THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

J U D G E M E N T

On Behalf of the Republic of Latvia

Riga, 27 January 2011

Case No. 2010-22-01

The Constitutional Court of the Republic of Latvia composed of the Chairman of the Court session Gunārs Kūtris, and justices Kaspars Balodis, Aija Branta, Kristīne Krūma, and Vineta Muižniece,

having regard to an application of Sonia Traub (hereinafter – the Applicant),

according to Article 85 of the Satversme (Constitution) of the Republic of Latvia and Article 16 (1), Article 17 (1) Indent 11, Article 19.^{2} and Article 28.^{1} of the Constitutional Court Law

on 4 January 2011 in writing examined the case

"On Compliance of Para 7 of Transitional Provisions of the Law "On Land Reform in the Cities of the Republic of Latvia" insofar as it Applies to Land under Residential Apartment Houses and Para 40 of Transitional Provisions of the Law "On Privatization of State and Local Government Residential Houses" with Article 1 and Article 105 of the Satversme of the Republic of Latvia"

The Facts

1. On 12 December 2007, the Saeima [Parliament] of the Republic of Latvia (hereinafter – the Saeima) adopted the Law "Amendments to the Law "On Land Reform in the Cities of the Republic of Latvia" that provided for the following wording of Para 7 of Transitional Provisions of the Law "On Land Reform in the Cities of the Republic of Latvia" (hereinafter – the Law on Land Reform in the Cities):

„The fee for the land lease specified pursuant to the procedures determined in Section 12, Paragraphs one and two of this Law shall not exceed the amount of fee for land lease calculated for the previous year by more than 25 per cent in 2008, 2009 and 2010".

However, on 13 March 2008, the Saeima adopted the Law "Amendments to the Law "On Privatization of State and Local Government Residential Houses"" that supplemented Transitional Provisions of the Law "On Privatization of State and Local Government Residential Houses" (hereinafter – the Law on Privatization of Residential Houses) by Para 40 in the following wording:

"The lease payment of a plot of land for an owner of the privatized apartment and artist's workshop, which has been specified in conformity with the procedures specified in Section 54, Paragraph two, first sentence of this Law, in 2008, 2009 and 2010 may not exceed the amount of the lease payment of the plot of land calculated for the previous year by more than 25 per cent."

On 15 April 2009, the Constitutional Court adopted a judgment in the case No. 2008-36-01 "On Compliance of the Words "Apartment Houses" of the Second Part of Section 12 of the Law "On Land Reform in the Cities of the Republic of Latvia" and Para 7 of the Transitional Provisions Thereof, and the First Sentence of the Second Part of Section 54 of the Law "On Privatization of State and Local Government Apartment Houses", and Para 40 of the Transitional Provisions Thereof with Article 1 and Article 105 of the Satversme (Constitution) of the Republic of Latvia" (hereinafter – the Judgment in the case No. 2008-36-01).

In the above mentioned Judgment, Para 7 of Transitional Provisions of the Law on Land Reform in Cities insofar as it restricts lease payments for the land under residential houses, as well as Para 40 of Transitional Provisions of the Law on Privatization of Residential Houses was recognized as non-compliant with Article 105 of the Satversme of the Republic of Latvia (hereinafter – the Satversme) and null and void as from 1 November 2009.

On 22 October 2009, the Saeima adopted the Law "Amendments to the Law "On Privatization of State and Local Government Residential Houses"" by providing for the following wording of Para 40 of transitional Provisions of the Law on Privatization of Residential Houses:

"The lease payment of a plot of land for an owner of the privatized apartment and artist's workshop, which has been specified in conformity with the procedures specified in Section 54, Paragraph two, first sentence of this Law, in 2009 and 2010 may not exceed the amount of the lease payment of the plot of land calculated for the previous year by more than 25 per cent."

Meanwhile, the Law "Amendments to the Law "On Land Reform in the Cities of the Republic of Latvia"" was adopted and Para 7 of Transitional Provisions of the Law on Land Reform in the Cities was established in the following wording:

"The fee for the land lease specified pursuant to the procedures determined in Section 12, Paragraphs one, two and two prim of this Law shall not exceed the amount of fee for land lease calculated for the previous year by more than 25 per cent in 2009 and 2010."

2. the Applicant – **Ms. Sonia Traube** – indicates that, in the frameworks of the property reform, her right to the property in Riga, Maskavas Street 112, cadastre No. 0100-043-0132 (hereinafter – the Land Plot) was restored. A privatized multi-storied residential house was located on the particular Land Plot. Consequently, compulsory lease relations were established between the Applicant and owners of flats of the privatized residential house (hereinafter – Privatized Object).

Pursuant to Para 7 of Transitional Provisions the Law on Land Reform in the Cities, insofar as it applies to land under residential houses, and Para 40 of Transitional Provisions of the Law on Privatization of Residential Houses (hereinafter – the Contested Norms), in November and December 2009, as well as in 2010 must not exceed the amount of the lease payment of the plot of land calculated for the previous year by more than 25 per cent. By referring to several judgments of the Constitutional Court and those of the European Court of Human Rights (hereinafter – the ECHR), the Applicant indicates that property right includes the right to gain all possible benefits related with the property owned by a particular person. However, the Contested Norms reduce the economical value of the Land Plot and infringe the rights established in Article 105 of the Satversme.

When assessing compliance of the Contested Norms with Article 105 of the Satversme, the Applicant indicates that restriction of the fundamental rights has been established by Law. However, the aim of the Contested Norm is protection of owners of privatized objects, including those of multi-storied houses, from rapid increase of lease payment for land plots. The Saeima discussions regarding the Contested Norms do not show that the legislator would have established the legitimate aim of the norms with the purpose to protect the rights of owners of privatized objects.

Although the Contested Norms do have a legitimate aim, they still breach the principle of proportionality. The legislator did have the right to restrict lease payment for land parcels in the initial stage of the land reform. However, under the present economical and social circumstances, restriction of lease payment for land parcels is no more justifiable. Interests of owners of privatized objects cannot be apprised more than those of land owners. Namely, owners of privatized objects cannot be regarded as socially weaker subjects of civil relationships, due to which they should be granted payment easements.

Moreover, the legislator has failed to assess other alternatives of the Contested Norms restricting the rights of land owners at a lesser extent, such alternative being, for instance, restriction of increase of lease payment for a land parcel by 50 per cent. When elaborating and adopting the Contested Norms, the legislator has not discussed the ways of balancing justly interests of owners of privatized objects and those of land owners.

Consequently, the Contested Norms breach the principle of proportionality and fails to comply with Article 105 of the Satversme of the Republic of Latvia.

The Contested Norms also breach the principle of legitimate expectations that follow from Article 1 of the Satversme since, after expiry of the term established by the Constitutional Court, i.e. 1 November 2009, land owners could count on the fact that legal relations in case of compulsory lease would be dealt with in a reasonable manner, and restriction of increase of lease payment would finally be cancelled. When adopting the Contested Norms, the legislator has acted contrary to what has been established in the Judgment in the case No. 2008-36-01 and has failed to prevent unlawful infringement of the fundamental rights of the Applicant.

Non-compliance of the Contested Norms with Article 1 of the Satversme is also proven by the fact that the legislator has failed to establish any measures that would reduce unfavourable consequences caused by the norms to land owners, such measures being, for instance, compensation of losses or establishment of tax relief. Consequently, the Contested Norms fail to comply with Article 1 of the Satversme.

After the Constitutional Court adopted the Judgment in the case No. 2008-36-01, the Saeima did not have the right to adopt the same regulation that has already been recognized as unconstitutional in the above mentioned Judgment. By preserving validity of increase of lease payment by 25 per cent, infringement of the rights of the Applicant was preserved at the same extent as before adoption of the above mentioned judgment. After adoption of the Judgment in the case No. 2008-36-01, the Applicant was given legitimate trust into the fact that restrictions already assessed therein would not be restored.

After the expiry of the term established in the Contested Norms, the legal situation would comply with the Satversme because lease payment would be economically substantiated and the amount thereof would balance interests of owners of a privatized object and those of land owners.

After having got acquainted with the case materials, it as additionally noted that the aim of the particular constitutional complaint is full restitution of the rights of the Applicant. It is possible only in case if the Constitutional Court recognizes the Contested Norms as non-compliant with the Satversme and declares them as null and void as from

the date of adoption thereof. Consequently, the Applicant asks the Constitutional Court to recognize the Contested Norms as null and void as from the date of adoption thereof.

3. The institution that adopted the contested act, i.e. the Saeima does not share the argumentation of the Applicant and asks the Constitutional Court to recognize the Contested Norms as compliant with legal norms of a higher legal force.

It has been emphasized in the reply that, when choosing to restore the property right to a land plot with buildings pertaining to another owner situated thereon, the owner of the land plot has implicitly accepted the situation of the land plot and the stipulated legal regulatory framework. Land owners had the right to choose wither to compensation or an equivalent land plot by thus avoiding the stipulated restrictions.

The necessity of the Contested Norms can be considered not only in the frameworks of legal relations of compulsory lease, but also in conjunction with the changes in the procedure for calculating the cadastre value. In 2008, when an updated data base of cadastre values of lands plots came into force, a frequentative increase of land plot cadastre value was prognosticated in respect to all groups of immovable property located in the territory of the State. In order to prevent frequentative and considerable increase of land lease payments in cities, it was necessary to introduce amendments into the Law on Land Reform in the Cities and to establish a transitional period for introducing increased land lease payments in the cities. The actions of the legislator were aimed at protection of the rights of owners of privatized objects and those of land owners and to ensure a fair balance in regulatory framework applying to their legal relationships. Therefore, restrictions to increase of the amount of land lease payments were established based on the lease payment of the previous year in order to ensure gradual increase of land lease payments.

It can be concluded form the case-law of the ECHR that the legislator enjoys broad rights to control the use of property in accordance with the general interest. Even in cases when, pursuant to the law, the right of a person to receive income from his or her property have been considerably limited, the ECHR has not established any infringement of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention).

The Saeima indicates that one of the criteria for establishing the amount of restriction to land lease payments is aimed at preventing a land owner to get full disbursement of land plot value in a relatively short timeframe. For instance, if the land lease payment constitutes 6 per cent per year, then the full value of the land parcel would be paid within 16 years. Moreover, owners of privatized objects are committed to make payments of immovable property tax, as well as cover expenses related with maintenance of the land plot. In certain administrative territories, the Contested Norms hardly ever have an impact on the amount of lease payment. Consequently, the restriction included in the Contested Norms is based on the principle of justice and they comply with the principle of proportionality.

The opinion of the Applicant that the Contested Norms breach the principle of legitimate expectations is ungrounded. At the initial stage of the land reform, the legislator has already established that, when reinstating the property right by former land owners or their heirs, their right to concluding lease agreements would be restricted. Likewise, adequate right to choose has been established; namely, a land owner could choose either to receive compensation or an equivalent land plot. Moreover, lease payments have been gradually increasing since 1 January 2008. Consequently, it can be concluded that no such regulatory framework that would confer any legitimate expectations to the Applicant has ever existed; therefore the Contested Norms do comply with the principle of legitimate expectations and Article 1 of the Satversme.

The Saeima additionally indicates that the possibility to extend the term established in the Contested Norm is still plausible and land owners have not reason to count on the fact that compulsory lease relationships would not be regulated or that the legislator would not react to establishment of an unreasonably high lease payment. The 10th Saeima might have a different view on legal norms regulating the institute of compulsory lease, and therefore they can be amended.

4. The summoned person – **the Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) indicates that, when adopting the Contested Norms, the Saeima has, in fact, preserved the previous regulatory framework. The amendments of 22 October 2009 into the Law on Land Reform in the cities and the Law on Privatization of

Residential Houses are of formal character because nothing has been changed in the result of it, and the ruling of the Judgment in the case No. 2008-36-01 has not been observed.

The Contested Norms fail to reach the legitimate aim, which is protection of owners of flats in residential houses from rapid increase of lease payment for the land plot because, after the term of validity of the Contested Norm expires, the amount of compulsory lease payments would increase anyway. For instance, the lease agreement for the Land Plot owned by the Applicant in 2011 could increase even eightfold. The legislator has other measures for reaching of the legitimate aim at its disposal, which is, for instance, a different way of increase of lease payments (calculated in percents) or the possibility to institute a voluntarily shared property.

The Applicant would not have any legitimate trust into the fact that the term established in the Contested Norms would not be extended or that the present restrictive regulatory framework would not be preserved henceforth. The fact that the pervious norms were cancelled by means of the Judgment in the case No. 2008-36-01 does not permit concluding that all restrictions regarding legal relations of compulsory lease would be cancelled.

5. The summoned person – **a professor and Head of the Department of Civil Law of the Faculty of Law of the University of Latvia [*Latvijas Universitātes Juridiskās fakultātes Civiltiesisko zinātņu katedra*] dr.iur. Mr. Jānis Rozenfelds** indicates that compulsory lease legal relations shall be regarded as legal anomaly. They have been established on compulsory basis contrary to the will of one of the parties of these relations, i.e. a leaser. The statement that compulsory land lease relations are the result of choice made by a land owner because restoration of property right to land was launched in 1991, whilst the institute of compulsory lease has been introduced in 1995, is ungrounded.

The institute of compulsory lease fails to comply with the freedom of concluding of agreements included into the Civil Law and with the normative regulatory framework of the norm. The above mentioned institute causes non-compliance of the rights and duties of the parties. This does not facilitate the owner of an object to fulfil lease

provisions and change the existent legal situation. Moreover, the legal norms does not establish a precise amount of rights and duties of parties of compulsory land lease relations, for instance, in respect to the right of the owner of a privatized object to improve the respective land plot.

The Judgment in the case No. 2008-36-01 has been observed only partially since, when adopting the Contested Norm, the Saeima has failed to assess the way it would influence the rights and legal status of the owner of a land plot. The Saeima has neither reviewed the issue whether the amount of compulsory lease payments would fulfil the function of remuneration. Consequently, the Contested Norms fail to comply with the principle of proportionality and therefore with Article 105 of the Satversme.

Because of the Contested Norms, income of the Applicant in 2010 constitutes only 0.73 per cent of the cadastre value of the Land Plot. Such level of income does not comply with the market price. The situation if annual income from the immovable property would constitute 10 – 20 per cent of the value of a particular land plot would comply with the market price.

It is neither grounded that the legal regulatory framework regarding the data base of cadastre values fails to establish correction of value of immovable property depending on the fact whether immovable property pertaining to another person is located on a particular land plot. This deficiency should be prevented because the market value of immovable property bearing the burden of compulsory land lease relations is lower than that of immovable property having no burdens.

The possibility granted to the owner of a land parcel to buy out a particular land plot could be regarded as an alternative solution to the Contested Norms provided that the owner expresses such will within a stipulated term. Implementation of such rights would facilitate correction of value of immovable property because the market value rather than the cadastre value of a land plot would be taken into account. Likewise, granting the right to land owners to request of sale of a particular privatized object at auction in case if a tenant has failed to settle lease payment for, for instance, three years, would be regarded as another alternative.

6. The State Land Service [*Valsts Zemes dienests*] informs that, taking into account cadastre marking for a respective land unit, it is possible to calculate estimated cadastre value for 2011. Estimated cadastre value is calculated pursuant to 18 April 2006 Cabinet of Ministers Regulations No. 305 "Regulations regarding Cadastral Assessment". The cadastre value of the Land Plot owned by the Applicant in 2011 is estimated at the amount of 34 697 lats.

7. The Land Committee of the Council of Riga [*Rīgas domes Zemes komisija*] informs that the Applicant had the right to request allocation of an equivalent land plot or to receive compensation as the alternatives when restoring the property right. All documents at the disposal of the Land Committee and related to the Land Plot owned by the Applicant testify the will of the Applicant to restore the property right.

The Findings

8. The Contested Norms became invalid on 1 January 2011. Article 29 (1) Indent 2 of he Constitutional Court Law provides that judicial proceedings of a matter may be terminated until pronouncement of the judgment at the decision of the Constitutional Court if the disputed legal norm (act) has ceased to be in force. Consequently, first of all, the Court shall decide whether the proceedings in the present case can be continued.

In order to adopt decision regarding termination of proceedings it is not sufficient only to conclude that that Article 29 (1) indent 2 of the Constitutional Court Law can be applied. The Law grants the Court the right to terminate legal proceedings rather than the duty to do it. The Constitutional Court has to assess whether there exist such considerations that require continuing legal proceedings in the present case (*see: Judgment of 11 January 2011 by the Constitutional Court in the case No. 2010-40-03, Para 6*).

As to the case when constitutionality of a legal norm that has lost its force before the judgment is adopted, the Constitutional Court has indicated that, from the point of

view of effectiveness of court proceedings, a judgment is significant only if it will be determined an antedate force. Consequently, legal proceedings in such cases are possible if the legal relations to be assessed allow assigning antedate to the judgment of the Constitutional Court. However, if cancelling of the Contested Provision from the date of passing or coming into force thereof could cause, for instance, a considerable violation or threat of the State (society) interests, then usefulness of continuing legal proceedings shall be assessed during preparation of the decision of the Constitutional Court (*see: Judgment of 3 April 2008 by the Constitutional Court in the case No. 2007-23-01, Para 6*).

In the case under review, the Applicant submitted the constitutional application at the time when the Contested Norms had not yet taken effect. Moreover, the Applicant has asked to recognize the Contested Norms as non-compliant with the Satversme and null and void since the date of adoption thereof.

In has been indicated in the constitutional complaint of the Applicant, as well as in the opinions submitted by both summoned parties that the Saeima has failed to fully observe the Judgment in the case No. 2008-36-01.

The issue regarding observance of findings made in judgments of the Constitutional Court and implementation thereof is of great importance. Namely, this aspect is an indispensable part of a law-governed State and that of the rights to a fair court, which affects protection of fundamental rights of persons. Moreover, in cases when it is necessary to eliminate deficiencies of legal regulatory framework as established in judgments of the Constitutional Court, adoption of a now regulatory framework or amendment of the effective one depends only on those institutions that have adopted particular contested norms.

Taking into account the above mentioned considerations, the Constitutional Court is of the opinion that, in the case under review, there is grounds to continue legal proceedings and to assess constitutionality of the Contested Norm.

9. According to the application, compliance of two legal norms with the Satversme has been contested. Para 7 of Transitional Provisions of the Law on Land Reform in the Cities established restriction of increase of lease payments at the amount of 25 per cent in 2009 and 2010, and the norm applied to lease payments referred to in

Section 12 (1), (2) and (2.[1]) of the same Law. Para 40 of Transitional Provisions of the Law on Privatization of Residential Houses similarly established restriction of increase of lease payments at the amount of 25 per cent in 2009 and 2010 in respect to lease payments referred to in Section 54 of the same Law. Both norms restricted increase of lease payments, which the owner of a particular land plot has the right to receive from owners of privatized flats of residential multi-storied houses.

It can be concluded from the constitutional complaint that the Applicant asks the Constitutional Court to assess compliance of the Contested Norm with the Satversme insofar as the restrictions established therein apply to land under residential houses.

Since both Contested Norms are mutually related, their constitutionality shall be assessed simultaneously.

10. The Applicant has asked to assess compliance of the Contested Norms not only with Article 1, but also with Article 105 of the Satversme because it holds that restrictions of property right established therein infringed her right to own property as established in the Satversme.

Pursuant to Section 19.[2] (1) and (6) Indent 1, in case of a constitutional complaint it is important to establish whether the fundamental rights of an applicant established in the Satversme have been infringed. Therefore, the Constitutional Court shall first of all assess whether the Contested Norms restrict the fundamental rights of the Applicant established in Article 105 of the Satversme and whether such restriction is justifiable. It follows from the constitutional complaint that the Applicant asks the Constitutional Court to assess constitutionality of the restriction of increase of lease payment.

Consequently, the Constitutional Court shall assess whether the restriction of increase of lease payments by 25 per cent in 2009 and 2010, insofar as it applies to land under residential houses was compliant with Article 105 of the Satversme.

11. The application contains a claim to assess compliance of the Contested Norm with Article 105 of the Satversme. However, it follows from the application that, in fact, compliance with the first and the third sentence of Article 105 of the Satversme is

assessed, namely, that “Everyone has the right to own property. Property rights may be restricted only in accordance with law”.

12. In the Judgment of the Constitutional Court in the case No. 2008-36-01, the Court assessed restriction of the property right of the applicant and concluded that the former wording of particular contested norms did not comply with Article 105 of the Satversme.

The Applicant of the present case indicates in the constitutional complaint that the Judgment in the case No. 2008-36-01 has not been observed, and her fundamental rights are still being infringed at the same amount. The summoned persons, too, namely, the Ombudsman and Mr. J. Rozenfelds indicate that the Judgment in the case No. 2008-36-01 regarding Para 40 of Transitional Provisions of the Law on Privatization of Residential Houses and Para 6 of Transitional Provisions of the Law on Land Reform in the Cities has not been observed, and infringement of the rights of the Applicant has not been eliminated (*see: case materials, Vol. 1, pp. 159, 172 and 173*).

Consequently, the Constitutional Court shall assess whether the infringement of the rights of the Applicant has or has not been eliminated, as well as consider how legal situation has changed since adoption of the Contested Norms, whether the Judgment in the case No. 2008-36-01 has been fully observed, and whether the Contested Norms comply with the constitutionality criteria established in the case-law of the Constitutional Court. The Constitutional Court indicates that conclusions made in the Judgment in the case No. 2008-36-01 shall be applicable to the present case.

12.1. The Constitutional Court has already concluded that the regulatory framework applying to increase of land lease payments (in per cents) does restrict the rights of an owner of a land plot (*see: Judgment of 15 April 2009 by the Constitutional Court in the case No. 2008-36-01, Para 10*).

Consequently, the Contested Norm establish restriction of the fundamental rights established to the Applicant in Article 105 of the Satversme.

12.2. Article 105 of the Satversme provides for peaceful enjoyment of property right, as well as the possibility to restrict the use of property in the interests of the society.

Property rights may be restricted but only after verifying whether the restriction is valid, namely, whether:

1) it has been determined by the law;

2) it has a legitimate objective;

3) it is proportional with its legitimate aim (*see: Judgment of 20 May 2002 by the Constitutional Court in the case No. 2002-01-03, and Judgment of 19 November 2009 in the case No. 2009-09-03, Para 12*).

The restriction of the fundamental rights has been established by law, namely, the Contested Norms were included into the Law on Land Reform in the Cities and the Law on Privatization of Residential Houses. The present case contains no materials questioning the fact that the Contested Norms would have been adopted according to proper procedure.

Consequently, the restriction of the property right has been established by law.

12.3. Circumstances and arguments why it is needed shall be the basis for any restriction of fundamental rights, namely, the restriction is determined because of significant interests – the legitimate aim (*see: Judgment of 22 December 2005 by the Constitutional Court in the case No. 2005-19-01, Para 9*). This is the institution that has adopted the contested act, namely, the Saeima, that is committed to refer to and to substantiate the legitimate aim of such restriction in the proceedings of the Constitutional Court.

In its reply, the Saeima provides explanations similar to those presented in its reply in the case No. 2008-36-01, i.e., the aim of the contested norms is protection of the rights of owners of flats and provisions of welfare of the society (*see: Judgment of 15 April 2009 by the Constitutional Court in the case No. 2008-36-01, Para 12*).

The Applicant does not agree with the above mentioned opinion and indicates that the only interests that were assessed by the Saeima when elaborating and adopting the Contested Norms were only those of the State and local government budgets. It was also indicated in the constitutional complaint that the aim of land lease payment directly

follows from the Contested Norm, i.e. to protect interests of owners of privatized objects during property reform (*see: Case materials, Vol. 1, pp. 10 – 11*).

The Constitutional Court does not share the opinion of the Applicant that the Contested Norms would have been adopted based only on interests of the State and local government budgets. It can be concluded from an audio record of a meeting of the Saeima State Administration and Local Government Committee that the Contested Norms have basically been adopted with the purpose to protect owners of flats (*see: Case materials, Vol. 2, Appendix 1, and Transcripts of meetings of 8 October and 22 October 2009 of the 9th Saeima, www.saeima.lv/steno/Saeima9/091008/st0, consulted on 13 January 2011*).

Such intent of the Saeima is manifested in what has been indicated in the annotation of the draft law "Amendments to the Law "On Land Reform in the Republic of Latvia"", and that of the draft law "Amendments of the Law "On Privatization of State and Local Government Residential Houses"". Namely, the following has been indicated in both annotations: "In order to ensure lawful interests of owners of privatized flats, as well as to balance them with lawful interests of owners of a land plot, in the Reform Law it is necessary to establish restriction of minimum lease payment in respect to lease payment of the previous year, which would ensure that lease payment is increased gradually" (*see: Case materials, Vol. 1, pp. 50 – 87*).

Likewise, it has been indicated in the opinion of the Ombudsman that the legitimate aim of the Contested Norm was to protect owners of privatized objects from rapid increase of land lease payment (*see: Case materials, Vol. 1, pp. 159*).

Consequently, it can be concluded that the legitimate aim of the restrictions included in the Contested Norms is to protect the rights of other persons, namely, those of owners of flats.

12.4. The proportionality principle determines that – if the public power limits person's rights and lawful interests – a reasonable balance between the interests of the person and the state or public interests has to be taken into account. To evaluate whether the legal norm, adopted by the legislator, complies with the proportionality principle one has to ascertain:

first of all, if the means, used by the legislator are suitable for achieving the legitimate objective;

secondly, if such an activity is required, i.e., if it is not possible to attain the objective by other means, which would less limit the rights and legal interests of an individual;

thirdly, if the activity of the legislator is proportionate or adequate, i.e., if the benefit, obtained by the society, is greater than the loss incurred to the rights and lawful interests of an individual.

If, after evaluating the legal norm, it is acknowledged that it does not comply with even one of the above criteria, then it shall be considered as not being in conformity with the principle of proportionality and illegitimate (*see: Judgment of 19 March 2002 by the Constitutional Court in the case No. 2001-12-01, Para 3.1 of the Concluding Part*).

12.4.1. In the Judgment in the case No. 2008-36-01, the Constitutional Court established that the Contested Norms are appropriate for reaching of legitimate aim (*see; Judgment of 15 April 2009 by the Constitutional Court in the case No. 2008-36-01, Para 14*).

The Constitutional Court holds that, in the present case, there is no obvious causal relation exists between the Contested Norms and the legitimate aim. Namely, the Contested Norms restricted increase of lease payment (calculated in per cents) in respect to previous year, and this resulted in gradual increase of land lease payments of owners of flats in multi-storied houses at least in 2009 and 2010.

Consequently, the Contested Norms are appropriate for reaching the legitimate aim.

12.4.2. The restriction of fundamental rights determined in the contested norm is proportionate only if there are no other means, which are as effectual and by choosing them the fundamental rights will be restricted in a lesser degree. When assessing whether the legitimate aim may be reached in a more lenient way, the Constitutional Court takes into consideration that a more lenient means are not any means, but only such by which the aim may be reached in the same quality (*see: Judgment of 13 May 2005 by the Constitutional Court in the case No. 2004-18-0106, Para 19 of the concluding part*). The

Constitutional Court has reiterated that it is not committed to assessing insofar alternative solutions would be more appropriate for solution of the situation (*see, e.g.: Judgment of 8 March 2006 by the Constitutional Court in the case No. 2005-16-01, Para 15.8, and judgment of 13 February 2009 in the case No. 2008-34-01, Para 22*).

However, it falls within the jurisdiction of the Constitutional Court to investigate whether, when restricting fundamental rights of a person or a group of persons, the legislator has properly assessed whether there exist other alternative measures that would restrict the fundamental rights of persons established in the Satversme at a lesser extent.

The Applicant indicates that the legislator has failed to assess alternative measures that would restrict the rights of a person at a lesser extent and that would also ensure reaching of the legitimate aim. Likewise, the legislator has failed to observe the Judgment in the case No. 2008-36-01 and has failed to prevent infringement of fundamental rights of the Applicant (*see: Case materials, Vol. 1, pp. 12*).

In the Judgment in the case No. 2008-36-01, the Constitutional Court assessed constitutionality of four legal norms, namely, restrictions to increase of the amount of lease payment (in per cents) established in the Law on Land Reform in the cities and the Law on Privatization of Residential Houses (Section 12 (2) and Section 54 (2) respectively), as well as the amount of lease payment established in transitional provisions of the above mentioned laws (Para 7 and Para 40 respectively) in respect to the previous year. The Constitutional Court concluded in relation to the norms of the basic texts of the law that exist two alternative measures, by means of which it would be possible to reach the legitimate objective by restricting the rights of land owners at a lesser extent, and consequently, the above mentioned norms fail to comply with Article 105 of the Satversme (*see: Judgment of 15 April 2009 by the Constitutional Court in the case No. 2008-36-01, Para 15.3*).

The Constitutional Court also indicated that norms of the basic texts of the above mentioned laws are mutually related with norms of their transitional provisions. Since the contested norms included in transitional provisions cannot be considered separately from other contested norms, the contested norms of transitional provisions neither comply with the principle of proportionality. It cannot be recognized in the context of the contested norms of transitional provisions that the legislator would have considered the ways hot to

establish a fair balance between the interests of the land owners and those of the owners of residential houses. Likewise, it was concluded that "the legislator, when trying to prevent substantial increase of lease payment, has not considered the possibility to apply measures that would restrict the rights of the land owners at a lesser extent" (*see: Judgment of 15 April 2009 by the Constitutional Court in the case No. 2008-36-01, Para 16.1 and 16.2*).

Consequently, it is necessary to investigate whether the legislator has observed what has been established in the Judgment in the case No. 2008-36-01 and has adopted such regulatory framework that would restrict the property right of land owners at a lesser extent.

13. It can be concluded form the draft laws submitted by the Cabinet of Ministers, namely, the draft law "Amendments to the Law "On Land Reform in the Cities of the Republic of Latvia"" and the draft law "Amendments to the Law "On Privatization of State and Local Government Residential Houses"" that it was suggested to include, into the Contested Norms, a compulsory restriction to increase of land lease payment at the amount of 50 per cent. Namely, it was suggested to supplement Para 7 of Transitional Provisions of the Law on Land Reform in the Cities by third sentence in the following wording: "If the lease payment of a plot of land has been established in accordance with the procedure specified in Section 12 ($2.^1$) of this Law, the lease payment of a plot of land in 2009 and 2010 may not exceed the amount of the lease payment of the plot of land calculated for the previous year by more than 50 per cent."

However, it was suggested to establish the following wording of Para 40 of Transitional Provisions of the Law on Privatization of Residential Houses: "The lease payment of a plot of land for an owner of the privatized apartment and artist's workshop, which has been specified in conformity with the procedures specified in Section 54, Paragraph two, first sentence of this Law, in 2009 and 2010 may not exceed the amount of the lease payment of the plot of land calculated for the previous year by more than 50 per cent." (*see: Case materials, Vol. 1, pp 48 and 85*).

It follows from the materials furnished by the Saeima National Economy, Agriculture, Environmental and Regional Policy Committee and the Saeima State

Administration and Local Government Committee that, when discussing the draft laws, the Saeima commissions supported the suggestion of the Saeima member Mr. Juris Sokolovskis and thus the figure "50" mentioned in the draft laws was substituted by the figure "25". No substantiation for such action of the Saeima can be found in minutes of the meetings of either of the committees (*see: Case materials, Vol. 1, pp. 54 – 64 and 96-99*), and it neither follows from the reply of the Saeima or the supplement thereto.

The Saeima adopted the increase of lease payment at the amount of 25 per cent in respect to the previous year, as supported by the Committee. Consequently, after coming into force of the Contested Norms, the infringement of the rights of the Applicant continued at the same amount as before adoption of the Judgment in the case No. 2008-36-01. For instance, lease payment per month that was established pursuant to the Contested Norms, in November and December 2009 was identical to that of other ten months of the same years.

13.1. The Saeima indicates that, in the Judgment in the case No. 2008-36-01, the Court assessed constitutionality of the contested norms of the particular case, and the Constitutional Court did not express its attitude towards the content of these norms.

The Constitutional Court cannot recognize the above mentioned opinion of the Saeima as grounded. It has been *expressis verbis* established in Para 16 of the Judgment in the case No. 2008-36-01 that the increase of lease payment by 25 per cent if compared to the previous year is not proportional and the legislator shall be committed to consider alternative solutions that would restrict the rights of land owners at a lesser extent (*see: Judgment of 15 April 2009 by the Constitutional Court in the case No. 2008-36-01, Para 16*). Likewise, it can clearly be concluded from the draft laws "Amendments to the Law "On Land Reform in the Cities of the Republic of Latvia"" and "Amendments to the Law "On Privatization of State and Local Government Residential Houses"" elaborated by the Cabinet of Ministers and Submitted to the Saeima that, according to what has been established in the Judgment in the case No. 2008-36-01, it is necessary to establish another increase (calculated in per cents) of land lease payment in respect to the previous year in order to restrict the rights of land owners at a lesser extent (*see: Case materials, Vol. 1, pp. 49 – 53 and 86 – 90*).

13.2. It follows from the Saeima reply and supplements thereto that the following solutions can be regarded as less restrictive measures that have been included into the Law on Land Reform in the Cities and the Law on Privatization of Residential Houses after the adoption of the Judgment in the case No. 2008-36-01: first, to establish lease payment at the amount of six per cent thus replacing the previous five per cent, and secondly, a stipulated duty of owners of flats in multi-storied residential houses to compensate immovable property tax to land owners.

The Constitutional Court holds that amendments mentioned in the context of the Contested Norms cannot be regarded as such alternative measures that would restrict the rights of the Applicant at a lesser extent. The fact that lease payment would be limited to the amount of six per cent does not affect application of the Contested Norms, whilst the latter establish restriction of increase of lease payment in respect to the previous year. In this light, the amount of lease payment established in the context of the law is of no importance because the possibilities of application thereof were restricted by the Contested Norms included in Transitional Provisions of the Law.

Transfer of the duty to pay immovable property tax to owners of privatized flats did not affect the extent of lease payment applicable to the Applicant. Such conclusion follows from calculations indicated in the constitutional complaint, validity of which the Saeima has not contested (*see: Case materials, Vol. 1, pp. 8*).

Consequently, the Constitutional Court agrees to what has been indicated by the Ombudsman and Mr. J. Rozenfelds, namely, that the Contested Norms only formally amended the Law on Land Reform in the cities and the Law on Privatization of Residential Houses because the situation was regulated in the same way it was regulated before the Contested Norms were adopted (*see: Case materials, Vol. 1, pp. 159, 172 and 173*).

13.3. The Saeima indicates that the aim of the Contested Norms is to prevent the situation that would permit land owners to gain non-proportional profit, whilst the updated cadastre value of immovable property has not yet been balanced. In that period, owners of flats had the legitimate trust into the fact that transition to the new regulatory framework would be lenient.

The Constitutional Court, however, agrees with the opinion of the Applicant that the decision to update cadastre values of immovable property in 2008 has been adopted mainly based on political considerations. However, political decisions, too, are restricted by the Satversme; therefore the limits of action of the legislator, when adopting decisions in the field of social rights, must comply with norms and principles of the Satversme (*see: Judgment of 1 December 2010 by the Constitutional Court in the case No. 2010-21-01, Para 13.2*).

If the decision to update cadastre values of immovable properties would have been adopted earlier, it is most probable that the increase of land lease payment would not be that fast and cadastre value of immovable property would have sooner been approximated with the market value. Even taking into account the nature of the update cadastre value of immovable property, the legislator had the duty to fairly balance interests of owners of privatized objects and those of land owners. Increase of cadastre value of immovable property as such cannot serve as justification for a non-proportional restriction of the fundamental rights of any part of the society.

It can be concluded from the case materials that the leas payment received by the Applicant in 2010 was 286 lats and 43 santimes, which is about 0.73 percent of the cadastre value of the Land Plot. The personal income tax at the amount of 26 percent was withdrawn from the above mentioned sum. Taking into account the above mentioned amount of lease payment, the cadastre value of the Land Plot would be covered by means of the lease payment within aboutn137 years.

It can be concluded form the Annotation of the draft laws ““Amendments to the Law “On Land Reform in the Cities of the Republic of Latvia”” and “Amendments to the Law “On Privatization of State and Local Government Residential Houses”” that the amount of lease payment at the amount of 6 per cent per year has been planned in order to reimburse, by means of lease payments, the full value of a land plot within 16 years. Such timeframe approximately complies with the term of mortgage for the purchase of immovable property (*see: Case materials, Vol. 1, pp. 52, 53, 89 and 90*).

13.4. It has been indicated in the supplement of the Saeima reply that a land owner who receives lease payments in the frameworks of compulsory lease, and a land owner who freely lets his or her immovable property cannot enjoy equal or even comparable

circumstances (*see: Case materials, Vol. 1, pp. 157*). Mr. J. Rozenfelds has concluded in his opinion that the value of immovable property burdened with the compulsory lease right is lower than that of unladen immovable property (*see: Case materials, Vol. 1, pp. 174*).

Legal acts regulating establishment of cadastre value of immovable property do not establish the possibility to correct value of a particular immovable property based on the fact whether buildings (constructions) pertaining to another person are or are not located on a particular land plot. However, regulatory frameworks of such acts cannot serve as the basis for the conclusion that the value of immovable property burdened by compulsory lease legal relations is the same as that of unladen immovable property. The difference between values of the above mentioned types of immovable properties follows frm the fact that freedom of action of owners in the case of compulsory lease is more restricted than that of owners who own unladen property. Consequently, the Constitutional Court draws attention to the necessity to assess criteria for establishing cadastre value in respect to this issue.

Although compulsory lease legal relations is a different kind of lease relationships that fulfils special functions; still it is necessary in such cases to observe adequate proportion of lease payment under the circumstances of a free market. The summoned person Mr. J. Rozenfelds indicates that, in a normal economical situation, market value of immovable property is equal with lease payments for a particular immovable property of approximately five to ten years. However, the income of 0.73 per cent of the cadastre value of immovable property per year obviously fails to comply with market prices (*see: Case materials, Vol. 1, pp. 173*). It has also concluded in the literature on Law that, within a certain timeframe, lease payments should cover the value of a particular property. Repayment of investments is calculated based on the value of invested capital (investments). In an ordinary situation of a free market, the capital return based on the investment risk level can be effected within seven to thirteen years (*see: Bērtaitis S. Nomas maksas noteikšana zemes piespiedu nomas gadījumā // Jurista Vārds, 19 May 2009, No. 20, pp. 4*).

Taking into account the aforesaid, the Contested Norms shall be recognized as non-compliant with the first and the third sentence of Article 105 of the Satversme.

14. Having established non-compliance of the Contested Norms with a legal norm of a higher legal force, it is not necessary to assess its compliance with Article 1 of the Satversme.

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

In specifications to the constitutional complaint, the Applicant has asked the Constitutional Court to recognize the Contested Norms as null and void as from the date of adoption thereof.

The Contested Norms were in force for a considerably short time, i.e. one year and two months; moreover they have already lost their validity. The Constitutional Court Law does not prohibit the Constitutional Court to decide whether, in the particular case, it is possible to recognize the Contested Norms as null and void as from the date of adopting them.. However, if cancelling of the Contested Provision from the date of passing or coming into force thereof could cause, for instance, a considerable violation or threat of the State (society) interests, then usefulness of continuing legal proceedings shall be assessed during preparation of the decision of the Constitutional Court (*see: Judgment of 3 April 2008 by the Constitutional Court in the case No. 2007-23-01, Para 6*).

The Contested Norms are applied not only to Land Owners. They are applied also to the object located on a particular land plot and, in the particular case, to owners of privatized objects. The Contested Norms have been adopted with the purpose to equalize interests of the above mentioned groups of persons. Should the Contested Norms be recognized as unconstitutional from the date of adoption thereof, the Applicant would have the right, as from 1 November 2009, to request lease payment at the amount of 6 percent of the cadastre value of the Land Plot pursuant to Section 12 ($2.^1$) of the Law on Land Reform in the Cities and Section 54 (2) of the Law on Privatization of Residential Houses. Taking into account the cadastre value of the Land Plot owned by the Applicant in 2009 and 2010 and the lease payment in November and December 2009, as well as

that of 2010, she could request additional lease payment at the amount of approximately 2400 lats. Such sum would increase the sum lawfully due to the Applicant by more than seven times.

Should the Contested Norms be recognized as non-constitutional, the task of the Constitutional Court is to prevent such situation that the retroactive force of the present judgment would considerably infringe the rights of other persons. Namely, the task of the Court is to balance the different interests of persons as far as possible. The rights of land owners as well as those of owners of privatized objects shall be protected at equal extent.

It follows from the Saeima reply that the regulatory framework of the Contested Norms has been established only as a temporary solution. However, many persons were affected during the period of validity of the Contested Norms, namely, land owners and owners of privatized objects. The Constitutional Court Law authorizes the Constitutional Court to decide important legal consequences of its judgments by itself. Namely, the Law not only grants authorisations to the Constitutional Court but also makes it responsible for its judgments – so that they ensure legal stability, clarity and peacefulness in the public sphere (*see: Judgment of 21 December 2009 by the Constitutional Court in the case No. 2009-43-01, Para 35.1*).

In its judgments, the Constitutional Court has several times assessed relationships similar to those considered in the present case. In such cases, the Constitutional Court has not conferred any retroactive force to its judgments, whist it has declared contested norms as null and void as from a particular date in the future. It has been particularly emphasized that, solving legal issues related with denationalization and restoration of property right in the context of elimination of consequences of the occupation, immediate recognition of the Contested Norms as invalid and repeal thereof would constitute even greater restriction of the basic rights (*see: Judgment of 8 March 2006 by the Constitutional Court in the case No. 2005-16-01, Para 20, and judgment of 15 April 2009 in the case No. 2008-36-01, Para 18*).

Taking into account the aforesaid, as well as the practical considerations related with retroactive administration of compulsory lease payments, the Constitutional Court holds that recognition of the Contested Norms as null and void as from the date of

adoption thereof would burden owners of privatized objects in a non-proportional manner; therefore the judgment cannot be conferred a retroactive force.

Consequently, the Constitutional Court cannot declare the Contested Norms as null and void as from the date of adoption thereof.

The Constitutional Court

Based on Article 30 – 32 of the Constitutional Court Law,

h o l d s :

Para 7 of Transitional Provisions of the Law "On Land Reform in the Cities of the Republic of Latvia" insofar as it applies to land under residential apartment houses and Para 40 of Transitional Provisions of the Law "On Privatization of State and Local Government Residential Houses" fails to comply with Article 1 and Article 105 of the Satversme of the Republic of Latvia.

The Judgment is final and not subject to appeal.

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

Presiding Judge G. Kūtris

Translated by Egija Labanovska, translator of the Constitutional Court