal spatial plan, allegedly, cannot be legal.

The Applicant holds that the WPS envisaged in the Detail Planning will be located too close to her place of residence and, thus, will have a negative impact upon the quality of her life, her health and the value of her property.

It is noted in the application that substantial procedural violations had been committed in the procedure of adopting the Detail Planning and the precautionary principle and the principle of sustainable development had not been complied with. Environmental impact assessment had to be performed with regard to the operations envisaged in the detail planning; however, it was not conducted. If such an assessment had been performed, allegedly, the Detail Planning would not have been approved.

It is alleged that in the process of adopting the Detail Planning substantial procedural violations with regard to society's participation had been committed. The public discussion of it had been held together with a discussion of another detail planning, comprehensive information had not been provided in the course of it; for example, it had been impossible to familiarize oneself with the technical data of wind generators and understand, where exactly each intended wind generator would be located. Public opinion had been rejected without sufficient grounds. The Applicant holds that the violations committed in the process of public discussions should be assessed as being a sufficiently serious violation of the spatial planning procedure and unfounded infringement upon the fundamental rights of society established in Article 115 of the Satversme.

It is noted in the application that wind generators are not harmless for environment. Allegedly, they create perceivable changes in the surrounding landscape, the use thereof is linked to noise, shadow flickering, possible low frequency sounds, vibrations, electromagnetic radiation, risk of incidents and other changes that, in case of adverse coincidence, may influence both nature and human health. Allegedly, the Applicant's place of residence and property are subject to this adverse impact without her permission. The Applicant can no longer freely act with her property, for example, use or for recreation or for commencing a tourism business. Likewise, the market value of the property is said to decrease a number of times due to the wind farm. Therefore, both the right to a benevolent

environment, defined in Article 115 of the Satversme, as well as the right to own property, defined in Article 105 of the Satversme, are restricted.

The Applicant does not deny that the fundamental rights established both by Article 105 and Article 115 of the Satversme may be restricted. However, in the particular case the restrictions are said to be incompatible with the necessary criteria: they have not been established by law, they do not have a legitimate aim, and they do not comply with the principle of proportionality. I.e., the respective restrictions upon fundamental rights have been established by a regulatory enactment, which, because of the considerations presented above, was not adopted in due procedure.

Allegedly, the restrictions do not have a legitimate aim, since they do not serve for the protection of other constitutional values. It is alleged that they are aimed solely at ensuring profit of the respective entrepreneurs. The sums of money offered as compensation for encumbering the land are said to be negligible compared to the profit that the entrepreneurs plan to gain in the long-term.

The restriction is said to be incompatible with the principle of proportionality, since the local government did not assess alternative measures for parish development and implementation of the intended project. A reasonable balance between the interests of society and those of a person has not been ensured.

2.3. In the opinion and explanations that Inita Vecbaštika submitted after familiarising herself with the case materials, she does not uphold the opinion provided in the written answer that administrative acts had been already issued on the basis of the Contested Spatial Plan and their addresses, in the majority of cases, have started exercising their rights and constructing wind generators. Allegedly, the building permit with regard to WPS envisaged in the territory of the Detail Planning has been suspended in connection with the administrative legal proceedings initiated by the Applicant, whereas it follows from the explanations provided in the course of these legal proceedings that “Energo Wind” has only begun negotiations regarding supply of WPS.

The Applicant draws the attention of the Constitutional Court to the decision of 23 December 2010 by the Department of Administrative Cases of the Supreme

Court Senate in Case No. SKA-1064, being of the opinion that the findings expressed in the aforementioned decision are applicable also to the facts of the case under review.

3. The institution, which issued the contested act, – Rucava Council – has submitted to the Constitutional Court two written replies. They express the opinion that the Contested Spatial Plan and the Detail Planning (hereinafter – the contested acts) are not incompatible with legal norms of higher legal force and comprise a request to recognise them as being compatible with Article 105 and Article 115 of the Satversme.

The written answers, referring to Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (hereinafter – Directive 2009/28/EC), underscore that wind energy is one of the types of renewable energy. It is contended that it does not have substantive adverse impact upon environment, compared to the fossil sources of energy.

It is noted in the written replies, referring to the Guidelines on Energy Policy for 2007-2016, that increasing the use of energy [from renewable sources] is one of the strategic aims of the energy policy. WPS are being installed, not only to realize the economic interests of a particular group of persons, but also the interests of all inhabitants of the state. They are said to ensure both energy independency from other countries and improvement of environment, since the use of fossil energy resources is decreased and, thus, also the emission of greenhouse gasses into the atmosphere.

By including the property of submitters of the Application into the zone for harvesting wind energy, no additional restrictions are placed upon them. Allegedly, without the owner's permission, neither WPS can be placed on the respective property, nor the property can be encumbered with the protective zone of a wind generator. It is alleged that the placement of WPS does not influence the possibility to engage in agriculture and husbandry, but only envisage one more, additional possibility for using one's property.

Allegedly, the Applicants wish to keep the surrounding environment unchanged and to prohibit the owners of adjacent properties from using the property they own in accordance with their interests. Pursuant to the case law of the Constitutional Court, Article 115 of the Satversme *a priori* does not envisage preserving the existing environment and does not prohibit implementation of projects linked to economic interests. The principle of sustainability, allegedly, does not demand placing environmental interests above economic and social interests in spatial planning; however, it does require that all these interests were taken into consideration as being of equal importance.

3.1. The Council of Rucava County holds that the first application is incompatible with the requirements set out in the Constitutional Court Law, since 20 persons have been indicated as the submitters of the applications; however, substantiation has been provided only for presumed violation of I. Vecbaštika's fundamental rights, envisaged in Article 105 and Article 115 of the Satversme. The Council of Rucava County does not deny that the Contested Spatial Plan could affect also other Applicants' fundamental rights, defined in Article 115 of the Satversme; however, it does not agree that there could be a violation of their fundamental rights defined in Article 105 of the Satversme.

The written reply expresses the opinion that no substantial violations had been committed in the process of elaborating the spatial plan. The shortcomings that, in accordance with the opinion of MRDLG, had been committed in elaborating the spatial plan prior to the adoption of the decision of 10 November 2006 by the Council of Dunika Parish, have been eliminated by revoking it and holding a repeated public discussion of the final draft of the spatial plan. After this decision was revoked, the local government, allegedly, did not introduce amendments to the approved spatial plan, but prepared the final draft of the spatial plan in accordance with the procedure established by Para 43 of Regulation No.883. Regulation No. 883 did not prohibit from introducing amendments to the planned (permitted) use of a territory after receiving opinions of institutions and public discussions, but demanded that in such a case society should be informed and it should be familiarised with the final draft. Pursuant to Par 43 of Regulation

No. 833 all institutions had been informed about the new final draft of the plan and they had been ensured the possibility to familiarize themselves with it.

It is underscored in the written reply that in marking the wind energy zone in the spatial plan the opinion by the Latvian Ornithologists Society of 31 October 2005 No. LOB2005/100 on the best possible place, where the farm for harvesting wind energy could be located in the parish, had been taken into account. The respective territory had been outlined in the central part of Dunika Parish, without affecting the specially protected nature territories. Liepāja Regional Environmental Board had been informed about harvesting of wind energy envisaged in the final draft of the spatial plan. The possibility to familiarize oneself with the new solution of the spatial plan had been ensured to inhabitants.

The Council of Rucava County holds that the cases referred to in Section 4(3) of the Law on Assessment are not of imperative nature with regard to applying the strategic assessment. Prior to adopting the decision the Bureau should assess the criteria defined in Section 23¹ of the Law on Assessment. The comparison with the spatial plan of Medze Parish, included in the application, is said to be unfounded, since *Natura 2000* territory – a nature restricted area “Tāšu Lake” is situated in the vicinity of the territory planned for constructing wind generators on, therefore it had been necessary to assess the impact of the planned activities upon it.

It is noted in the written reply that pursuant to Directive 2001/42/EC of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment (hereinafter – Directive 2001/42/EC), in those cases, when it is planned to use small territories on local level, assessment must be performed only if the Member States establish that these plans and programmes might have a substantive effect upon the environment. The particular case is said to comply with the aforementioned criterion: a comparatively small territory is envisaged for engaging in one type of business activity. Whether the procedure of strategic assessment is or is not applied in the particular case depends upon the Bureau’s decision, therefore the fact that the strategic assessment of the spatial plan is not conducted does not cause a violation of the provisions of the European Union (hereinafter – the EU).

It is underscored in the written reply that after the Contested Spatial Plan entered into force the Council of Rucava County had elaborated and approved 23 detail plans, which envisaged construction of wind generators. The Bureau, with its decision of 1 June 2009 No. 277, decision of 2 July 2009 No. 333, decision of 3 September 2009 No. 395, and the decision of 4 June 2010 No. 153 decided not to apply the procedure of strategic assessment to the envisaged operations – construction of WPS. In view of the fact that it is planned to place 39 WPS on the territory of Dunika Parish and that the Bureau has not identified substantive impact upon the environment in connection with the placement of initially planned 41 WPS, it had not been necessary to apply the strategic assessment to the spatial plan of Dunika Parish.

The Council of Rucava County draws the attention of the Constitutional Court to the fact that 23 detail plans have been approved in the respective territory and until the moment of submitting the first written reply the Construction Board had issued 21 building permits for constructing 26 wind generators. Recognition of the Contested Spatial Plan as being invalid would be incompatible with the principles of legal stability, legal certainty and expedience.

3.2. The Council of Rucava County expresses the opinion that the Detail Planning was elaborated in compliance with the requirements of regulatory enactments that were in force at the time, including the requirements with regard to respecting the rights of owners, whose real estate is affected, informing and involving the affected society, as well as with regard to the environmental impact assessment.

Thus, after the Council of Dunika Parish on 9 March 2009 decided to forward the 1st draft of the Detail Planning for public discussion and for receiving opinions, a written notification about the public discussion had been sent to the Applicant and also to other owners (legal possessors) of immovable properties linked to the solution in the Detail Planning. The Applicant, in particular, had been informed about the protection zone envisaged in the Detail Planning and had been invited to conclude an agreement on the amount of compensation and approval of the Detail Planning. Maps had been appended to these notifications, and the areas, where it was planned to place wind generators, had been marked on them.

Not only meetings for discussing the first and the second stage of the Detail Planning had been held, but also an additional informative meeting, which had been attended by 62 inhabitants. The Applicant also had participated in all the aforementioned events, as well as exercised her right to submit applications to the local government.

Allegedly, regulatory enactments do not prohibit conducting a public discussion of a number of detail plans, if other provisions of regulatory enactments are complied with. In the particular case, by organising joint meetings regarding all detail plans, inhabitants were ensured the opportunity to familiarize them thoroughly with the intended construction of the wind farm and to receive information on it. If detail plans were to be discussed separately, inhabitants might develop a misleading perception of this planning.

The fact that the Applicant's opinion had not been taken into account does not mean that the public discussion and assessment of public opinion had been formal. The Applicant's demand not to construct WPS closer than 2 kilometres from residential homes is said to be founded neither on regulatory enactments, nor scientific research. If the local government had satisfied these demands, it would have placed illegal and disproportional restrictions upon the rights of those real estate owners, who wished to use their land plots for placing WPS on them.

It is underscored in the written reply that all institutions had provided opinions on the 1st draft of the Detail Planning without objections.

The Council of Rucava County holds that the requirements of the Law on Assessment have been met in the course of elaborating the Detail Planning. Annex 2 to this Law comprises a list of those activities with regard to which initial environmental impact assessment (hereinafter – the initial assessment) must be conducted, but not a mandatory requirement to perform procedures of strategic assessment. The initial assessment of the planned activity had been made. On the basis of it, the Bureau had adopted the decision not to apply the procedure of impact assessment. It is alleged that the Applicant unfoundedly compares the case of Dunika Parish with the case of the territory of Liepāja City. Dunika Parish is said to be one of those territories in Latvia with the lowest density of population, whereas Liepāja is a republican city with a high density of population.

During the course of elaborating the Detailed Planning the responsible institutions several time changed their opinion on the protection zone of wind generators. In connection with the explanation on the width of the protective zone of wind generators provided in the letter of 14 April 2009 by the Ministry of Economics No. 422-43764 (*see Case Materials, Vol. 4, p. 58*) the Council of Dunika Parish had adopted the decision on improving the Detail Planning. Later this decision was revoked.

Allegedly, the Detail Planning defines the location of a wind generator with all protection zones. The protection zones are not encumbering the Applicant's immovable property. It is contended that the Applicant had "taken out of the context" what was written in the letter of 21 May 2010 by MRDLG (*Case Materials, Vol. 4, p. 8*), because the letter is said to pertain to possible widening of the protection zones of wind generators.

The Applicant's statement on the violation of fundamental rights defined in Article 105 of the Satversme is said to be unfounded. The Detail Planning places no restrictions upon the Applicant's immovable property, and the Detail Planning, allegedly, does not pertain to the Applicant's immovable property.

4. MRDLG, the Ministry of Economics, the Ministry of Environment, the Bureau and the association "Wind Energy Association" are recognised as being the summoned persons in the case.

4.1. The summoned person – MRDLG – notes that the Binding Regulation No. 27 had been issued on the basis of Para 13 in the Transitional Provisions of the Spatial Planning Law. On 11 January 2007 MRDLG provided opinion No. 1-22/14074/226 on the initially approved spatial plan of Dunika Parish, requesting to introduce the necessary amendments to it. On 13 June 2007 MRDLG provided its opinion on the final draft of the spatial plan, indicating that after editorial changes the spatial plan should be approved and its graphic part and regulations on the use of territory and construction should be issued as binding regulation of the local government. MRDLG examined the spatial plan adopted on 21 June 2007, did not identify substantial violations and on 11 October 2011 informed the Council of Dunika Parish that the Binding Regulation No. 3 had been taken note of.

In examining the Detail Planning, MRDLG did not identify violations in the procedure for its elaboration.

4.2. The summoned person – the Ministry of Economics – notes that Directive 2009/28/EC sets mandatory goals for the EU Member States, and Latvia has set the aim to increase by 2020 the share of renewable energy in the total gross energy consumption up to 40 per cent. Traditionally, in the energy supply in Latvia the share of renewable energy resources has been significant and in 2008 constituted 29.9 per cent.

The Energy Development Guidelines for 2007–2016 envisage increasing effective use of renewable energy resources. However, no regulatory enactments impose an obligation upon local government to consider in the process of spatial planning the possibility of producing energy from renewable energy resources on its territory, since a comprehensive study on which territories would be the most appropriate for this purpose has not been conducted. However, the Institute of Physical Energetics has performed measurements in all territory of Latvia, except for the sea, and made a map, where the average wind speed at the height of 10, 50 and 100 metres is shown. The Cabinet Regulation of 5 December 2006 No. “Methodology for Establishing Protection Zones for Objects of Energy Infrastructure”, issued pursuant to the Protection Zone Law (hereinafter – Regulation No. 982) establishes safety protection zones around WPS; however, does not set requirements with regard to defining the maximum height of WPS.

In 2009 the Ministry of Economics had provided a number of contradictory explanations of the words included in Section 32¹ of the Protection Zone Law “the maximum height of a wind generator”. In practice different understandings of this term are encountered. At that time it had been possible to approve of a detail plan, where the width of the protection zone for wind generators with horizontal axis of rotation had been 1.5 times larger than the height from the land up to the rotation axis of the generator.

On 22 April 2010 at the meeting of State Secretaries draft amendments to Regulation No. 982 were announced, the amendments envisaged that the maximum height of a wind generator with horizontal rotation axis should be measured as the height from the land to the rotation axis of the generator. In view

of the objections voiced during the process of approval, the Ministry of Economics withdrew this draft.

On 5 August 2010 a draft law “Amendments to Protection Zone Law” had been announced at the meeting of State Secretaries, it envisaged defining the width of protection zones around wind generators with horizontal rotation axis as the height from the land surface to the rotation axis of the wind generator. Taking into account the objections of the Ministry of Environment, the draft law envisaged defining that the width of protection zone around WPS should be 1.5 times larger than the height of WPS from the land surface to the highest point of the construction reached by the blades of WPS rotor. The Latvian Association of Local and Regional Governments objected to this wording.

4.3. The summoned person – the Ministry of Environment – upholds the opinion that follows from the written reply that the development of wind energy production (compared to energy, which is not produced from renewable energy resources) is aimed at improving the quality of environment and, thus, also at ensuring for society in general the fundamental rights defined in Article 115 of the Satversme.

Scientific research shows that WPS can have a negative influence upon environment and inhabitants. Operation of WPS is linked to noise, overshadowing, flickering, low frequency sounds, vibrations, electromagnetic radiation, incident risk and other changes that in case of adverse coincidence can affect both nature and human beings – their health and safety. To assess and eliminate the negative aspects in the course of constructing WPS, referred to above, as well as to harmonise various interests, the Law on Assessment defines the obligation to perform initial assessment of WPS that are higher than 20 meters.

The Ministry of Environment holds that the public benefit from production of wind energy outbalances the possible deterioration of the local environment, if the interests of involved parties are duly harmonised in the process of spatial planning, the procedure of environmental impact assessment is implemented, and the respective standards are complied with in designing, constructing and operating WPS.

To assess the restriction upon the Applicant's right to own property, the way the WPS protection zone was established must be taken into consideration. If the protection zone was defined by taking into account the height of the wind generator up to the axis of the rotor, then, in the opinion of the Ministry of Environment, the protection zone has been established in a smaller area than Section 32¹ of the Protection Zone Law requires. In interpreting the term "maximum height" used in the first part of Section 32¹ of the Protection Zone Law the purpose of establishing the protection zone must be taken into consideration – to guarantee safety of people and objects in the vicinity of wind generators at the time when wind generators are operated and in possible accidents. A possible accident of WPS, similarly to other vertical structures, would be collapsing. Therefore the protective zone should ensure that in the area of possible WPS fall no objects that could be affected by such an accident would be located. Moreover, rotating parts have the peculiarity that at a moment of collision they retain their motion on inertia, therefore the possible zone of accident is even larger than the horizontal projection of the maximum height of the construction enlarged 1.5 times.

The Ministry of Environment notes that the fact that the decision on the necessity of strategic assessment was not adopted correctly causes a violation of the EU legal norms. If in assessing the requirements of regulatory enactments or the planned use of a territory in a draft spatial plan, complete information is lacking, then the decision on the necessity of strategic assessment may be erroneous and the EU legal norms may be violated.

The procedure of environmental impact assessment cannot be compared to the procedure of strategic assessment and therefore the opinion expressed in the written reply that the Bureau had not seen the necessity to apply the procedure of environmental impact assessment upon the planned activity and therefore there had been no grounds for performing the strategic assessment of the spatial planning is said to be ungrounded.

4.4. The summoned person – the State Environmental Bureau – notes that at the time, when it adopted the decision of 9 November 2005 No. 175-p on not applying the procedure of strategic assessment, the spatial plan did not

envisage a zone for harvesting wind energy. Since the Council of Dunika Parish, in elaborating the improved draft spatial plan, envisaged in it a zone for harvesting wind energy, Para 4 of Section 4(3) of the Law on Assessment had to be taken into consideration, it provided that strategic assessment was not performed with regard to minor amendments to the documents referred to in Para 1 of the third part of this Section, except for cases, where the implementation of these documents might have a substantial impact upon the environment. The Bureau holds that envisaging a zone for harvesting wind energy in the spatial plan at that time could have been qualified as a substantial impact, taking into consideration the fact that the local government had wished to define harvesting of wind energy as the permitted additional use throughout the marked site, as well as the area of this site, the fact that no other regulatory pre-requisites regarding the scale and possibilities of performing such activities are envisaged, as well as the fact that the construction of WPS, if the height of the construction exceeds 20 meters, is an activity referred to in Annex 2 to the Law of Assessment. Thus, in 2007 there had been grounds for adopting a decision on applying the procedure of strategic assessment.

The Bureau draws the attention of the Constitutional Court to the difference in the level of detail, structures and aims of the strategic assessment and of the environmental impact assessment. The issue of environmental impact assessment applied to an activity should not be directly linked with the strategic assessment applicable to a spatial plan.

The Bureau does not uphold the Applicant's opinion that the initial impact assessment had to be conducted for the envisaged activity – construction of WPS farm, but it was not conducted. The Bureau notes that the initial assessment was conducted. Initial assessment is said to be one of the procedures in the environment impact assessment approach that must be conducted with regard to activities envisaged in Annex 2 to the Law on Assessment. Construction of WPS, the height of which exceeds 20 meters, is said to be an activity indicated in the aforementioned Annex. Pursuant to the provisions of Section 8 of the Law on Assessment, in the particular the regional Environmental Board had been informed about the activity. The Board had performed the assessment of the significance of impact complying with the provisions of the Law on Assessment, in accordance

with the criteria of Section 11 of the aforementioned Law, as the result of which the Bureau had established that no objective criteria existed for performing environmental impact assessment in addition to the initial assessment. The impact assessment was performed and the effects were assessed in accordance with Section 8,10 and 11 of the law on Assessment. Allegedly, there were no objective grounds for applying additional assessment in compliance with the provisions of Section 14(1), Chapter IV and Annex 1 of the Law on Assessment.

4.5. The summoned person – association “Wind Energy Association” (hereinafter also – the Association) – notes that it has been active already for 15 years. The Association, being a member of the European Wind Energy Association, regularly receives information about developments in the field of wind energy. The Association has provided hundreds of free-of-charge advice on issues related to impact and operations of WPS. None of the Applicants had requested advice of this kind.

The statements included in the application regarding incompatibility of wind turbines and agriculture are said to be false. The risks related to operation of wind turbines are assessed by the regional Environmental Board.

As regards the size of the protection zone, the Association supports the opinion on defining it in the circle of 1.5 of the radius within the limits of the height of the axis of the wind turbine. Only the tower is a construction, whereas the gondola and its parts (blades, gearbox, generator, etc.) are equipment. Establishing of an excessively large protection zone prohibits from using the respective land for other commercial needs.

The Findings

5. The Applicants request assessment of the compliance of two interconnected spatial planning documents – the Contested Spatial Plan and the Detail Planning – with both Article 115 and Article 105 of the Satversme.

Until now the practice has been established in the judgements by the Constitutional Court to examine the compliance of a spatial plan with Article 115

of the Satversme with regard to such applications, where the applicants have contested a spatial plan that allows commercial activities (*see, for example, Judgement of 17 January 2008 by the Constitutional Court in Case No. 2007-11-03*), as well as assessment of the compatibility of a spatial plan with Article 105 of the Satversme with regard to such applications, where the applicants have contested a spatial planning that prohibits commercial activities (*see, for example, Judgement of 12 November 2008 by the Constitutional Court in Case No. 2008-05-03*).

In the framework of the particular case the Applicants contest the acts in connection with the commercial activity permitted by them, requesting to assess simultaneously their compatibility with both Article 115 and Article 105 of the Satversme. Thus, it must be established, whether the fundamental rights referred to in these Articles have been restricted for the Applicants, i.e., which aspects referred to in the applications fall within the scope of, respectively, Article 115 or Article 105 of the Satversme.

6. Article 115 of the Satversme provides that “the State shall protect the right of everyone to live in a benevolent environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment.”

6.1. The Constitutional Court has noted that the right to live in a benevolent environment includes, *inter alia*, the rights of an individual (a person) as a member of society to have any decision by a public person, linked to the use of environment, adopted and implemented within the framework of an effective system for environment protection (management). With respect to spatial planning it means that the development solutions adopted by the local government should be sustainable (*see Judgement of 9 July 2009 by the Constitutional Court in Case No. 2008-38-03, Para 9.2*).

Sustainable development is integrated and balanced development of public welfare, environment and economy, which satisfies the current social and economic needs of inhabitants and ensures compliance with requirements on environmental protection, without threatening the possibilities for satisfying the

needs of future generations, as well as ensures preservation of biological diversity (see *Judgement of 17 January 2008 by the Constitutional Court in Case No .2007-11-03, Para 15, as well as the Sustainable Development Strategy of Latvia until 2030, approved by the Saeima on 10 June 2010* <http://www.latvija2030.lv>).

In 1992 in Rio de Janeiro Latvia was among those states, which at the conference of the United Nations Organisation (hereinafter – the UN) signed the Declaration on Environment and Development and the UN Framework Conventions on Biological Diversity and Climate Change. It is recognised in the Preamble to the UN Framework Convention on Climate that the changes in Earth's climate and their adverse consequences are a common problem of mankind. Human activities have significantly increased the concentration of greenhouse gases in atmosphere, and this reinforces the natural greenhouse effect. This causes additional warming of the Earth's surface and atmosphere, which may have a negative impact upon natural ecosystems and mankind. In the framework of UN Environment Programme climate changes are considered to be the most important comprehensive environmental issue and the major challenge in the field of environment (see <http://www.unep.org/climatechange/Introduction/tabid/233/Default.aspx>).

The internationally renown international organisation “Greenpeace” notes that the rapid development of wind energy use is linked to urgent need to combat climate change, which in the global scale is considered to be the greatest threat for environment (see, for example, *Global Windenergy Outlook 2006* <http://www.greenpeace.org/international/Global/international/planet-2/report/2006/10/globalwindenergyoutlook.pdf>). The international non-governmental organisation “BirdLife International” also considers climate change as the greatest threat to mankind and global biological diversity (see, for example, *BirdLife International Position Statement on Wind Farms and Birds* http://www.birdlife.org/eu/pdfs/Nature_Directives_material/BHDTF_Position_Wind_farms_and_birds_2005_12_09.pdf).

In specifying the obligations of the State and local governments that follow from Article 115 of the Satversme in the field of sustainable development, it must

be taken into consideration that climate change related issues are a significant part of sustainability.

6.1.1. Sustainability has three interconnected aspects: ecological, economic and social sustainability. The 1st principle of UN Declaration on Environment and Development underscores that efforts of sustainable development are aimed at people and their right to lead a healthy and productive life in harmony with nature.

The Constitutional Court has already noted that the legislator defines environment as a totality of nature, anthropogenic and social factors. The legislator looks at environment from “anthropocentric” vantage point, i.e., as the environment of human being, an environment, which is necessary for human survival and satisfaction of needs (*see Judgement of 24 September 2008 by the Constitutional Court in Case No. 2008-03-03, Para 17.1*). The fundamental rights established in Article 115 of the Satversme cannot be construed as a person’s fundamental right to live in an absolutely unchanged environment or the State’s obligation to ensure such environment to a person. Actions that are aimed at changing the natural or existing environment *per se* are not be regarded as a restriction upon fundamental rights established in Article 115 of the Satversme. The Constitutional Court has already found that the economic interests of some private persons and the society as a whole often require changing the environment, *inter alia*, cultural environment and nature. Article 115 of the Satversme *a priori* does not envisage unchangeability of environment and does not prohibit implementation of projects that are related to economic interests. Quite to the contrary, Article 115 of the Satversme requires balanced and responsible improvement of environment, which comprises also ensuring conditions that are appropriate for human life and public welfare (*see Judgement of 7 January 2008 by the Constitutional Court in Case No. 2007-11-03, Para 13*).

6.1.2. The term “everyone” that is used in Article 115 of the Satversme comprises the interest to live in a benevolent environment of not only the present generations, but also of the future ones. The Constitutional Court has noted already before that the requirement to take into consideration the right to live in a benevolent environment of not only the present generation, but also of the future ones in all environment-related issues follows from Article 115 of the Satversme

(see *Judgement of 24 September 2008 by the Constitutional Court in Case No. 2008-03-03, Para 17.1*). The possibilities of the present generation and of the future generations to live in a benevolent environment in many ways depend upon the State's readiness to implement sustainable development, by protecting the climate system of the Earth, forecasting and preventing or neutralising causes of climate change and decreasing its adverse impact. The rights defined in Article 115 of the Satversme, interpreted in interconnection with Latvia's international commitments, impose an obligation upon the State to facilitate processes that are linked to prevention of global climate change. By ratifying the UN Framework Convention on Climate Change and the Kyoto Protocol to this Convention, Latvia has become involved in the shared efforts of countries of the world to achieve stabilisation of the greenhouse gas concentration in atmosphere on the level that would prevent dangerous anthropogenic interference into the climate system.

The State's obligations in the field of environment have been enshrined in Article 115 of the Satversme on the level of fundamental rights. I.e., it is the obligation of the State to protect human rights to living in a benevolent environment by: 1) providing information on the status of environment; 2) take of environment preservation; 3) take care of environment improvement

Even though initially an opinion that the fundamental rights defined in Article 115 of the Satversme were "avant-garde rights" was expressed in Latvian legal science (see: *Levits E. Piezīmes par Satversmes 8. nodaļu – Cilvēka pamattiesības. Cilvēktiesību žurnāls, 1999, Nr.9–12, 37. lpp.*), similar rights have been enshrined on the constitutional level also in other countries, for example, Belgium. Para 4 of Section 23(3) of the Belgian Constitution provides for the right to live in a benevolent environment. The Constitutional Court of Belgium has found that this provision mainly provides for the legislator's obligation to establish the framework for exercising this right, as well as not deteriorating the legal situation in this field, if there are no sufficient grounds for it (see *Judgement No. 151/2003 of 26 November 2003 by Constitutional Court of Belgium in Case No. 2502, Para B.16.3, and Judgement No. 137/2006 of 14 September 2006 in Case No. 3764, Para B.7.1*).

In interpreting the fundamental rights envisaged in Article 115 of the Satversme the existing reality should be taken into consideration, in the particular case – the fact that currently civilisation cannot exist without producing energy, whereas any form of energy production leaves an impact upon environment. The development of wind energy production should be examined in the framework of Article 115 of the Satversme mainly as one of the alternatives to production of energy from fossil energy resources and, thus, as an element in a totality of measures aimed at improving environmental condition.

In view of the principle of unity of the Satversme, the rights established in Article 115 of the Satversme may not be interpreted in isolation from other fundamental rights enshrined in the Satversme, *inter alia*, socio-economic rights and respective international commitments. Latvia must perform two equally important and very complex tasks: promoting economic growth and, thus, – also social welfare, at the same time decreasing emission of greenhouse gases, by implementing measures of energy efficiency, environmentally friendly technologies, replacing fossil fuel with renewable energy resources (*see “Guideline of Environmental Policy for 2009-2015, adopted by the Decree of 31 July 2009 by the Cabinet of Ministers No. 517*).

6.1.3. The Ministry of Environment, referring to international documents binding upon Latvia, notes that wind energy is one of the types of renewable energy resources. Production of electricity at wind power stations replaces production of electricity from fossil energy resources (coal, natural gas, oil products, etc.), as the result emission of greenhouse effect gases and other substances that pollute air is reduced, which affects both nature and human health. Moreover, production of electricity at wind power stations, compared to production of electricity from fossil energy resources, does not create substantive material pollution, for example, waste and waste waters, thus, no additional burden upon environment is created and additional financial resources for decreasing the material pollution (disposal, recovery or treatment) are not necessary.

Whereas the applications note, referring to the opinion of individual persons, that “wind energy is said not to be stable, it requires balancing capacities, which predominantly are ensured by fossil resources. As the result this energy is said not

to be that “green” at all (*see Case Materials, Vol.1, p. 45*). The application comprises references to the opinion of the organisation “European Platform Against Windfarms” (hereinafter also – *EPAW*). This organisation holds that “the only thing that wind turbines do is cause significant damage to people, economy, national budgets and environment” (*see: http://www.epaw.org/about_us.php?lang=en*). *EPAW* has expressed its opinion to the European Commission. It is noted in the answer by the Directorate General of Energy and Transport of the European Commission to *EPAW, inter alia*, that in December 2008 the heads and governments of 27 EU Members States, as well as the European Parliament adopted a package of documents, which aim to facilitate decreasing the emission of greenhouse gases and at producing energy from renewable resources. Production of wind energy should be viewed in this context. The political support of the European Commission and other European institutions coincides with the opinion of the majority of Europeans: the majority of European citizens are not only interested in decreasing the consequences of climate change, but also support production of energy from renewable energy resources, in particular, harvesting of wind energy [*see Commission Européenne Direction Generale de l’Energie et des Transports, 07.07.2009, D1/NL/gdc D(2009) 57427, http://www.epaw.org/documents/4388-57427_signed_MR.pdf*].

It is not the task of the Constitutional Court to become involved in reasoned discussions about the *EPAW* opinion referred to above on its merits. The Constitutional Court has already found that the rights and obligations defined in Article 115 of the Satversme should be interpreted in compliance with the provisions of international law that are binding upon Latvia (*see Judgement of 17 January 2008 by the Constitutional Court in Case No. 2007-11-03, Para 12*). Thus, these rights should be interpreted in accordance with the opinion elaborated in international documents that harvesting of wind energy should be considered as a measure that is comparatively more friendly to environment and should be promoted. Part 42 of the Preamble to Directive 2009/28/EC notes: “For the benefit of rapid deployment of energy from renewable sources and in view of their overall high sustainable and environmental beneficial quality, Member States should [...] take into account the contribution of renewable energy sources towards meeting

environmental and climate change objectives, in particular when compared to non-renewable energy installations.”

Pursuant to Annex I to Directive 2009/28/EC, the general aim for Latvia is to achieve that the share of energy produced from renewable energy resources in the gross end consumption of energy is 40 per cent in 2020. Each Member State has the discretion to establish the most appropriate means and measures for reaching the envisaged share of energy produced from renewable energy resources.

The Ministry of Environment notes that the choice between different renewable energy resources that can be used in producing energy is a political issue, which is mainly dealt with when deciding on the mandatory electricity procurement. In adopting the decision such consideration as the availability of the respective renewable resources in Latvia, the necessary amount of energy to be produced from each type of renewable energy resources for reaching the aim, as well as the necessary incentives are taken into account.

The Cabinet Regulation of 16 March 2010, issued pursuant to the Electricity Market Law, “Regulations Regarding the Production of Electricity Using Renewable Energy Sources and the Procedure for the Determination of the Price” regulates the amount of electricity produced using renewable energy sources to be mandatorily procured, as well as the procedure for determining the price, depending upon the type of energy resources.

The study “Latvian Energy Policy: Towards Sustainable and Transparent Energy Security” is attached to the application, it included a conclusion that “the elaboration and implementation in the field of Latvian Energy Policy and, in particular, in support for RER [renewable energy resources] has been very contradictory and – despite public interest and the regulatory presence of the EU – influenced by political interests” (*see: Autoru kolektīvs Dr. Andra Sprūda vadībā. Pētījums “Latvijas enerģētikas politika: ceļā uz ilgtspējīgu un caurspīdīgu enerģētikas sektoru”. Rīga, Sorosa fonds Latvija, 6. lpp.*).

Dealing with issues of political nature does not fall within the jurisdiction of the Constitutional Court. Neither the mandatory procurement of electricity, nor conditions of it or determination of process has been contested in the framework of

the particular case, nor it is not the task of the Constitutional Court to review the legality thereof. Various incentives of economic nature exist also in other European states; their aim is to achieve rapid development of energy production from renewable energy resources, which include wind energy. For example, the German Law on Renewable Energies (*Gesetz für den Vorrang Erneuerbarer Energien*) envisages subsidies in the amount of 5–9 cents for one kilowatt energy produced by WPS (see http://www.gesetze-im-internet.de/eeg_2009/index.html).

The outcome of incentives is entrepreneurs having economic interest in investing labour and resources in developing wind energy. However, the fact that the aim of improving environment is achieved not by administrative means of coercion, but by economic means, stimulating entrepreneurs' interest does not exclude issues related to the development of WPS from the scope of Article 115 of the Satversme.

Therefore the opinion expressed in the applications that the construction of WPS in Dunika Parish is aimed only at exercising the property rights of some persons for gaining profit is unfounded.

In examining the compliance of the contested acts with Article 115 of the Satversme, it must be taken into account that in general wind energy production is aimed at the State performing its positive obligation that follows from Article 115 of the Satversme – to improve the condition of environment, i.e., at public welfare and the right to live in a benevolent environment.

6.2. The obligation of the State, enshrined in Article 115 of the Satversme, to improve the condition of environment, must be performed by taking into account the situation in the state as a whole, not only within the framework of one local government. Article 115 of the Satversme does not require preserving unchanged environment to the inhabitants of one local government, at the same time making other local government put up with pollution by both producing the energy needed by both local governments and through the mechanism for equalisation of finances for re-allocating revenue gained from economic activities.

In this particular case it must be taken into consideration that at the time, when the Contested Spatial Plan was elaborated, Dunika Parish was among those

local governments that were unable to provide for themselves the necessary resources. Thus, pursuant to the Cabinet Regulation of 28 December 2006 No. 1070 “Regulation on the Revenue of the Equalisation Fund of Local Government Finances and the Procedure of Allocation in 2007”, the financial provisions that Dunika Parish needed from the Equalisation Fund of Local Government Finances was 45 342 lats, whereas those local governments that had to put up with the environment that had been altered by objects for producing energy, for example, Ķegums County and Aizkraukle County, had to make contributions to this Fund.

In interpreting the fundamental rights defined in Article 115 of the Satversme in interconnection with Article 91 of the Satversme, the Applicants’ right to live in as benevolent environment as possible must be correlated to the rights of other inhabitants of Latvia to live in as benevolent environment as possible.

6.3. One cannot but uphold the opinion of the Ministry of Economics that no regulatory enactment in Latvia imposed an obligation upon local government to consider in the process of spatial planning the possibility to develop on their territory production of energy from renewable energy sources.

The Constitutional Court has already noted that the aims and objectives that the environmental law sets for contemporary society can be reached only through close cooperation of the State, local governments, as well as non-governmental organisations and the private sector. The term “State” used in Article 115 of the Satversme should not be interpreted narrowly, it should be understood also as local government and derived public law legal persons, together with the institutions of public administration that have the obligation to protect everyone’s right to live in a benevolent environment, caring for its preservation and improvement (*see Judgement of 8 February 2007 by the Constitutional Court in Case No. 2006-09-03, Para 11*). Article 115 of the Satversme not only establishes a person’s right to a benevolent environment, but also imposes an obligation upon institutions of public power, *inter alia*, local governments, to ensure exercise of these rights (*see Judgement of 17 January 2007 by the Constitutional Court in Case No. 2007-11-03, Para 11*).

Spatial planning is one of the means for reaching the aims of the national environmental policy (*see Judgement of 8 February 2007 by the Constitutional Court in Case No. 2006-09-03, Para 11*). Pursuant to the Spatial Planning Law, a local government must in this process comply with the principle of sustainability, thus, the local government must consider also issues related to possibilities of promoting energy production from renewable energy resources.

In countries with long-standing traditions in the field of renewable energy development, legal acts alongside incentives of economic nature envisage, in cases provided for by law, also special regulations in the field of spatial planning and construction. For example, German courts have repeatedly recognised spatial planning documents as being invalid, since they had not allocated sufficient territories for placing WPS (*see, for example, Judgement of 28 August 2008 by the Supreme Administrative Court of the German Land of North Rhine-Westphalia in Case No. 8 A 2138/06* http://www.justiz.nrw.de/nrwe/ovgs/ovg_nrw/j2008/8_A_2138_06urteil20080828.html).

Analogous requirements with regard to spatial plans have not been defined in Latvia. Even though, a local government, in implementing the principle of sustainability must consider the above-mentioned issues in the course of spatial planning, it does not have the obligation to envisage territories, to the extent possible, for the needs of producing renewable energy, including WPS. It should be taken into account that the work in selecting locations most suitable for placing WPS on the national scale has just been commenced in Latvia. The Ministry of Economics notes that the Institute of Physical Energetics has performed measurements throughout the territory of Latvia, except the sea, and has elaborated a map, showing the average speed of wind at the height of 10 meters, 50 meters and 100 meters (*see Case Materials, Vol. 4, p. 185*). However, no other comprehensive studies on territories favourable for the development of WPS from other vantage point have been conducted in Latvia.

Thus, the local government, within the limits of its discretion, could verify, whether places that are suitable for installing WPS were found on its territory and whether the plan of a wind farm should be implemented on its territory.

6.4. The precautionary principle is one of the fundamental principles of environmental policy. Pursuant to this principle, dealing with environmental problems should start before complete scientific evidence on the adverse environmental impact of the planned activity has been received (*see Judgement of 17 January 2008 by the Constitutional Court in Case No. 2007-11-03, Para 20.2*).

However, the precautionary measures should be taken and, if necessary, the intended activities should be prohibited only if the suspicion about the adverse environmental impact of this activity is well-founded. For a County Council to prohibit an activity in spatial planning documents, by referring to the precautionary principle, it should verify the validity of its doubts by obtaining the necessary information (*see Judgement of 12 November 2008 by the Constitutional Court in Case No. 2008-05-03, Para 15.2*).

The opinion that follows from the applications that at the time when the contested acts were adopted no studies on WPS impact upon human health and environment had been available in Latvia is unfounded. 22 887 WPS operated in Europe already in 2000. In 2006, i.e., at the time when the Contested Spatial Plan was elaborated, 40 500 WPS operated in Europe. In 2007 there were 56 535 WPS operating in Europe (*see: Vēja enerģētika: fakti, <http://www.wind-energy-the-facts.org/lv/kopsavilkums/atzinba.html>*). The majority of these WPS operated in countries, where the population density significantly exceeds the density of population both in Latvia and in Dunika Parish. Pursuant to the explanatory note to the Spatial Plan, in Dunika Parish it was 3.8 inhabitants per square kilometre (*see Case Materials, Vol. 1, p. 138*).

Global best practice in matters of designing, constructing and operating wind energy objects has already been summarised in the World Wind Energy Association Sustainability Guidelines (*http://www.wwindea.org/home/images/stories/pdfs/wwea_05_11-10.pdf*), which were presented on 2–5 November 2005 at the Conference of the World Wind Energy Association in Melbourne. To develop best practice and facilitate recognition of environmental, social and economic aspects, in assessing sustainability of new wind energy projects, the aforementioned Guidelines were elaborated by the World Wind Energy Association (WWEA), organisation with

members from more than 95 countries of the world – almost half a hundred organisations of scientific nature, which conduct research in this field, as well as more than 70 organisations linked to wind energy from the countries of five continents, including many EU countries.

Thus, extensive experience has been accumulated both in global and European practice in dealing with various issues related to establishing and operating WPS. The aforementioned Guidelines include references both to possible adverse impact that WPS could leave upon environment, as well as to the most important measures for decreasing or preventing this impact. This impact has been analysed also in documents and publications by numerous other organisations, for example, in the Global Wind Energy Outlook, elaborated with the participation of the international organisation for environment protection “Greenpeace” (*see Global Wind Energy Outlook 2006* <http://www.greenpeace.org/international/Global/international/planet-2/report/2006/10/globalwindenergyoutlook.pdf>).

Thus, in the course of elaborating the contested acts the Council of Dunika Parish and the Council of Rucava County had access to information about WPS impact upon human health and environment and had the possibility to take it into account, when planning the location of WPS so that it would not create threats to human health and environment.

The case contains no dispute on whether WPS could affect birds and bats, whether its construction causes visual alteration of the landscape, whether operation of WPS is linked to noise, overshadowing and flickering. However, the participants of the case have different opinions about a number of aspects in this impact, moreover, significantly – with regard to WPS impact upon human health.

6.5. WPS impact upon birds and bats significantly depends upon the location of WPS and is comparable to the consequences of any other human activity. According to the estimates by researchers in the US, of all birds that have perished in collisions with man-made installations or as the result of human activities, only 0.01– 0.02 per cent have perished because of installations for producing wind energy. Studies conducted in California lead to the conclusion that in 2001, when in total 15 000 installations for harvesting wind energy operated, 33 000 birds had

been killed, thus, slightly more than two birds per one WPS. In Navarra province of Spain, where 692 installations for harvesting wind energy operate, on average one WPS had killed 0.13 birds annually. Whereas in the German Land of Brandenburg 278 incidents related to perishing of birds have been recorded in wind farms in the period from 1989 to 2004, where at the end of the period referred to above more than 16 500 installations for harvesting wind energy operated (see *Global Wind Energy Outlook 2006* <http://www.greenpeace.org/international/Global/international/planet-2/report/2006/10/globalwindenergyoutlook.pdf>). In studies conducted in Lower Austria, when some WPS were observed over a year, it was established that in collisions with one installation of wind energy on average seven birds and five bats perish (see *Wörten S. Erneubare Energien. Wissen, was stimmt. Herder, Freiburg, 2010, S.59–60*). In view of the results obtained in various studies, non-governmental organisations that are active in the field of environment protection, note that the danger for birds caused by WPS is comparatively smaller than the threats caused by climate change. Organisation “BirdLife International” was commissioned by the Council of Europe to develop guidelines, so that in assessing locations suitable for installing WPS the negative impact upon birds and bats would be decreased to the extent possible (see, for example, *BirdLife International Position Statement on Wind Farms and Birds* http://www.birdlife.org/eu/pdfs/Nature_Directives_material/BHDTF_Position_Wind_farms_and_birds_2005_12_09.pdf)k

Latvian Ornithological Society (Reg. No. 40008002230, hereinafter – LOS) represents organisation “BirdLife International” in Latvia. To make the planning of WPS easier and to elaborate a map of potential conflict zone with the interests of wind energy, LOS has implemented a project funded by the Latvian Environmental Protection Fund Environment Project “Identification of zones for developing wind energy installations and developing impact reduction measures.” LOS has used this study also in providing a number of opinions with regard to the plan of harvesting wind energy in Dunika Parish.

The Council of Dunika Parish, before including the zone for harvesting wind energy in the Contested Spatial Plan, took into account the opinion of LOS. In the

regulations on the use of territory and construction of the Contested Spatial Plan it is indicated *expressis verbis* that the borders of the zone for harvesting wind energy had been marked in compliance with recommendations provided by LOS. All places, where installation of WPS would not be permissible, have been listed in the letter of 31 October 2005 by LOS No. 2005/100, and it is noted that the rest of the territory “is suitable for planning wind farms in the future. However, precise sites for installing WPS can be approved of later, in the course of implementing the project” (*see Case Materials, Vol. 2, pp. 55 –57*).

Before the decision on elaborating the Detail Planning was adopted, LOS provided opinion on locating WPS in Dunika Parish (*see letter of 17 July 2008 by LOS No. 2008/062 and letter of 13 August 2008 No. 2008/069, Case Materials, Vol. 3, pp. 75 –90*). In the course of elaborating the Detail Planning, LOS expert R. Lebuss provided an opinion. It is noted, *inter alia*, that it was not planned to locate any of the intended WPS in Dunika Parish in the risk zones and *Natura 2000* territories (*see letter of 20 August 2009 by LOS No. 2009/107, Case Materials, Vol. 4, pp. 33 –36*).

LOS notes also in the letter to the Applicant that “in constructing the planned WPS farm in Dunika Parish, the estimated impact upon population of wild birds could be comparatively small. In the case of Dunika WPS farm the migration routes in Sventāja valley, as well as the route by which geese go to Dunika swamp to pass the night have been preserved” (*see LOS letter of 16 September 2009 No. 2009/115, Case Materials, Vol. 3, pp. 73–74*).

It must be also taken into account that at the time, when the contested acts were drafted, Liepāja region already had a spatial plan (*see http://old.kurzemesregions.lv/media/uploads/liepaja_plan.pdf.pdf*), and on this level the territories in the region that were important for birds had already been identified. In 2006 amendments to this spatial plan were elaborated. In the course of preparing them, strategic assessment was performed and a report on environment was prepared, characterizing every protected nature territory situated in the region.

The applications do not maintain that the territories important for birds have been incompletely identified in Liepāja Region. The case materials do not show

that during the course of discussing the spatial plan of Liepāja Region any of the Applicants had proposed expanding these territories. The issue, which territories are important from the vantage point of nature protection in the spatial plan of Dunika Parish, could not be dealt with in way that would differ from a planning document of a higher level – the regional spatial plan.

The contested acts do not envisage installing WPS in *Natura 2000* territories or in other places, which pursuant to the spatial plan of Liepāja Region or other regulatory enactments are significant for birds. Liepāja Regional Environmental Board conducted the initial assessment of the planned placement of 41 WPS in Dunika Parish and concluded that the construction of WPS farm would not leave a negative impact upon populations of wild birds, since this farm would be located outside the national and EU specially protected nature territories, would not be located in close vicinity of these territories and the territory would not be crossed by important bird migration routes (*see, letter of Liepāja Regional Environment Board of the State Environment Service of 5 August 2009 No. LI 09 SI 0048/1503 on the initial assessment in Case Materials, Vol. 3, pp. 107–110*).

Thus, the opinion that follows from the applications – that the contested acts, from the vantage point of bird and bat protection, were incompatible with the principle of sustainable development and Article 115 of the Satversme – is unfounded.

6.6. European experience does not confirm that WPS installed on land have negative influence upon fauna and flora, to the extent their construction is not linked to transformation of nature background. It must be taken into consideration that the zone for harvesting wind energy is located as close as possible to the already existing infrastructure, thus minimising, to the extent possible, the need for land transformation to construct access roads. Case materials do not provide confirmation that the contested acts envisaged construction of access roads or transforming for the construction of WPS such territories, which pursuant to the spatial plan of Liepāja region contain protected biotopes.

In the case law of the Constitutional Court detail plans that comprised the solution of transforming forest land, which might lead to substantive decrease of biological diversity in the respective territory, have been repeatedly recognised as

being incompatible with Article 115 of the Satversme (*see, for example, Judgement of 9 July 2009 by the Constitutional Court in Case No. 2008-38-03, Para 12*). The Constitutional Court has pointed that, in view of the principle of sustainable development, the local government had to assess the necessity of preserving the environmental (ecological) value of a forest (*see Judgement of 9 July 2009 by the Constitutional Court in Case No. 2008-38-03, Para 12.1*).

In difference to the aforementioned case, in the case under review the Detail Planning does not affect such territories, where the defined use of territory would be nature background. It is envisaged to construct WPS in an ameliorated agricultural territory, and the use of the territory does not restrict cultivating this territory with agricultural machines, as well as replacing natural flora with crops needed by people.

6.7. Landscape alteration is recognised as being one of the major problems in WPS environmental impact. The experience of other countries shows that people take personal attitude to these changes.

The British association of renewable energy “Renewable UK” points to studies, which have lead to conclusions that the majority of respondents consider wind farms as an interesting element of landscape. In general, 80 per cent of all members of society support wind energy, 10 per cent are against it, but the remaining part does not have a definite opinion (*see Top Myths About Wind Energy <http://www.bwea.com/energy/myths.html>*).

A large part of wind turbines located in Europe are found in Germany. Thus, 20 622 wind turbines operated in Germany in 2006 (*see: Vēja enerģētika: fakti, <http://www.wind-energy-the-facts.org/lv/kopsavilkums/atzinba.html>*).

It follows from publications prepared by the German Wind Energy Association that the absolute majority of German inhabitants support not only production of electricity from renewable energy resources, but also installations of respective constructions close to their place of residence (*see Bundesverband WindEnergie e.V. A bis Z fakten zur Windenergie http://www.wind-energie.de/fileadmin/Shop/Broschueren/A-Z/A-Z_2010.pdf*).

Criteria regarding admissibility of encumbrances upon residential buildings caused by wind energy equipment have been defined in the legal system and case

law of this state. The finding has been enshrined in the case law that instalment of wind energy equipment at a distance from residential buildings, which exceeds threefold height of the wind energy equipment (the height of the tower from the land surface to the axis of the rotor, to which a half of the diameter of the rotor blade is added) is absolutely permissible. Usually a construction that is located closer than twofold height of the wind energy equipment is considered to be an inadmissibly “intrusive”. The cases, where the wind energy equipment is located at a distance between the two values referred to above, are assessed on case-by-case basis (*see, for example, Ruling of 24 June 2010 by the Supreme Administrative Court of the German Land of North Rhine-Westphalia in Case No. 8 A 2764/09* http://www.justiz.nrw.de/nrwe/ovgs/ovg_nrw/j2010/8_A_2764_09_beschluss20100624.html, *Judgement of 28 August 2008 by the Supreme Administrative Court of the German Land of North Rhine-Westphalia in Case No. 8 A 2138/06,* paragraph 177 http://www.justiz.nrw.de/nrwe/ovgs/ovg_nrw/j2008/8_A_2138_06urteil20080828.html, and the *Ruling of 11 December 2006 by the Supreme Administrative Court of the German Land of North Rhine-Westphalia in Case No. 4B72.06* <http://www.bundesverwaltungsgericht.de>).

It is noted in the materials prepared by the Canadian Wind Energy Association that many wind farms in Canada have been placed within 300-400 meters’ distance from residential buildings, which, in general, is considered to be the minimum appropriate distance. The houses of those land owners, who rent land for the wind farm, quite often are located closer than this distance, and in these cases the experience have been positive. However, in the absence of financial relationship, some persons living within this distance have submitted complaints (*see Wind Turbines and Sound: Review and best Practice Guidelines* http://www.canwea.ca/images/uploads/File/CanWEA_Wind_Turbine_Sound_Study_-_Final.pdf).

Thus, the Applicants’ argument that nowhere in the world WPS are built closer than 2 kilometres from settlements is obviously ungrounded. At the same time it should be taken into consideration that, for example, in federative countries like Austria, Germany, the US, Canada, the issue of establishing restrictions on the

distance of WPS from settlements and residential buildings are mainly dealt with on the level of states, and the solutions adopted in various states differ significantly.

The placement of WPS, which is regulated by the contested acts, has been planned by taking into consideration the experience of company *ENERCON*, but this company has been engaged in constructing wind energy installations already since 1984 and is one of the leading European companies in this field (*see <http://www.enercon.de>*). The maps of noise and overshadowing, appended to the case, show that these have been elaborated by an Austrian construction design company, which has made the construction design of numerous wind farms in Austria and in other European countries (*see <http://www.baubetreuung.at/wind.php>*).

Thus, considering the possibility to develop production of wind energy in Dunika Parish and in elaborating the contested acts, the Council of Dunika Parish had at its disposal the experience accumulated in the respective European countries. It follows from the case materials, *inter alia*, the video-clip of the public discussion of the Detail Planning submitted by the Applicants, that in accordance with this experience, there was no intention to locate WPS closer than 500 meters from residential buildings.

6.8. In assessing the compliance of the Contested Spatial Plan with Article 115 of the Satversme from the vantage point of protecting human life and health, it must be taken into account that operation of WPS is not linked to the emission of gasses hazardous for human life and health into the atmosphere, nor with waste waters or chemical substances entering soil or hazardous waste. The risks and the possible adverse impact of operating of WPS exist either in close vicinity of WPS or within a certain distance from it. Therefore, the location of WPS could be of decisive importance.

The term “planned zone for harvesting wind energy” can be interpreted differently. To the extent the Contested Spatial Plan could be interpreted as such that allows the construction of wind energy equipment of any height and any capacity in any of the indicated places, it could become incompatible with a number of legal norms. However, the Contested Spatial Plan cannot be interpreted

in isolation from the Regulation on the Use of Territory and Construction, which defines the obligation to abide by the established protection zones and other legal norms.

Thus, Para 2.1.2 of the Regulation on the Use of Territory and Construction of the Spatial Plan of Dunika Parish envisages that such use of land that causes substantial pollution and is incompatible with provisions of legal acts is not permitted (*see Case Materials, Vol. 5, p. 131*), whereas pursuant to Para 3.15.5.2 the construction of farms for harvesting wind energy within the zone for harvesting wind energy is permitted only “in compliance with requirements set out in valid regulatory enactments” (*see Case Materials, Vol. 5, p. 167*).

The Contested Spatial Plan does not envisage any concrete location for WPS and does not define the height and the capacity of WPS to be planned. The Council of Dunika Parish and the Council of Rucava County interpret it as permission for additional use of the immovable property, upon the condition that detail planning for the respective territory is elaborated in the established procedure. I.e., the content of the contested act cannot be examined in isolation from the words “planned zone”, which is to be understood as a territory, for which detail planning may be elaborated with the purpose of defining one or several locations of WPS. Pursuant to Para 54.1 of the Regulation No. 883, local governments may envisage in the spatial plan territories, with regard to which detail planning must be elaborated.

The concept “spatial plan” is used in two meanings. Firstly, in a broader sense, comprising both the spatial plan and the detail planning. Secondly, in a narrower sense, understanding by this term the spatial plan alongside the detail planning.

In 2007, at the time when the Contested Spatial Plan was elaborated, the Regulation No. 883 was in force, Para 6 thereof envisaged: “If the spatial plan of the local government does not sufficiently define the use of concrete land units and the terms of construction, these shall be defined in detail planning.” I.e., a legal act of higher legal force *expressis verbis* allowed a situation, where the regulation on the use of a territory and construction was “insufficient”. Such spatial plan cannot

be a sufficient pre-requisite for starting the construction process. The use of a territory and construction must be sufficiently defined in detail planning.

Pursuant to Para 7 of the Regulation No. 883 “detail planning is the plan of a part of a local government’s administrative territory, and it is elaborated pursuant to the spatial plan of the local government, detailing and specifying the planned (permitted) use of the part of the respective territory and restrictions to use in accordance with the defined scale.”

At the time when the Contested Spatial Plan was elaborated, uniform requirements with regard to which zones with what permitted use a local government may envisage in its spatial plan were not defined. The Bureau notes that a number of solutions exist with regard to construction of WPS. The Constitutional Court has noted that such planning practice, where only one planned (permitted) use is defined for a territory, where different conditions exist, but envisage many purposes of use, thus significantly decreasing the predictability with regard to the use of territory, may become incompatible both with the principles of spatial planning, as well as with general principles of law (*see Judgement of 17 January 2008 by the Constitutional Court in Case No. 2007-11-03, Para 24.4*). In difference to the situation in Case No. 2007-11-03, the Council of Dunika Parish has chosen a solution aimed at increasing predictability with regard to the use of territory. I.e., the wind energy zone is marked as an additional permitted use within a restricted territory.

The Contested Spatial Plan, as follows also from the definition provided in the Regulation on the Use of Territory and Construction, defines precisely the outer borders of the zone for harvesting wind energy, i.e., the borders, the aim of which is to ensure that WPS would not be installed inadmissibly close the places that are important for birds. Whereas the word “planned”, which is included in the wording “the planned zone for harvesting wind energy” (contrary to other wordings of permitted use, which do not comprise this word), indicates that the particular use must be specified by planning, i.e., by detail planning that would regulated the issue of WPS location, taking into consideration the existing constructions and ensuring that provisions regarding human health and welfare are met.

Assuming that the Council of Dunika Parish had to mark the zone for harvesting wind energy in the spatial plan in a way that would envisage the location of each WPS, then the elaboration of detail planning would become meaningless.

Thus, the Contested Spatial Plan is not incompatible with the State's obligations in the field of protecting human life and health, to the extent it envisages the possibility of harvesting wind energy in the respective territory, upon the condition that the location of each WPS must be specified in detail planning, in the elaboration of which location of WPS that would comply with legal provisions would be ensured.

6.9. Noise is considered to be one of the adverse effects of WPS. The European Court of Human Rights (hereinafter – ECHR) considers excessive noise to be a restriction upon the right to private life (*see, for example, Judgement of 8 July 2003 by ECHR in case "Hatton and Others v. the United Kingdom", Application No. 36022/97*). The Belgian Constitutional Court also (even though the Belgian Constitution comprises an article on the rights to a benevolent environment) examines noise from the vantage point of the right to private life (*see Judgement of 30 April 2003 by the Belgian Constitutional Court No. 51/2003 in Cases No. 2303, 2304, 2431 and 2432 <http://www.const-court.be>*).

Thus, noise could be examined both from the vantage point of Article 115 and Article 96 of the Satversme. However, the issue of admissible noise cannot be examined on its merits within the framework of the case under review, it is dealt with by the Law On Pollution and regulatory enactments issued pursuant to it. The first part of Section 14 of the Law On Pollution – “Restriction on Initiating a Polluting Activity” provides that “a polluting activity shall not be initiated if environmental quality standard limit values for a specific type of pollution in a specific territory have been exceeded or may be exceeded and if the emissions caused by the relevant activity may increase the total quantity of the relevant pollution in this territory”. Thus, irrespectively of the solution chosen in the spatial plan, the operation of WPS will not be admissible, if the noise exceeds the established restrictions.

Annex 2 to the Cabinet Regulation of 13 July 2004 No. 597 “Procedure of Noise Assessment and Management” provides that at night the threshold of noise in the territory of low-rise residential buildings shall be 40 decibels.

The opinion expressed in the applications that it allegedly exceeds the threshold value recommended by the World Health Organisation, which is said to be 30 decibels, cannot be upheld. The threshold value recommended in Para 4.3.3 of the World Health Organization Guidelines for Community Noise “Sleep Disturbance Effects” – 30 decibels – apply to noise indoors (*see World Health Organization Guidelines for Community Noise <http://www.who.int/docstore/peh/noise/guidelines2.html>*).

In the framework of the case under review the respective Cabinet Regulation is not contested. The local government had the right to rely upon it. Moreover, in many other countries the permitted threshold value of noise in villages at night does not differ significantly from the threshold value referred to above. For example, in Germany it is 45 decibels. “Noise Guidelines for Wind Farms”, issued by the Ministry of Environment of Ontario Province in Canada, defines the noise level in rural regions, depending upon the wind force, in the range of 40–51 decibels (*see Noise Guidelines for Wind Farms. Ministry of the Environment, Ontario, October 2008 <http://www.windcows.com/files/4709e.pdf>*).

Thus, in interpreting the Contested Spatial Plan more narrowly, it does not prohibit from elaborating detail planning, where, in defining the exact location of WPS, the provisions of legal acts would be taken into consideration. The Detail Planning, in turn, was adopted on the basis of calculations that the noise caused by WPS with the speed of wind 10 metres per second at the Applicant’s residence would not exceed 39 decibels. Moreover, the level of noise caused by WPS is not constant. It depends, *inter alia*, also from the direction and force of wind.

Thus, the contested acts are not incompatible with a person’s right not to have the permitted level of noise exceeded.

6.10. It is not disputed that also moving shadows and the so-called disk effect are among the adverse effects of WPS. I.e., as the Ministry of Environment notes, the operation of WPS is linked to visually perceivable changes caused by moving objects (parts of the construction) and shadows, i.e., moving objects cause

visual irritation. These effects, *inter alia*, depend upon the height of the Sun and WPS, as well as the location of residential buildings with respect to the Sun. Shadows are not observed when it is dark, as well as at the time, when the Sun is hidden by clouds.

As mentioned above, in the case law of other countries these effects are considered to be sufficiently unobtrusive, if WPS is located at a distance that is threefold its height from residential buildings. Thus, in interpreting the Contested Spatial Plan in a narrower sense, it does not prohibit from elaborating detail planning, where the exact location of WPS would be defined in an appropriate distance from residential buildings. Whereas pursuant to the Detail Planning, the Applicant's place of residence is located in such a distance, which in the case law of other countries is not considered to be inadmissible.

At the same time the Constitutional Court draws the Saeima's attention to the fact that countries with long experience in operating WPS sometimes define in their legal norms the maximum duration of the WPS effect of casting shadows, to which a residential building could be subjected. The definition of such threshold values would fall within the competence of the legislator or an institution authorised by it.

6.11. It is not disputed that a threat of accidents exists in immediate vicinity of WPS, linked to falling of ice from WPS, as well as collisions of WPS with flying objects, for example, birds, air balloons, parachutists, small-size aircrafts. Accidents of WPS are possible, even though, with improved technical solutions, probability thereof is considerably decreasing. A positive obligation of the State to adopt a regulation that, to the extent possible, eliminates threats caused by WPS operation follows both from Article 115 of the Satversme and a person's right to life and health. Such regulation is included in the Protection Zone Law.

The second part of Section 32¹ of the Protection Zone Law provides that the width of protection zone around wind generators must be 1.5 times bigger than the maximum height of wind generators. As noted in Pars 4 of section Facts in this Judgement, some ministries at various points in time have provided different explanations on the way "the maximum height" should be determined for WPS with horizontal rotation axis.

The Constitutional Court draws the Saeima's attention to the fact that the aforementioned norm does not clearly define the term "wind generator", as well as the term "maximum height of the wind generator".

Pursuant to the Data Base of Terms of the State Language Centre defines the term "generator" as "a machine or equipment for producing a certain type of energy" (electric generator, steam generator, gas generator, etc.)" (*see <http://www.vvc.gov.lv>*). This database does not contain translations of the English term "wind turbine", used in the documents of International Wind Association and the term used in German "Windkraftanlage". In professional literature this term is translated as "wind energy installation" a – VEI" (*see Latvijas vēja enerģijas rokasgrāmatas 14. lpp., Case Materials, Vo. 5, pp.102*), WPS (*see, for example, the decision by the Bureau, Case Materials, Vol. 3, pp. 102- 106*) or wind turbine (*see, for example, opinion by the Wind Energy Association, Case Materials, Vol. 4, pp. 186–187*). Outside professional literature the term "wind generator" is used in the meaning of "wind turbine". In this meaning the term "wind generator" has been used in the Detail Planning.

The Ministry of Environment validly notes that in this meaning the term "wind power station" – WPS should be used instead of the term "wind generator". The Cabinet Regulation of 7 July 2009 No. 733 lists the vocation "8161 08 Operator of wind/ power station" (not an operator of a wind generator). Para 260 in Annex 1 to the Cabinet Regulation of 22 December 2009 No. 1620 "Regulation on Classification of Constructions" provides that constructions are WPS – "Power stations of wind turbines, where a gondola with rotor blades is supported by a specially constructed tower." The term WPS has been used also in the prepared amendments to the Protection Zone Law.

In accordance with the terminology that has been consolidated in international standards and practice, the generator is only one part of the wind turbine (*see, for example, http://www.wwindea.org/technology/ch01/imgs/1_2_img1.jpg*). Thus, from the perspective of technical terminology, "wind generator" *expressis verbis* is, albeit very important, a part of the installation, and the grammatical interpretation of the term of height in the respective norm could lead to a rather absurd result.

Moreover, the same generator, for example, the one included in *ENERCON* model *E 82*, could be installed on towers with different heights. Thus, the maximum height of a generator could be understood also as the height at which this generator has been installed, i.e., the height of WPS tower up to the axis of the generator. This is the height that the producer, for example, *ENERCON*, indicates in identifying WPS of a particular model (see <http://www.enercon.de/de-de/63.htm>).

In systemic interpretation of the term “wind generator”, it must be taken into consideration that at the time when Section 32¹ was added to the Protection Zone Law, the Law on Assessment referred to “instalment of wind generators and construction, if the height of the construction exceeds 20 meters”, i.e., it referred to the maximum height of the generator’s construction, not of the generator itself. Later the words “instalment of wind generators and construction” were replaced by words “construction of wind power stations”. The Association in its opinion submitted to the Constitutional Court notes that “only the tower is a construction, the gondola and its parts (blades, gearbox, generator, etc.) are equipment” (see *Case Materials, Vol. 4, p. 187*). A similar view is expressed also in the letter by the Ministry of Economics (see *letter of 11 March 2010 by the Ministry of Economics No. 41-2-2184 to the Latvian Association of Local and Regional Governments and the Wind Energy Association, Case Materials, Vol. 4, pp. 56 – 57*).

The Ministry of Environment holds that a construction like this would be unable to perform its function – produce electricity – without rotor blades. Hence, the rotor blades are said to be part of the construction and the protection zone should be defined accordingly, and “the maximum height of a wind generator (more accurately – WPS) should be defined, by taking into account the highest point reached by rotor blades”. In this opinion the terminology included in the law, which the legislator used at the time when the norm was adopted, is replaced by another – which is relevant currently, but is not used in the law.

It must taken into account that initially the draft law “Amendments to the Protection Zone Law”, which was submitted by the Cabinet of Ministers, envisaged two different protection zones, i.e., the second and third part of the respective Section provided:

“(2) The width of the protection zone around wind generators shall be equal to four times the maximum height of the wind generator.

(3) The width of that part of protection zone that is under threat in the case of wind generator accident shall be established as 1.5 times larger than the maximum height of the wind generator.”

At the same time it was noted in the annotation to the draft law that in the safety protection zones around wind generators “restrictions are established that restrict the presence of people therein and decrease the number of victims in a case of possible accident” (*Case Materials, Vol. 4, p. 144*).

It was the Ministry of Environment, which in its letter of 15 February 2005 No. 2-06/691 to the Economic, Agricultural, Environmental and Regional Policy Committee of the Saeima expressed the opinion that too many restrictions had been envisaged within a too wide zone (*see Case Materials, Vol. 5, p. 12*). In this letter the Ministry of Environment used the term “height of a generator”, not the term “maximum height of a generator”.

In the course of discussing the draft law, in the second reading the fourfold distance was replaced with a 1.5 times larger distance and, finally, the third part was excluded. In the copy held at the archive materials of the Saeima a note by the Committee’s consultant has been preserved “to exclude third part, because it is identical with the second” (*see Case Materials, Vol. 5, p. 9*).

The second part of Section 32¹ of the Protection Zone Law may not be interpreted in isolation from the part of the law, in which it has been included. The Protection Zone Law regulates very diverse protection zones. Section 32¹ has been included in Chapter V “Safety Protection Zones”. Pursuant to Section 29 of this Law, the main task of safety protection zones is to guarantee the safety of environment and people during the exploitation of objects and in the case of possible accidents, as well as the safety of objects themselves and objects located in their vicinity.

Section 35 of the Protection Zone Law establishes general restrictions in the protection zone. *Inter alia*, the owner or the possessor of the object protected by a protection zone has the right to perform the works necessary for exploitation, repair, renovation and reconstruction of the respective object. The owner or the

legal possessor of the land must be notified about it in writing at least two weeks before commencing these works, except for preventing accidents or work for eliminating consequences thereof, which may be performed anytime.

Section 58¹ of the Protection Zone Law defines additional restrictions in the safety protection zones around wind generators. Pursuant to it, it is prohibited to: 1) to build new residential buildings or to reconstruct the existing structures to convert them into residential buildings; 2) to build new buildings and structures that could interfere with the operations of wind generator, or to reconstruct the existing buildings in way that they could interfere with the operations of wind generator; 3) to open institutions of education, to install playgrounds and zones for recreation; 4) organise public events; 5) to place fuel stations, storage sites of oil, oil products, hazardous chemicals and products.

Thus, the task of safety protection zones is not dealing with the issues of noise, overshadowing or possible vibration and electromagnetic radiation, insofar it creates perceivable changes in the environment, but is not directly linked to the safety of people and environment. Likewise, it is not the task of safety protection zones to deal with civil law issues linked to the aforementioned effects. Significant restrictions upon property are placed within the safety protection zone, irrespectively of the owner's attitude towards WPS. For example, the owner is not permitted to build a residential building, even if he considers WPS to be totally harmless to health and has a positive perception of its visual and acoustic effect. It is prohibited to organise public events, even if the organisers are of the opinion that the visual and acoustic effects of WPS will not interfere with the event. Thus, the aforementioned restrictions must be interpreted as narrowly as possible and are not to be defined in excess of what is indeed necessary for the exploitation and safety of WPS.

In answering a question put by a Justice of the Constitutional Court on how large a protective zone reaches its aim, the Ministry of Environment expressed the opinion that the protective zone should be so large that no objects were placed on the area of the possible WPS collapse, which could be affected by such accident.

Researchers hold that total collapse of the tower of a wind turbine is almost impossible, insofar as it pertains to new turbines, which have been constructed in

compliance with contemporary safety standards. Additional safety can be ensured by placing wind turbines in at least such a distance from inhabited structures that is equal to the height of [one] tower, to which the radius of [one] rotor blade is added (*see James F. Manwell, Jon G. McGowan, Anthony L. Rogers. Wind Energy Explained: Theory, Design and Application. Second edition. United Kingdom, John Wiley and Sohns, 2009, p. 586*).

The information by the World Wind Energy Association about WPS technologies included examples on the proportion between the tower of wind turbine and the diameter of rotor blades. None of them states that the diameter of rotor blades could exceed the height of the tower. Hence, the coefficient 1.5, defined in the Protection Zone Law, essentially could express the total height of WPS, i.e., the height of the tower to which a half of the diameter of rotor blades is added.

The Ministry of Environment notes that the peculiarities of rotating parts should be taken into account; i.e., at the moment of collision they retain inertia movement. However, in calculating, where, for example, a piece from the external part of a rotor blade might fall, a number of parameters, apart from the height of the tower and the length of the rotor blade, are important – the turning speed of rotor, weight of the fragment, direction of the wind, etc. The risk of such accidents is to be recognised as being minor, in view of the low possibility of accidents and the fact that usually such an accident would not cause severe consequences (*see, for example, Hau E. Windkraftanlagen: Grundlagen, Technik, Einsatz, Wirtschaftlichkeit, 4. vollständig neu bearbeitete Auflage, Berlin Heidelberg, Springer Verlag, 2008, S. 600*).

A finding has been consolidated in the German case law that from the point of view of falling ice or possibility of other accidents, exploitation of WPS is not to be considered as being more dangerous than the exploitation of other high-rise structures (*see, for example, Judgement of 28 August 2008 by the Supreme Administrative Court of the German Land of North Rhine-Westphalia in Case No. 8 A 2138/06, paragraph 197–202 http://www.justiz.nrw.de/nrwe/ovgs/ovg_nrw/j2008/8_A_2138_06urteil20080828.html*).

It is neither the task of the Constitutional Court, nor the local government to perform calculations of engineering nature on the distance that is needed to guarantee safe exploitation of WPS. The institutions, which have been given this task by the legislator, are authorised to perform such calculations. The legislator has provided in the third part of Section 32¹ of the Protection Zone Law that “draft methodologies for defining safety protection zones around wind generators shall be elaborated by the Ministry of Economics, with the approval of the Ministry of Health and the Ministry of Environment Protection and Regional Development”. Thus, the Ministry of Economics have been tasked by law to approve of and establish methodology, also with respect to the issue on how to define the maximum height of a wind generator. Persons and local government had the right to expect that the Ministry of Economics had duly fulfilled this authorisation defined in law.

Essentially, the Ministry of Environment tends to use the safety protection zone to deal with other issues linked to the exploitation of WPS, which the initial draft Section 32¹ of the Protection Zone Law envisaged to solve by establishing two different protection zones for WPS. The Ministry of Environment and the Ministry of Health had the task to express their opinion to the Ministry of Economics. Issues related to construction fall within the competence of the Ministry of Economics. As the opinion of the Ministry of Environment shows, it replaced the Ministry of Economics and performed calculations on the engineering aspects of the collapse of WPS structure; however, it did not evaluate the outcomes of these calculations in accordance with the methodology for risk assessment.

The local government had the right to elaborate a spatial plan by following those explanations that were provided by the institution authorised by law – the Ministry of Economics. Thus, the contested acts in the part regarding protection zones comply with the Protection Zone Law and are not incompatible with Article 115 of the Satversme.

6.12. The Ministry of Environment holds that exploitation of WPS is linked to low frequency sounds, vibration and electromagnetic radiation, which under adverse coincidence might have an effect both upon nature and humans – their

health and safety. The organisation “European Platform Against Windfarms”, referred to above also points to these adverse consequences.

However, information about this impact is contradictory. Some researchers hold that the so-called wind turbine syndrome has been observed in many persons living in the vicinity of WPS (*see Pierpont N. Wind Turbine Syndrome. Testimony before the New York State Legislature Energy Committee http://www.savewesternny.org/docs/pierpont_testimony.html*). Other researchers, however, question the methodology for reaching the conclusions used in these studies. The Health Service of Ontario Province in Canada collected studies available in 2010 and noted that WPS did not create noteworthy electromagnetic radiation and that the infrasound created by them did not cause health problems, since the total sound level did not exceed 40 decibels (*see The Potential Health Impact of Wind Turbines Chief Medical Officer of Health Report. May 2010 http://www.health.gov.on.ca/en/public/publications/ministry_reports/wind_turbine/wind_turbine.pdf*).

At the time, when Directive 2009/28/EC was adopted on the EU level, the EU institutions, as mentioned above (*see Para 6.4 of this Judgement*) had been informed about the position of organisation “European Platform against Windfarms” and its arguments regarding WPS effects upon human health. However, part 40 of the Preamble to this Directive underscores: “The procedure used by the administration responsible for supervising the authorization, certification and licensing of renewable energy plants should be objective, transparent, non-discriminatory and proportionate when applying the rules to specific projects. In particular, it is appropriate to avoid any unnecessary burden that could arise by classifying renewable energy projects under installations which represent a high health risk.”

Kurzeme Control Department of the Health Inspectorate has provided opinion No. 29 on 30 October 2009, in which it does not object to the solution in the improved Detail Planning.

Thus, the Applicant's opinion that WPS located from residential buildings within the distance envisaged in the Detail Planning would create threat to human life and health is unfounded.

7. Natural environment has an aesthetic and spiritual value, which determines the quality of human life and the intangible aspects of a person's wellbeing (*see Judgement of 6 July 2009 by the Constitutional Court in No. 2008-38-03, Para 9*). The changes to environment caused by WPS may affect this aspect of wellbeing. In the process of spatial planning a person's interests to preserve the natural environment to the extent possible must be taken into account as one of the interests to be assessed and balanced in this process. However, Article 115 of the Satversme defines a smaller scope of protection to them compared to Article 105 of the Satversme. Therefore, in this respect the compliance of the contested acts with Article 105 of the Satversme must be examined.

8. Article 105 of the Satversme provides: "Everyone has the right to own property. Property shall not be used contrary to the interests of the public. Property rights may be restricted only in accordance with law. Expropriation of property for public purposes shall be allowed only in exceptional cases on the basis of a specific law and in return for fair compensation."

The Constitutional Court has found that Article 105 of the Satversme provides for both exercise of the right to own property without interference, as well as the rights of the state to restrict the use of property in the interests of the public (*see, for example, Judgement of 20 May 2002 by the Constitutional Court in Case No.2002-01-03 the Findings*).

The Constitutional Court has noted: "In the field of spatial planning the interests that follow from the right to own property must be examined in a wide scope. For example, a certain view from the window, insulation of an apartment may belong to it" (*Judgement of 24 September 2008 by the Constitutional Court in Case No. 2008-03-03, Para 20*).

It is indicated in the first application that the Applicants are "owners of immovable property and/ or inhabitants of Dunika Parish".

8.1. Without denying that, for example, the property relationships that follow from a rental agreement, under certain conditions, could fall within the scope of Article 105 of the Satversme, it can be established that the first application does not provide any kind of substantiation on how, in the particular case, the fundamental rights of persons, who are not owners of immoveable property located in Dunika Parish, have been violated.

8.2. Printouts from the Land Register have been appended to the first application, in these part of the Applicants are indicated as owners of immoveable property located in Dunika Parish. The opinion expressed in the written reply that extensive substantiation has been provided only with regard to the possible violation of the Applicant's right to own property can be upheld.

The Applicant's opinion that it is the location of WPS that prohibits her from developing tourism business cannot be upheld. The British Wind Energy Association noted that frequently WPS turn into a factor that promotes tourism. Thus, for example, in the United Kingdom the first commercial wind farm in its first decade of operation was visited by 350 thousand tourists, 10 thousand tourists annually visit the Centre for EcoTechnologies set up in the United Kingdom, Swaffham wind farm (*see <http://www.bwea.com/energy/myths.html>*). The list prepared by Ainaži municipal tourist information centre "Notable sites in Ainaži town and its vicinity" indicates: "wind turbines, which is one of Ainaži landmarks of the new times, look very impressive" (*see <http://www.ainazi.lv/?s=48976>*).

The spatial plan does not envisage a zone for tourism development in the part of Applicant's property, which is in direct vicinity of WPS envisaged in the Detail Planning. It does not follow from the Case Materials that she had submitted a corresponding proposal during the process of spatial planning and that it had been rejected. In order for the Applicant to develop tourism business intensively, which, *inter alia*, is linked to a substantive load upon the environment, first of all corresponding amendments would have to be introduced to the spatial plan.

The spatial plan defines the territory of the Applicant's property that is in direct vicinity with WPS envisaged in the Detail Planning as territory of agricultural use. It is not prohibited to build in this territory some tourism related objects, for example, a guesthouse or a boarding house. However, the maximum

built-up area is defined as 0.5 or 0.7 hectares, depending upon the area of the farm, and the maximum number of storeys has been defined – three storeys. The minimum area of a newly established land plot may not be below 2 hectares. The application does not reveal that there would objective difficulties to develop the potential constructions within the Applicant’s property within a sufficient distance from WPS.

Likewise, one cannot uphold the opinion that installation of WPS in the vicinity of the Applicants’ property would prohibit persons from engaging in agriculture.

Insofar the Applicants are persons, who own immovable property to which the contested acts apply, the construction of WPS may affect some aspects of using the immovable property. I.e., prohibiting the Applicants from gaining all possible benefits from using their property without interference in the way most desirable for them – without changes to landscape caused by WPS, overshadowing and noise. Thus, installing WPS on land plots bordering with the land plots owned by the Applicants may cause restrictions upon their right to own property, therefore it needs to be assessed, whether the contested acts have been adopted in procedure set out in regulatory enactments, whether the restriction has a legitimate aim and whether the restriction is proportional.

9. Elaboration of a spatial plan is not only a formal procedure. It is regulated in order to identify and weigh various interests and to decide, which interests should be given priority. Balancing the interest of all parties, protection of weaker participants and ensuring the interests of the whole society must be achieved in this process (*see Judgement of 9 March 2004 by the Constitutional Court in Case No. 2003-16-05, Para 5.1 of the Findings*).

The issue, whether the right to own property has been restricted by a spatial plan elaborated in due procedure should be assessed by taking into consideration the procedural aspect of Article 115 of the Satversme. The Constitutional Court has concluded previously that this article provides to persons the right to participate in solving environment related issues, *inter alia*, in the process of spatial planning. However, this procedural aspect should be examined in

interconnection with everyone's right to participate in the work of the state and local governments, included in Article 101 of the Satversme. None of these rights are absolute, but are to be exercised in the form and scope provided for in law.

In order for a spatial plan to be legal, it must be, firstly, elaborated and approved in the established procedure, and, secondly, must comply with regulatory enactments (*see Judgement of 9 March 2004 by the Constitutional Court in Case No. 2003-16-05, Para 4 of the Findings*). If substantive violations have been committed in the process of spatial planning, then the spatial plan or a part thereof has not been adopted in due procedure.

A substantial violation can be qualified in accordance with a number of criteria. Firstly, a substantial violation in the spatial planning process is a violation as the result of which a decision is adopted that is different from the one that would have been adopted if the procedure had been complied with. Secondly, a substantial violation has been committed in those cases, when the rights of society to participate in the spatial planning process have been substantially violated. Thirdly, also other violations of the principles of spatial planning are to be recognised as substantial violations (*see Judgement of 26 April 2007 by the Constitutional Court in Case No. 2006-38-03, Para 14*).

9.1. The applications point to a number of deficiencies in the course of elaborating the Contested Spatial Plan in 2007.

9.1.1. The Council of Dunika Parish adopted the decision on the elaboration of the spatial plan on 28 July 2004. MRDLG holds that pursuant to Regulation No. 34 that was in force at the time the public discussion had to be held immediately after the decision was adopted; however, the first stage of public discussions about the spatial plan was scheduled for the period from 10 January 2005 to 11 February 2005. The public discussion event was held on 1 February 2005.

9.1.2. On 21 June 2006 the Council of Dunika Parish adopted the decision on the second stage of public discussions about the 1st draft of the Spatial Plan, scheduling it for the period from 28 July to 8 September 2006. The notice on discussion was published in the official journal "Latvijas Vēstnesis" on 28 July, but in the newspaper "Kursas Laiks" – on 29 July. The event of public discussions

about the 1st draft of the Spatial plan was held on 10 August 2006. It is noted in the minutes of this event that “8 inhabitants of Dunika” participated in the meeting (*Case Materials, Vol. 1, p. 82*).

9.1.3. MRDLG in its opinion has pointed to a number of other deficiencies.

All deficiencies referred to were essentially eliminated by revoking the decision of 10 November 2006 by the Council of Dunika Parish, deciding to elaborate the final draft of the spatial plan anew and to organise new public discussions in the course of elaborating it.

9.2. It is not disputed that prior to 2007 harvesting of wind energy was mentioned neither in the forwarded documents, nor during the events of public discussions. However, the Applicants’ opinion that the local government had no right to introduce respective additions to the spatial plan, without adopting a decision on elaborating the spatial plan anew, is unfounded.

It was indicated in the terms of reference already at the beginning that a proposal on locating industrial territories in the spatial plan would be elaborated. i.e., the need to develop also industrial territories within the parish had been identified.

MRDLG had pointed in its opinion that new public discussion had to be organised. The elaboration of a new final draft of the spatial plan and a new public discussion would be meaningless, if persons would have no possibility to express their proposals – not only proposals on keeping a certain territory unchanged, but also proposals on the development of a certain territory. If the discussion of the 1st final draft of the spatial plan had been held in compliance with the provisions of regulatory enactments, persons, possibly, might have expressed their proposals on including into the spatial plan a zone for harvesting wind energy already previously.

The Constitutional Court has found that “a local government may develop conceptually new ideas on the provisions to be included in the spatial plan not only before the elaboration of the spatial plan has started, but also in the course of elaborating it. To include these ideas in a spatial plan that is in the elaboration stage, the local government has the right to adopt a decision on the inclusion of corresponding amendments into the draft spatial plan. Also in those cases, when

recommendations and proposals are submitted by members of the public, the local government may adopt a decision on including the respective amendments into the spatial plan (*see Judgement of 12 November 2008 by the Constitutional Court in Case No. 2008-05-03, Para 9.4*).

Thus, a local government, in elaborating the final draft of the spatial plan anew, had the right to add to the spatial plan a zone for harvesting wind energy.

9.3. The local government, upon introducing such an amendment, had to verify, whether strategic assessment of the spatial plan should not be conducted. The failure to conduct a strategic assessment or if it is not duly conducted, when such assessment is a necessary part of the procedure for adopting a planning document, can cause a substantial procedural violation (*see Judgement of 17 January 2008 by the Constitutional Court in Case No. 2007-11-03, Para 20*).

9.3.1. Legal norms that follow from the Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds and the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora” have been included in the Law on Specially Protected Nature Territories. Pursuant to the third part of Section 4 of the Law on Assessment, strategic assessment is conducted with regard to planning documents, which could substantively impact *Natura 2000* territory. Pursuant to Section 43(4) of the Law on Specially Protected Nature Territories, an environmental impact assessment must be conducted with regard to an envisaged action or a planning document, which separately or together with another envisaged action or planning document might substantively impact *Natura 2000* territory.

9.3.2. The legal provisions that follow from Directive 2001/42/EC have also been included in the Law on Assessment. Pursuant to Subparagraph 8 of Para 3 in Annex 2 to this Law, construction of WPS, if the height of the structure exceeds 20 meters, is an activity with regard to which initial assessment must be performed.

Therefore, when such activities are envisaged in the planning document, pursuant to Section 4(3) of the Law on Assessment, strategic assessment must be performed. However, Section 4(5) of the Law on Assessment provides:

“Strategic assessment of the planning documents referred to in Paragraph three of this Section which are related to the utilisation of small territories on the local government level, as well as for small amendments of the planning documents referred to in Paragraph three of this Section shall not be performed, except for cases where the implementation of such documents may have a substantial impact on the environment.”

To apply this norm, compatibility with two criteria must be established: “small territory” and “local government level”, and also it should be verified that the envisaged activity would not have a substantial impact on the environment. Whether a territory should be considered as being small should be decided by taking into consideration Latvia’s scale. Otherwise a situation would develop, where with regard to the same activity at the same time the strategic assessment would have to be performed in, for example, Sigulda County, but would not be needed in Dunika Parish.

The Ministry of Environment notes that it basically applies the legal regulation referred to above to detail planning, upon the condition that a strategic assessment of the spatial plan has been performed.

Since in recent past the territories of local governments could be also relatively small, the Bureau, in some case, upon assessing information included in the draft spatial plan of a local government, could adopt a decision on not applying a strategic assessment to the spatial plan. The Bureau’s decision of 9 November 2005 No. 7-04/2685 on not applying strategic assessment also indicates that, pursuant to the Bureau’s practice, the territory of Dunika Parish was to be recognised as being small in the meaning of the aforementioned norm. Thus, on the basis of this criterion, it was possible not to perform the strategic assessment of the new draft spatial plan of Dunika Parish, upon verifying that the implementation of this document would not leave a substantive impact upon the environment.

It must be taken into consideration that the Council of Dunika Parish elaborated the Contested Spatial Plan at the time when the spatial plan of Liepāja region was already in force. Moreover, by the decision of Liepāja Regional Council adopted at the sitting of 21 April 2006 (Para 5 in Minutes No. 4), the

elaboration of amendments to the spatial plan of Liepāja Region began (hereinafter – the Amendments). A strategic assessment of the Amendments was performed. In the Environment Report of the Amendments all *Natura 2000* territories in the Liepāja region, as well as other protected territories, including places important for birds, were identified.

It is mentioned in Annex 1 to Environment Review of the Amendments “Assessment of the Possible Environmental Impacts of the implementation of “Amendments to the Spatial Plan of Liepāja Region for 2008-2020”, part “Main Utilities Infrastructure, Objects of Technical Infrastructure and Communication Networks”, column “Aims”: “Wind generators are envisaged for producing alternative electricity, their operation must comply with the prepared projects”, whereas the column “Possible risks and aspects that must be assessed in implementing the planned activities” comprises the finding: “The envisaged impact is not substantive or is generally neutral. To prevent possible negative impacts, attention should be paid to the following aspects – where necessary, the environment impact assessment procedure should be applied to particular activities. An assessment of the planned infrastructure development upon nature background should be performed, infrastructure development solutions that decreases the nature background or its values as little as possible should be chosen” (*see Vides pārskats. Liepājas rajona teritorijas plānojuma grozījumi 2008.-2020. gadam. Kuldīga, 2008, 52. lpp. http://old.kurzemesregions.lv/media/uploads/liepaja_plan.pdf.pdf*).

As it has been noted *expressis verbis* in the Regulation on the Use of Territory and Construction of the Contested Spatial Plan, the Council of Dunika County, taking into account LOS’s opinion (*see Para 6.5 of this Judgement*), concludes that this spatial plan could not have an impact upon *Natura 2000* territories, other places important for birds, and marked the zone for harvesting wind energy so that it would not have substantial impact upon these territories. The local government holds that the Contested Spatial Plan cannot have a substantial impact upon the environment.

Thus, from the vantage point of substantive law, the local government had the right to adopt the final draft of the Contested Spatial Plan, without performing

strategic assessment of it. However, from the procedural point of view, the local government had to verify the correctness of its decision by requesting a corresponding opinion of the Bureau; however, the local government did not do it. The Bureau holds that in 2007 it would have demanded application of strategic assessment to the Contested Spatial Plan, in view of the fact that 1) construction of WPS, the height of which exceeds 20 metres, has been referred to in Annex 2 to the Law on Assessment; 2) the Council of Dunika County had portioned off a specific territory, where harvesting of wind energy was admissible as the permitted additional use in the whole area of this territory; 3) no other regulatory requirements regarding scope and possibilities of implementing these activities were envisaged (*see Case Materials, Vol. 4, pp. 191*).

In the period from September 2009 to July 2010 the Council of Rucava County approved of 23 detail plans for the territory of Dunika Parish, which envisaged construction of WPS. During the elaboration of these detail plans, Liepāja Regional Environmental Board of the State Environmental Bureau performed initial assessment and, on the basis of it, the Bureau adopted a number of decisions on not applying the assessment procedure to proposed activities in the territory of Dunika Parish – construction of WPS (*see the Bureau's decision of 1 June 2009 No. 277, decision of 2 July 2009 No. 333, decision of 4 June 2010 No. 153, and the decision of 3 September 2009 No. 395, Case Materials, Vol. 2, pp. 61–73, and Vol. 3, pp. 102–106*).

One cannot uphold the opinion that follows from the written replies that there had been no grounds for applying strategic assessment to the Contested Spatial Plan just because later, when the initial assessment of the envisaged activities was conducted, it was established that their impact upon the environment was not as substantial or complex that would require application of the environmental impact assessment procedure.

Strategic assessment is applied to planning documents, the implementation of which might have substantial impact upon environment, whereas the initial assessment and, if necessary, impact assessment procedure is applied to the particular envisaged activity. By applying the strategic assessment, the impact of the particular policy-planning document is evaluated in general, taking into

consideration the criteria defined in Section 23⁵ of the Law on Assessment. The strategic assessment is less detailed, but its context is broader. This means that the procedure of strategic assessment differs from the procedure of impact assessment.

Application of strategic assessment to the Contested Spatial Plan would have complied both with the interests of those persons, who had developed a negative attitude towards WPS, and the interests of those persons, who wished to develop wind energy production in Dunika Parish. Para 5.3 of Sustainability Guidelines prepared by the World Wind Energy Association states that one of the potentials benefits from strategic assessment is preventing insecurity of wind energy developers, by defining priorities and advantages (*see World Wind Energy Association Sustainability Guidelines http://www.wwindea.org/home/images/stories/pdfs/wwea_05_11-10.pdf*).

However, MRDLG did not identify procedural violations prior to adopting the Contested Spatial Plan. There is no dispute in the case that the local government informed about the final draft of the spatial plan that was elaborated anew those institutions that were envisaged in regulatory enactments. Moreover, part of the issues that would have to be assessed in order to decide on the need for strategic assessment, as well as within the framework thereof, at the time of drawing this Judgement had been already assessed in the framework of the initial assessment. The responsible institutions, in performing the initial assessment, did not identify substantial problems that might pose a threat to the environment.

Thus, it cannot be concluded that if the Council of Dunika Parish had acted in greater conformity with the procedure, another decision and not the one envisaged by the contested acts would have been adopted.

The principle of the rule of law requires compatibility of the norms of the spatial plan and detail planning with the norms of higher legal force. The rights and lawful interests of those persons, to whom the spatial plan grants certain rights and which, in making long-term plans of their commercial activities, have the right to rely upon the stability of the spatial plan, are equally important and in need of protection (*see Judgement of 27 March 2008 by the Constitutional Court in Case No. 2007-17-05, Para 23, Decision of 13 February 2009 on terminating legal*

proceedings in Case No. 2008-23-03, Para 10, and Judgement of 24 March 2009 in Case No. 2008-39-05, Para 12).

Thus, **the aforementioned procedural violation can no longer be regarded as being so substantial at the time of adopting this Judgement as to recognise the Contested Spatial Plan as being incompatible with Article 105 or Article 115 of the Satversme.**

9.4. The Applicants hold that the public discussions of the final draft of the Contested Spatial Plan had a number of shortcomings.

9.4.1. The discussion of the final draft of the Contested Spatial Plan had been formal, since they had known nothing about it and had not been able to participate in it. As referred to above (*see Para 9 of this Judgement*), in the process of spatial planning persons enjoy their right to participation within the procedure and scope established by law. Notifications on the repeated public discussion of the final draft of the Contested Spatial Plan were timely published in the official journal “Latvijas Vēstnesis”, newspaper “Kursas laiks” and also in the publication of Dunika Parish “Dunikas Vēstis” (*see: Latvijas Vēstnesis, 2007. gada 21. februāris, Nr. 31, Kursas Laiks, 2007. gada 21. februāris un Dunikas pašvaldības izdevums “Dunikas Vēstis”, 2007. gada janvāris–februāris*).

Those persons, who genuinely wished to become involved in planning the development of the parish, had real possibility to submit their proposals. For example, an application was received from a limited liability company “Rema kokaudzētavas”. This application was examined at the sitting of the Council of Dunika Parish, a decision was adopted to take the submitted proposal into account and to introduce amendments into the materials of the final draft of the plan (*see Report on repeated public discussion of the final draft of Dunika Parish spatial plan, Case Materials, Vol. 2, pp. 5*).

The Constitutional Court has already noted that “participation in the process of adopting decisions, which are linked to special activities in the field of environment, is not an obligation of society, but only its right (*Judgement of 14 February 2003 by the Constitutional Court in Case No. 2002-14-04, Para 2 of the Findings*). For example, in Case No. 2002-14-04 the Constitutional Court pointed to shortcomings in the way public discussion had been organised, and yet

did not recognise the contested act as being incompatible with Article 115 of the Satversme. The purpose of public discussion is to provide to stakeholders an opportunity to express their opinion. This opportunity is ensured by complying with requirements regarding providing information on the content of the project and the venue of discussion. How actively persons use this opportunity, first of all depends upon the persons themselves (*see Judgement of 24 September 2008 by the Constitutional Court in Case No. 2008-03-03, Para 19.8*).

9.4.2. The Applicants note that the public discussion had been scheduled for the period from 1 to 22 March 2007 and that already on 22 March at 14.00 a sitting of the Dunika Parish Council had been held and that the final draft of the spatial plan had been reviewed. However, the fact that the sitting would be held at the specific time had been noted in Para 4 of the same notification. Moreover, there are no materials in the case that would prove that anybody had submitted a proposal on the Contested Spatial Plan in the afternoon of 22 March.

9.4.3. In the course of elaborating the spatial plan (detail planning) the local government has the obligation to be an objective and neutral mediator between the interests of a developer of a concrete territory and the interests of the involved society, to hear and assess in an unbiased way the opinions of all stakeholders about the most appropriate and suitable form of development for the particular territory, as well as to abide by the provisions of regulatory enactments that regulate spatial planning (*see Decision of 28 November 2007 by the Constitutional Court on terminating legal proceedings in Case No. 2007-16-03, Para 7, and Judgement of 24 March 2009 in Case No. 2008-39-05, Para 10*). In an ideal type situation, the local government, by making an extra effort in order to provide to the owners objective information about positive and negative aspects of WPS already during the public discussion of the spatial plan, could have prevented unnecessary tension in later stages of discussions about the project. However, the fact that the local government did not perform this function in the best possible way is not to be considered as being a substantial procedural violation.

Thus, from the procedural vantage point, the Contested Spatial Plan is to be recognised as being legal.

9.5. There is no dispute in the case, whether the initial assessment has been conducted regarding construction of WPS on its territory during elaboration of the Detail Planning. The Law on Assessment does not require performing a strategic assessment of the Detail Planning. Likewise, the Law on Assessment does not envisage that, unless the outcome of the initial assessment requires it, the procedure of environmental impact assessment should be applied to the project. The Department of Administrative Cases of the Supreme Court Senate (hereinafter – the Senate) has concluded on the basis of regulation on the assessment procedure that the aim of assessment is to obtain as extensive information about the envisaged activity as possible, including information, opinion and proposals provided by society. Conducting such complex, costly and lengthy procedure is not justified, if the possible environmental impact of the envisaged activity can be established also in a simpler procedure. The legislator has singled out the most essential cases of possible adverse impact by establishing mandatory impact assessment procedure (activities referred to in Annex 1 to the Law on Assessment). Whereas with regard to activities, the environmental impact of which might be and might not be such that requires impact assessment (activities referred to in Annex 2 to the Law on Assessment), initial assessment is envisaged (*see Decision of 23 December 2010 by the Department of Administrative Cases of the Supreme Court Senate in Case No. SKA 1064/2010, paragraphs 10 and 11*).

There are no materials in the case that would cause doubt as to whether the Bureau's decisions on not applying the impact assessment procedure had been adopted in a procedure that was incompatible with legal provisions.

9.6. Shortcomings in the public discussion of the Detail Planning are pointed out in the application.

9.6.1. The Applicant's opinion that a public discussion of several plans at the same time should not be held (within one meeting) is unfounded. Law grants discretion to the local government to decide in how many individual detail plans a territory should be planned. Likewise, a local government enjoys discretion to decide, which details could and should be discussed at the same time.

9.6.2. Some deficiencies in drawing up the documents can be identified in the course of public discussion of the Detail Planning. For example, minutes do

not list persons, who are denoted as “Austrian colleagues”, the person, who provided interpretation is not indicated (*see, Minutes of the informative meeting of Dunika Parish Wind Farm on 17 April 2009, Case Materials, Vol. 3, pp. 41–50*). However, taking into account also information published in the press, it can be ascertained that interpretation was provided and that persons, who had been genuinely interested in information provided by foreign specialists, had been able to understand this interpretation.

9.6.3. The Applicants note that a written translation had not been appended to the noise and overshadowing maps that were presented at the meeting of public discussions of the Detail Planning. However, with the development of contemporary science and technologies, it is impossible to avoid situations where scientific and technical information is provided not solely in the official language. Specialists, who want to receive professional level information, as well as other persons, who should receive this information, to the extent possible, on the level of popular science, may participate in public discussions at the same time.

In this particular case maps of noise and overshadowing, prepared with the assistance of software, were used (*see Case Materials, Vol. 3, pp. 144-145*). Place names in these maps were written in Latvian. Since the amount of the English text is small, it would be possible to understand information included in these maps with the interpreter’s assistance. Moreover, it should be taken into account that cartographic information poses problems for many people, irrespectively of the language used in the legend of the map.

The respective maps of noise and overshadowing should be considered as being only a supplementary visual aid. Regulatory enactments require neither preparing such maps, nor appending them to detail planning. Presentation of these maps and not appending them to the Detail Planning is not a violation of the procedure.

9.6.4. The Applicant contends that the oral answers provided by the elaborators of the Detail Planning to the questions put by the public had been short and unconvincing, based only upon statements regarding the practice in other countries, moreover – had been based upon false statements. However, the respective minutes of the meetings do not provide proof that false information had

been provided. Moreover, the local government in addition to the events of public discussions defined in regulatory enactments organised an additional informative meeting. One of the aforementioned events lasted for even more than four hours.

9.6.5. The Applicant contends that in the course of elaborating the Detail Planning genuine participation of society in adoption of the decision had not been ensured and that she had not been duly heard. It follows from the case materials that during the elaboration of the Detail Planning the Applicant had submitted to the local government more than ten various applications (*see Case Materials, Vol. 4, pp. 14 –16, 19–22, 24, 26, 28, 30, 32*), *inter alia*, proposing adding to the Regulation on the Use of Territory and Construction of Dunika Parish the words “wind generators with capacity above 20 kilowatts may not be installed closer than 20 kilometres from residential buildings in a quiet rural area”, as well as pointing to inaccuracies in the opinions reflected in the materials summarising public discussion and requesting convening a new public discussion. The Council of Rucava County has repeatedly provided written answers to the Applicant (*see Case Materials, Vol. 4, pp. 17–18, 23, 25, 27 and 31*); it also examined and rejected the aforementioned proposal at the sitting of 27 August 2009 (*see Case Materials, Vol. 4, p. 29*). The requirements of regulatory enactments with regard to applying assessment procedure to detail planning were explained to the Applicant in writing, the Applicant’s note regarding an error in the spelling of the name of a farmstead was taken into account, and in connection with a proposal that she submitted Para 2.10 was included in the Detail Planning, providing that before developing technical design instrumental surveying of the land plot should be conducted, following the instrumental surveying the safety protection zone of the wind generator may not affect any other immovable properties, but only those defined in this detail planning, except in cases, where an agreement with the owner of the encumbered land plot has been reached.

The answer by the Chairperson of Dunika Parish Council to the letter, signed by 182 inhabitants, submitted to the Council of Dunika Parish on 14 April 2009 (*see Para 1 of this Judgement*) was also printed in the publication in “Dunikas Vēstis”. It is noted, by referring to Article 105 of the Satversme that, *inter alia*, the Council of Dunika Parish in adopting the decision should take into consideration

also the interests of those inhabitants of the parish, who wish to install wind generators on their property (*see Dunikas Vēstis, Nr. 3, 2009. gada maijs–jūnijs, Case Materials, Vol. 3, pp. 157–158*).

Thus, there are no doubts about the fact the Rucava County Council knew about the Applicant's absolutely negative attitude towards installing WPS on the land plot adjacent to her property and the Rucava County Council was informed about the existence of different opinions about the use of territory, to which the Detail Planning pertained.

The Constitutional Court has already noted that local governments should be honest with the public on issues of restrictions upon the forms of direct participation and should avoid encouraging excessive hopes regarding possibility to satisfy various interests that have been expressed, in particular, when decisions on conflicting interests or rationing of resources are adopted. The Council has the right to decide, which of the contradictory opinions should be preferred, within the limits of its discretion (*see Judgement of 24 September 2008 by the Constitutional Court in Case No. 2008-03-03, Para 20.4*).

“The decision maker should not always follow the proposals expressed by persons or the objections submitted. The proposals by persons should be carefully assessed, following considerations on expedience” (*Judgement of 9 March 2004 by the Constitutional Court in Case No. 2003-16-05, Para 5 of the Findings*).

Even though the Spatial Planning Law provides that the assessment should be performed by the local government, this does not mean that every proposal expressed during the discussions of the detail planning should be examined at a plenary session of an elected body of the local government. The Council establishes the procedure in which the Council allocates and organises work in plenary session, committees and structural units, as well as the subject, who in each particular case carries out assessment on behalf of the Council, in accordance with the law “On Local Governments” (*see Judgement of 24 September 2008 by the Constitutional Court in Case No. 2008-03-0, Para 19.8*).

Assessment of the minutes of the meetings of public discussions on the Detail Planning, the Applicant's correspondence with the Rucava Council and the minutes of the Rucava Council's sitting in interconnection does not show that the

Applicant had not been heard during the elaboration of the Detail Planning or that her opinion had not been evaluated.

9.7. In the course of elaborating the Detail Planning the Ministry of Economics changed its opinion on methodology for establishing protection zones twice. In connection with this the local government adopted corresponding decisions on amendments to the wordings of the Detail Planning. The Constitutional Court has already concluded in this Judgement that the local government had to take into consideration the opinion of the Ministry of Economics (*see Para 6.11 of this Judgement*). Hence, these amendments cannot be considered to be a violation of the procedure for elaborating the Detail Planning.

The protection zone marked in the final draft of the Detail Planning complies with the explanation that envisages that it should be calculated by counting into the maximum height of the generator both the height of the tower and the radius of rotor blades, thus, in compliance with the option that Applicant considered to be more favourable for her. The protection zone does not encumber the Applicant's property. The purpose of a constitutional complaint is to prevent possible violations of the Applicant's fundamental rights. Thus, the issue on whether the marked protection zone is not too wide and whether, consequently, the Detail Planning does not infringe upon the fundamental rights, set out in Article 115 of the Satversme, of the owner of the respective property should not be decided on the basis of the concrete application.

9.8. It was concluded in the decision of 12 October 2010 by the Administrative District Court in Case No. A420697510 that pursuant to the detail planning the width of protection zone around wind generators (total height – 149 m) was 1.5 times bigger than the maximum height of wind generators – it is 223.5 metres, where the technical design defines the protection zone of 165.0 metres around the wind generator. The Constitutional Court has already concluded that the compliance of a particular construction plan with the detail planning is not be examined in the process of reviewing norms (*see Judgement of 24 September 2008 by the Constitutional Court in Case No. 2008-03-03, Para 21*). The legality of construction plans should be assessed by taking into account the provisions of the detail planning and not *vice versa*.

Thus, the Detail Planning has been adopted in due procedure.

Therefore the contested acts are to be recognised as being adopted in legal way, and the restriction upon fundamental rights has been established by law.

10. As noted above, development of WPS should be considered not only as ensuring that some persons exercise their right to own property, but it is also aimed at performing the obligation of the State defined in Article 115 of the Satversme in improving the environment.

In parallel to this, the contested acts facilitate development of energy sector in Latvia and Latvia's energy independence from foreign countries. Latvia is one among those European Union member states, which to the utmost degree depend upon imported energy resources. Almost all oil and gas is imported from Russia. Decreasing local demand, more extensive use of local renewable energy resources and gradual increase in energy efficiency have been the factors that allowed decreasing Latvia's energy dependency from 80–90 per cent after regaining independence to 60–70 per cent (*see: Autoru kolektīvs Dr. Andra Sprūda vadībā. Pētījums "Latvijas enerģētikas politika: ceļā uz ilgtspējīgu un caurspīdīgu enerģētikas sektoru". Rīga, Sorosa fonds Latvija, 19. lpp.*).

Finally, the contested acts are aimed at exercising the right to own property of those persons, who want to use their property by installing WPS on it and gaining profit from this commercial activity. The outcome of installing WPS would be budget revenue gained by the local government, thus finding a possibility to use these resources for the development of the county, *inter alia*, ensuring social rights of persons.

Thus, the restriction upon the right to own property has a legitimate aim – ensuring the rights of other persons and public welfare.

11. To assess, whether the restrictions included in the contested acts are proportional to the legitimate aim, it must be verified, whether a reasonable balance between the Applicants' interests, on the one hand, and the interests of society in general and other persons, on the other hand, is ensured. It must be

established, whether: 1) the measures used by the local government are appropriate for reaching the legitimate aim; 2) are such actions necessary, i.e., whether the aim cannot be reached by other measures, less restrictive upon a person's rights and lawful interests; 3) the actions of the local government are proportional or appropriate, i.e., whether the benefit gained by society exceeds the damage inflicted upon a person's rights and lawful interests (*see, for example, Judgement of 12 November 2008 by the Constitutional Court in Case No. 2008-05-03, Para 11*).

11.1. The Applicants hold that the contested acts do not reach the legitimate aim referred to above. However, the Constitutional Court in this Judgement has already examined and recognised as being unfounded the Applicants' opinion that the production of energy in WPS is not suitable for the State to perform obligations that follow from Article 115 of the Satversme (*see Pars 6 of this Judgement*). The large share of imported energy resources in Latvia was already mentioned above (*see Para 10 of this Judgement*), thus the opinion that Latvia is able to produce all electricity it needs in hydropower stations is unfounded (*see Case Materials, Vol. 1, p. 45*).

An opinion has been expressed in the applications that those owners, who have agreed to implementation of WPS projects on the land they own, gain comparatively small economic benefits. However, evaluation of civil law transactions of private persons does not fall within the competence of the Constitutional Court. The contested acts do not define an obligation for an owner to assume civil law liabilities in connection with the implementation of WPS project, if he does not want to.

Likewise, whether the financial benefit that the local government gains from exploitation of WPS is proportional to the profit that individuals might gain is not to be examined in the framework of the particular case. Applying taxes to immoveable property and personal revenue, as well as the allocation of money paid as the respective taxes between the State budget and budgets of local governments are regulated by laws, not by the contested act.

Thus, the contested acts are appropriate for reaching the legitimate aim.

11.2. “In assessing, whether the legitimate aim can be reached by more lenient means, the Constitutional Court takes into consideration that a more lenient measure is not just any other measure, but a measure that allows reaching the legitimate aim in the same quality” (*Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 19*). The Applicants hold that installing WPS at a distance of at least 2 kilometres from their properties could be an alternative measure. However, this solution would totally prohibit other owners to use their properties for producing wind energy and, thus, would not reach the legitimate aim as effectively as the contested acts.

11.3. In assessing, whether the benefit to society outbalances the restriction imposed upon the Applicants, a number of aspects should be taken into account.

Prior to the decision of 10 November 2006 by the Dunika Parish Council, Dunika Parish had no spatial plan at all. Thus, persons could not have developed legal certainty that the territory of the parish would be maintained or developed in a specific way.

Pursuant to Para 3 of Section 1 of the Spatial Development Law, the level of spatial development is characterised by the development index. The index that was calculated for Dunika Parish in the Cabinet Regulation of 15 September 2008 No. 730 “The Procedure for Calculating Spatial Development Index” was “–0.325”, which ranked it into the 259th place among all Latvian parishes. Under such conditions the decision by local government to choose spatial development and not preserving the environment unchanged cannot be regarded as being disproportional.

In view of the fact that the Contested Spatial Plan is specified in detail plans, where installation of WPS in due distance from the existing residential buildings can be envisaged, as well as the fact that the Detail Planning envisages construction of WPS within an appropriate distance from the Applicant’s residential building, the restriction imposed upon persons’ right to own property is not large and is smaller than the benefit gained by society from reaching the legitimate aim and development of WPS within the framework of the concrete project.

Thus, the restriction upon fundamental rights is proportional and the contested acts comply with Article 105 and Article 115 of the Satversme.

The Substantive part

On the basis of Section 30–32 of the Constitutional Court Law, the Constitutional Court

held :

to recognise the Binding Regulation of 3 November 2009 by the Council of Rucava County No. 27 “On Spatial Plans of Rucava County” in the Part of Establishing Wind Energy Zone in the Territory of Dunika Parish and the Binding Regulation of 17 December 2009 No. 41 “Detail Planning for the Immoveable Property “Šuķi” (Cadastre Reg. No. 6452 012 0156, Cad. No. 6452 011 0012), “Skrandas” (Cad. No. 6452 012 0007) as being compatible with Article 105 and Article 115 of the Satversme of the Republic of Latvia.

The Judgement is final and not subject to appeal.

The Judgement enters into force on the day it is published.

Chairperson of the court sitting

V. Skudra