THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

JUDGMENT
ON BEHALF OF THE REPUBLIC OF LATVIA
Riga, 13 February 2009
in Case No. 2008-34-01

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

having regard to the constitutional claim of Regina Dubovska

based on Article 85 of the Satversme (Constitution) of the Republic of Latvia and Article 16 (1), the first part of Article 17 (11), Article 19.^{2} and Article 28.^{1} of the Constitutional Court Law,

on 27 January 2009 in a Court session examined the case in written proceedings:

"On Compliance of the Word "Norm" Used in the Third Part of Section 12 of the Law "On Land Reform in the Cities of the Republic of Latvia" and the First and Second Part of Section 54 of the Law "On Privatization of Dwelling Houses" with the First Sentence of Article 91 and Article 105 of the Satversme (Constitution) of the Republic of Latvia".

The Constitutional Court has established:

1. On 20 November 1991, the Supreme Council of the Republic of Latvia (hereinafter – the Supreme Council) has adopted the Law "On Land Reform in the Cities of the Republic of Latvia" (hereinafter – the Law on land reform in the

cities). The initial wording of the first part of Section 12 of the Law provided that former land owners and their heirs have the right to demand restoration of property right to the land parcels previously owned, apart for the cases provided for in Item 1 and Item 2 of this section. The second part of this section provided:

"In all other cases when a land parcel of former land owners had been covered with buildings or constructions that are necessary to satisfy the needs of the society are planned to be constructed in accordance with city planning and construction projects, former land owners or their heirs have the right:

- to demand restoration of the property right and receive, from the owner of buildings (or in the case of planned building process, from the local government of the city), a rent payment, the minimum amount of which being determined by the Council of Ministers of the Republic of Latvia; or
- to demand an equivalent land parcel to be assigned for them within the administrative territory of the same city to own or use depending on the planned way of use of the land parcel; or
- to receive compensation according to the procedures established by law."

1.1. On 31 March 1994, the Saeima (Parliament) of the Republic of Latvia (hereinafter – the Saeima) adopted a law that provided for a new wording of Section 12 of the Law on land reform in the cities. The new wording of the second part of this section provided the following:

"In all other cases the former land owners or their heirs had the following rights at choice:

- to demand restoration of property rights and receive a rent charge from the owner of buildings and constructions; or
- to demand a land parcel of equal value to be assigned for them to own and use; or
- to receive compensation according to the procedures established by law."

1.2. On 8 May 1997, the Saeima adopted a law, by means of which Section 12 of the Law on land reform in the cities was supplemented. The new wording provided the following:

"If the property right was restored to former owners or their heirs to a land parcel that contains the objects mentioned in Item 3 of the first part of Section 12 of this Law, as well as apartment houses, water supply, heat supply and power supply object owned by the State or a local government, buildings and constructions privatized in the cases mentioned in laws and normative enactments, rent payment per year may not exceed five percent from the cadastre value of the land."

It was also decided to regard the second part of Section 12 as the third part thereof.

2. On 21 June 1995, the Saeima adopted the Law "On Privatization of State and Local Government Dwelling Houses" (hereinafter – the Law on Privatization of Dwelling Houses), the first and the second part of Section 54 of which provides the following:

"(1) The owner of a land plot has the duty to conclude a land lease agreement with the owner of a privatized object.

(2) Rent charge for the owners of a privatized apartment and artist's workshop may not exceed five percent per year from the cadastre value of the land. In all other cases rent charge for the lease of land shall be established by means of an agreement between the owner of the privatized land parcel and the owner of the land parcel."

3. The person who submitted the constitutional claim, Regina Dubovska (hereinafter - the Applicant) holds that the word "norm" included into the third part of Section 12 of the Law on land reform in cities and in the first and the second part of Section 54 of the Law on privatization of dwelling houses (hereinafter - the Contested Norms) do not comply with the first sentence of Article 91 and Article 105 of the Satversme (Constitution) of the Republic of Latvia (hereinafter - the Satversme).

It was indicated in the constitutional claim that the rights to property regarding the deemed part of the land parcel of Lielvārde Street (cadastre No. 01000712041) were restored for the Applicant by means of the 2 May 1996 Decision No. 17/83 of the Riga City Land Commission. At the moment when the rights to property of the Applicant were restored, an apartment house was already located on this land parcel. Previously the building was a property of the local government of the Riga city, but by means of a decision of the Riga City Privatization Commission for Municipal and State Property, the house was denationalized in 2000. Taking into consideration what is established in Section 12 of the Law on land reform in cities and Section 54 of the Law on privatization of dwelling houses, the Applicant has concluded a land lease agreement with the owners of the apartment house.

When substantiating non-compliance of the Contested Norms with the first sentence of Article 91 of the Satversme, the Applicant draws attention to the fact that owners of the land located in the territory of Riga and Ventspils freeports enjoy equal and comparable conditions, if compared to owners of land located elsewhere in the cities. All these land owners cannot freely use the land parcels and decide themselves whom to lease the land. In both cases, the buildings already constructed can be regarded as an encumbrance on the land parcels.

Still, the attitude towards both groups of persons is different because the Contested Norms force them to conclude an agreement, however in the territory of the freeports, as provided by law, a personal servitude to land parcels owned by legal and natural persons are established for the benefit of port administration. Taking into account the fact that the legal regulation in both cases differs, the extent of the rights and duties of land owners also differs. The relations between a land owner and port administration are regarded as property law relations. The owners of the land parcels encumbered with personal servitudes receive a limited compensation, while port administration makes tax payments for the landed property. In this case, the owners of the land plots can receive a greater profit from their property because, unlike the owners of such land plots where apartment houses are located, they do not have to register as a self-employed person, as well as they do not have to pay property tax, personal income tax, value-added tax, and

state mandatory social insurance tax from their real estate. Moreover, it is more difficult for those land owners, the legal relations of whom with owners of buildings are regulated by the Contested Norms, to protect their rights according to the civil procedure if compared to the owners of the land located in the territory of the freeports.

The Applicant emphasizes that the above mentioned different attitude has no objective and reasonable grounds. According to the Applicant, it would be more correct and just to establish a servitude to regulate the legal relations mentioned in Section 12 of the Law on land reform in the cities and Section 54 of the Law on privatization of dwelling houses. Legal relations of compulsory lease do not possess the character of liability law since they are not founded by means of an agreement concluded on voluntary basis. Moreover, in the landbook department, an apartment house is registered as a property law encumbrance. Liability law, including land lease, are registered in a landbook only in the case of an exception.

When justifying non-compliance of the Contested Norms with Article 105 of the Satversme, the Applicant indicates that because of the legal regulation regarding compulsory lease the owner cannot use his own land on his own discretion. Consequently, the rights to property of the Applicant established in Article 105 of the Satversme are being restricted.

There is no doubt that the restriction has been established by law and it has a legitimate objective, because the Contested Norms protect the inhabitants of apartment houses from unreasonable expenses of house maintenance. In this case, however, the principle of proportionality between the interests of a person and that of the society have not been observed, because about a half of the rent payment received goes to the State and local government in the form of different taxes, rather than to the land owner. If this kind of income would be defined, in the law, as compensation rather than a rent payment, then the land owner would receive about twice as small income if compared to the present income, whilst payments by the inhabitants of the apartment houses would remain unchanged.

4. The institution that passed the Contested Acts, the Saeima holds that the Contested Norms comply with the first sentence of Section 91 and Article 105 of the Satversme.

The Saeima indicates that the institute of a compulsory lease rather that the restrictions to the rent payment are contested in the application. Moreover, non-compliance of the Contested Norms with the Satversme is grounded, in the application, by referring to disadvantageous and cumbersome tax payments imposed on the rent payment received.

When explaining the choice of a compulsory rent to regulate legal relations, as provided for in the Contested Norms, the Saeima indicates that the normative regulations regarding land reform includes exceptions of the provisions of Section 968 of the Civil Law. In the exceptional cases established in the Law, a building can be legally separated, as an independent property object, from the land parcel and it can belong to another person. Being aware of such situation when buildings and other construction can be legally constructed on a land parcel of a certain owner, the duty of the legislator was to regulate the relations between the land owner and the owner of buildings (constructions). Already at the beginning of land reform, the legislator has provided regulation for legal relations regarding compulsory rent between a land owner and an owner of buildings (constructions), as well as provided for the rights of land owners and their heirs to demand compensation or to be assigned a land parcel of equal value.

As it was emphasized by the Saeima, all activities of the legislator at the beginning of the land reform and during its entire course has been directed towards guaranteeing and protection of the rights of both abovementioned owners by achieving a fair balance in the regulatory framework of their legal relations The legislator has regarded the normative legal relations as the most appropriate model for regulating such relations.

When characterizing compliance of the Contested Norms with Article 105 of the Satversme, the Saeima admits that in the case of a compulsory lease, there exists restriction of the property rights of the owner of a land parcel. Since the Contested Norms provide for a duty to conclude a land lease agreement, it is

necessary to assess the restriction of the property rights of the Applicant, the restriction being caused by the legal renal relations.

By preferring restoration of the property rights to a land parcel to compensation or a land parcel of an equivalent value, the land owner has agreed that legal rental relations have been formed between the owner of a building and himself as the owner of the land parcel, and he is aware of all possible consequences and duties. Consequently, a person, after having obtained a land parcel, has implicitly agreed to the restriction of the rights established by the Contested Norms. However, it is indispensible for such restriction to have a legitimate objective and comply with the principle of proportionality.

The restriction of the property rights has been established for the benefit of the society, and it has a legitimate objective – to provide the owner of a building an access to his real estate and, at the same time, guarantee incomes form the land parcel to the owner thereof by leasing the land to other persons.

The Saeima admits that both, the legal relations provided for in the Contested Norms and establishment of servitude are appropriate for reaching the legitimate objective. The most important provisions of the land reform, however, have come into force before coming into effect of the Civil Law chapter regarding property rights. The Civil Code of Latvia that was effective at that time established provisions regarding a land lease agreement, whilst the legal regulations regarding servitudes did not yet exist.

Moreover, the Civil Law does not provide for any remuneration to the owner of a servient real estate for establishing a servitude. A land lease agreement, unlike establishment and use of a servitude, is a very good option since it is possible to include therein provisions favourable for both parties. If the model of establishing of a servitude would be chosen, it could be established only for the benefit of each separate apartment property. Consequently, the normative legal relations, if judged systematically, are more appropriate for regulation of the situations described in the Contested Norms.

Since a land lease agreement always is an agreement on remuneration, legal rental relations are the most lenient measure for reaching the legitimate objective.

The Saeima also emphasizes that at present it would not only be unsuitable but also difficult to create a different regulatory framework for it to be effective along with the Civil Law with a view to substitute compulsory lease with servitudes. In such case it would be necessary to review already established legal relations and to entirely change the normative regulation that is effective for almost 17 years.

When analysing compliance of the Contested Norms with the first sentence of Article 91 of the Satversme, the Saeima holds that person who own a land parcel in the territories of Riga and Ventspils freeports, as well as the owners of land parcels located elsewhere in the cities enjoy comparable but not equal conditions. Therefore a different attitude towards such persons has not only a reasonable but also an objective ground.

As it is indicated by the Saeima, a port is a territory with a special functioning regime. In order to ensure substantial interests of the society in the field of national economy, normative acts provide for a special procedure regarding managing, use and forfeit of real estate.

Restrictions of the property rights of the owners of land located in the territory of the freeports are more substantial if compared to restrictions of the rights of the owner of land in the case of compulsory lease. For instance, port administration has the right to use the land for its needs, as well as to let it to businessmen working in the territory of the port. Thus the norm that provides for the duty of the user of the land located in the territory of a freeport, not that of the land owner, to pay taxes and cover expenses related with maintenance of the land parcel.

Taking into account the aforesaid, the Saeima holds that the Contested Norms do comply with the first sentence of Article 91 of the Satversme.

5. In the framework of the case under review, the Ministry of Justice, the Human Rights Bureau of the Republic of Latvia (hereinafter - the Human Rights Bureau), and Dr. iur. Jānis Kārkliņš were invited, as external party, to provide their opinion. On the other hand, information was requested from the State Revenue Service (hereinafter - the SRS) and the State Land Service.

6. The Ministry of Justice indicates that, in the case of compulsory lease, the property rights of a land owner are restricted. This restriction is caused not by a lease agreement, but by the situation permitted during the process of restoration of property rights and privatization when the land parcel and buildings constructed on it can have different owners. There is no doubt that the restriction has been provided by law.

The Ministry of Justice holds that the restriction of property rights included in the Contested Norms has a legitimate objective. The objective of the restriction of the property rights is to protect the rights of the owner of a building, whilst a land lease agreement, as an agreement on remuneration, ensures incomes for the owner of the land parcel who cannot lease the land to another person. Likewise, the duty of the land owner to conclude a land lease agreement, as provided for in the Contested Norms, cab be regarded as the most lenient measure for reaching the legitimate objective. It is more lenient if compared to restriction of property rights of a land owner by establishing a real servitude.

When analysing compliance of the Contested Norms with the first sentence of Article 91 of the Satversme, the Ministry of Justice agrees with the opinion of the Saeima. Persons owning a land in the territory of Riga or Ventspils freeports, and land owners possessing a land located elsewhere in the cities, enjoy comparable but not equal conditions. The different attitude towards both groups of persons has an objective and reasonable ground.

When assessing establishment of real servitudes for the benefit of the owners of apartments as an alternative for existent compulsory lease relations, the Ministry of Justice indicates that in such a case normative acts should particularly regulate procedure for establishing such real servitudes. It would also be necessary to deal with the issue regarding compulsory land lease agreements already listed in the landbooks.

The Ministry of Justice concludes that the legal status of land owners would only deteriorate if compulsory land lease agreement would be substituted by real servitudes. It is possible to provide for different provisions in a land lease agreement that are advantageous for both parties, whilst in the case of a real

servitude binding regulations should be provided in normative enactments. Moreover, establishment of a real servitude would not guarantee decrease of tax burden. In the result of change in tax policy it would be possible to adopt both, regulatory framework advantageous for land lessors and regulatory framework that is disadvantageous for an owner of land encumbered with a real servitude.

7. The Human Rights Bureau indicates that the duty of a land owner to conclude a lease agreement with the owners of premises in the apartment house constructed on the land restricts the rights to property of the land owner established in Article 105 of the Satversme. This restriction, first of all, is directed towards protection of the owners of apartments by providing them with an access to their real estate. It is established in the first part of Section 65 of the Law on privatization of dwelling houses, which obligates the land owner in particular to conclude a land lease agreement. The Human Rights Bureau agrees to what has been indicated by the Saeima, namely, that the objective of the restriction of property rights established in the Contested Norms is to ensure incomes for land owners from their land parcels.

The Human Rights Bureau holds that the measure selected by the legislator is appropriate for reaching the legitimate objective, because a land lease agreement ensures a possibility for the owners of premises in the apartment house to access to their property. On the other hand, the land owner is guaranteed an income from the use of the land parcel.

The Human Rights Bureau draws attention to its opinion No. 3 of 8 May 2008, wherein it has assessed compliance of the second part of Section 12 of the Law on land reform in the cities with Article 105 of the Satversme. It has been indicated in the opinion that the second part of Section 12 of the Law on land reform in the cities that provides for restriction of a lease payment in the case of compulsory lease is non-proportionate restriction of property rights because the owner of the land parcel, in fact, has no possibility to use his own land parcel on his own discretion. Moreover, the amount of the lease payment is restricted not only by the limit of five percent of the cadastre value of the land, as established

by the Law, but also by the duty of the land owner to pay taxes from the lease payment received.

The land owner has no possibility to use his own land on his own discretion, as well as he is obligated to tolerate the fact that his land is being used for the interests of the society. Moreover, the factual amount of remuneration at the disposal of the land owner after tax does not reach the minimum amount of lease charge of compulsory land lease provided for in the Law. Consequently, the legislator has not selected the most lenient measure for restricting the rights of land owners.

When assessing compliance of the Contested Norms with the first sentence of Article 91 of the Satversme, the Human Rights Bureau has concluded that the owners of the land located in the territory of Riga and Ventspils freeports and the owners of the land located elsewhere in the cities enjoy comparable conditions, although the legislator has regulated the legal relations between these two groups of persons and owners of buildings in a different way.

The Human Rights Bureau holds that in this case the different attitude has the same legitimate objective if compared with the restriction of the property rights, namely, to ensure owners of buildings an access to their real estates. The benefit for the society, however, is not greater than the restriction of the rights of the land owner, one whose land an apartment house is constructed. Consequently, in the case under review, the different attitude has no objective and well-grounded reason.

8. Dr. iur. Janis Karklins indicates that the Contested Norms restrict the owner's full rights of control over property. After restoration of independence of the Republic of Latvia, there occurred a situation when a land parcel and a building located on it belonged to different persons. Therefore it was necessary to establish a new legal framework to regulate legal mutual relations of these persons. The legislator, for the sake of the interests of the society, has provided for an exception of the principle of contract freedom by thus restricting the rights of persons to choose a partner and content of an agreement to be concluded. Mr.

Karklins holds that the normative relations provided for in the Contested Norms comply with Article 105 of the Satversme.

An agreement is more appropriate legal basis for regulating the relations between a land owner and owners of premises of an apartment house, if compared to establishment of a real servitude. A real servitude is an institution of property law. On the other hand, a lease agreement, as an institution of liability law, is more flexible model for regulating relations because it provides for a possibility for contracting parties to agree on different additional provisions. Moreover, any legal model provided by the legislator regarding regulation of legal relations of landowners and apartment owners would not change the extent of the restriction of property rights.

When analysing compliance of the Contested Norms with the norms of the Satversme, Mr. Karklins emphasizes that owners of land located in the territory of Riga and Ventspils freeports and owners of land located elsewhere in the cities enjoy comparable but not equal conditions. A port is a special institution, and functioning of it is regulated by normative acts. Therefore the Applicant, when substantiating non-compliance of the Contested Norms with the Satversme, has no reason to compare the legal status of owners of land located in the territory of Riga and Ventspils freeports and owners of land located elsewhere in the cities.

When assessing argumentation provided by the Applicant, Mr. Karklins has concluded that they are based on practical problems related with application of legal norms. Namely, the Applicant is not satisfied with legal regulations regarding taxation, as well as the problems of civil procedure, for instance, inconvenient filing of evidence and involving of many respondents into proceedings. When characterizing the argumentation of the Saeima, Mr. Karklins indicates that the explanations provided by the Saeima coincide with his own opinion.

9. The State Revenue Service informs that incomes of a leaser, as well as the rent payment received for letting a land parcel, constitutes income to be taxed with personal income tax. The duty of the payer when initiating economic activities is to register in the SRS territorial department according to the declared

place of residence within one month. If this requirement is fulfilled the personal income tax that shall be assessed and paid from the incomes gained in the result of economic activities constitutes 15 percent. A payer having registered in the SRS and who has no employer can also choose fixed income tax in the case if his incomes do not exceed 10 000 per year before tax.

A payer has the right not to register in the SRS if he has no expenses due to the economic activity, or if the expenses are small. In this case, the amount of the personal income tax to be calculated from income for the lease of land shall constitute 25 percent of the income gained. Contrary to the opinion of the Applicant, the SRS indicates that compensation of any kind shall be regarded as income of a person and shall be taxed with personal income tax at the rate of 25 percent.

The SRS has also concluded that land lease service shall be taxed with value added tax because the service is provided by a person that is listed into the VAT register. A person has the duty to register in the abovementioned register if the total value of taxable transactions constitutes 10 000 lats per year. On the other hand, compensation shall not be taxed with the personal income tax.

As to property tax, the SRS indicates that a landowner is the payer of property tax, and the tax rate up to 31 December 2010 constitute one percent out of the cadastre value of the property. On the other hand, an owner of a building, according to a lease agreement, shall pay the rent payment indicated in the account, VAT included if the landowner is VAT payer.

SRS also emphasizes that establishment of a servitude would not change the procedure for calculation and payment of taxes. Taxes charged on the incomes from servitudes shall be paid like any tax of economic activities.

10. The State Land Service provided information on the basic principles of cadastre value assessment established in the normative enactments. According to Section 71 of the Law on State Real Estate Cadastre, the cadastre value of a land parcel shall be calculated taking into account cadastre value basis, cadastre object and data characterizing tax object of the property, as well as objective of the use of property and encumbrances of property. On the other hand, in order to

calculate the cadastre value basis, it is necessary to take into consideration such factors as objective of use and information of property market, which then is affirmed by the Cabinet of Ministers before 15 June of each year.

The procedure and methods of assessing cadastre, in fact, resemble individual assessment, however, taking into consideration the fact that cadastre assessment implies simultaneous assessment of several objects and costs of assessment must be low, standard calculations models are used for the assessment, as well as only the data characterizing the object registered in the information system of State real estate cadastre are assessed. Often cadastre value is two or three times lower than the price fixed in the transactions with the real estate.

The Constitutional Court holds:

11. After restoration of independence of Latvia, returning of nationalized land to their owners and heirs took place within the framework of land reform. Historical circumstances determine that the land reform shall be a complex, continuous and embracing the whole national economy process. In the course of development the nationalized land was used for different objectives, also for locating of objects of public significance. The aim of land reform is to reorganize the legal, social and economic relations between city land owners and users in order to promote the city's construction and rational utilization of land (*see: Judgment of 25 March 2003 by the Constitutional Court in the case No. 2002-12-01, Para 1 of the Concluding Part*).

Land reform in the cities of Latvia has not yet been finished. According to the sixth part of Section 12 of the Law on land reform in the cities, a claim regarding restoration of property rights could be submitted before a court up to 1 September 2008. This means that the legislator must ensure that the legal norms adopted before coming into force of Chapter 8 of the Satversme "Fundamental Human Rights" on 6 November 1998 would comply with the effective norms of the Satversme, including the first sentence of Article 91, and Article 105 of the Satversme.

12. The duty of a landowner, including the Applicant, to conclude a land lease agreement with the object of privatized object follows from the word "norm" included into the first part of Section 54 of the Law on privatization of dwelling houses. On the other hand, the rights of the Applicant to receive remuneration for the lease of the land follow from the word "norm" included into the second part of Section 54 of the Law on privatization of dwelling houses.

Legal rental relations regulated in the Contested Norms shall be established, by the leaser and leaseholder by fulfilling the duty established by law rather than concluding a voluntary agreement. Therefore this institution of law is called, in scientific literature, as compulsory lease (*see: Grūtups A., Krastiņš E. Īpašuma reforma Latvijā. Rīga: Mans īpašums, 1995, pp. 309; Rozenfelds J. Lietu tiesības. 3. labotais un papildinātais izdevums. Rīga: Zvaigzne ABC, 2004, pp. 73; Alliks A. Par zemes nomas attiecībām // Mans īpašums, 1999, No. 23/24, pp. 26; Grūtups A., Kalniņš E. Civillikuma komentāri. Trešā daļa. Lietu tiesības. Īpašums. Otrais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2002, pp. 79).*

If follows from the constitutional claim that the Applicant asks the Constitutional court to assess compliance of the institution of compulsory lease with the Satversme. Although the minimum amount of lease charge for owners of privatized houses and artists' workshops is established in the second part of Section 54 of the Law on privatization of dwelling houses, it can be concluded from the application that the Applicant has not contested compliance of the regulation regarding the amount of lease charge with the Satversme. Therefore, in the frameworks of this case the Constitutional Court will not assess whether the regulation regarding the minimum lease charge included in the second part of Section 54 of the Law on privatization of dwelling houses complies with the Satversme.

Consequently, the Constitutional Court must assess whether the institution of compulsory lease as such insofar as it regulates the Contested Norms complies with the first sentence of Article 91, and Article 105 of the Satversme.

13. The first sentence of Article 91 of the Satversme provides: "All human beings in Latvia shall be equal before the law and the courts."

The principle of equality included into the first sentence of Article 91 of the Satversme prohibits public institutions to adopt such norms that would permit a different attitude towards persons who enjoy equal and, according to certain criteria, comparable conditions. At the same time the principle of equality allows and even demands different attitude to persons who are in different circumstances, as well as allows different attitude to persons who are in equal circumstances if there is an objective and well-grounded reason (*see, e.g.: Judgment of 3 April 2001 by the Constitutional Court in the case No. 2000-07-0409, Para 1 of the Concluding Part and Judgment of 29 December 2008 by the Constitutional Court in the case No. 2008-37-03, Para 7*). A different attitude has no objective and well-grounded reason if it has no legitimate objective and it is not proportionate with the chosen means and the advanced objectives (*see: Judgment of 23 December 2002 by the Constitutional Court in the case No. 2002-15-01, Para 2 of the Concluding Part*).

Therefore, in order to assess whether the institution of compulsory lease complies with the first sentence of Article 91 of the Satversme, it is necessary to establish the following:

1) whether and what persons (groups of persons) enjoy equal and, according to certain criteria, comparable conditions;
2) whether the Contested Norms provide for an equal or different attitude towards these persons;
3) whether such attitude has an objective and well-grounded reason, namely, whether it has a legitimate objective and whether the principle of proportionality has been observed.

14. First of all, the Constitutional Court must assess what persons enjoy equal and, according to certain criteria, comparable conditions.

The Applicant has indicated in the constitutional claim that landowners, for whom the property rights have been restored in the course of land reform and on whose land parcels buildings and dwelling houses constructed during the soviet

times are located, enjoy equal and comparable conditions disregarding the fact whether the land is located in the territory of a freeport or elsewhere in the city.

14.1. According to the third part of Section 12 of the Law on land reform in the cities, former landowners or their heirs have the right to choose between demanding restoration of property rights, allocation of a land parcel of equal value to be assigned for them to own and use or receiving of compensation according to the procedures established by law. During the course of time, however, the legislator has amended the norms included into the Law on land reform in the cities regarding the rights of landowners and their heirs to restore the property rights to the land located in a port, including the freeport, on which buildings owned by another persons are located.

The initial wording of Section 12 of the Law on land reform in the cities effective from 20 November 1991 to 19 April 1994 did not restrict the rights of a person to regain a land parcel located in the territory of a port. According to the abovementioned wording of the Law, a person could restore the property rights to a land parcel, on which a building owned by another person was located, disregarding the fact whether the land parcel was located in the territory of the port or elsewhere in the city. Only by the amendments of 31 March 1994 to the Law on land reform in the cities that came into force on 20 April 1994 and that provided for a new wording of Section 12 of this Law, it was established that former land owners or their heirs shall not have the right to restoration of the property rights if the land parcel is located in the territory of the port. On the other hand, the amendments of 8 May 1997 that came into force on 6 June 1997, supplemented Item 3 of the first part of Section 12 of the Law on land reform in the cities by a note that provides that former landowners or their heirs shall have the right to restore the property rights to a land parcel located in the territory of the port if they own dwelling houses there.

Consequently, in the frameworks of this case it is necessary to compare two groups of person, one of which is formed by persons who, according to the initial wording of Section 12 of the Law on land reform in the cities, have the right to restore their property rights to the land located in the territory of a port, including a freeport, on which a building owned by another person is located. The second

group is formed by persons whose property rights to a land parcel located elsewhere in the city, on which a building owner by another person is located, have been restored according to the Law on land reform in the cities.

14.2. Both abovementioned groups of persons enjoy equal and comparable conditions. In cases, the property rights of land owners or their heirs to land parcels, on which a building owned by another person is located, have been restored on their request. Both of these land owners are not allowed to use their land without restrictions because a building owner by another person is located there.

14.3. The Constitutional Court must assess whether the attitude towards the above mentioned groups of persons provided for in the Contested Norms is equal or different. Therefore it is necessary to assess whether the law equally or differently regulates the legal relations between the persons pertaining to the groups to be compared and the owners of buildings located on the land parcels of these persons.

If the land parcel and the building located on it belong to different persons, the legal relations between them, as provided for in the Contested Norms, are being regulated by means of a compulsory norm. This general principle applies to any case when in the result of the land reform the land parcel has one owner and the building has another. Therefore it is necessary to establish whether the normative acts provide for any exceptions regarding mutual legal relations between the land and building owners in the case if a person has regained property rights to a land parcel located in the territory of a port, including a freeport, on which a building owned by another person is located.

Special normative enactments regulating functioning and procedures for administration of ports, including freeports, were adopted already after April 1994 when landowners and their heirs, by means of the amendments to the Law on land reform in the cities, were denied the rights to demand restoration of property rights to a land parcel located in the territory of ports.

The Law on Ports was adopted on 22 June 1994. The Law on Ventspils Freeport, however, was adopted on 19 December 1996 but the effective Law on Riga Freeport was passed on 9 March 2000. The abovementioned laws contain no

special provisions regarding mutual legal relations between owners of the land parcel and owners of buildings needed in the case if landowners and their heirs would regain the land parcel located in the territory of a port, on which a building owned by another person is located.

Consequently, the relations between an owner of the land parcel and an owner of a building, as provided by the compulsory norm of the Contested Norms, were established also in the case of the property rights to such land parcel located in the territory of a port or a freeport, on which a building owned by another person is located would be restored for the land owner of his or her heir. The assumption of the Applicant that mutual legal relations of the abovementioned persons are regulated by Section 4 of the Law on Riga Freeport and Section 4 of the Law on Ventspils Freeport does not comply with what has been established in normative enactments and therefore is ungrounded.

Consequently, persons whose property rights to a land parcels, on which buildings and constructions belonging to other persons are located, have been restored according to the Law on land reform in the cities, enjoy equal and comparable conditions, therefore attitude towards these persons must be equal disregarding the fact whether the land parcel is located in the territory of a port (freeport) or elsewhere in the city. Consequently, the principle of equality included in the first sentence of Article 91 of the Satversme in relation to these two groups of landowners has been observed.

15. The Applicant holds that the principle of equality included into Article 91 of the Satversme would be observed if her land parcel would be encumbered with a personal servitude like in freeports, which would be established for the benefit of the owners of apartments of the house located on her land parcel. It is stated in the constitutional claim that persons for whom property rights to a land parcel located in the territory of freeports and whose land parcel is encumbered with personal servitude for the benefit of port administration, enjoy equal and comparable rights if compared to the persons whose property rights are established to a land parcel located elsewhere in the city, on which a building owned by another person is located.

According to the fourth part of Section 4 of the Law on Riga Freeport and the fourth part of Section 4 of the Law on Ventspils Freeport, a real servitude is established on the land owned by natural and legal persons for the benefit of port (freeport) administration, this land parcel being occupied by the freeport. The port administration has the rights to use the land located in the territory of the port and owned by natural and legal persons for its needs, as well as to let it to enterprises (business companies) that operate in the territory of the freeport but conferring no rights to sublease.

It clearly follows from the abovementioned norms of the laws that those land parcels that are necessary for the needs of the port are encumbered with personal servitudes. Therefore the comparable groups of persons are those, whose property rights have been restored to a land parcel located in the territory of a port, on which a building owned by another person is located, and persons, whose property rights have been restored to a land parcel located in the territory of a freeport and being used for the needs of the port.

15.1. According to Section 2 of the Law on Ports, a port is a part of the land territory of Latvia defined by boundaries, including artificially created banks, and such part of inland waters, including inner and outer roadsteads and fairways in the port entrance, which are set up for the servicing of ships and passengers, for the conduct of freight, transport and expedition operations and other economic activities. According to Section 2 of the Law on Riga Freeport and Section 2 of the Law on Ventspils Freeport, however, freeports are formed with a view to facilitate participation of Latvia in international trade, attraction of investments, development of production and services, as well as formation of new working places. Consequently, the land located in the territory of ports and freeports is necessary to ensure important interests of the State and the society in the field of national economy.

In order to protect these interests, the legislator has provided that a port is a closed territory with a special operation regime and particular conditions of economic activities. Therefore the normative regulation that controls legal relations between a landowner, port administration, as well as subjects of economic activities in the territory of a port differs from the regulatory framework regarding the use of the land located eslewhere in the city. Such normative regulation for the use of the land located

elsewhere in the territory of the city is not necessary becayse such land does not fulfil any specific function characteristic for the land located in the territory of ports.

15.2. The Applicant holds that non-compliance of the Contested Norms with Article 91 of the Satversme is also testified by the different regulatory framework in the field of tax payment. It is more favourable for the owners of land located in the territory of freeports although restriction of their property rights are the same if compared to the restriction of the rights of the Applicant.

The seventh part of Section 4 of the Law on Riga Freeport and the seventh part of Section 4 of the Law of Ventspils Freeport provide that port (freeport) administration shall pay taxes and covers expenses related with maintenance of the land parcel, whilst all other burdens related with the use of the rest of the land shall be undertaken by the landowner. On the other hand, in the case of compulsory lease the landowner shall deal with all payments related with the maintenance of land.

The opinion of the Applicant that restriction of property rights in the freeport are the same if compared to the restriction of property rights regarding land parcels located elsewhere in the city is ungrounded. That is because, according to the fourth part of Section 4 of the Law on Riga Freeport and fourth part of Section 4 of the Law on Ventspils Freeport, the port (freeport) administration has the rights to use the land located in the territory of the port and owned by natural and legal persons for its needs, as well as to let it to enterprises (business companies) that operate in the territory of the freeport but conferring no rights to sublease. Moreover, the fifth part of Section 4 of the Law on Riga Freeport and the fifth part of Section 4 of the Law on Ventspils Freeport provide that the port (freeport) administration shall have the right to construct, on the land plot located in the territory of the freeport, buildings and construction indispensible for the needs of port functioning. Consequently, the port (freeport) administration, in the frameworks of the abovementioned laws, have the right to use the land and deal with it disregarding the will of the landowner. In addition, in the case of compulsory lease of land the owner of a building does not have the rights to use the land parcel that is leased. He has the rights to use this land parcel only at the extent provided for in a land lease agreement.

The Constitutional Court agrees with the opinion of the Saeima that a different tax regulation is grounded provided that both, substantial restriction of the property rights of landowners in the freeports and the objectives of use of land located in the territory of the freeports established by the land use plans of Riga and Ventspils. According to the land use plan, construction of production and industrial buildings is permitted on the greatest part of the land located in the territory of the Riga Freeport. On the other hand, the land located in the territory of the Ventspils Freeport is the territory of industry, port terminals and technical constructions. According to Para 2 of the Cabinet Regulations of 20 June 2006 No. 496 "Real Estate Exploitation Purpose Classification and Real Estate Exploitation Purpose Establishment and Change Order", the objective of use of a land entity shall directly depend on the way of the use of land established in the land used planning. Hence the objectives of the use of land located in the territory of the freeports are mainly related with production, and the land has high cadastre value, which is taken into consideration when calculating property tax. Consequently, proeprty tax for the land located in the territory of the freeports is hisher if compared to the land elsewhere in the cities.

Consequently, former landowners and their heirs whose property rights to a land parcel, on which a building owned by another person is located, have been restored in accordance with the Law on land reform in the cities, and persons whose property rights to the land located in the territory of the freeport and used for the needs of the port, have been restored enjoy different conditions and therefore the attitude towards the two groups differs. Consequently, the principle of equality included in the first sentence of Article 91 of the Satversme has been observed in relation to these groups of persons.

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

Section 927 of the Civil Law provides that ownership is the full right of control over property, i.e. the rights to possess and use it, and dispose of it. The rights of the owner to dispose of the property include the rights to lease a land to another person (*see: Grūtups A., Kalniņš E., pp. 17*). Consequently, a person owning a land or other immovable property has the right to lease it on his own discretion. If these rights have been denied for the owner of this property, then his property rights are being restricted.

If a person, according to the third part of Section 12 of the Law on land reform in the cities, has asked restoration of property rights to a land parcel, on whcih a building owned by another person is located, he or she has the duty to conclude a land lease agreement with the owner of the building as provided for in normative enactments. Thus the rights of the owner to freely decide whether to lease the land parcel, as well as the rights to freely choose a leaser are restricted.

Consequently, it is possible to conclude that the Contested Norms restrict the property rights of the Applicant.

17. As the Constitutional Court has already concluded, the property rights can be restricted if the restriction is established by law and in favour of a legitimate objective, and is proportionate with this objective (*see, e.g.: Judgment of 12 November 2008 by the Constitutional Court in the case No. 2008-05-03, Para 8, and Judgment of 26 April 2007 by the Constitutional Court in the case No. 2006-38-03, Para 12*).

18. According to the third sentence of Article 105 of the Satversme, the property rights can be restricted only by law.

The restriction of the basic rights has been established by the Law on land reform in the cities and the Law on privatization of dwelling houses. Both of these normative acts are adopted and proclaimed according to the procedure established by law.

Consequently, the restriction of the property rights has been established in accordance with law.

19. In order to justify any restriction of the basic rights, it must be established with a legitimate objective - protection of values of other constitutional level (*see: Judgment of 22 December 2005 by the Constitutional Court in the case No. 2005-19-01, Para 9*). Property rights of a person can be restricted with a view to ensure the rights of other persons, democratic regime, security of the society, welfare, welfare and morality

One of the most important objectives of land reform is restoration of social justice that was breached when the soviet power expropriated, unlawfully and without any compensation, properties from the inhabitants of Latvia. The Law on land reform in the cities provided for returning of the land to their former owners or their heirs as one of the most important measures for restoration of social justice (*see: Judgment of 25 March 2003 by the Constitutional Court in the case No. 2002-12-01, Para 1 of the Concluding Part*). At the same time, however, the legislator must also take into consideration the interests of those persons whose buildings and constructions are located on the land owned by another person.

If no duties are established for a landowner regarding the owner of a building, there could be a situation formed that the landowner could not or would not want to agree with the owner of a building on land use. In such case the owner of a building could not access to his or her property because he would have no legal basis to use the land owned by another person. Therefore the Constitutional Court agrees to what has been indicated in the reply of the Saeima that the restriction of the property rights included into the Contested Norms has a legitimate objective, i.e. to ensure the owners of buildings with an access to their immovable property. The fact that the Contested Norms ensure landowners with income from the use of their land parcel that he or she cannot let to other persons, however, cannot be regarded as the legitimate objective of the property rights, as established in the Contested Norms. The legitimate objective must serve for ensuring the rights of other persons. The legitimate objective of the restriction is not to protect the rights of those persons whose property rights have been restricted by law.

Even though the Saeima, in its written reply, has not mentioned other legitimate aims, the Constitutional Court, taking into consideration the principles of the

Constitutional Court process on its own initiative has to establish whether some other legitimate aims cannot be found to the Contested Norms (*see: Judgment of 8 Marhc 2006 by the Constitutional Court in the case No. 2005-16-01, Para 16*).

The owner of a building must be provided with an access to his property in order to manage and use it. Consequently, the legislator, when providing for the duty of the landowners to conclude a land lease agreement with the owner of a building, has ensured the possibility for the owner of a building to freely manage and use property owned by him. It can be concluded that the legitimate objective of the restriction of the property rights of the land parcel owner is to protect the right of the owner of a building to own property, as established in Article 105 of the Satversme.

Consequently, the legitimate objective of the restriction of the property rights is protection of the rights of other persons.

20. The Constitutional Court has already concluded that to evaluate whether the 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 proportionate. 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, e.g.: Judgment of 19 March 2002 by the Constitutional Court in the case No. 2001-12-01, Para 3.1 of the Concluding Part and Judgment of 27 June 2004 by the Constitutional Court in the case No. 2003-04-01, Para 3 of the Concluding Part*).

21. In order to ensure the possibility for the owners of a building to freely manage and use their immovable property located on the land owned by another person, the legislator had to provide, in normative acts, procedure, which would guarantee such rights to the owners of buildings. The owner of a building can access to his property, manage it and use it only in the case if he has the rights to use the land where the building is located.

Section 2112 of the Civil Law provides that a lease or rental contract is a contract pursuant to which one party grants or promises the other party the use of some property for a certain lease of rent payment. If a landowner has concluded an agreement with the owner of a building, the owner of a building is conferred the rights to use the land, which provides him or her with the possibility to manage and use the building.

Consequently, the institution of compulsory lease established in the Contested Norms is suitable for reaching of the legitimate objective.

22. In order to establish whether the restriction of the property rights established in the Contested Norms complies with the principle of proportionality, it is necessary to assess whether there exist other measures that would restrict the property rights of the Applicant and would be suitable for reaching the legitimate objective.

The Constitutional Court has already concluded that the European Court of Human Rights shall not assess whether the chosen solutions are suitable for dealing with the current situation (*see: Judgment of 8 March 2006 by the Constitutional Court in the case No. 2005-16-01, Para 15.8*). It falls within the jurisdiction of the Constitutional Court to examine whether the legislator, when selecting a measure for restriction of the property rights, has assessed at what extent they would be restricted by other measures that could be applied to the particular legal relations.

The Applicants refers to several alternative measures that, according to her mind, could also be applied for reaching of the legitimate objective and would restrict the property rights at a lesser extent. Consequently, the Constitutional Court must assess whether any of the alternative measures mentioned by the Applicant would restrict her property rights at a lesser extent.

23. The Applicant indicates that her property rights would be restricted at a lesser extent if servitude rather than a land lease agreement would be the base of her legal relations with the owner of the dwelling house.

23.1. The Saeima has justly indicated in this respect that it is necessary to take into account several circumstances that made the legislator choose the institution of compulsory lease in particular in order to regulate legal relations of the landowner and the owner of a building.

The Law on land reform in the cities was adopted on 20 November 1991. This law was the most important normative enactment that provided for the procedure of land reform implementation in the cities of the Republic of Latvia. Therefore the legislator, already when elaborating it, had to decide how mutual legal relations formed, in the result of land reform, between landowners and the owners of buildings would be regulation.

The Civil Code of Latvia was a normative enactment that regulated civil relations also at the time when the Law on land reform in the cities was being elaborated and came into force. Provisions of the Civil Law regarding the property rights did not provide for any servitude.

Only on 14 January 1992, the Supreme Council adopted the Law "On the 1937 Civil Law of the Republic of Latvia", by means of which it was decided to restore the force of the Civil Law, as well as to provide for date and procedures of coming into force of certain chapters of the Civil Law. On 7 July 1992, the Supreme Council adopted the Law "On Time and Procedure of Coming into Force of the Introduction, the Inheritance Rights and the Property Rights of the 1937 Civil Law", which provided that this law and the part of the Civil Law regarding the property rights would come into force on 1 September 1992.

It can be concluded from the aforesaid that during elaboration and adoption of the Law on land reform in the cities there were no normative acts yet valid that would restore the 1937 Civil Law. Consequently, the legislator, in fact, had no possibility to choose whether servitude or compulsory lease would regulate the legal relations between a landowner and the owner of a building. The choice of the legislator in favour of a compulsory lease was more appropriate for the situation of that time.

23.2. The property rights of the Applicant are being restricted by compulsory lease in the way that she has no rights to freely choose whether to lease the land parcel or to freely choose a leaseholder. The Constitutional Court

must assess whether, in the result of establishing servitude, the property rights of the Applicant would be restricted at a lesser extent.

A servitude, according to Section 1130 of the Civil law, is such right in respect of the property of another as restricts ownership rights regarding it, with respect of utilisation, for the benefit of a certain person or a certain land parcel. In order to ensure the rights of the owner to manage and use the building he or she owns and is located on a land parcel owned by another person, a servitude shall be established by law, as provide for in Item 1 of Section 1231 of the civil Law.

If a law provides for a servitude as an encumbrance to the land parcel of the Applicant, she would have no rights, like in the case of a compulsory lease, to deice whether she wants to let the land parcel be used by the owners of premises in the dwelling house or not. The right to use the land are conferred to the owners of premises by law disregarding the will of the Applicant.

Consequently, the property rights of the Applicant in the case of establishing a servitude, would not be restricted at a lesser extent if compared to the case of land lease.

23.3. According to the Applicant, in the case of establishing a servitude her rights would be restricted at a lesser extent because she would get more income, for instance in the form of remuneration for real encumbrance, if compared to the case of land lease.

A general principle that a user of a servitude does not have any duty to pay remuneration to the owner of a servient immovable property follows from the provisions of the Civil Law regarding servitudes. The provisions of the Law that the owner of a servient immovable property has the right to compensation for the use of real servitude are legally possible, however they would not be characteristic to the essence of a servitude. The Law on Riga Freeport and the Law on Ventspils Freeport provide that a used of the land shall pay to the owner of the land in accordance with the agreement, but it this case it is necessary to take into account the substantial restrictions of the property rights and provisions regarding personal servitudes in the territory of the freeports.

If it would be provided in normative enactments that a landowner has the right to receive, from the owner of a building, remuneration for the use of the

land, this would not mean that incomes of a person in this case would be higher if compared to the case of a compulsory land lease. The Applicant, in her constitutional claim, has not contested the minimum amount of the lease charge, namely, five percent of the cadastre value of the land, provided in the second part of Section 12 of the Law on land reform in the cities and the second part of Section 54 of the Law on privatization of dwelling houses. If the word "lease" of the third part of Section 12 of the Law on land reform in the cities and the first and the second part of Section 54 of the Law on privatization of dwelling houses were substituted by the word "servitude", the payment for a servitude could not exceed the abovementioned five percent of the cadastre value of the land.

It can be concluded from the application that, according to the Applicants, view, a servitude is a more lenient measure because provisions that are more favourable for tax payments by the landowner are applicable to remuneration for the use of a servitude. The Constitutional Court agrees with the Saeima that it is not necessary to assess compliance of the institution of compulsory lease included into the Contested Norms with the Satversme by using provisions of tax payment as the main criterion. Taxes charged on the incomes of a person from immovable property are provided for in the tax legislation, not in the Law on land reform in the cities and the Law on privatization of dwelling houses.

23.4. The Applicant holds that her property rights would be restricted at a lesser extent also in the ace if the remuneration received for the lease of land would be called compensation rather than rent charge according to the Contested Norms. According to the Applicant, the regulation included in the tax legislation would allow her to gain higher income if she received compensation instead of a rent charge.

In such case, too, taxes may not serve as a criterion to assess how lenient is one or another measure that could be used for reaching the legitimate objective. The legislator enjoys a broad freedom of action in the domains regarding tax system. Amendments providing for more favourable conditions to lessors if compared to beneficiaries of other kinds of remuneration could also be made to the normative enactments. The Applicant has not contested legal norms on taxes

that provide for the kinds of incomes of a person to be charged, as well as the amount of taxation.

Moreover, naming a rent charge as compensation would not change the essence of the remuneration. A land lease agreement would still serve as the basis for mutual legal relations between the Applicant and the owner of the building. Therefore remuneration that the Applicant would receive in this case for the use of land could be regarded as a rent charge irrespectively of the title thereof.

Consequently, the Contested Norms is the most lenient measure for reaching the legitimate objective of the restriction included therein.

24. In order to establish whether the Contested Norms comply with the principle of proportionality, the Constitutional Court must establish whether the benefit that the society gains from the restriction of the property rights of the Applicant is greater than the harm done to the rights and legal interests of a person.

According to Section 2 of the Law on land reform in the cities, when implementing land reform in a city, the following objective was put forth: to reorganize ownership and use of land in the cities with a view to favour formation of city planning appropriate for the interests of the society, as well as land protection and rational use thereof. In order to reorganize legal relations formed between a landowner and the owner of a building located on the land parcel, the legislator had to select such measures that would allow establishing the fairest balance possible between the contradicting interests of the members of the society (*see: Judgment of 25 March 2003 by the Constitutional Court in the case No. 2002-12-02, Para 1 of the Concluding Part*).

On the one hand, the legislator, when introducing a compulsory norm, restricted the property rights of those landowners and their heirs who chose restoration of property rights to a land parcel. They were prohibited the possibility to freely decide whether to let the land parcel for the use by other persons or not.

On the other hand, the society in general gains benefit from the fact that he legislator has selected compulsory lease as the very measure for regulating mutual

legal relations between a landowner and the owner of a building located on this land.

As it was justly indicated by the Saeima, a land lease agreement ensures the land owner with incomes form the use of the land parcel. Even if the landowner had the right to freely choose whether to let the land parcel to another person or not, he would, in fact, have no possibility to let the land to another person that is not an owner of a building located on this land parcel. Such person would not be interested to use the land owned by one proprietor provided that a building owned by another person would be located on the same land.

As it has already been concluded, the legitimate objective of the Contested Norms is too ensure that the owner of a building could manage and use the building that he or she owns in the cases when landowners of their heirs have chosen to restore their property rights to the land instead of receiving a land parcel of equal value or a compensation.

The Contested Norms are necessary to ensure the fairest balance possible between the interests of the landowner and the owner of a building located on this land. From these Contested Norms, the society gains legal procedures that are substantial for functioning of a democratic state and society. The procedure established by law providing for coordination of the various interests of different persons complies with the interests of the society, and the benefit of the society from such procedures is greater than the harm done to a person by means of the restriction of the property rights.

Consequently, the harm that the society gains from the Contested Norms is greater that the harm done to the rights and legal interests of a person.

Consequently, the Contested Norms comply with the principle of proportionality and complies with Article 105 of the property rights of a person established in the Satversme.

The Constitutional Court

Based on Articles 30 – 32 of the Constitutional Court Law

holds:

the Word "Norm" Used in the Third Part of Section 12 of the Law "On Land Reform in the Cities of the Republic of Latvia" and the First and Second Part of Section 54 of the Law "On Apartment House Privatization" complies with the First Sentence of Article 91 and Article 105 of the Satversme of the Republic of Latvia

The Judgment is final and not subject to appeal.

The Judgment takes effect as on the date of publishing it.

The Presiding Judge J. Jelāgins