THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

JUDGMENT
ON BEHALF OF THE REPUBLIC OF LATVIA
Riga, 28 May 2009
in Case No. 2008-47-01

The Constitutional Court of the Republic of Latvia, composed of the Chairman of the Court hearing Gunārs Kūtris, Justices Kaspars Balodis, Juris Jelāgins, Kristīne Krūma and Viktors Skudra,

based on the application of the limited liability company "Vegan" (hereinafter – the Applicant),

according to Article 85 of the Satversme (Constitution) of the Republic of Latvia and Article 16 1st indent , Article 17 (1) 11th indent of the Constitutional Court Law,

on 28 April 2009, in writing, examined the case

"On Compliance of the Words "not Later than within 60 Days" of the Third Part of Section 32 of the Law "On Prevention of Laundering of the Proceeds from Crime and Financing of Terrorism" with Article 105 of the Satversme (Constitution) of the Republic of Latvia".

The Facts

1. On 17 July 2008, the Saeima (Parliament) adopted the Law "On Prevention of Laundering of the Proceeds from Crime and Financing of Terrorism" (hereinafter – the

Prevention Law), and on 30 July 2009 it was proclaimed by the State President. On 13 August 2009, the abovementioned law came into force.

According to Section 3 of the Prevention Law, the persons subject to the Law are persons performing economic or professional activities, credit institutions and financial institutions included (hereinafter – Person subject to the Law).

Under the first part of Section 50 of the Prevention Law, the Office for the Prevention of Laundering of Proceeds Derived from Criminal Activity of the General Prosecutor's Office of the Republic of Latvia (hereinafter – the Control Office) "there exists a specially established public institution that, pursuant to this Law, exercises control of unusual and suspicious transactions, and obtains, receives, makes records, processes, compiles, stores, analyses and provides to a pre-trial investigation institution, the Office of the Prosecutor and the court the information that may be used for the prevention, uncovering, pre-trial criminal proceedings or adjudicating money laundering, terrorist financing or an attempt thereof or other criminal offence related thereto.

The first, the second and the third part of Section 32 "Refraining from Executing a Transaction" of the Prevention Law provides the following:

"(1) The person subject to this Law shall take a decision to refrain from executing one or several linked transactions or debit operations of a particular type on the customer's account where the transaction is related or may be reasonably suspected of being related with money laundering or terrorist financing.

(2) The person subject to this Law shall notify the Control office of its refraining from executing a transaction without delay, not later than on the next business day in due course of Section 31 hereof.

(3) Not later than 60 days of receiving a report about refraining from executing a transaction, but in exceptional cases during an additional term that is established by the Prosecutor General or a specially authorised prosecutor as necessary for receiving the required information from a foreign country, the Control Office shall take one of the following measures:

1) issue an order to suspend the transaction or the particular debit operation on the customer's account where:

a) pursuant to Paragraph 3 of Article 4 of this Law, money or other funds are recognised as derived from criminal activity. In that case the transaction or the particular debit operation on the customer's account shall be suspended for the time indicated in the order, but no longer than for six months;

b) on the basis of information available to the Control Office there is a suspicion of committing a criminal offence, including that of money laundering or an attempt thereof. In that case the transaction shall be suspended for the time indicated in the order, but no longer than for 45 days.

2) notify in writing the person subject to this Law to the effect that a further refraining from executing the transaction is not motivated and shall be terminated;

3) not later than on the 60th day of receiving a report about refraining from executing a transaction, notify in writing the person subject to this Law of the additional term established by the prosecutor general or a specially authorised prosecutor referred to in Paragraph 3 hereof."

2. On 25 September 2008, the joint-stock company "Parex banka" informed the Applicant that, pursuant to the requirements of the first part of Section 32 of the Prevention Law, it has taken a decision to refrain from executing debit transactions on two accounts of the Applicant (*see: case materials, Vol. 1, pp. 5*). It has also been indicated in the letter that any further operations with these funds shall be managed by competent public authorities according to the procedures provided by law and within the term established, whilst, under Section 40 of the abovementioned law, banks will be exempted from liability for refraining from executing transaction.

On 29 September 2008, the Control Office received a report of the joint-stock company "Parex banka" regarding the decision to refrain from executing debit transactions on the Applicant's accounts (*see: case materials, Vol. 2, pp.1*).

On 20 October 2008, the limited liability company "Parex līzings un faktorings" informed the Applicant on unilateral cancelling of the agreement as from 28 October 2008 (*see: case materials, Vol. 1, pp.6*).

On 31 October 2008, the Control Office informed the joint-stock company "Parex banka" in writing that, when carrying out an in-depth analysis of the information acquired, it has not established any grounds for the Control Office to issue an order regarding the suspension of execution of debit transactions on the Applicant's accounts and transfer of the material to investigation institutions. Consequently, refraining from executing transactions should be ceased (*see: case materials, Vol. 2, pp.1*).

3. The Applicant holds that the words of the third part of Section 32 of the Prevention Law "not later than 60 days" (hereinafter – the Contested Norm) breaches the right established in Article 105 of the Satversme of the Republic of Latvia (hereinafter – the Satversme), namely, the right to own property because it authorizes the Person subject to the Law to take a decision regarding refraining from executing one or several linked transactions or debit operations of a particular type on the customer's account (hereinafter – refraining from executing transactions or debit operations). Moreover, neither the Prevention Law, nor other normative acts provide for any remedies that a person could apply to protect his or her rights.

The action of the Control Office within the time frame established in the Contested Norm is not related with consideration of usefulness or lawfulness. Neither the Control Office, nor the Bank becomes the responsible party even in the case when refraining from executing transactions or debit operations has been ungrounded or the order has not been timely issued by the Control Office.

If the Bank refrains from executing transactions for the period of 60 days, the right of the Applicant to operate with its property, i.e. to execute payments in accordance with agreements concluded and bills of business partners. Such situation causes substantial negative consequences for the Applicant that are apparent in the fact that, for example, sanctions in the case of failure to fulfil its

obligations within the established term, cancelling of agreements by the business partners and listing into the debtors register. In the case under review, the resources on the accounts of the joint-stock company "Parex banka" were necessary for the Applicant to fulfil its liabilities that it has undertaken regarding the limited liability company "Parex līzings un faktorings".

The Applicant indicates that, according to the Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering (hereinafter –Directive 91/308/EEC) and Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (hereinafter –Directive 2005/60/EC), refraining from executing transactions or debit operations can last only up to the moment when the information is transferred to the Control Office. Subsequent failure to execute debit operations shall be regarded as suspension of transaction that is permitted only based on an order of the Control Office.

Unlike the decision taken by the Person subject to the Law regarding refraining from executing transactions or debit operations, the order of the Control Office regarding suspension of execution of transactions or debit operations should be appealed against.

It was indicated in the opinion received from the Applicant after it got acquainted with the case materials of the Constitutional Court that, when assessing compliance of the Contested Norm with Article 105 of the Satversme, its compliance with Directive 91/308/EEC and Directive 2005/60/EC must also be assessed. The Applicant does not agree with the interpretation of the abovementioned directives provided by the Saeima and the Cabinet of Ministers and indicates that the Constitutional Court is the final judicial institution that has the duty, in the case if ambiguity, to ask the European Court of Justice to provide interpretation of the Community law in the form of a preliminary ruling.

The Applicant draws attention of the Constitutional Court to the fact that in the case under review the Bank has refrained from executing all transactions, including monthly transfers to the subsidiary company of the Bank. These

payments for the cars purchased in leasing had to be made each month, and it had not been executed for several times already. Previously these payments have not caused any doubts to the Bank. The Applicant holds that the Bank has unfairly blocked the resources on the account on its own initiative for its subsidiary company to be able to take advantage of the possibility to annul leasing agreements and take back the cars purchased in leasing and almost paid.

The Applicant emphasizes that the Law does not provide for the possibility to appeal against the decision of the Bank even in the case if it is evidently ungrounded. It neither provides for the possibility to demand indemnification of losses from the Bank. Consequently, the restriction of the fundamental rights established in the Contested Norm is not proportional although it has been provided by law and has a legitimate objective. It is possible to reach the legitimate objective with other measures that would restrict the rights of person at a lesser extent.

4. The institution that passed the Contested Act – the Saeima – holds that the Contested Norm complies with Article 105 of the Satversme and asks to reject the application.

It has been indicated in the reply that the Contested Norm comprises a restriction of property rights, however this restriction complies with the necessary criteria – it has been established by law, it has a legitimate objective and it complies with the requirements of proportionality.

According to the Saeima, the Contested Norm has a double nature. Firstly, it establishes the maximum term for taking a decision by thus protecting the person from time-consuming procedure. Secondly, a restriction to act with the property (for example, financial resources) until the decision is made follows from it.

It is stated in the reply that the property right has been restricted in the interests of the society by thus creating one of the preconditions for prevention of laundering of proceeds from crime and terrorism financing. Consequently, the restriction has a legitimate objective, which is security of the society.

The Saeima emphasizes that the principle of proportionality requires assessing other more lenient measures and selecting such solutions that would reach the legitimate objective at the same level. The requirements of the Contested Norm are related with requirements of other laws, especially normative acts regulating taxes. There are no other more lenient measures that would reach the legitimate objective with the same efficiency as the solution established in the Contested Norm.

The Saeima agrees with the interpretation of Section 24 of Directive 2005/60/EEC and provides the following explanation: if the interpretation offered by the Applicant were accepted, this would cause a situation when the credit institution should refrain from executing or debit operations only up to the moment when it reports to the Control Office on suspicious actions. Such interpretation would be absurd regarding activities for prevention of laundering of proceeds from crime and financing of terrorism. After the Control Office has received a report from the Person subject to the Law, the first needs a certain period of time and information to decide on the most adequate further action in accordance with law.

When assessing compliance of the Contested Norm with the requirements of proportionality, the Saeima indicates among the rest that, under the provisions of Section 32 of the Prevention Law, the Person subject to this Law (including a credit institution) shall take a decision to refrain from executing one or several linked transactions or debit operations of a particular type on the customer's account rather than all transactions on the customer's account.

5. The summoned parties in the case are the following: the Cabinet of Ministers of the Republic of Latvia, the Finance and Capital Market Commission, the Association of Latvian Commercial Banks, the Ombudsman of the Republic of Latvia, the General Prosecutor's Office, and the Control Office.

5.1. The Cabinet of Ministers holds that the Contested Norm complies with Article 105 of the Satversme. Although the Contested Norm contains

restriction of the fundamental rights enshrined in the abovementioned Article of the Satversme, it still has a legitimate objective – to ensure security of the society; whilst the restriction included therein is proportional with this objective.

When interpreting Article 105 of the Satversme in conjunction with Article 1 of the Protocol No. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) and referring to the judgment of the Constitutional Court No. 2002-01-03 and No. 2006-38-03, the Cabinet of Ministers holds that refraining by the Person subject to the Law, for the period of 60 days, to execute respective transactions or debit operations means control of customer's property in the meaning of Article 1 of the Protocol No. 1 of the Convention and Article 105 of the Satversme.

Referring to the Framework Decision 2001/500/JHA of 26 June 2001 of the Council of the European Union on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime, as well as Directive 2005/60/EC, the Cabinet of Ministers emphasizes that the restriction of the property right has been established not only by national law but also by European Union law. Refraining from executing transactions or debit operations serving as means for prevention of money laundering as provided in Section 32 of the Prevention Law complies with the international documents and recommendations, and an analogous system exist in all Member States of the European Union.

The Cabinet of Ministers holds that the objective of the restriction is ensuring of the security of the society. Refraining by the Person subject to the Law, for the period of 60 days, to execute respective transactions or debit operations ensures that the resources that are suspected, by the Person subject to the Law, to be proceeds from crime, would not be laundered during the time when the Control Office analyses the acquired information. The aim of the Contested Norm is to ensure a fair balance between the interests of a customer and those of the State, i.e. the duty to fight against laundering of proceeds from crime and financing of terrorism.

The Cabinet of Ministers emphasizes that the legitimate objective cannot be reached by other means that would restrict the fundamental rights of a person established in Article 105 of the Satversme at a lesser extent.

When assessing compliance of the restriction set forth in the Contested Norm with the requirements of proportionality, the Cabinet of Ministers indicates among the rest that the doubt expressed by the Person subject to the Law may not serve as sufficient grounds to refrain from executing transaction of the customer. This doubt must be grounded, namely, there must exist certain factual circumstances that clearly manifest connection of the customer with laundering of proceeds from crime or terrorism financing. Moreover, the Person subject to the Law can only take a decision about refraining from executing one or several linked transactions or debit operations of a particular type on the customer's account rather than all transactions on the customer's account in general.

5.2. The Finance and Capital Market Commission (hereinafter – the FCMC) agrees with the opinion expressed by the Saeima that the Contested Norm provides for a restriction of fundamental rights and it complies with the respective criteria – it is provided by law, it has a legitimate objective and it is not in breach of the principle of proportionality.

The FCMC indicates that the Person subject to the Law – a credit institution – is the very person that must initially assess whether there are doubts about possible connection of a transaction with money laundering. A credit institution might not have access to all information resources, whilst the Control Office has. Therefore there exists a risk that the transfer that may be reasonably suspected of being related with money laundering could turn out non-suspicious according to the information available to the Control Office.

The FCMC cannot see any other measures that would restrict the fundamental rights of other persons at a lesser extent and would equally ensure reaching of the objective of the Contested Norm, except for the possibility to provide in the law for a shorter term for the Control Office to take a decision. However, lack of such term of all is not permissible.

The FCMC admits that the Law contains no provision regarding appealing against an ungrounded or malicious decision issued by the Person subject to the Law, i.e. the credit institution. A person, however, has the right to address the Control Office by submitting a demand in accordance with the procedure established in the Law on Applications.

The FCMC emphasizes that, under the sixth part of Section 32 of the Prevention Law, the Control Office shall be entitled to issue an order to repeal the suspension of a transaction or a particular debit operation on the customer's account before the deadline set out in the initial order. A person as a participant of the particular legal relations acting in good faith has the right to prove his or her good will (to submit documents and materials, to provide explanations, etc.) by thus ensuring procedurally efficient decision-making process by the Control Office (the term of the decision-making included).

The FCMC indicates that Section 40 of the Prevention Law does not provide for an unconditional exemption of the Person subject to this Law from liability only because he or she has refrained from executing transactions or debit operations and submitted a report to the Control office. The effective regulation provides that the abovementioned activities shall be carried out in the case of suspicion (if suspicion exists according to good faith). Otherwise, a person can protect his or her rights and interests according to both, the civil procedure (by recovering losses) and the criminal procedure (in the case if features of a criminal delinquency are present).

5.3. The Association of Latvian Commercial Banks holds that the Contested Norm, based on the opinion of commercial banks as a Person subject to the Law and that of the persons, regarding whom commercial banks take the decision to refrain from executing transactions or debit operations, complies with Article 105 of the Satversme. The Association indicates, however, that there exist other measures that would restrict the fundamental rights of a person at a lesser extent and ensure reaching of the legitimate objective of the Contested Norm

provided by the Saeima in its reply. This measure is, for instance, a shorter term established by law.

Referring to the information that the Association of Latvian Commercial Banks has received from separate members of the European Banking Federation, the Association indicates that in many European States there are short terms provided by law. For example, the maximum time, within which a State finance control institution should take a decision, constitutes one working day in France and Hungary (for domestic transactions), two working days in Germany, Slovakia and Bulgaria and five working days in Lithuania and Switzerland. However, in other states this term is longer, for instance – three months in Luxembourg, whilst no maximum time is established in Estonia and Cyprus.

5.4. The Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) indicates that Section 32 of the Prevention Law stipulates restrictions for executing transactions. When interpreting Article 105 of the Satversme in conjunction with Article 1 of the Protocol No. 1 of the Convention, as well as taking into consideration the conclusions made in the judgments of the Constitutional Court, the Ombudsman concludes that, in the meaning of Article 105 of the Satversme, Section 32 of the Prevention Law establishes restrictions for the property right. This right, however, is not absolute and it can be restricted by means of certain conditions, namely, if a restriction is provided by law, then it has a legitimate objective and is proportional.

The Ombudsman holds that the restriction included in the Contested Norm is provided by law and it has a legitimate objective, which is to protect the rights and interests of other persons, as well as the society in general – it complies with the principle of proportionality.

When assessing compliance of the restriction established in the Contested Norm with the principle of proportionality, the Ombudsman indicates among the rest that only those resources are restricted that are meant for specific transactions. The person is allowed to freely use the rest of his or her resources. Moreover, a transaction cannot be ceased in any case but only under certain

conditions, namely, the Person subject to the Law must have information at its disposal regarding the illicit nature of the transaction.

When answering to the question set by a justice of the Constitutional Court – whether the respective person has any remedies at his or her disposal to protect his or her rights during the period when the Person subject to the Law refrains from executing transactions or debit operations but the Control Office has not yet taken the decision, the Ombudsman indicates that the legislator has provided for supervision by the public prosecutor's office over the Control Office. Moreover, the issue regarding the existence of an efficient complaint mechanism is not related with the Contested Norm.

5.5. The General Prosecutor's Office agrees with the opinion expressed by the Saeima in its reply that the restriction of the fundamental rights of a person has a legitimate objective and it complies with Article 105 of the Satversme.

The General Prosecutor's Office emphasizes that, providing the Control Office with a sufficient time period to obtain exhaustive information and assess it, this ensures taking of a grounded and just decision and prevents all undue interference with entrepreneurship and activities of persons with their property. Upon receiving a report from the Person subject to the Law regarding its decision to refrain from execution of transactions or debit operations, the Control Office exercises the right conferred thereto by the second part of Section 51 Indent 4 of the Prevention Law and requests, from the Person subject to the Law, information necessary for assessment of the report. The Person subject to the Law requests, on its turn, all information from the customer. Thus the customer, by means of an active involvement, may facilitate the procedure of clarifying actual circumstances by providing, to the Person subject to the Law, grounded information regarding lawfulness of the origin of money and other resources. Then the duty of the Person subject to the Law is to transfer this information to the Control Office.

If the customer holds that the Person subject to the Law has taken an ungrounded or malicious decision regarding refraining from executing transactions or debit operations, then he or she can protect the rights in the supervisory and control authorities of the Person subject to the Law. The list of these control authorities is provided in Section 45 of the Prevention Law. Article 46 of the same Law provides for duties of supervisory and control authorities.

The General Prosecutor's Office informs that after 13 August 2008, the Prosecutor's Office has received two complaints from entrepreneurs about activities of credit institution regarding refraining from execution of transactions or debit operations on the accounts of these customers. The complaints were sent to the FCMC. The FCMC recognized the activities of the credit institutions as compliant with the requirements of law.

On the other hand, in the case if the customer holds that the Control Office, after the receipt of a report by the Person subject to the Law, defers taking of a decision, he or she can protect his or her rights at a public prosecutor's office.

5.6. The Control Office holds that the Contested Norm complies with Article 105 of the Satversme.

Referring to several international conventions whereto Latvia is a party, as well as to Directive 2005/60/EC, the Control Office indicates that the Contested Norm has a legitimate objective.

The Control office emphasizes that everyone has the right to a lawful property, whilst no person has the right to own proceeds from crime. From all rights, priority is conferred to the right of the entire or at least a part of the society to protection of its substantial interests, including security. The State has the right to restrict the use of unlawful property by adopting statutory procedures, criteria and terms to ensure that the Persons subject to the Law could efficiently determine the kind of property and the ways of its use (for instance, in the case of terrorism financing) based on the origin and lawfulness of the property.

When analysing the terms established in the Law "On Value Added Tax" and 22 December 2008 Cabinet of Ministers Regulations No. 1092 "Procedures

for providing information by the State and local government authorities to the Office for the Prevention of Laundering of Proceeds Derived from Criminal Activity", as well as its judicial and technical possibilities to ensure information exchange with foreign states, the Control Office indicates that it is not possible to reach the legitimate objective by other measures that would restrict the rights of a person at a lesser extent.

The Control Office indicates that the action of the customer plays a great role in blocking funds (this is understood as refraining by the Person subject to the Law from executing transactions or debit operations and an order issued by the Control Office regarding suspending of a transaction) because this can substantially implement further processes.

The Constitutional Court holds that:

6. The case under review was initiated based on the application submitted by a legal person to prevent such violation of its fundamental rights established in Article 105 of the Satversme that has been caused by a credit institution when it refrained from executing debit operations on Applicant's accounts.

The Constitutional Court has reiterated that the notion "to violate" has been incorporated into the Law to dissociate the constitutional claim from the claim for general benefit (*see: Judgment of the Constitutional Court of 22 February 2002 in the case No. 2001-06-03, Para 2.4 of the Concluding Part*). If the Contested Norm applies to a wide scope of different situations, the Constitutional Court should concretize the extent, to which it assesses the Contested Norm.

In the case under review, it is necessary to distinguish between the Persons subject to the Law to whom the Contested Norm applies. The Contested Norm *expressis verbis* applies to any Person subject to the Law. Under the first part of Section 3 of the Prevention Law, this Law shall apply to persons engaging in economic or professional activities. The range of Persons subject to the Law is very wide. It includes representatives of different areas, including persons, whose

professional activities are regulated by special laws. These are, for instance, credit institutions and financial institutions, sworn auditors and commercial companies of sworn auditors, sworn notaries, sworn advocates, other independent legal professionals.

The laws provide for a different institutional status for each of these persons. Likewise they set forth specific requirements for the particular person to be able to engage in the respective area. **The Constitutional Court shall assess the Contested Norm only in relation to credit institutions and financial institutions.**

7. 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 right 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."

7.1. It is accepted in the case-law of the Constitutional Court that, when, when clarifying the content of the norms of human rights included in the Satversme, it is necessary to take into consideration the interpretation that is used when applying respective international norms regarding human rights.

Article 105 of the Satversme shall first of all be interpreted in conjunction with Article 1 of the Protocol No. 1 of the Convention (*see, e.g.: Judgment of 20 May 2002 of the Constitutional Court in the case No. 2002-01-03, Concluding Part and Judgment of 26 April 2007 in the case No. 2006-38-03, Para 10*).

Article 1 of the Protocol No. 1 of the Convention provides:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of

property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

7.2. It has been concluded in the case-law of the European Court of Human Rights that this Article includes three separate norms: first, the first sentence of the Article provides for the right to peacefully enjoy one's possessions. Secondly, the second sentence of the Article enshrines a prohibition to deprive a person of his possessions, whilst in the third sentence of the Article it is admitted that the State shall have the right to control the use of property in accordance with the general interest [*see, e.g.: judgments of the European Court of Human Rights in the following cases: AGOSI v. the United Kingdom, 24 October 1986, para 48, Series A no. 108; Air Canada v. the United Kingdom, 5 May 1995, para 29 and 30, Series A no. 316-A; Butler v. the United Kingdom (dec.), no. 41661/98, ECHR 2002-VI; Saccoccia v. Austria, 18 December 2008, no. 69917/01, para 85 and 86]*.

When examining the case on seizure of assets found in a safe of a bank with the purpose to fulfil the punishment of confiscation, the European Court of Human Rights recognized that in the meaning of Article 1 of Protocol No. 1 of the Convention such seizure falls to be considered as the so-called third rule, relating to the State's right to enforce such laws as it deems necessary to control of the use of property in accordance with the general interest (*see: Judgment of the European Court of Human Rights in the case Saccoccia v. Austria, 18 December 2008, no. 69917/01, para 86*).

When interpreting Article 105 of the Satversme with the abovementioned norm of the Convention, the Constitutional Court has established that Article 105 of the Satversme provides for a peaceful enjoyment of property right and the right of the State to restrict the use of property in accordance with the general interest (*see: Judgment of 20 May 2002 of the Constitutional Court in the case No. 2002-01-03, Concluding Part*).

7.3. The European Court of Human Rights has indicated that the notion "property" in the meaning of Article 1 of Protocol No. 1 of the Convention has an independent meaning. When analysing the notion "property" included in Article 105 of the Satversme, the Constitutional Court has concluded that property right includes the right to gain all possible benefit from property, including income and fruits (*see, e.g.: Judgment of 20 May 2002 of the Constitutional Court in the case No. 2002-01-03, Judgment of 12 November 1008 in the case No. 2008-05-03, Para 7 and Judgment of 15 April 2009 in the case No. 2008-36-01, Para 10*), as well as the right of the owner of property to use his possessions in a manner that would ensure gaining greatest economic benefit possible (*see, e.g.: Judgment of 26 April 2007 by the Constitutional Court in the case No. 2006-38-03, Para 11*).

The first part of Section 32 of the Prevention Law provides that in the cases provided in this Law the Person subject to the Law shall take a decision to refrain from executing one or several linked transactions or debit operations of a particular type on the customer's account. Although the abovementioned norm *per se* does not provide for forfeiture of property, it prohibits the owner of the property to peacefully enjoy his property, including executing such transactions or debit operations that a person considers as the most favourable way of the use of property.

In the case under review, there exists restriction of the fundamental rights established for the Applicant by Article 105 of the Satversme because it cannot use the resources on bank accounts in a manner that would ensure the greatest possible economic benefit in accordance with its interests and liabilities.

Consequently, the Constitutional Court agrees with the opinion expressed by the Saeima, the Cabinet of Ministers, and the Ombudsman that **refraining by the Person subject to the Law from executing transactions or debit operations as provided for in Section 32 of the Prevention Law for the time period established by the same Law shall be regarded as restriction of the fundamental rights established in Article 105 of the Satversme and control**

of property for general interest in the meaning of Article 1 of Protocol 1 of the Convention.

8. The Control Office has provided an opinion that Article 105 of the Satversme confers a person the right to own property with lawful origin only, whilst it does not confer the right to proceeds from crime.

If the opinion that Article 105 of the Satversme does not apply to such property of a person that are suspected, by the Person subject to the Law or the Control Office, of being related with money laundering were grounded, the Applicant would not have the right to submit an application to the Constitutional Court and the case would be terminated.

Consequently, the Constitutional Court will assess whether the resources, to which the third part of Section 32 of the Prevention Law applies, shall be regarded as property in the meaning of Article 105 of the Satversme even in the case if the Person subject to the Law or the Control Office (reasonably) suspects these resources of being unlawfully derived and has doubts about the lawfulness of the transactions carried out by means of these resources.

The first part of Section 4 of the Prevention Law establishes the following: "The proceeds shall be recognised as derived from criminal activity where: 1) a person, directly or indirectly, acquires ownership or possession of them as a result of a criminal offence, 2) in other cases specified by the Criminal Procedure Law.

The second part of Section 4 of the Prevention law sets forth that the notion "proceeds from criminal activity" shall mean "criminally acquired property and financial resources" as used in the Criminal Procedure Law. Moreover, the third part of the same Section provides that "in addition to the property and resources as set out in the Criminal Procedure Law, the proceeds from criminal activity shall also mean the funds that belong to a person or that are, directly or indirectly, controlled by a person who:

1) is included in the list of persons who are suspected of being involved in terrorist activities that is compiled by countries or international organisations recognised by the Cabinet of Ministers;

2) may reasonably be suspected of the execution of or participation in a terrorist-related criminal offence on the basis of information available to bodies performing investigatory operations, pre-trial investigation institutions, the Office of the Prosecutor or the court.

Consequently, proceeds from criminal activities shall be the resources that are recognized as such in accordance with the Criminal Procedure Law and in special cases established in the third part of Section 4 of the Prevention law. The fifth part of Section 4 of the Prevention Law provides that "the proceeds from criminal activity shall be recognised as such in due course of the Criminal Procedure Law." The Prevention Law is guided towards reaching objectives that are similar to those of the criminal procedure.

One of the most important principles of a law-governed state is the principle of presumption of innocence that is enshrined in the second sentence of Article 92 of the Satversme (*see: Judgment of 23 February\ 2005 by the Constitutional Court in the case No. 2005-22-01, Para 4 and Judgment of 16 December 2005 in the case No. 2008-09-0106, Para 4.2*). Presumption of innocence protects a person for him or her not to be found guilty until the fault has not been proven in accordance with law. Proof, rather than assumption, established under the procedure, determined by law, shall be the basis of a non-rehabilitating ruling. Presumption of innocence prohibits treating a person in such a way that it was as if proved he/she has committed offence. However presumption of innocence does not prohibit establishing restrictions to a person, if such are necessary for reaching a respective legitimate aim and the principle of proportionality is being observed (*see: Judgment of 23 February 2006 by the Constitutional Court in the case No. 2005-22-01, Para 4 and 5.1*).

Section 32 of the Prevention law (insofar as it is assessed in the case under review) confers the right to the Person subject to the Law – a person of private law – to refrain from executing transactions or debit operations if the respective

resources may be reasonably suspected of being derived from criminal activity as long as unlawful origin of these resources is proved by a proper authority of a law-governed State, i.e. a court, or in a procedure appropriate for a law-governed State.

Article 50 of the Prevention Law provides "The control office is a specially designed public institution that, pursuant to this Law, exercises control of unusual and suspicious transactions and obtains, receives, makes records, processes, compiles, stores, analyses and provides to a pre-trial investigation institution, the Office of the Prosecutor and the court information that may be used for the prevention, uncovering, pre-trial criminal proceedings or adjudicating money laundering, terrorist financing or an attempt thereof, or other criminal offence related thereto."

The assumption that resources that are suspected, by the Person subject to the Law or the Control Office, of being acquired or used in an unlawful manner would not be recognized as property in the meaning of Article 105 of the Satversme would be in breach of the fundamental values of a law-governed State.

Consequently, **the Contested Norm applies to such property of the Applicant that is regarded as property in the meaning of Article 105 of the Satversme.**

9. In the judgments of the Constitutional Court it has been concluded that the State of Latvia has the right to adopt laws that are necessary to control the use of property in accordance with the interests of the society. However, each restriction of property right that is related with the right of the State to control the use of property must reach a fair balance between the general interests of the society and protection of the fundamental rights of a person. Property right that is guaranteed for a person by the State is not absolute in a democratic State. Property right may be restricted but only after verifying whether the restriction is valid, namely, whether: 1) it has been determined by law; 2) it has a legitimate objective; 3) it is proportional (*see, e.g.: Judgment of 20 may 2002 of the Constitutional Court in the case No. 2002-01-03, Concluding Part*).

Therefore the Constitutional Court will investigate whether refraining, by the Person subject to the Law, as provided for in Section 32 of the Prevention Law, from executing respective transactions or debit operations for a time period up to 60 days (hereinafter – the Contested Restriction) complies with the abovementioned criteria.

10. The Contested Restriction has been established by law, namely, it is included in the Prevention Law, that was adopted by the Saeima on 17 July 2008 after its second revision, and proclaimed by the State President on 30 July 2008. In the case under review, there are no materials provided that would cause suspicion that the Contested Norm would not have been adopted according to proper proceedings.

11. 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, Judgment of 14 March 2006 by the Constitutional Court in the case No. 2005-18-01, Para 13, Judgment of 22 November 2008 by the Constitutional Court in the case No. 2008-07-01, Para 10 and Judgment of 4 February 2009 in the case No. 2008-12-01, Para 10.2, Judgment of 25 April 2009 in the case No. 2008-36-01, Para 12*).

The Saeima, the Applicant and the summoned parties agree that the Contested Restriction has a legitimate objective – to protect the constitutional value established in Article 116 of the Satversme – security of the society.

With a view to reach this objective, the State has the duty to carry out measures to control flow of financial resources, prevent money laundering and financing of terrorism and organized crime, and combating against evading from taxation.

When assessing legitimate objective, it is necessary to take into consideration liabilities of Latvia as an EU Member State, as well as a range of

international liabilities that Latvia has undertaken in this respect when becoming a party to several international acts, for example, the Convention of the United Nations Organization (hereinafter – the UNO) of 20 December 1988 against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, UNO International Convention of 9 December 1999 for the Suppression of the Financing of Terrorism, and 8 November 1990 Convention of the Council of Europe on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime.

It is indicated among the rest in the Preamble of the UNO International Convention for the Suppression of the Financing of Terrorism that the States Parties to this Convention have adopted it being "deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations, considering that the financing of terrorism is a matter of grave concern to the international community as a whole and noting that the number and seriousness of acts of international terrorism depend on the financing that terrorists may obtain".

The aim of the Convention of the Council of Europe on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime is to achieve a greater unity between the Member States when pursuing a common policy aimed at the protection of society, using modern and effective on an international scale in the fight against serious crimes, which has become an increasingly international problem, believing that one of these methods consists in depriving criminals of the proceeds from crime and forming a well-functioning system of international co-operation.

The UNO Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances has been adopted being "aware that illicit traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and interrupt the structures of government, legitimate commercial and financial business, and society at all its levels, and being determined to deprive persons engaged in illicit traffic of the

proceeds of their criminal activities and hereby eliminate their main incentive for so doing".

It is indicated in the Preamble of 26 June 2001 Framework Decision of the Council of the European Union 2001/500/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime that serious forms of crime increasingly have tax and duty aspects, calls on Member States to provide full mutual legal assistance in the investigation and prosecution of this type of crime, as well as it is admitted that money laundering is at the very heart of organised crime and should be rooted out wherever it occurs.

The following is indicated in the Preamble of Directive 2005/60/EC:

"(1) Massive flows of dirty money can damage the stability and reputation of the financial sector and threaten the single market, and terrorism shakes the very foundations of our society. In addition to the criminal law approach, a preventive effort via the financial system can produce results.

(2) The soundness, integrity and stability of credit and financial institutions and confidence in the financial system as a whole could be seriously jeopardized by the efforts of criminals and their associates either to disguise the origin of criminal proceeds or to channel lawful or unlawful money for terrorist purposes.

It is indicated in the informative reference to directives of the European Union given in the Prevention Law that the law contains such legal norms that follow from Directive 2005/60/EC, 1 August 2006 Directive 2006/70/EK laying down implementing measures for Directive 2006/60/EC of the European Parliament and of the Council as regards the definition of "politically exposed person" and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis (hereinafter –Directive 2006/70/EC).

Consequently, the Contested Restriction has a legitimate objective – protection of the security of the society.

12. The Constitutional Court has concluded that, to evaluate whether a legal norm complies with the proportionality principle, one has to ascertain if the means, used by the legislator are suitable for achieving the legitimate objective and if it is not possible to attain the objective by other means, which would less limit the rights of an individual as well as show whether the activity of the legislator is proportional. If, after evaluating the legal norm, it is acknowledged that it does not comply with even one of the above criteria, it is unconformable 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, Judgment of 27 June 2004 in the Case No. 2003-04-01, Para 3 of the Concluding Part, and Judgment of 15 April 2009 in the case No. 2008-36-01, Para 13*).

13. Refraining from executing transactions or debit operations provided in the Contested Restriction is a provisional measure, which ensures the following:

firstly, the resources do not reach those persons that could be involved in financing terrorism,

secondly, the resources that the Person subject to the Law suspects of being unlawfully obtained are not laundered during the period when the Control Office analyses the information received.

The Contested Restriction is appropriate for reaching the legitimate objective.

14. Now the Constitutional Court will assess the negative consequences experienced by a person and the remedies that can be applied by the person with the purpose to avoid such negative consequences or to prevent them. The Contested Norm comprises several different aspects.

Firstly, the Contested Norm establishes the term for the procedures carried out by the Control Office. Namely, within this term, the Control Office must either issue an order to suspend all transactions or debit operations or report on

repealing of termination, by the Person subject to the Law, of refraining from execution of transactions or debit operations.

Secondly, based on the Contested Norm, blocking of resources by the Person subject to the Law is valid during the abovementioned period. Namely, during the time period established in the Contested Norm, the restriction of the fundamental rights of a person is being continued only based on the decision taken by the Person subject to the Law.

Thirdly, it indirectly follows from the Contested Norm that during the abovementioned period neither the Control Office, nor other public authority has the duty to verify whether the particular restriction of rights of a person has been reasonably established and whether it is proportional in the case under review.

The Applicant, in fact, does not object the fact that the Control Office is provided with the term established in the Contested Norm with a view to take such decision that is based on the entire information that it is able to collect. The Applicant holds that her rights were restricted regarding the fact that during the period established in the Contested Norm the duty to verify whether the restriction of rights of a particular person has been reasonably established and proportional in the case under review is conferred neither to the Control Office, nor to any other public authority.

The Constitutional Court will now assess whether these statements of the Applicant are grounded.

14.1. The Applicant indicates that the Person subject to the Law is conferred the right to restrict the rights of a person at a broad extent and without reason, these activities including, among the rest, refraining from executing all kinds of operations on the customer's accounts in the case if certain transactions are suspected of being unlawful.

The Ombudsman indicates, however, that only those resources are restricted that are meant for a specific transaction. A person can freely act with his or her other resources. The Saeima and the Cabinet of Ministers also emphasize that in accordance with the provisions of Section 32 of the Prevention

Law, the Person subject to the Law (including a credit institution) takes a decision to refrain from executing one or several linked transactions or debit operations of a particular type on the customer's account rather than all transaction on the customer's account.

According to the information provided by the Cabinet of Ministers and the Control Office, Persons subject to the Law and the Control Office observe the following principles when blocking financial resources in practice:

1) blocking of debit operations is established regarding a particular sum of money that the Person subject to the Law or the Control Office consider as proceeds from crime;

2) the Control Office does not issue orders regarding lawful resources and, if there are no resources on account at the particular moment, it does not terminate all debit operations with a view not to restrict all kind of further lawful activities on the account. Moreover, the customer is always provided with a possibility to open another account;

3) all debit operations on the customer's account are blocked only in exceptional cases when the account is reasonably suspected of being unlawful, the account has been opened using a forged passport, the person has died before the account is opened etc. (*see: case materials, Vol. 2, pp. 9 and Vol. 3, pp. 14*).

However, the case under review causes doubts regarding the fact whether the abovementioned principles are being consistently observed in the actions of the Person subject to the Law. As the Constitutional Court has already concluded in this case (*see: Para 2*), the joint-stock company has refrained from executing all kinds of debit operations on the Applicant's account, including transfer of resources to the limited liability company "Parex līzings un faktorings", although the Control Office has not established that the account would have been opened using a forged passport, the person has died before the account was opened, and no other breaches of law have been established.

14.2. The Applicant indicates that the restriction of the fundamental rights of a person is non-proportional first of all because of the fact that during the term

established in the Contested Norm no legal remedies can be applied by a person to achieve repealing of the decision taken by the Person subject to the Law in the case if it does not comply with the requirements of the Law or over-restricts the rights of the person.

According to the case-law of the Department of Administrative cases of the Senate of the Supreme Court of the Republic of Latvia (hereinafter – the Senate), decisions and activities taken by the Person subject to the Law (in the case under review – that of the bank) and the Control Office shall not be appealed against according to administrative procedure. The Senate has concluded that even in the case if a credit institution fulfils any legal public duty regarding its relations with the customer, it shall not be regarded as an institution in the meaning of administrative procedure. Legal public relations could emerge between the Control Office as a public authority on the one hand and a natural person on the other in the case if the Control Office, when applying its public power, would delegate responsibility to the person. In such a case, it would be necessary to assess whether the relations emerged in the result of the abovementioned activities have characteristics of criminal procedure or that of administrative procedure (*see: Decision of the Department of Administrative Cases of the Senate of the Republic of Latvia in the case No. SKA–140/2008, case materials, Vol. 1, pp. 129*).

It is necessary to take into account the fact that the decision of the Senate has been adopted in the case where the joint-stock company "Hansabanka" had refrained from executing transactions based on the Law "On Prevention of Laundering of Proceeds from Crime" that was valid beforehand, rather than on the Prevention Law. The third part of Section 17 of this law provided that within 14 days after the receipt of a report, the Control Office shall issue a respective order or inform the reporter in writing on the necessity to carry out additional analysis of the information provided in the report.

When answering to the question set by a justice of the Constitutional Court - whether the respective person has any remedies at his or her disposal to protect his or her rights during the period when the Person subject to the Law

refrains from executing transactions or debit operations but the Control Office has not yet taken the decision, the Ombudsman indicates that the legislator has provided for supervision by the public prosecutor's office over the Control Office.

The General Prosecutor's Office informs that after 13 August 2008, the Prosecutor's Office has received two complaints from entrepreneurs about activities of credit institution regarding refraining from execution of transactions or debit operations on the accounts of these customers. The complaints were sent to the FCMC. The FCMC recognized the activities of the credit institutions as compliant with the requirements of law.

Under Section 45 of the Prevention Law, the FCMC is one supervisory and control authorities of the Persons subject to this Law. When answering to the question set by a justice of the Constitutional Court, the FCMC indicates that "the Law contains no provision regarding appealing against an ungrounded or malicious decision issued by the Person subject to the Law, i.e. the credit institution. A person, however, has the right to address the Control Office by submitting a demand in accordance with the procedure established in the Law on Applications" (*case materials, Vol. 2, pp. 3*). The FCMC also indicates that a person as a participant of the particular legal relations acting in good faith has the right to prove his or her good will (to submit documents and materials, to provide explanations, etc.) by thus ensuring procedurally efficient decision-making process by the Control Office (the term of the decision-making included).

Such solutions provided by the FCMC shall not be regarded as exhaustive legal remedies because, firstly, the law does not provide for the right of a person to be informed on the suspicions caused to the Person subject to the Law. Moreover, if a person is not engaged in financing of terrorism, which is the subject of the suspicions, he or she cannot even guess the reason for doubts and this cannot foresee necessary documents and information to be submitted to eliminate all suspicions.

Moreover, the customer cannot fully prognosticate the kinds of situation that the Person subject to the Law would consider as risky and thus to avoid

them. The summoned parties have indicated that the Persons subject to the Law, especially credit institutions, carefully elaborate internal normative acts necessary for implementation of Section 32 of the Prevention Law. However, these normative acts are not available for the person to whom they can be applied. Therefore persons cannot clearly foresee those activities that they should avoid for the Person subject to the Law not to qualify such actions as risky.

14.3. The General Prosecutor's Office indicates that the Control office, after it has received a report from the Person subject to the Law regarding its refraining from execution of transactions or debit operations, exercise the rights established by the second part of Section 51 Indent 4 of the Prevention Law and requests, from the Person subject to the Law, information necessary for assessment of the report. The Person subject to the Law requests, on its turn, all information from the customer. Thus the customer, by means of an active involvement, may facilitate the procedure of clarifying actual circumstances by providing, to the Person subject to the Law, grounded information regarding lawfulness of the origin of money and other resources. Then the duty of the Person subject to the Law is to transfer this information to the Control Office.

Such solution can neither be regarded as an exhaustive legal remedy in a law-governed State in the case of restriction of the fundamental rights. Moreover, its efficiency is questionable. If the Persons subject to the Law has taken a decision to refrain from executing transactions or debit operations on the customer's account and has announced to the customer that such refraining is exercised in accordance with Section 32 of the Prevention Law, it cannot be hidden from the customer that the Persons subject to the Law has announced its decision to the Control Office. Therefore it is difficult to understand the reason why the time is lost by making the Person subject to the Law to be the intermediary in the process of requesting information from the customer and transferring of it to the Control Office, especially due to the fact that the Person subject to the Law does not have the right to repeal the decision to refrain from execution of transactions or debit operations during the time period established in

the Contested Norm. It is neither possible in the case if the customer has already provided information that eliminate all previous doubts.

The Cabinet of Ministers maintains that the Control Office is trying to reduce the time necessary for taking a decision by using modern communication methods and a courier for information exchange. Services of "Latvijas Pasts" are never used. In the case under review, however, there is doubt whether information exchange between the Person subject to the Law and the Control Office was fast enough. As it has already been established (*see: Para 2*), the joint-stock company "Parex banka" informed the Applicant on its decision already on 25 September, whilst the Control Office received this information only on 29 September, which is four days later.

14.4. The European Court of Human Rights (the Grand Chamber), in the judgment of joined cases No. C-402/05 P and No. C-415/05 assessed, among the rest things, and recognized as grounded the complaint of a person on the breach of his property right. When assessing proportionality of the restriction of the property right, the Court took into account the fact whether the person had access to appropriate remedies to efficiently protect his rights.

The European Court of Human Rights indicated in the abovementioned judgment that the principle of effective judicial protection is a general principle of Community law stemming from the constitutional traditions common to the Member States, which has been enshrined in Article s 6 and 13 of the ECHR (European Convention on Human Rights], this principle having furthermore been reaffirmed by Article 47 of the Charter of fundamental rights of the European union, proclaimed on 7 December 2000 in Nice.

The Court has also concluded that, because the [European] Council neither communicated to the appellants the evidence used against them to justify the restrictive measures imposed on them nor afforded them the right to be informed of that evidence within a reasonable period after those measures were enacted, the appellants were not in a position to make their point of view in that respect known to advantage. Therefore the appellant's rights of defence, in

particular the right to be heard, were not respected (*see: Judgment of the European Court of Human Rights: joined cases C-402/05 P and C-415/05 P Yassin Abdullah Kadi and Al Barakaat International Foundation v Council [2008] Judgment of 3 September 2008, paragraphs 368 and 369).*

Although in the abovementioned case the restriction of property right was much graver that in the case under review, it is necessary to take into consideration the fact that these suspicions regarding the abovementioned persons are considerable.

The Federal Constitutional Court of Germany, when reviewing case where the property of the applicant was arrested without proper hearing of the person, concluded that the idea of a law-governed State requires for the defendant, to whom a restrictive measure of criminal law has been applied, to be given the possibility to defend based on the justification of this measure that restricts the rights. The possibility to defend shall be ensured in a separate proceedings regarding lawfulness of this measure in particular even if these proceedings are initiated after application of the measure. Investigating institutions must consider this procedural guarantee, which is indispensible in a law-governed State, in conjunction with the interest to keep initial investigation in secret. As long as the authorities consider that the defendant may not be aware of the investigation, they shall refrain from such measures as imprisonment or [property] arrest that cannot be kept secret from the defendant, considerably breaches his rights, and thus is subject to verification during proceedings (*see: Judgment of 19 January 2006 by the Federal Constitutional Court of Germany in the case No. 2 BvR 1075/05, available at http://www.bverfg.de).*

The Constitutional Court, when referring to the conclusions made by constitutional courts of other states, has emphasized that "dignity of persons require that a person is not only an objects of proceedings. Instead, he or she must be provided with the possibility to express his or her viewpoint before the decision related with his or her rights is made" (*see: Judgment of 5 November 2008 by the Constitutional Court in the case No. 2008-04-01, Para 11*).

If a person, in the particular case of restriction of property right, is not provided with the possibility to effectively protect his or her rights, then there exists a risk that the Person subject to the Law might refrain from executing transactions or debit operations, for a certain period of time, on the accounts of such persons who are not involved in money laundering.

14.5. Moreover, the legislator has neither provided for any regulation that would mitigate negative consequences that a person undergoes in the case when the Person subject to the Law takes a decision, in relation to this person, to refrain from executing transactions or debit operations, and it turns out later that such decision is ungrounded. For example, there is no duty to exclude such person from debtors' register established in the case if the person has been listed therein because of suspension of transactions due to non-fulfilment of his or her liabilities.

The third part of Section 40 of the Prevention Law provides the following:

"Where a person subject to this Law has refrained from executing a transaction in good faith in accordance with Article 32 hereof, discontinued business relationship or requested fulfilment of liabilities before maturity in accordance with Paragraph 2 of Article 28 hereof, refraining from or delaying a transaction, discontinuing a business relationship or requesting fulfilment of liabilities before maturity shall not incur legal, including civil, liability on the person subject to this Law.

Consequently, all losses that have occurred in the result of the decision taken by the Person subject to the Law to refrain from execution of transactions or debit operations are undergone by the respective person, whilst no compensation of such losses is established even in the case if the Control Office, after it has made careful analysis of the information, has no suspicions regarding the respective resources having been derived from criminal activity or the respective transactions being related with financing of terrorism.

Since the restriction of the fundamental rights of a person, based on the decision taken by the Persons subject to the Law only, remains valid for a

considerable period, the person has no access to effective legal remedies to protect his or her rights. Procedure for compensation of the losses incurred has neither been provided. This means that the Contested Norm might cause unfavourable and grave consequences to a person.

15. The Constitutional Court has concluded: "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*).

Consequently, the Constitutional Court will now assess whether it is possible to reach the legitimate objective at the same quality by means of other more lenient measures.

15.1. The Saeima and the Cabinet of Ministers emphasize in particular that the Contested Norm is necessary to ensure fulfilment of international liabilities of Latvia. An important role in the fight of the states against money laundering and terrorism financing is plaid by recommendations elaborated by the intergovernmental organization "Financial Action Task Force" (hereinafter – FATF) that are based on the summary of great experiences of different states.

The third recommendation "Provisional Measures and Confiscation" included in Chapter A "Legal Systems" of the FATF document "The 40 Recommendations" provides that Countries should adopt measures similar to those set forth in the Vienna and Palermo Conventions, including legislative measures, to enable their competent authorities to confiscate property laundered, proceeds from money laundering or predicate offences, instrumentalities used in or intended for use in the commission of these offences, or property of corresponding value, without prejudicing the rights of bona fide third parties.

Such measures should include the authority to: (a) identify, trace and evaluate property which is subject to confiscation; (b) carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer or

disposal of such property; (c) take steps that will prevent or void actions that prejudice the State's ability to recover property that is subject to confiscation; and (d) take any appropriate investigative measures.

However, Chapter B "Measures to Be Taken by Financial Institutions and Non-Financial Businesses and Professions to Prevent Money laundering and Terrorist Financing" makes a reference to reporting on suspicious transactions and compliance:

„13. If a financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing, it should be required, directly by law or regulation, to report promptly its suspicions to the Control office."

However, these recommendations do not establish that these are finance institutions or other businesses in particular, rather that public authorities having received the respective report, should undertake the responsibility for a long-term blocking of the resources of a person.

15.2. According to the abovementioned informative reference included in the Prevention law, it includes the legal norms that follow from Directive 2005/60/EC and Directive 2006/70/EC.

Article 22 of Directive 2005/60/EC provides the following:

„1. Member States shall require the institutions and persons covered by this Directive, and where applicable their directors and employees, to cooperate fully:

(a) by promptly informing the FIU, on their own initiative, where the institution or person covered by this Directive knows, suspects or has reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted;

(b) by promptly furnishing the FIU, at its request, with all necessary information, in accordance with the procedures established by the applicable legislation.

Article 24 of the same Directive provides:

"1. Member States shall require the institutions and persons covered by this Directive to refrain from carrying out transactions which they know or suspect to be related to money laundering or terrorist financing until they have completed the necessary action in accordance with Article 22(1)(a). In conformity with the legislation of the Member States, instructions may be given not to carry out the transaction.

2. Where such a transaction is suspected of giving rise to money laundering or terrorist financing and where to refrain in such manner is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering or terrorist financing operation, the institutions and persons concerned shall inform the FIU immediately afterwards."

It is indicated in the application that according to these norms refraining from executing of transactions is permissible only up to the moment when the information is transferred to the Control Office. Otherwise non-execution of debit operations shall be regarded as suspension of transactions that shall be carried out only based on an order issued by the Control Office.

However, the Saeima "Does not agree with such grammatical and evidently illogic interpretation of Article 24 of Directive 2005/60EC (*see: case materials, Vol. 1, pp. 181*).

It is indicated in the opinion submitted by the Applicant after it has got acquainted with case materials that the Constitutional Court is the final instance of national judicial institutions, therefore, according to the third part of Article 234 of the EC Treaty, it has the duty to ask the European Court of Justice to provide interpretation of Community law in the form of a preliminary ruling.

Article 234 of the EC Treaty provides:

The Court of Justice shall have jurisdiction to give preliminary rulings concerning:

(a) the interpretation of this Treaty;

(b) the validity and interpretation of acts of the institutions of the Community and of the ECB;

(c) the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide.

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.

The European Court of Justice has established in its case-law that in separate cases higher instance courts of the Member States, when facing issues of EU law, are not obligated to refer to the Court of Justice a question concerning the interpretation of Community law raised before them if that question is not relevant, that is to say, if the answer to that question, regardless of what it may be, can in no way affect the outcome of the case; the Court of Justice has already explained this question; the correct application of Community law may be so obvious as to leave no scope for any reasonable doubt as to the manner in which the question raised is to be resolved (*see: Judgment of the Court of Justice in the case 283/81 CILFIT and Lanificio di Gavardo SpA v Ministry of Health (CILFIT), [1982], ECR p. 3415]*.

Judgments of the Constitutional Court cannot be appealed against; therefore the Constitutional Court will verify whether interpretation of Directive 2005/60EC provided by the Court of Justice is indispensible, namely, whether what has been established in this Directive is clear enough not to cause any reasonable suspicion and whether the outcome of the case depends on the interpretation of the abovementioned Directive.

In the case under review, the following aspects must be considered:

1) whether Directive requires refraining from execution of transactions after the Person subject to the Law has reported to the Control Office;

2) whether Directive requires providing of the term of 60 days;

3) whether Directive prohibits establishing of such term;

4) whether Directive requires or prohibits any particular procedure, including existence of legal remedies regarding the decision taken by the Person subject to the Law.

It is clear that Directive 2005/60/EC does not provide for any particular term for adoption of a decision by the Control Office; neither has it prohibited establishing of such term. It regulates the procedure and legal remedies to be selected to contest the decision taken by the Person subject t the Law. Interpretation of the abovementioned Directive would probably be necessary regarding the question whether this Directive requires refraining from executing transactions for a certain period of time after the Person subject to the Law has reported to the Control Office on its decision to refrain from executing transactions or debit operations on the customer's account.

It is also obvious that Directive 2005/60/EC neither prohibits the state to establish any stricter measures but those established by Directive. Article 5 thereof provides: "The Member States may adopt or retain in force stricter provisions in the field covered by this Directive to prevent money laundering and terrorist financing."

If the Court of Justice would establish in its preliminary ruling that Directive 2005/60/EC does not require refraining from executing of transactions after the Person subject to the Law has reported to the Control Office, this would not affect the outcome of this case because it would not prohibit the legislator of Latvia do adopt stricter provisions.

However, even if the Court of Justice would conclude that Directive 2005/60/EC requires refraining from execution of transactions for a certain period after the Persons subject to the Law has reported to the Control Office, this would neither affect the outcome of the case because the Constitutional Court should verify compliance of the established procedure with the Satversme.

Consequently, the Constitutional Court does not have to ask the Court of Justice to provide a preliminary ruling.

15.3. The Saeima and the summoned parties emphasize that Section 32 of the Prevention Law establishes the maximum term, within which the Control Office should issue an order to suspend transaction or debit operations of a certain kind on the customer's account or to inform the Person subject to the Law that refraining from execution of transactions should be terminated. In practice, these activities are fulfilled in a shorter period, which generally depends on the time required by information verification and analysis.

The Control office and the Cabinet of Ministers inform (*see: case materials, Vol. 2, pp. 1 – 2 and Vol. 3, pp. 17*) that from 13 August 2009 to 18 December 2009, the Control Office has taken 55 decisions regarding the third part of Section 32 of the Prevention Law. In 37 cases (67 percent of the cases) it has issued an order to suspend execution of transactions or debit operations. 16 out of abovementioned 55 cases were reviewed within 14 working days.

In 37 cases when the Control Office has issued an order to suspend execution of transactions or debit operations, the average period for issuing of the order was 22 working easy, in eight cases – up to 10 days, in 14 cases – up to 30 days, in 11 cases – more than 30 days, whilst the longest period that was necessary for the Control Office to issue an order was 48 days, which was present only in one case.

In 18 cases when the Control Office has announced that there was no reason to issue the order established in the third part of Section 32 of the Prevention Law, the average period for taking the decision was 24 working days, whilst five decisions were taken within 14 working days.

Consequently, it can be concluded that only in some cases the Control Office needs a full period established in the Contested Norm to take a decision. However, less than one third of all decision was taken within 14 days, as it was initially provided in the draft law.

15.4. The statement of the Saeima that the Contested Norm provides for the maximum term for taking of a decision and thus protects a person from time

consuming procedure is ungrounded. The Contested Norm does not provide for the maximum term, for which the respective resources of a person can be blocked in the case of suspicions.

Blocking of person's resources takes place at the very stage of the procedure when the Person subject to the Law refrains from executing transactions or debit operations, as well as at the stage when the Control office has suspended the respective transactions or debit operations. According to the point of view of the person, actual consequences remain the same – the person may not act with its property on his or her own discretion.

The opinion of the Applicant that blocking that takes place based on the order issued by the Control Office restrict the rights of a person at a lesser extent is grounded because the Control Office as a public authority has more possibilities to assess actual situations by objective considerations and not to permit blocking of such resources that are not suspected of being related with criminal activity. The activity of the Control Office, including delay of taking a decision or a non-proportional breach of the rights of a person, can be appealed against in the Genera Prosecutor's office. Consequently, it is more likely to avoid biased or ungrounded decisions.

Moreover, if it turns out by objective considerations that the order is ungrounded, namely, if there are no grounds for initiating criminal procedure has been established and provisional measures are cancelled, of if the criminal procedure is closed by adopting a decision of rehabilitating nature, the person can request compensation of the harm incurred like for any ungrounded or unlawful breach committed by the State, also in accordance with the Law "On Compensation for Losses Caused by Illegal or Ungrounded Actions by the Investigative Authority, Prosecutor's Office or Court" or, in the case if there is no special regulation, he or she can address the court of general jurisdiction by submitting an application regarding compensation of losses based on the third sentence of Article 92 of the Satversme (*see: Judgment of 4 March 2008 by the Department of Administrative Cases of the Senate of the Supreme Court of the*

Republic of Latvia in the case No. SKA-140/2008, Para 7, case materials, Vol. 1, pp. 129 – 130).

15.5. According to the third part of Section 32 of the Prevention Law, the Control Office shall take a decision within the term established in the Contested Norm, however this does not mean that this is a final term, within which blocking of resources is based on suspicions. Namely, in the term established in the Contested Norm, the Control Office can take decisions of two kinds, in accordance with which blocking of customer's resources is continued. Firstly, this is the decision mentioned in the third part of Section 32 Indent 1 of the Prevention Law regarding recognition of resources as proceeds from crime. In this case, the Control Office has the right to suspend execution of certain kind of transactions or debit operations on the customer's account for the term established in the order, but not longer than for six months. Secondly, in the case when, according to the information at the disposal of the Control Office, there are suspicions of a criminal offence, including money laundering or an attempt of money laundering, the Control Office takes a decision that execution of transactions or debit operations shall be suspended for a certain period of time but not longer than for 45 days.

The duration of the contested term shall not be assessed separately from the term established in the third part of Section 32 Indent 1 of the Prevention Law. These terms form a time period, within which person's resources are being blocked only based on suspicions or doubt for the public authorities to be able to carry out necessary verifications to prove or disprove doubts or suspicions.

Although in separate cases that are related with prevention of an especially serious crime, for instance, financing of terrorism, this term could be proportional, it is still necessary to take into consideration the fact that the Prevention Law comprises a wide spectre of different criminal offences, including the issues related with fraudulent activities in the area of taxes and evasion from taxation. The maximum term of 105 days, within which blocking of resources is possible based on doubts or suspicions (60 days, within which the

Person subject to the Law refrains from executing transactions or debit operations and 45 days, within which the Control office suspends all transactions or debit operations) is not proportional in all cases.

15.6. Conclusions made by the Saeima, the Cabinet of Ministers and the Control Office, namely, that the requirements of the Contested Norm are related with requirements of other laws, especially normative acts regulating tax system, shall be applied only to one aspect of the Contested Norm, i.e. insofar as the Contested Norm established the term, within which the Control office must either issue a grounded order to suspend transactions or debit operations or to repeal the refraining, by the Person subject to the Law, from executing transactions or debit operations.

Neither the Saeima, nor the summoned parties have indicated that the legitimate objective could not be reached at the same level of efficiency if the Control Office or any other public authority would be obligated to verify, immediately after the Person subject to the Law has taken a decision regarding refraining from execution of transactions or debit operations, whether the particular restriction of rights for a particular person has been reasonably established (taking into consideration the information at the disposal of the Persons subject to the Law) and whether it is proportional in the case under review.

Moreover, the argument mentioned by the Control Office that it must carry out information exchange (including requesting of the information) with more than 100 analogous offices of states provided that international acts provide for no execution term for such co-operation is not grounded (*see: case materials, Vol. 2, pp. 8*). The Contested Norm does not provide for the maximum term, within which the Control Office should take a decision in the case if more time is needed for acquisition of information from abroad. In this exceptional case, the Prosecutor General or a specially authorised public prosecutor is entitled to establish an extra term.

15.7. The summoned parties offer an opinion that the term established in the Contested Norm is grounded in the way that it complies with the provisions of the Law "On the Value Added Tax". Taxation period is one calendar month and payments are made within 15 days after the end of transaction period. Transactions executed even on the last day of each month cannot be examined in a short period because the person who has fulfilled the transaction has no period necessary for declaration of the transactions at his or her disposal. Information analysis and decision taking may be difficult in the cases when schemes comprising a number of transactions and parties involved, which, in fact, is one of the main priorities of the Control Office (*see: case materials, Vol. 2, pp. 8 and Vol. 3, pp. 23 – 24*).

However, based on this clarification, it is not possible to find an answer to the question why shouldn't the Control Office verify, before requesting the respective information, whether the blocking of resources by the Person subject to the Law has been executed in accordance with the requirements of law. The Cabinet of Ministers reasonably indicates that doubts of the Persons subject to the Law may not serve as sufficient grounds for refraining from executing transactions or debit operations on the customer's account because these doubts must be grounded, namely, there must exist certain factual circumstances that indicate to possible involvement of the customer in money laundering of financing of terrorism.

15.8. The Saeima and several summoned persons hold that the particular legitimate objective cannot be reached by other measures that would restrict the property right of a person at a lesser extent. This also applies to a shorter period that could be established by law for the Control Office to take the decision.

The FCMC indicates that theoretically it is possible to shorten this term, however the FCMC does not think that it is possible not to establish any term at all.

The Cabinet of Ministers holds that the refraining to execute customer's transactions, as provided for in Section 32 of the Prevention Law, "as a measure

to prevent laundering of the proceeds from crime complies with international documents and recommendations, and an analogous system exist in all European Member States" (*see: case materials, Vol. 3, pp. 14*).

The opinion of the Cabinet of Ministers is grounded insofar that the characteristic feature of the common system of the Member States of the European Union is the duty of the Persons subject to the Law to transfer the information at their disposal to the Control Office, whilst the Control Office takes the respective decision after having got acquainted with the information. However, no confirmation can be found for the fact that in all Member States of the European Union the fundamental rights of persons would be restricted in the long term only based on a decision of the Persons subject to the Law. The Association of Commercial Banks of Latvia indicates that shorter terms are established in many European States. For instance, the maximum period, within which the respective State financial control institution must take a decision, constitutes one day in France and Hungary (for domestic transactions), two working days in Bulgaria, Slovakia and Germany, and five working days in Lithuania and Switzerland.

In the Republic of Poland and the Republic of Slovenia, laws that regulate prevention of laundering for proceeds from crime and financing of terrorism provide for the duty of respective banks and financial institutions to report to competent public authorities, whilst the duty of the latter is to undertake responsibility for all further activities (*see: http://www.mofnet.gov.pl, http://www.uppd.gov.si).*

The Control Office draws attention of the Legal Bureau of the Saeima Legal Bureau to the fact that the states can be divided into several groups according to the term of resource blocking. The States (Belgium, Bulgaria, Check Republic, France, Italy, Poland, Romania, Slovakia) that have established the term of 24 – 72 hours are being criticized by international institutions, whilst the terms established in other states (Austria – 6 months, Luxembourg – 3 months, Estonia – 90 days in total, Latvia – 45 days) comply with the considerations of good practice applied in this respect (*see: case materials, Vol.*

2, pp. 11). These terms indicated by the Control Office, however, apply mainly to the period when blocking of resources is executed based on the order issued by the respective finance control institution rather than the period when it is based on the decision taken by the Person subject to the Law.

For instance, the term of six months mentioned by the Control office is provided by Section 42 of the Austrian Law on Banks (*Bankwesengestz*). The third part of the same section also provides that the customer and prosecutor's office shall immediately be informed on the order. It shall be indicated in the notice to the customer that he or she shall have the right to submit a complaint, to the administrative senate (*Verwaltungssenat*) regarding the breach of his or her rights. Moreover, according to the first part of the abovementioned Section 41 Indent 3, credit institutions and financial institutions that have suspended transactions and have reported on this to the financial control institutions have the right to ask the institution to provide its opinion before the end of the following working day (*see: http://www.ris.bka.gv.at).*

15.9. The Contested Norm was included into the Prevention Law during its second revision. The Cabinet of Ministers, when submitting the respective draft law, had provided for a shorter term for the Control Office to take the initial decision, which was 14 days. As it has already been mentioned, control offices of other States also take their initial decision regarding blocking of resources in a shorter period.

The opinion of the Cabinet of Ministers that only "providing the Control Office with a sufficient time period to obtain exhaustive information and assess it, this ensures taking of a grounded and just decision and prevents all undue interference with entrepreneurship and activities of persons with their property" (*see: case materials, Vol. 3, pp. 22*) is ungrounded. In the term provided by law – 60 days – the fundamental rights of a person are being restricted based on the decision of a private person, for instance, a credit institution, rather than that of a public authority and in the frameworks of civil relations. If this authority has

made a mistake, the consequences caused by its decision affect more gravely, which means that a private person has less information at its disposal if compared to the Control Office, which is a public authority, even in the case if the Control Office would take a decision without requesting any additional information. Moreover, the Person subject to the Law has the duty to assess risks that are related with the possibility that resources are obtained from criminal activity, however it is not obligated to hear the affected person regarding the gravity of the restriction of the fundamental rights in the particular case. The Person subject to the Law is neither obligated to assess whether the benefit gained by the society if the suspicions of the Person subject to the Law turn out to be grounded in the case under review is proportional with the harm done to the interests of a person in the case if the suspicions of the Person subject to the Law turn out to be ungrounded.

The State President, when requesting second revision of the Prevention law, mentioned, as one of the deficiencies of the Law, the fact that the term provided, by Section 32 of the Law, for the Control Office to take a decision (14 days without any possibility to prolong the term) could hamper information exchange with foreign authorities; moreover, it has not been coordinated with the procedure of declaring transactions and the term of taxation period set out in laws on taxes of the Republic of Latvia. Still, the State President emphasized that, when considering the possibility to provide the Control Office with a longer term, within which it could assess received reports on refraining from execution of transactions, it would still be necessary to take into account the principle of proportionality by coordinating the restriction of the rights of a person with the objective of the Law (*see: case materials, Vol. 1, pp. 17*).

It is also emphasized in the Preamble of Directive 2005/60/EC that „this Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Nothing in this Directive should be interpreted or implemented in a manner that is inconsistent with the European Convention on Human Rights”

Moreover, the FCMC indicates that the fact whether there are grounded suspicions regarding the transaction of being related with laundering of proceeds from crime shall initially assessed by the Person subject to the Law, which is a credit institution that does not have all that information at its disposal that the Control Office has (*see: case materials, Vol. 3, pp. 3*).

As it follows from the data provided by several summoned parties and the Saeima, the Control Office, too, has established grounds for suspension of respective transactions or debit operations only in 60-70 percent of cases (*see, e.g. case materials, Vol. 1, pp. 182, Vol. 3, pp. 6, Vol. 3, pp. 30*) when the Persons subject to the Law have refrained from executing transactions or debit operations in accordance with Section 32 of the Prevention Law. Consequently, this is about one third of cases when the Persons subject to the Law have refrained from executing transactions or debit operations regarding such property of customer that has not been recognized, according to proper procedures, as proceeds from crime and that the competent public authority has not suspected of being unlawful. In the case of the Applicant, too, the Control Office has not established any grounds to suspend, by means of its order, debit operations on its accounts.

Consequently, the legislator has provided for a procedure, according to which the private person, i.e. the Person subject to the Law, must undertake responsibility, in the frameworks of civil relations, for continuous breach of the fundamental rights, however it has not provided a person with effective measures that would allow him or her contesting unlawful decisions of the private person. Neither the legislator has established any mechanism for the State to be able to compensate losses, within a reasonable procedure, incurred by a person due to the fact that the Persons subject to the Law has refrained from executing of transactions or debit operations in good faith. However, the Control Office has concluded that there is no doubt whether the respective person is related with laundering of proceeds from crime or financing of terrorism.

The opinion of the Control Office is grounded. It holds that the State has the right to restrict the use of unlawful property by establishing statutory

procedure, criteria and term for the respective authorized subject could verify lawfulness of the origin and the way of use of the property. However, when establishing this procedure, criteria and terms, the State does not have the right to ignore the principles of a law-governed State and infringe the rights of persons.

The legislator had the possibility to select the procedure, according to which a public authority rather than a private person would undertake the responsibility for the restriction of the fundamental rights. For example, the legislator could set forth that the Control Office should verify whether the refraining by the Persons subject to the Law from executing transactions or debit operations in each particular case complies with the provisions of law and requirements of proportionality in a considerably shorter period of time as provided by the Law even if, when taking such initial decision, the Control Office cannot decide whether to issue the order provided in the third part of Section 32 Indent 1 of the Prevention Law.

Consequently, the Contested Norm does not comply with the principle of proportionality and thus with Article 105 of the Satversme.

16. According to Article 32 Indent 3 of the Constitutional Court Law, Any legal norm (act) which the Constitutional Court has determined as incompatible with the legal norm of higher force shall be considered invalid as of the date of publishing the judgment of the Constitutional Court, unless the Constitutional Court has ruled otherwise.

The Constitutional Court has reiterated that in the cases when immediate recognition of the Contested Norms as invalid would constitute even greater restriction of the fundamental rights, the Constitutional Court shall establish the term of execution of this Judgment (*see, e.g. Judgment of 22 October 2002 of the Constitutional Court in the case No. 2002-04-03, Para 3 of the concluding part and Judgment of 21 October 2008 in the case No. 2008-02-01, Para 12*).

In the case under review, the legislator needs time to elaborate new solution that would be more appropriate.

The Constitutional Court draws the attention of the Control Office to the fact that all public authorities have the duty to observe the fundamental rights established in the Satversme. Therefore they must first of all verify, upon receiving information from the Person subject to the Law regarding its refraining from execution of transactions or debit operations, whether the activities of the Persons subject to the Law in the particular case comply with requirements of Law and whether the restriction of the fundamental rights of a person is proportional.

17. The infringement of the fundamental rights of the Applicant and the losses incurred in the result of such infringement cannot be prevented or compensated by recognizing the Contested Norm void in relation to the Applicant as of the day when the joint-stock company "Parex banka" took the decision regarding refraining from execution of debit operations on the Applicant's accounts. Even if the Constitutional Court would adopt such decision, the third part of Section 40 of the Prevention Law would still remain valid, whilst it has not been contested in the case under review.

The third sentence of Article 92 of the Satversme provides: "Everyone, where his or her rights are violated without basis, has a right to commensurate compensation." In the frameworks of the proceedings of the Constitutional Court, it is not possible to assess whether the joint-stock company "Parex banka" acts in good faith. Neither it is possible to assess whether the consequences that the Applicant attributes to such activity, which is annulling of leasing agreement, are related with the continuous blocking of the resources of the Applicant. Consequently, in the frameworks of the Proceedings of the Constitutional Court, it is not possible to assess the losses incurred by the Applicant in the result of the infringement of its fundamental rights.

The Constitutional Court takes into account the fact that the Senate has already examined the situation where the applicant contested a decision taken by a bank regarding blocking of resources. The Senate has concluded that in such a situation the applicant had the opportunity to protect his rights in accordance

with the kind of activities that he regarded as unlawful. In the case of the credit institution justifies its activities with the financial resources of the customer by referring to the Law "On Prevention of Laundering of Proceeds from Crime", the customer has the right to submit objections in this regard to the respective public authority, the orders of which are binding on credit institution, namely, Control Office or it supervising institution – a public prosecutor's office, due to prevention of laundering of proceeds from crime. However, in the case if the activity of the credit institution is not justified by law or exceeds what has been established by law or by an order issued by the Control Office, it is possible for the customer of the credit institution to bring an action, according to civil procedure, against the credit institution with a view to protect his or her property right (*see: Judgment of 4 March 2008 by the Department of Administrative Cases of the Senate of the Republic of Latvia in the case No. SKA-140/2008, Para 7, case materials, Vol. 1, pp. 129 – 130*).

Consequently, in the case if the Applicant holds that the joint-stock company "Parex banka" was not acting in good faith, the amount of the abovementioned losses and possible guilt of the bank in causing such losses shall be established in a court of general jurisdiction.

However, in the case if the Applicant holds that, taking into account particular circumstances, the Control Office had to immediately take the decision regarding the fact that refraining from executing debit operations or a part of them on the Applicant's account had to be terminated, the Applicant has the right to address the court referring to the third sentence of Article 92 of the Satversme.

The Constitutional Court has already concluded: "As any norm of human rights, the legal norm, incorporated into the third sentence of Article 92 of the Satversme shall be applied directly and immediately. Besides, the norm does not envisage that a special law is needed to specify it. The fact that such a law does not exist is linked with the possibility of direct application of Article 92 (the third sentence) of the Satversme. It cannot serve as a reason for the court of refusing to accept the claim of an individual to receive compensation." (*see: Judgment of 5*

December 2001 of the Constitutional Court in the case No. 2001-07-0103, Para 1 of the Concluding Part).

The Constitutional Court,

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

h o l d s :

the words "not later than within 60 days" of the third part of Section 32 of the Law "On Prevention of Laundering of the Proceeds from Crime and Financing of Terrorism" does not comply with Article 105 of the Satversme of the Republic of Latvia and shall be declared void as from 1 January 2010.

The Judgment is final and not subject to appeal.

The Judgment takes effect on the date of publishing it.

Presiding Judge G. Kūtris