THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

JUDGMENT
ON BEHALF OF THE REPUBLIC OF LATVIA
Riga, 19 May 2009
in the Case No. 2008-40-01

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

with the court secretary Līva Rozentāle,

at the presence of Rolands Irklis, the representative of twenty members of the 9th Saeima Ilma Čepāne, Sandra Kalniete, Anna Seile, Kārlis Šadurskis, Ina Druviete, Gunārs Laicāns, Solvita Āboltiņa, Arturs Krišjānis Kariņš, Dzintars Zaķis, Silvija Bendrāte, Ingrīda Circene, Uldis Ivars Grava, Einars Repše, Ausma Kantāne, Inguna Rībena, Sarmīte Ķikuste, Ainars Latkovskis, Artis Kampars, Linda Mūrniece, Aigars Štokenbergs,

at the presence of the representative of the institution that issued the contested act, the Saeima - Gunārs Kusiņš, Head of the Saeima Legal Bureau,

based on Article 85 of the Satversme (Constitution) of the Republic of Latvia, Article 16 (1) and 17 (1) (3) of the Constitutional Court Law,

in Riga, on 21 April 2009, in an open Court sitting examined the case

"**On Compliance of the Second Sentence of Section 22 of the Law "On National Referendums and Initiation of Legislation" with Article 1 of the Satversme (Constitution) of the Republic of Latvia**".

The Constitutional Court has established:

1. On 31 March 1994, the Saeima adopted the Law "On National Referendums and Initiation of Legislation". Section 22 thereof provides: "Not fewer than 10,000 Latvian citizens eligible to vote, upon indicating their full name and personal identity number, shall have the right to submit to the Central Election Commission a fully elaborated draft law or a draft amendment to the Constitution. Not earlier than 12 months before the submission of the draft law or the draft amendment to the Constitution, each signature must be certified by a sworn notary public or a local government authority that performs notarial functions."

In the application, compliance of the second sentence of Section 22 of the Law "On National Referendums and Initiation of Legislation" (hereinafter - the Contested Norm) with Article 1 of the Satversme of the Republic of Latvia (hereinafter - the Satversme) has been contested.

2. Persons who submitted the application – twenty members of the 9th Saeima (hereinafter – the Applicant) has indicated in the claim that the Contested Norm does not comply with Article 1 of the Satversme. The State administration has the duty to observe the principle of good administration that follows from Article 1 of the Satversme, i.e. it has the duty to ameliorate the quality of services rendered to the society, as well as to simplify and ameliorate procedures in favour of private persons. This principle is binding not only on the State administration but also the legislator.

The legislator has provided for carrying out notarial procedure with a view to strengthen the will of citizens to initiate legislation. The Applicant indicates that the 1922 Law "On National Referendums and Initiation of Legislation" adopted by the Constitutional Assembly *[Satversmes sapulce]* there was a norm included that provided: "not less than one thousand citizens eligible to vote has the right to submit a draft law provided for in Article 78 of the Satversme to the Central Election Commission", however, the norm provided that "each signature must be certified by a sworn notary public or a State or local government authority". The Applicant emphasizes that this norm allowed certifying signatures in several authorities – at a notary's office, in a State or local government institution. The abovementioned norm

has not provided that State or local government authorities should perform notarial functions. The Contested Norm, however, considerably restricts the rights of citizens to take part in initiation of legislation because signatures must be certified in such authorities that perform notarial functions.

The Applicant holds that it should be necessary to distinguish between the cases when a person goes to a notary to certify his or her signature when implementing civil rights or legal interests and the cases when a person goes to a notary to implement the rights to initiate legislation as provided for in the Satversme. In the first case, the State, by mediation of sworn notary public, takes part in civil circulation by thus ensuring the fact that implementation of civil rights and legal interests of persons is certified by a public document, which is a notarial act or certification of a signature. Issuing of such document requires payment of stamp duty. But, as to the other case, according to the Applicant, certification of a signature by a sworn notary public may not serve as an obligatory precondition for a citizen to be able to exercise his or her rights to initiate legislation. A similar procedure for collection of signatures is established in Section 7, 8, 9 and 24 of the Law "On National Referendums and Initiation of Legislation". In these cases, persons can sign in election commissions established by the Central Election Commission.

Moreover, when collecting signatures for initiation of legislation, it is not necessary to carry out additional verification of personal data according to the Population Register and Invalid Document Register since this falls within the competency of another institution. The data of all persons in these registers are verified by the Central Election Commission. Thus the signatures of persons are verified in two institutions - a sworn notary public, whose services are being paid by the person itself, and the Central Election Commission, the budget of which contain resources for carrying out such verification. This does not comply with the principle of good administration because the Contested Norm encumbers the procedure of signature collection, as well as causes a situation when the State administration carries out double verification of personal data.

The Applicant indicates that the rights of the citizens to participate in State administration also follow from Article 1 of the Satversme. If the State has provided

for the rights of citizens to take direct part in State administration, then these rights should be ensured without any discrimination and they should not be restricted without reason. The rights to participate in collection of signatures must be conferred to all Latvian citizens eligible to vote in the Saeima elections. The requirement to certify a signature by a notary public in order to be able to participate in initiation of legislation, in fact, restricts the rights or a person to participate in State administration because this certification procedure is bound with certain material remuneration (at the date of filing the application – 9,99 lats). For many persons this payment constitutes difficulties, which means that they cannot implement their rights due to their economic situation. Consequently, the Contested Norm infringes the principle of equality established in the Satversme.

R. Irklis, the representative of the Applicants maintained the claim of the Applicant and immediately drew attention to the fact that the Satversme provides for parliament and local government elections, a national referendum and initiation of legislation as elements of direct democracy. The principle of legitimacy of power follows from these elements. This principle ensures that the carrier of the sovereign power, i.e. the people have the possibility to have an impact on decision-making processes in the State. Having no proper procedures for elections, national referendums and initiation of legislation, the State may not be regarded as democratic. In the situation when a normative regulation that encumbers or restricts implementation of direct democracy exists, the sovereign rights vested in the people of Latvia are, in fact, restricted. Only initiation of legislation is provided with additional encumbrances and expenses. The people of Latvia can freely implement all other elements of direct democracy without any additional payments, and they can do it in the way that is the most available for them. Any kind of payment of certification of a signature is non-proportionate because there are other existing measures that would permit collecting these signatures free of charge. And the State should have the duty to ensure it.

R. Irklis concretized the extent of the claim and indicated that the Applicant contests compliance the encumbrance of the rights of voters, i.e. the necessity to certify a signature at a notary public and to pay a free, with Article 1 of the Satversme.

2. The institution that adopted the contested act, the Saeima does not share the point of view of the Applicant and holds that the Contested Norm complies with Article 1 of the Satversme.

The Saeima indicates in its reply that verification of personal data does not take place twice. A notary public (an orphan's court) confirms that a particular person does put his or her signature at the present of a notary public or an official from an orphan's court. A notary public as a person representing judicial system publicly certifies a private will, i.e. the notary carries out public certification. On the other hand, the Central Election Commission only ascertains whether the particular person has or had the rights to sign, as well as the fact whether a person has signed at several notaries or an orphan's courts. The Central Election Commission may not verify whether the particular person has signed with his or her own hand.

The Saeima expresses a viewpoint that, by repealing the Contested Norm, authenticity and validity of the will of initiators of legislation would not be ensured, as well as the rights of other persons who would have signed for initiation of legislation would be infringed in the case if the initiated law is recognized as invalid due to possible falsification of signatures.

The Saeima holds that the notion of democracy is closely related with the possibility to participate in State administration by electing their representatives, exercising mechanisms of direct democracy and participating in pickets, meetings, associations and political parties. Such forms of participation are different. Still, those forms having legitimate basis, should be ensured free of charge. For instance, Saeima elections, national referendum and collection of signatures of one-tenth of the citizens eligible to vote organized by the Central Election Commission is free of charge for the citizens.

In order for a national referendum provided for by Article 78 of the Satversme to take place, there should always be some initiator or group of initiators that would prepare a draft law and ask 10 000 citizens to sign it. Although the initiative could be regarded as civil element, at the same time it is private and may require private funding. The Saeima holds that the State should not ensure such private initiative

based on national resources. According to such initiative, the State shall fund and organize all subsequent necessary procedures but only in the case if the initiative is successful (at least 10 000 signatures are collected) by thus proving the possibility to be able to collect signatures of one-tenth of the citizens eligible to vote.

The Saeima emphasizes that the legislator must provide for a clear and fair procedure to ensure the possibility to collect, under civil and private capacity, signatures for initiation of legislation. One of the elements of such procedure that ensures authenticity and validity of will expression by the citizens and reduces the number of possible falsification of signatures has been established in the Contested Norm by requiring certifying 10 000 signatures of citizens at a notary public of an orphan's court. The duty to pay for certification of the signature is related with expenses of notarial activities. This charge is not established by the legislator but by the Cabinet of Ministers in accordance with the first part of Section 164 of the Law on Notary Office, and this remuneration may not be increased by notaries. Moreover, the second part of the abovementioned section establishes that, when establishing a charge in the case of signature certification provided for in the Law on "National Referendums and Initiation of Legislation", the amount thereof shall not restrict the right to sign on its merits.

Since the amendments were introduced into the Law on Notary Office that came into force on 13 January 20009, the fee for certification of a signature constitutes, respectively, 1.65 lats if the signature is certified by a notary public, and 2 lats in the case if the signature is certified by an orphan's court. Consequently, the Saeima holds that the Law does not provide for an unreasonably high chare for signature certification. Actual expenses of the procedure established in the Contested Norm can be justified with the objective that is being ensured.

The Saeima questions the opinion of the Applicant that, according to the Law "On National Referendums and Initiation of Legislation" adopted by the Constitutional Assembly, signature certification for initiation of legislation could be carried out in any local government authority.

At the Court sitting, **G. Kusiņš, the representative of the Saeima** maintained the position laid out in the reply of the Saeima and also indicated that the Central

Election Commission cannot verify whether the persons who have submitted a draft law have signed this document with their own hands. This is done by the notary public or an orphan's court, which at present is the only and the most efficient measure for implementation of the procedure established in the Contested Norm.

G. Kusiņš indicated that in the case if signature certification were delegated to the authorities that do not fulfil this function on everyday basis, plausibility of the signatures collected would reduce, the possibility of signature falsification would increase and, in the result of this, State expenses for organization of the second round of initiation of legislation could also increase. Moreover, every time when such group of initiators would have collected 10 000 signatures, credibility of which could be subject to doubt, it would not be even useful to ask the Central Election Commission to verify whether the persons signed are citizens of Latvia eligible to vote. Such verification would neither provide an answer to the question whether persons under consideration have signed the document with their own hands. G. Kusiņš emphasized that it is not possible to verify *post factum* the validity of the will of the persons signed.

G. Kusiņš holds that the lenient measures indicated by the Applicant would not reach the objective of the Contested Norm. Namely, they would not ensure authenticity and validity of the will of initiators of legislation. Moreover, they would indirectly infringe the rights or persons that would have signed for initiation of legislation if, due to possible falsification of signatures, this initiation would be regarded as invalid. It is possible to solve the abovementioned case by applying precise interpretation of normative acts; therefore G. Kusiņš asks to recognize the Contested Norm as compliant with Article 1 of the Satversme of the Republic of Latvia.

3. The invited person, **the Ministry of Justice** holds that the Contested Norm complies with Article 1 of the Satversme. Section 22 and Section 23 of the Law "On National Referendums and Initiation of Legislation" provides for a "double procedure", namely, at first initiation of a legislation is carried out by private persons, whilst all further activities are undertaken by the State.

The Ministry of Justice indicates that such procedure is grounded and effective. It provides the citizens eligible to vote the possibility to initiate legislation without, at the same time, overloading the State President and the Saeima with such draft laws initiated by voters that would gain only the majority of support among the citizens.

The objective of the Contested Norm is to ensure plausibility to authenticity and validity of the expression of will of such a person who wants to participate in legislative process. Therefore the Contested Norm provides that the signature of a citizen eligible to vote must be certified by a sworn notary public or a local government authority that performs notarial functions.

Since the legislator has chosen to authorize sworn notary public (an orphan's court) to certify validity of signatures and provided that such a regulation has existed in the legislation of Latvia since the Second World War (the Supreme Council *[Augstākā padome]* of the Republic of Latvia has restored the 1937 Law on Notary Office of the Republic of Latvia), it is justifiable and rational, according to the Ministry of Justice, to delegate the responsibility to certify not less than 10 000 signatures of the citizens of Latvia eligible to vote to collected for initiation of legislation to sworn notaries (orphan's courts). Consequently, the Contested Norm provides for a sufficiently easy procedure and, at the same time, reaches its objective, which is to ensure certification of the validity of a will of a person by thus eliminating the possibility of falsification of signatures.

The Ministry of Justice indicates that one does not have to pay for participation in the process of initiation of legislation. However, sworn notaries do collect fees and receive remuneration for fulfilment of notary activities, namely, certification of a signature. The duty to pay stamp duty at the amount of 0.20 lats and position remuneration tariff at the amount of 1.65 lats (plus the value added tax) is not too cumbersome and does not cause unequal attitude towards persons. According to the Ministry of Justice, such remuneration shall be regarded as justifiable and proportionate.

The representative of the Ministry of Justice Inese Nikuļceva provided additional explanations at the Court sitting that the Ministry of Justice has elaborated regulations on stamp duties that would provide that a person will not have to pay the

stamp duty when certifying his or her signature at a notary public office with a view to exercise the rights established in Article 78 of the Satversme.

I. Nikuļceva drew attention to the fact that, compared to the normative regulation regarding initiation of legislation in Latvia and other States, it is necessary to take into consideration the fact that in other States initiative of citizens is examined by a parliament, which, in fact, is the entire procedure (for instance, in Lithuania, Poland and Spain). On the other hand, in Latvia, in the case if the Saeima does not accept the initiative of the citizens without amendments, a national referendum is held. This is a substantial difference that should be taken into account in order to ensure sufficiently high security level and to prevent excessive expenditure of budget resources at both stages, collection of signatures and holding of a national referendum.

4. The invited party, the Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) indicates that the Satversme confers persons the rights to participate in the work of the State. By means of the Contested Norm, particular requirements regarding certification of the signatures needed for initiation of legislation are set forth. Thus restrictions of the rights or person to participate in the work of the State, namely, to sign for initiation of legislation, are established.

The Ombudsman emphasizes that the Law "Amendments to the Law on Notary Office" adopted on 18 December 2008 changes the situation that is described in the application filed by the members of the Parliament, namely, that one is obliged to pay 9.99 lats for certification of a signature, which is a non-proportionate and high sum. After coming into force of the abovementioned amendments, a person must pay 1.65 alts for certification of a signature. This sum constituted 1.5 lats before the amendments of 20 December 2007. The Ombudsman concludes that after coming into effect of the amendments of December 2008, there is a situation prevented when a person are required to pay, possibly, non-proportionate fee for certification of a signature in the case established in the Contested Norm. By introducing amendments to the Law on Notary Office, one of the main arguments of the Applicants that would allow establishing non-compliance of the second sentence of the Law "On National Referendums and Initiation of Legislation" with the Satversme has been eliminated.

Moreover, the second part of Section 165 of the Law on Notary Office has been supplemented with a sentence of the following wording: "When establishing the rate in the case of certification of a signature established in the Law "On National Referendums and Initiation of Legislation", its amount should not restrict the rights to sign on its merits." Thus the legislator has introduced amendments to the respective legal acts and prevented possible non-proportionality. Consequently, the Contested Norm complies with Article 1 of the Satversme.

The representative of the Ombudsman and the Head of the Civil and Political Rights Department of the Ombudsman Office **Liene Lauceniece** has additionally indicated at the Court sitting that the restrictions of the rights of the voters established by the Contested Norm do comply with Article 1 of the Satversme. The objective of these restrictions is to ensure certitude, first of all, on the identity of each person at the moment when the document is signed and, secondly, on the free will of a person and authenticity of the signature. Consequently, the possibility to falsify signatures is prevented or at least reduced. L. Lauceniece emphasized that the restriction of the rights of the persons eligible to vote is proportionate because the fee at the amount of only 2 lats in required to be paid; moreover, low-income persons can be exempted from this fee.

5. A representative of the invited party – the Central Election Commission and a lawyer of the Central Election Commission **Daiga Plūme** explained at the Court sitting that verification of signatures takes place at the first and at the second stage of collection of signatures.

At the first stage, signatures are submitted by a group of initiators, and the duty of the Central Election Commission (hereinafter - the Commission) is to make sure that these 10 000 signatures are valid. When receiving a draft project with signatures, the duty of the Central Election Commission also is to verify whether all persons signed are eligible to vote. The Commission has a special data or computer system base at its disposition that verifies all 10 000 persons who have signed by entering their personal numbers. The Commission also verifies whether the person who has signed is eligible to vote, whether he or she has the right to vote and whether he or she

is a citizen. After having made sure that all 10 000 signatures are valid, the Central Election Commission holds the second stage of the procedure.

At the second stage of the procedure that lasts for 30 days, the Central Election Commission organizes a certain number of places for signature collection (for instance, in 2008, there were 620 places for signature collection in Latvia and 40 abroad), where members of election commissions work. An agreement is signed with each of the workers. They are trained to do their work and work in accordance with the instructions issued by the Central Election Commission. At this stage, the respective member of the election commission undertakes the responsibility for verifying authenticity of signatures – his duty is to verify the data of the passport and to make sure that the person signs on his or her behalf, as well as to register the name, surname and personal number of this person in the code list for signature collection.

D. Plūme emphasized that, at the end of the second stage, signatures are again verified. There have been cases when persons who are not citizens of Latvia sign the document or a person signs twice. About five to six thousand signatures are the same at both stages of signature collection, although all signatures collected at the first stage are automatically registered in the second state. If signatures of one-tenth of the electors are collected, the Central Election Commission acts in accordance with the law.

D. Plūme indicated that expenses for the second stage in 2008 constituted 526,619 lats.

6. The invited person – Latvian Sworn Notary Council (hereinafter – the Council) concludes that the Applicant contests the expenses related with personal data verification in the Population Register and Invalid Document Register rather than the requirement to certify signatures of citizens as provided for in Section 22 of the Law "On National Referendums and Initiation of Legislation".

The 2007 Law "Amendments to the Law on Notary Office" that provided for supplementing of Section 75 of the Law with Item 4 on personal data verification in national registers has been directed towards increase of the security of notarial acts and

certification and introduction of high quality control of person identification with a view to reduce the number of fraud and protect interests of persons.

The proposition to abandon personal data verification due to the high level of expenses is inadmissible according to the Council. Moreover, the Saeima has already solved this situation, namely, it has adopted the Law on "Amendments to the Law on Notary Office" that came into force on 13 January 2009, according to which notaries are released from the duty to refer to the Population Register and the Invalid Document Register when they have to certify the signature when a person exercises the rights established in Article 78 of the Satversme. On the other hand, the second part of Section 165 of the Law on Notarial Office has been supplemented with a norm that provides that in this case of certification of a signature the amount of tariff should not restrict the rights to sign on its merits.

The representative of the Council and Head of the Legal Department of the Council **Dita Reliņa** indicated at the Court sitting that the charge is requested for certification of a signature of a person, which is a paid service in any institution (State and local government institutions included), rather than for exercise of political rights.

D. Reliņa emphasized: if the law requires certification of signatures, then it can take place only in those institutions that have been formed with a view to implement the function of certification on behalf of the State. Consequently, in this respect the Council denies any non-compliance of the second sentence of Section 22 of the Law "On National Referendums and Initiation of Legislation" with the principles of a democratic state. Quite on contrary – this means that the State has reasonably allocated the functions of administration to such institutions that fulfil these functions at a professional level.

First of all, the aim of signature certification is to ensure authenticity of a signature and identify persons that have signed a draft law. A notarial certification of a signature is public certification. It grants authenticity to the signatures and admits that persons who have signed are capacitated. In the case under review, citizenship of persons is also verified.

Secondly, notarial certification is a guarantee that signatures are made on a free will at the presence of a neutral and impartial State official.

Thirdly, the requirement to go to a notary office to sigh a draft law, according to the Council, could help a person to adopt an independent and well-considered decision, and this is of particular importance because such activities of signature collection usually are related with active advertising campaigns. According to notaries, in these cases it is possible to manipulate with the free will of persons at some extent.

Fourth, it is important to note that the requirement of certification of 10 000 signatures serves as a special filter that guarantees that only socially significant projects are submitted to the procedure of signature collection because this is not useful to use budget funding for initiation of any project. As an example, D. Reliņa mentioned the draft law "On Elaboration and Implementation of the Riga-Herson Channel Project Connecting the Baltic Sea and the Black Sea through the Daugava River, Zapadnaya Dvina River and Dnieper River" filed in 2007, informing that no sufficient number of signatures was collected for development of the draft project.

Likewise, D. Reliņa indicated that during her entire term of office at the Council (since 2003), campaigns of signature collections have been organized by means of the funding of their organizers. Therefore it is possible to conclude that, before this, persons eligible to vote have signed for a draft law free of charge, and it has always been the group of initiations that covered the expenses.

The Council holds that the Contested Norm complies with Article 1 of the Satversme.

7. The invited persons – the Chairman of the 7th Saeima Legal Commission **Linards Muciņš** indicated at the Court sitting that the State has provided for a special procedure to exercise the rights of persons eligible to vote as established in Article 78 of the Satversme. This procedure requires certifying signatures at a notary public or an orphan's court (a local government authority) at the first stage of signature collection. Thus this is the issue on the function that arouses: what kind of function is it; what does it apply to and who has to pay for fulfilment of it.

The function of signature certification has been delegated to notaries public. If in certain places the inhabitants have no possibility to receive such service due to the absence of notaries, the State delegates this function to local governments. This,

however, shall not be regarded as a function of a local government. The State has the duty to pay a local government because signature certification is not a function of a local government. Fulfilment of any function is related with expenses, which means that the State has the duty to pay for fulfilment of these functions. The State must decide whether the respective function is important enough to be fulfilled on the basis of budget funding or this is a function that is equally important but applies only to a certain group of persons, which means that it shall not be founded from the budget. At present, the State has chosen such a procedure that is established in the Contested Norm.

I. Muciņš emphasizes that a sworn notary public and the institution of notary is an institution of judicial power and, based on analogy, it is regarded as a public authority. The State, when setting forth a requirement of notarial certification of a signature, ensures credibility of each signature since it is being certified in an institution that has been formed for this particular objective. The abovementioned requirement is not too high because, according to the Latvian model, rejection of a draft law on amendments or acceptance thereof and transferring to the Saeima means that the draft law will be submitted to a national referendum. Therefore, the State has justifiably requests certification of the signatures of the group of initiators at a notary public because this is the State that organizes the second stage of signature collection and the subsequent national referendum. L. Muciņš compares this procedure with the requirement to register property in a Land Register, which, on the one hand, obligates a person to register the property and pay a stamp duty, and, on the other one, gives it certitude because since then the State will protect his or her property rights that have been established according to appropriate procedure.

L. Muciņš holds that if this procedure would be simplified, this would endanger the interests of those persons who do not participate in the procedure of initiation of legislation or who are against the initiated law, because in this case plausibility of signatures collected would reduce and there would be no possibility to verify the signatures. Therefore, in the case if the number of falsified signatures would increase, such draft laws could be transferred to the second stage if they have not gained the agreement of 10 000 persons eligible to vote.

8. The invited person, Prof.Dr.h.c. Assessor jur. Dilp.-Pol. **Egils Levits** indicates that the procedure of national referendum begins with submission, by 10 000 voters, of a draft law (or draft project of amendments to the Satversme) to the Central Election Commission. This is the first stage of national referendum, and each voter has the right to participate in it.

The Contested Norm provides for a precondition to the rights of voters included in the Satversme when participating in the first stage of national referendum and signing for a particular draft law. This precondition implies certification of one's signature at a notary public or a local government authority that fulfils notarial functions. This condition implies two restrictions for those voters who want to participate in the procedure of initiation of legislation established in the Satversme. The first restriction is that a voter must present a signature certified by a notary public. The second additional restriction is that a person must pay 2.00 lats or 9.99 lats for this certification.

Provisions of Articles 78 – 80 of the Satversme that regulate the rights of a voter to participate in a national referendum are not exhaustive enough in order to cover all issues related with initiation of legislation by the people. Therefore a more detailed regulation of this issue is permitted to be established by a law. Such law, however, must comply with the Satversme, which means that the restrictions included in a law are admissible only if they are justifiable. On the other hand, the restrictions can be justified only if they, among the rest, comply with the principle of proportionality (in a wider meaning), which is a structural principle of a constitutional rank in a democratic state regime and applies to the public law.

E. Levits holds that the Contested Norm could be necessary to reach the legitimate objective, i.e. to eliminate the possibility to impact, by means of falsification of signatures or by other means, the legislation process initiated by the people. The Contested Norm shall also be regarded as appropriate because it allows preventing falsification of signatures or other unlawful possibilities to use signatures during a national referendum.

The Contested Norm, however, is not necessary, because it is possible to prevent unlawful manipulation with signatures by other alternative means that would restrict the rights of voters at a lesser extent. This measure is verification of signatures *post factum*. Moreover, the Central Election Commission is already carrying out such verification procedure.

E. Levits emphasizes that, according to the principle of good administration, when weighing restriction of the rights of a person and benefit to the society in the context of the principle of proportionality, wasting of time and efforts by a private person when fulfilling these bureaucratic duties cannot *per se* be regarded as a restriction of the rights of a person. This applies not only to the case when such restriction is an obligatory requirement, but also to the case when it has been established as a pre-condition for a person to be able to exercise his or her rights. This is not compensated by the negligible benefit gained by the society from such double verification of signatures. Consequently, the Contested Norm does not comply with Article 1 of the Satversme.

The Constitutional Court holds:

9. Article 64 of the Satversme provides that The Saeima, and also the people, have the right to legislate.

The legislation process is a special procedural order, according to which the Saeima or the people achieve that a draft law prepared in advance becomes a law, i.e. a normative act that occupies a certain place in the system of normative acts. The process of legislation can be divided into the following stages: initiation of legislation, discussion of a draft law, adoption of a law and publishing of the law (*see: Dišlers K. Latvijas valsts varas orgāni un viņu funkcijas. Rīga: Tiesu namu aģentūra, 2004, pp. 92).* Only after having undergone all these stages, a draft law becomes a law.

Initiation of legislation is issuing of a law proposition, amending or repealing thereof in the Saeima. Only those subjects have the right to submit such a proposition that have been conferred this right by the Satversme. Article 65 of the Satversme provides: "Draft laws may be submitted to the Saeima by the President, the Cabinet or committees of the Saeima, by not less than five members of the Saeima, or, in

accordance with the procedures and in the cases provided for in this Constitution, by one-tenth of the voters."

The basic provisions for the right of the people to implement initiation of legislation are included in Articles 78 – 80 of the Satversme. However, taking into consideration the laconic style of the text of the Satversme, it does not entirely regulate this issue. This has been done by the legislator by means of a separate law, namely, the Law "On National Referendums and Initiation of Legislation".

Exercising of the rights established in Article 78 of the Satversme is provided with a certain procedure. Soon after adoption of the Satversme on 30 June 1922, the Constitutional Assembly adopted the Law "On National Referendums and Initiation of Legislation". Namely, it provided for the procedure, according to which the people shall exercise its right to initiate legislation. Article 11 of this Law established that not less than one thousand citizens eligible to vote has the right to submit a draft law provided for in Article 78 of the Satversme to the Central Election Commission. This signature must be certified by a notary public or state of local government institutions. Therefore, after having received such application, the Central Election Commission had the duty to announce signature collection of not less than one tenth of the voters regarding the respective draft law.

In 1994, when renewing the Law "On National Referendums and Initiation of Legislation", the legislator do provide for a larger number of initiators of legislation, which was 10 000 voters in order to confirm the interests of a sufficient number of the society members and ensure that only such national issue shall be dealt with by means of legislative procedure that is substantial and the importance of which has been recognized by a sufficient number of citizens. This is closely related with the duty of the State to ensure signature collection of one tenth of the voters subsequent to the initiation of legislation stage, which requires considerable funding from the State (*see: Transcript of the Saeima meeting of 31 March 1994, http://www.saeima.lv/steno/st_94/st3103.html).*

Thus initiation of legislation wherein a body of citizens participate, takes place in two stages:

1) 10 000 voters submit to the Central Election Commission a signed draft law or draft project of amendments to the Satversme;

2) then, "having ascertained that the submitted draft law or draft amendment to the Constitution has been signed by not fewer than 10,000 Latvian citizens eligible to vote, the Central Election Commission shall announce that the collection of signatures in support of the law can begin law" (Section 23 of the Law "On National Referendums and Initiation of Legislation"). This is the State that undertakes organizing of the second stage of legislative procedure.

10. The Contested Norm provides for a procedure, according to which the rights of one tenth of the voters to initiate legislation shall be exercised. According to this procedure, 10 000 citizens eligible to vote have the right to initiate legislation according to this procedure. The Contested Norm includes several requirements:

1) at least 10 000 voters must sigh for a fully prepared draft project;

2) each signature of voters must be certified by a notary public or a local government authority that has the right to fulfil notary function;

3) period of validity is established for such signature - it must be certified not earlier than 12 months before submission of the draft law to the Central Election Commission.

10.1. The Applicant contests the duty to certify a signature by a notary public, which is also related with high expenses of the procedure. At the Court sitting the representative of the Applicant concretized the extent of the claim, namely: The Applicant only contests compliance the necessity to certify a signature at a notary public or a local government authority (*see: case materials, Vol. 1, pp.15*). The Applicant has not contested the amount of the stamp duty or the tariff of notary remuneration. Therefore the Constitutional Court shall not assess the amount of the fee for signature certification in the frameworks of this case.

10.2. The Applicant indicates that the rights of the citizens to participate in State administration follow from Article 1 of the Satversme. If the State has provided for the possibility of the citizens to directly participate in the Administration, it is prohibited to restriction these rights without reason. On the other hand, the

requirement to certify a signature at a notary public in order to be entitled to participate in initiation of legislation considerably restricts the rights of persons to participate in State administration because it is related with certain fees (certain expenses).

In addition to this, the Applicant also draws attention to the breach of the principle of good administration because double verification of personal data of the initiators takes place – at the notary office and at the Central Election Commission.

11. Article 1 of the Satversme provides: "Latvia is an independent democratic State." This means a law-governed and democratic regime prevails in Latvia that recognizes the principles of a democratic and law-governed State.

The Constitutional Court has reiterated in its judgments that the notion of "a democratic republic" includes a range of other principles of a law-governed state: the principles of separation of powers, mutual supervision, rule of law (subjection of the public power to the law), lawfulness, proportionality and the principle of legal security. At the same time it is emphasized that the list of these principles is not complete (*see: Judgment of 24 March 2000 by the Constitutional Court in the case No. 07-07(99), Para 3 of the Concluding Part*).

It has also been indicated in the Law that the notion "democracy" included into Article 1 of the Satversme is the so-called functional legal notion. The main principles that have been developed from the legal notion "democracy" apply to participation of the society in public decision-making process, separation of public power and mutual supervision, as well as subjection of the public power to the law, dignity of a person and equality of persons, subjective rights of a person before the public power, principles of a law-governed state and social solidarity (*see: E. Tiesību normu interpretācija un Satversmes 1. panta „demokrātijas" jēdziens // Cilvēktiesību žurnāls, 1997, No. 4, pp. 64).*

On the other hand, the core of the notion of democracy is implementation of the will of the majority of the society. This is closely related with the principle of sovereignty of people. Article 2 of the Satversme also provides that the sovereign power of Latvia is vested into the people of Latvia. The people of Latvia – carrier of

the sovereign power of the State must be able to influence decision-making process in the State. The people must be the basis of the State; it must be the source of power. In a democratic regime, sovereignty of the people shall first of all be implemented by means of regular and free elections (representation democracy), however separate democratic regimes have preserved the elements of direct democracy: national referendums and civil initiative (the rights of people to vote).

The sovereign will of Latvia is stated in the Satversme by establishing the following in its introductory part: The people of Latvia, in freely elected Constitutional Assembly, have adopted the following State Constitution". Consequently, the Satversme provides for the ways how the democratic regime of Latvia shall be implemented.

The Constitution provides for four ways how the citizens can implement their will, namely:

1) direct election of their representatives into the State legislative organ – the Saeima (Article 6 – 9 and Article 14 of the Satversme);

2) the people can function as legislators, except when adopting laws and amendments to the Satversme (Article 64, 65, 78 - 80 of the Satversme);

3) deciding upon laws or amendments to the Satversme adopted by the Saeima (Article 72 - 75, 77, 79, 80 of the Satversme);

4) deciding upon other issues provided for by the Satversme that are submitted to a national referendum (Article 48 and the third and the fourth part of Article 68 of the Satversme).

There are two procedures for the ways of implementing the will of the citizens: Saeima elections take place according to the election procedure, whilst the rest three ways of implementation of will are carried out in the frameworks of a national referendum.

Both these procedures are provided with a range of preconditions by the Satversme and respective laws.

12. The Satversme confers to the people the rights to participate in implementation of different functions of power. One of these functions is the legislative function. A natural representation organ of the people, by means of which the people (organ of public power) are acting, is the body of citizens. Separate citizens that form the body of citizens are not national organs *per se*, but they are only a part of the natural organ (*see: Dišlers K. Ievads Latvijas valststiesību zinātnē. Rīga: A. Gulbis, 1930, pp. 98).*

The rights of the body of citizens have a different function if compared to the basic rights of an individual. The objective of the first is to ensure direct and democratic participation process of the people in the legislative process, whilst the objective of the letter is to protect individual freedoms from intervention by the State, as well as to guarantee certain material or non-material benefits. Namely, legislative rights (rights to initiate legislation) is a tool that is given to a body of individuals in order to let it influence the life of the State, whilst human rights is a measure of legal protection that guarantees freedoms of a person (*see, e.g.: Dissenting opinion of the judge Egils Levits in the Case of 17 June 2004 by the European Court of Human Rights "Tatyana Zhdanoka vs. Latvia", Para 13 and 14 // Latvijas Vēstnesis, 15.07.2004., No. 111).*

Consequently the rights of the body of the citizens to participate in the legislation process shall be considered as the rights pertaining to the institutional field of constitutional regime (Article 78 – 80 of the Satversme).

13. According to Section 22 of the Law "On National Referendums and Initiation of Legislation", a certain number of voters (10 000) **have the right** to submit to the Central Election Commission a fully elaborated draft law of draft project for amendments to the Satversme. At the same time, the State has **obligated** each citizen of Latvia to certify his or her signature for initiation of such law at a notary office (an orphan's court).

The Contested Norm puts forth a precondition for the rights of the body of citizens, as established in the Satversme, to participate in the first stage of legislation initiation process. This precondition is the duty of each citizen, when signing for a

particular draft project, to certify his or her signature at a sworn notary public or a local government authority that fulfils notarial functions. On the other hand, a person must also pay a stamp duty and remuneration of the position for this certification.

Consequently, the Contested Norm provides for the procedure of implementation of initiation of legislation by the people.

In order to find out whether the Contested Norm complies with Article 1 of the Satversme, it is necessary to assess the procedure established for the body of citizens when exercising their rights to initiate legislation and the duty established for each person pertaining to the body of citizens, namely, it is necessary to investigate whether the fact that the signatures of initiators of legislation must be certified at a notary public or a local government institution that fulfils notarial functions, complies with the requirements of a democratic state regime.

Observing the extent of the claim, the following must be established in the frameworks of the case under review: whether the procedure established in the Contested Norm is indispensible and justifiable in a democratic state.

14. The order of implementing initiation of legislation by the State, as provided for by the legislator, is necessary in a democratic and law-governed State if it has been established to protect substantial social interests.

Consequently, the legitimate objective of such restriction must now be established.

It is possible to agree with the Saeima and the Ministry of Justice that the Contested Norm is directed towards ensuring authenticity and validity of the expression of will of a person at the first stage of initiation of legislation. Namely, its aim is to reduce possible falsification of signatures or to prevent any other unlawful way of affecting legislation process initiated by the people by thus protecting the democratic State regime.

Consequently, the procedure established in the Contested Norm providing for restrictions to the rights of voters is indispensible for a democratic State.

15. In order to assess whether the procedure established in the Contested Norm is justifiable in a democratic state, first of all it is necessary to find out whether it is proportionate, namely, whether the measures selected by the legislator are appropriate for reaching of the legitimate objective, whether there exist other more lenient measures for reaching of this objective and whether a sufficient balance has been observed between the interests of the State and initiators of legislation.

15.1. The Contested Norm provides the following:

1) each signature of a voter must be certified;

2) certification must be carried out according to certain procedure – at a notary public or a local government authority that fulfils notarial functions.

Consequently, the State has selected the mentioned measures to reach the legitimate objective. Therefore it is necessary to investigate whether these measures are appropriate for teaching of the legitimate objective and whether they can ensure equal exercise of the rights of voters.

The Latvian legislator has established that a sworn notary or orphan's courts have the jurisdiction to make public certification of signatures (Item 2 of Section 65 of the Law on Notarial Office, the second part of Section 2 of the Law on Orphan's Courts).

According to Section 2 and Section 3 of the Law on Notarial Office "Sworn notaries are persons belonging to the court system, who are assigned to regional courts and perform duties prescribed to them by law. [..] . In respect of their official duties, sworn notaries shall be equivalent to State officials." A sworn notary as a person pertaining to the judicial system publicly certifies a private will, namely, certifies signatures. According to the second part of Section 2 of the Law on Orphan's Court, in parishes and such cities not having a sworn notary, as well as in counties, except a city of an administrative centre if it has a sworn notary, an Orphan's court, in cases provided for by the Civil Law, shall provide assistance in the settlement of inheritance issues, provide the protection of inheritance, as well as make certifications and perform other tasks specified in this Law, including certification of signatures. The second part of Section 61 of the Law on Orphan's Courts established that the

certification of an Orphan's court shall be equal to the notarial certification within the meaning of the legal force.

Consequently, the legislator has delegated the function of signature certification to State officials or authorities that have been formed for fulfilment of these functions. The Legislator has also established that a stamp duty and position remuneration must be paid for fulfilment of this function. The amount of the stamp duty and the position remuneration, based on the authority included in the Law on Notary Office, is established by the Cabinet of Ministers. On the other hand, the Law on Orphan's Courts that provides for the amount of the stamp duty for the activities performed by orphan's courts (which is certification of signature).

Still, the fourth part of Section 75 of the Law on Notarial Office provides: "When carrying out verification of personal data according to the Population Register and the Invalid Document Register in the case of certification of a signature established in the Law "On National Referendums and Initiation of Legislation", a notary public is exempted from payments for information acquisition, and in this case shall not require a person to pay remuneration for data verification." In addition to this, the second part of Section 165 provides the following: "When establishing the amount of a fee in the case of signature certification provided for in the Law "On National Referendum and Initiation of Legislation", the amount thereof shall not restrict the rights to sign on its merits." Consequently, the legislator has indicated to the Cabinet of Ministers how the remuneration fee for sworn notaries public shall be established in the case of signature certification provided for in the Law "On National Referendum and Initiation of Legislation". At present, the fee for such service constitutes 2 lats. Moreover, Section 67 and Section 166 of the Law on Notary Office provide that a person can be exempted from payment of the stamp fee and position remuneration.

Taking into consideration the fact that signature certification is carried out by special authorities (or State officials) established for fulfilling of this function and the State has established that the fee for fulfilment of such function may not restrict the rights of voters to sing on its merits, the measures selected by the legislator are appropriate for reaching of the legitimate objective and ensures equal exercising of the rights.

15.2. The Applicant holds that there exist several more lenient measures that would facilitate initiation of legislation by the citizens, namely, certification of signatures could be authorized to other authorities or State officials, for instance, the Office of Citizenship and Migration Affairs or local government institutions or State officials. The number of such authorities (State officials) is higher, and thus they would be more available if compared to notary offices. Moreover, for signature certification it would not be necessary to pay stamp duty or position remuneration in authorities that do not fulfil notarial functions. The Applicant also admits that certification of a signature could not be carried out at all. But still, if notaries public would still be responsible for certification of signatures, then voters should be exempted from payment of stamp duty and the service of certification.

Since there are other more lenient measures available, it is necessary to assess whether they ensure reaching of the legitimate objective at the same level of efficiency. Namely, 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*).

Signature certification, disregarding the person or authority that carries it out, ensures that a person himself or herself has signed and thus manifested its will, and this increases credibility of the signature. If the certification duty were repealed, this would reduce credibility of collected signatures and increase the possibility of signature falsification. Moreover, at the first stage of signature collection, credibility of signatures is testified also by the possibility of the Central Election Commission not to organize the second stage of initiation of legislation if signatures of one-tenth of voters have been collected at the first stage of signature collection, as provided for by the Law.

Moreover, the Central Election Commission, when carrying out verification in accordance with the first part of Section 23 of the Law "On National Referendums and Initiation of Legislation", cannot establish whether a person indicated has signed with its own hand. It is possible to agree with the opinion of the Saeima that repealing of

the Contested Norm would infringe the rights of those persons who have signed for initiation of legislation but would have no possibility to exercise their rights due to possible falsification of signatures because in such a case the proposition would be recognized as invalid. The Applicant also concretized at the Court sitting that he does not contest the necessity of verification of signatures (*see: case materials, Vol. 2, pp. 15*).

Consequently, in the frameworks of this case there is no dispute on the necessity of verification of signatures. The person or authority that fulfils this function and payment for it is contested.

The Applicant holds that other State and local government authorities could certify signatures. Therefore it is necessary to establish whether they are appropriate for fulfilment of this function, whether additional resources are necessary for fulfilling this function, whether such a service could be provided free of charge and whether the respective authorities are competent to fulfil this function.

It is possible to agree with the opinion of the Saeima and the Ministry of Justice that the functions of State and local government institutions are not related with public certification of a private will. Therefore, delegation of such function to other State and local government institutions that do not fulfil the function of public certification of signatures would not ensure high quality of the service and would not comply with the principle of efficiency of State administration. The representative of the Central Election Commission also indicated at the Court sitting that members of election commission who collect signatures at the second state of the procedure of legislation initiation are specially trained to fulfil this function.

Signature certification in a State or local government authority according to the ninth part of Section 5 of the Law "On Budget and Financial Management" would not be regarded as the basic function of the authority and possibly this could be established as a paid service.

The Applicant holds that expenses for signature certification could be covered from the State budget. The Constitutional Court recognizes that the draft laws initiated by the people (especially draft project for amendments to the Satversme) can be of general importance and can be elaborated in the interests of the entire society; however

the initiative of a narrow group of persons is not excluded. If such an initiative would not be supported by a wider circle of the society and the necessary 10 000 votes were not collected, this could cause losses for the State budget since the second stage of signature collection is organized by the State. It is possible to agree with the position of the Saeima that it is not useful, based on the interests of the society, to provide budget funding for all initiations of legislation.

In order to make initiation of legislation more available to the society, it would be necessary to consider the issue on compensation of signature certification from the State budget in the cases if the particular draft law has been adopted. However, this solution would not solve the claim of signature certification in a respective institution and that of making a payment for this service. However, this falls solely within the scope of competence of the legislator to establish this procedure.

If the Law requires certification of signatures, only those authorities that have been particularly formed for fulfilment of this function of behalf of the State can provide this service at a high quality. At present these authorities are notaries public and orphan's courts.

Consequently, at present, the measures selected by the State are the most effective measures for reaching the legitimate objective because other measures would not ensure reaching of the objective at the same quality level.

15.3. In order to ensure collection of one-tenth of the voters, usually extensive budget resources are required. This is why the legislator has established the minimum number of initiators of legislation which is 10 000. Only if this number is reached, the State intervenes by providing budget resources (employees and financial funding) for signature collection. In order to justify this signature collection, the State must establish strict provisions for it. Consequently, this procedure, on the one hand, ensures that important draft laws and draft projects of amendments to the Satversme that are elaborated in the interests of the inhabitants, are being developed by means of initiation of legislation by the people. On the other hand, it helps to find out whether a draft law has gained sufficient support among the public (at least 10 000 voters) and it is related with the interests of a certain part of voters. Therefore the State organizes a subsequent stage of signature collection in order to ensure the rights of the people to

participate in the process of initiation of legislation. Since a document certified at a notary public has a high plausibility level, the State only has to verify before launching the second stage of signature collection whether the necessary quorum has been accumulated.

Thus a sufficient balance between the interests of the society and the rights of the initiators of legislation has been observed.

Consequently, the procedure established in the Contested Norm can be justified in a democratic State.

16. The Applicant expresses a viewpoint that the Contested Norm does not comply with the principle of good administration because the procedure established for implementation of the rights enshrined in Article 78 of the Satversme does not ameliorate the level of quality of services provided for the society. The task of the State is to facilitate and improve the procedures in favour of a private person, but still it carries out double verification of personal data - at a notary office (an orphan's court) and at the Central Election Commission.

The Constitutional Court, in its judgments, has already referred to the principle of good administration by indicating among the rest that this principle follows from Article 1 of the Satversme (*see: Judgment of 25 March 2003 by the Constitutional Court in the case No. 2002-12-01, Para 6 of the Establishing Part*) and the State is obligated to facilitate and improve State administration and to organize in the most efficient way possible (*see: Judgment of 6 April 2005 by the Constitutional Court in the case No. 2004-21-01, Para 6*), to guarantee implementation of the procedure within a reasonable time and other provisions, the objective of which is to ensure observation of human rights in State administration (*see: Judgment of 25 March 2003 by the Constitutional Court in the Case No. 2002-12-01, Para 6 of the Establishing Part*). However, in all these above mentioned judgment, the principle of good administration is related with State administration, which is relations of State administration with private persons and internal relations and organization of State administration.

The fact that the principle of good administration is related with State administration is also reflected in the Recommendation CM/Rec(2007)7 of the Committee of Ministers of the Council of Europe on good administration, the appendix of which includes the Code of Good Administration. It has been explained in Section 1 of the Code of Good Administration that this applies to the relations between State administration and a private person.

Consequently, the principle of good administration that follows from Article 1 of the Satversme applies mainly to the field of State administration.

17. The principle of good administration means observation of human rights in functioning of executive power, i.e. State administration, however, the legislator, too, which is the Saeima, has the duty to observe this principle.

As to this principle, duty of the legislator is to ensure compliance of the regulation of State administration with the principle of good administration. Certification and verification of signatures are activities that are being carried out when holding a national referendum. This activity takes place in the field of State administration and therefore the regulation thereof must comply with the principle of goof administration, which also means that the State is obligated to simplify and ameliorate the procedures, as well as to make them as efficient as possible. Simplification and amelioration of the procedures include, among the rest, prevention of ungrounded double fulfilment of functions.

Taking into consideration what has been established in Para 15 of the Judgment, namely, that the procedure established in the Contested Norm is justifiable in a democratic state observing the extent of the claim, it is necessary to establish whether, in the frameworks of signature collection, double fulfilment of functions takes place.

As it has already been indicated, there are two stages of initiation of legislation (*see: Para 9 of the Judgment*). At the first stage of initiation of legislation, a notary public (an orphan’s court) ensures that a particular person signs, with his or her own hand, for initiation of a law at the presence of a notary public or a State official from an orphan's court. A notary public as a person pertaining to the judicial system

performs public certification of this private will. Signature certification at a notary's office includes two stages: identification of a person (namely, the State official, i.e. the notary public identifies a person by means of an identification document presented, as well as by referring to public registers) and signs certification (namely, the notary public certifies that the person has signed at his or her presence).

On the other hand, after having received the entire list of persons signed, the Central Election Commission finds out (also by referring to the Population Register) only the fact whether a particular person has the right to sign (complies with the status of a voter), as well as the fact whether the person has or has not signed twice at several notary offices or orphan's courts. The Central Election Commission cannot verify whether the particular person has sighed with his or her own hand.

Consequently, a notary public in this procedure fulfils the function of signature certification, while the Central Election Commission - completely different function, i.e. it verifies whether the necessary amount of signatures (10 000) has been collected and whether these signatures are valid (whether come of the voters have or have not signed twice). Therefore the position that, within the frameworks of the procedure of signature collection, one and the same functions are fulfilled twice by different Sate authorities or State officials is ungrounded.

Consequently, the Contested Norm does not contradict the principle of good administration.

The Constitutional Court

based on Article 30 - 32 of the Constitutional Court Law

h o l d s :

the second part of Section 22 of the Law "On National Referendums and Initiation of Legislation" complies with Article 1 of the Satversme of the Republic of Latvia.

The Judgment is final and not subject to appeal.

The Judgment was announced in Riga, on 19 May 2009.

The Presiding Judge G. Kūtris