



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT ON BEHALF OF THE REPUBLIC OF LATVIA

Riga, December 21, 2007

in the case No. 2007-12-03

The Constitutional Court of the Republic of Latvia, composed of the Chairman of the Court session Uldis Ķiniš, Justices Aija Branta and Viktors Skudra,

having regard to the constitutional complaint of Andris Balams, Inese Treiliņa-Bergmane, Ivars Bergmanis, Inga Mikāne, Rita Mikāne, Juris Mikāns, Anitra Moora, Inta Ozola, Velta Ozola, Jānis Ozols, Kristīne Ozoliņa, Tatjana Ozoliņa, Alfrēds Ozoliņš, Guntars Plūme, Raimonds Rībēns, Gvidonna Smaukstele, Inga Vilka, Ģirts Vilks, Aivars Vītiņš and Andris Zdors (hereinafter - Applicants),

according to Article 85 of the Satversme (Constitution) of the Republic of Latvia, Section 16 (3), and Section 17 (1) (11) and Sections 19.² and 28.¹ of the Constitutional Court Law,

on November 27, 2007 in a Court session in writing examined the case

“On Compliance of the Part of Ādaži Spatial Plan Providing for Construction in the Flooding Area of The Big Baltezers Lake with Article 115 of the Satversme (Constitution) of the Republic of Latvia”.

The Constitutional Court has established:

1. Elaboration of the Spatial Plan of the Ādaži Parish was initiated in 2000.

On March 21, 2006, the Ādaži Parish Council passed binding Regulations No. 5 “Regarding Graphical Part of the Spatial Plan of the Ādaži Parish and Use and Building Regulations for the Territory” (Resolution No. 17, Protocol No. 6, § 2) (*see: Latvijas Vēstnesis, March 29, 2006, No. 51*).

Section 1 of these Regulations provide for possibilities, directions and restrictions for development of the Ādaži parish. The planned (permitted) use of the territory and restrictions of use are, in their turn, established by the Binding Part of the Spatial Plan of the Ādaži parish: Building Regulations, Procedures of Implementation of Construction Rights, Perspective Plan of Use of the Land of the Ādaži parish and Protective Zone Plan.

On July 27, 2006, the Ādaži Parish Council passed binding Regulations No. 13 “Regarding Editorial Corrections to the Explanatory Note and Building Regulations of the Ādaži Parish Spatial Plan” (Resolution No. 46, Protocol No. 9, § 9).

Para 5 of the binding part 4.30.1. a) (1) of the Riga District Ādaži Parish Spatial Plan provides that a 50 m wide protective zone is established villages located on the bank of the Big Baltezers Lake, the Small Baltezers Lake, the Dūņezers Lake, the Lilastes Lake and a bank of the Gauja river. The building setback line for buildings is established along with the border of the protective zone, but for subsidiary buildings related to the use of surface water bodies (saunas, boat docks) – 30 m away from the water body, except for cases if a detailed plan, by justifying it appropriately and observing requirements of the Protection Zone Law, establishes the building setback line closer to the water body.

In the Protective Zone Plan (map SD 2.7) of Part III of the Binding Part of the Riga District Ādaži Parish Spatial Plan (graphical materials), a 50-meter wide protective zone around The Big Baltezers Lake is marked. In some places the 50-meter protective zone coincides with the flooding area (in the map, it is marked as a flooding area with one-percent-possibility), whilst in other places flooding areas are wider and reach about 100 m in the direction of the land.

On April 25, 2007, the Ministry of Regional Development and Local Government sent the Letter No. 1-22/3566 to the Ādaži Parish Council “Regarding Ādaži Parish Spatial Plan”. The letter tells that on February 8, 2007, the judgment of the Constitutional Court in the Case No. 2006-09-03 takes effect. The Ministry

informs in the Letter that prohibition of any construction and raising the ground level with the purpose to raise buildings shall be provided for the entire flooding area with probability of flooding at least once in a hundred years. However, in the Protective Zone Plan of the Graphical Part of the Ādaži Parish Spatial Plan also marks the territory of the Big Baltezers Lake with the probability of flooding at least once in a hundred years, which exceeds the protective zone of the lake in the direction of the land but is not included in the protective zone of surface water body.

Taking into account the abovementioned, the Ministry of Regional Development and Local Government asks the Ādaži Parish Council to suspend the task of planning and architecture and issuing of building permissions in the territories with the probability of flooding at least once in a hundred years, as well as to inform the Ministry on further activities of the local government in order not to permit construction in flooding areas.

On May 28, 2007, the Ādaži Parish Council sent a letter No. 01-12-7/97 "Regarding the Ādaži Parish Spatial Plan" to the Ministry of Regional Development and Local Government. Based on Para 14 of the judgment of February 8, 2007 by the Constitutional Court in the case No. 2006-09-03, it was indicated in the letter that prohibition of construction of new buildings shall be established for the entire potentially flooding territories (flood-lands), rather than for the entire territory with the probability of flooding at least once in a hundred years. Procedures of determination of protective zones in cities and villages differ from that of the rural areas, and hence provisions of the Ādaži Parish Spatial Plan are not in conflict with the abovementioned Judgment of the Constitutional Court.

It is also emphasized in the letter that the requirements of Section 37 of the Protection Zone Law are not applicable to the territories that are located beyond the protective zones of surface water bodies. The Spatial Plan of the Garkalne Parish established a 300-meter wide protective zone of surface water bodies, and hence construction in the flooding areas was in conflict with Item 4 of the first part of Section 37 of the Protection Zone Law.

The Ādaži Parish Council neither agreed to the interpretation proposed by the Ministry of Regional Development and Local Government of the judgment of February 8, 2007 in the case No. 2006-09-03, because the judgment does not deal

with potentially flooding territories beyond the protective zone of the Big Baltezers Lake. The Council holds that protective zones of surface water bodies are established in the Ādaži Parish Spatial Plan according to the requirements of the Protection Zone Law and is not in conflict with the judgment of the Constitutional Court.

2. During preparation of the case, on September 17, 2007, an application of Andris Balams was submitted to the Constitutional Court, wherein it was asked to repeal “the complaint to the Constitutional Court submitted on July 4, 2007 regarding the real estate “Lībieši – 1”, lot No. 3, Cadastre No. 840440130015”.

3. The Applicants indicate in the constitutional complaint that the part of the Ādaži Parish Spatial Plan that refers to real estates “Ziemeļi” and “Lībieši – 1” and provides for construction of these two objects in the flooding area of the Big Baltezers Lake, is in conflict with Article 115 of the Satversme (Constitution) of the Republic of Latvia (hereinafter – Satversme), as well as it does not comply with Item 4 of the first part of Section 37 of the Protection Zone Law.

It is indicating in the constitutional complaint by referring to the jurisprudence of the Constitutional Court, that according to Article 115 of the Satversme, the State shall protect the right of everyone to live in a benevolent environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment. The abovementioned norm, first of all, obligates the State to form and ensure an effective environment protection system. Second, it confers the rights to natural persons to turn against those decisions of public legal subjects that violate the rights of a person in the field of use and protection of the environment. However, spatial planning is considered as a part of this field.

When assessing compliance of the Ādaži Parish Spatial Plan with Article 115 of the Satversme, it is necessary to take into account the fact that during elaboration of this Plan the local government must observe legal norms included in laws and regulations of the Cabinet of Ministers. In the case under review, Item 4 of the first part of Section 37 of the Protection Zone Law shall be regarded as the most substantial, which prohibits the local government including and later allowing construction in the territories that are recognized as flooding areas.

By referring to the judgment of February 8, 2007 by the Constitutional Court in the Case No. 2006-09-03, the Applicants conclude that the Ādaži Parish Council was not entitled to determine the Big Baltezers Lake flooding areas that go into its administrative territory as the territory to be built-upon. The Applicants, during elaboration of the parish Spatial Plan have several times informed the Council on non-compliance of the Plan with the requirements of Item 4 of the first part of Section 37 of the Protection Zone Law. However, the opinion of the inhabitants has not been taken into account and assessment of the objection was formal. Such conclusion can be made, since the local government has provided for a more intensive construction in the flooding territory of the Big Baltezers Lake after discussion of the first version of the Plan.

4. The institution that passed the contested act – the Ādaži Parish Council – indicates, that, when adopting the parish Spatial Plan, it has acted in accordance with the Law “On Local Governments”, the Protection Zone Law and Regulation No. 883 of October 19, 2004 of the Cabinet of Ministers “Local Municipalities Spatial Planning Regulations” (hereinafter – Regulations No. 883). Hence the Spatial Plan complies with Article 115 of the Satversme.

The Council indicates that it already was aware during elaboration of the Spatial Plan that a situation when all inhabitants of the local government with activities of the Council is impossible. However, all objections of the inhabitants of the local government were assessed “by deciding on their validity and relevance”. The submitted constitutional complaint expresses disinclination for development of separate territories of only some inhabitants of the Baltezers village and it is directed towards protection of their own interests, which are of narrow and private nature. Since these interests are in conflict with the rights of other owners of properties in the Baltezers village, the local government has not thought during elaboration of the Plan and still does not think that it is possible to satisfy the objection.

The Spatial Plan of the Ādaži Parish is said to be elaborated according to the effective legal enactments by fully observing procedures of its elaboration, discussion and adoption. It is testified by statements of institutions established by law. Remarks included in all these statements have been taken into account in the final version of the

Plan, and the respective institutions have positively evaluated the Plan.

The Council emphasizes that the Baltezers Village is located near to Riga, and the nearness of the city influences the Village and favours its economic development. The main State highway A1 [Rīga (Baltezers) – frontier of Estonia (Ainaži)], which is the main road within the borders of the Baltezers Village and influences development of the Village, since it requires widening of the construction coverage on the both sides of the road. In the territories adjacent to the main road and in the closest land parcels, where the level of noise and pollution higher, restriction of construction to the private house construction type would be an inappropriate solution from the point of view of town planning.

When determining the protective zone of the Big Baltezers Lake, the Council has taken into account the fact that a great part of the Baltezers Village is located in the territory with the probability of flooding at least once a hundred years. Floods of the above mentioned lake equally affects the entire foreshore. Before construction, raising of the ground level takes places.

When considering the necessity to protect the flooding zones of Lielais Baltezers, the Ādaži Parish Council expresses a viewpoint that normative enactments regulating the environmental Law of Latvia, as well as the Protection Zone Law and the Law “On Specially Protected Nature Territories” have introduced such a system when rural nature territories are primarily protected. It is testified by the different methodology of determination of the protective zone in rural areas and in populated areas. For example, the area of the land parcels “Ziemeļi” and “Lībieši – 1” are relatively small (1.9 ha in total), and preservation of a small and relatively “green island” in such ecologic situation would not in fact change anything. Banks of the Big Baltezers Lake have been degraded so far that they can not be recognized as intact, and it is impossible to make the changes undone. It is also necessary to take into account the fact that construction and raiding of the ground level in a flooding area outside the protective zone is permitted if in the result of these activities the flood-lands of the Big Baltezers Lake would remain relatively intact (non-degraded) and it can continue fulfilling its functions – to serve as a buffer zone and at least minimally protect the water body from pollution.

When assessing application of conclusions included in the judgment of

February 8 2007 by the Constitutional Court in the Case No. 2006-09-03 to the case under review, the Ādaži Parish Council considers that conclusions of the above mentioned judgment apply only to such flooding territories that are located within the protective zone of a surface water body. Unlike the case No. 2006-09-03, construction in the Baltezers Village is planned not in the protective zone of the surface water body, but outside it. Namely, the protective zone is not determined within the width of the flooding territory, but it forms a 50 meter wide zone along the lake and 20 meter wide zone along the artificial channel. Such rights are conferred to the local government by the second part of Section 7 of the Protection Zone Law.

When answering to the questions of the Constitutional Court, the Council indicates that the 50 meter protective zone of the surface water body has been established by Regulations of January 9, 201 by the Ādaži Parish No. 7 “Regulations regarding Construction on the banks of the Big Baltezers Lake and the Small Baltezers Lake, the Dūņezers Lake, the Lilastes Lake and the bank of the Gauja River in the Ādaži Parish” before coming into force of Item 4 of the first part of Section 37 of the Protection Zone Law. The Council has allowed raising the ground level in the flooding areas located outside the protective zone of the Big Baltezers Lake. It is also planned to raise the ground level in the flooding territory located outside the protective zone of the Big Baltezers Lake and raise buildings there.

When assessing criteria for determination of borders of a village included in the first part of Section 11 of the Law “On Creation of Administrative Territories of the Republic of Latvia and Establishment of the Status of the Populated Areas”, the Council indicates that the Baltezers Village has historically been formed already in 1778, when the Lutheran Church of Baltezers (Ādaži) was constructed. Therefore a conceptual construction is planned for this place, which has been populated by residents for decades.

Taking into account the aforesaid, the Ādaži Parish Council holds that the part of the Ādaži Parish Spatial Plan that provides for construction in the flooding territory of the Big Baltezers Lake complies with Article 115 of the Satversme, as well as it asks to recognize the constitutional complaint as ungrounded and to reject it.

5. The State Forest Service of the Ministry of Environment informs that,

according to the information provided by the Riga – Ogre Forest District of the Ādaži Forestry and the date of the State Forest Register, a forest of 0.9 ha area pertains to the land parcel “Ziemeļi” (cadastre No. 8044 013 0075). Whilst the land parcel “Lībieši – 1” contains a forest of 0.3 ha area.

6. The State Forest Service of the Ministry of Environment indicates that flood-lands usually form for those water bodies, the banks of which usually flood due to fluctuation of water level. Whilst in fact flood-lands are determined by making a complex assessment of topography, composition of rock, flora and periodicity of flooding. The determining factor is the regularity of flooding – explicit flood-lands that flood each year for a short time. Yet, also the territory that, in certain meteorological conditions (e.g. melting of ice, dry period) does not flood for one or several years is also regarded as flood-land.

The State Environmental Bureau holds that the 3rd land plot of the real estate “Lībieši – 1” and a small part of the real estate “Ziemeļi” is located in explicit flood-lands, the borders of which can be established along the reed zone. In fact, regularly flooding lands can be established by the zone of reeds or other above-water flora vegetation.

The State Environmental Bureau also indicates that the territory that floods twice each year shall be regarded as periodically flooding land.

7. The Ministry of Economics indicates that, according to Item 12 of Section 1 of the Construction Law, construction is designing of all types of structures, and construction work. Whilst Item 6 of the same Section establishes that construction work — part of the construction process, work carried out on a construction site or in a structure, including demolition. Hence raising of the ground level in flooding territories of surface water bodies with the view to construct therein is regarded as work fulfilled to prepare a particular land plot for construction – namely, works that are done for preparation of a construction site. Hence the Ministry concludes that raising of the ground level in flooding territory of a surface water body with the view to construct therein shall be regarded as construction for the purpose of the Construction Law.

8. The Ministry of Regional Development and Local Government indicates that a populated place, according to the explanation provided in the spatial planning dictionary elaborated by project COMMIN of the *Interreg* of the European Union, is a compact, spatially united and integrated territory with a dwelling house or houses for a long-term use and material preconditions for material or seasonal living.

The definition of a village is neither concretized in normative acts. According to the abovementioned dictionary, a village is a populated place with a unique name and concentrated buildings in its central part, where the distance between built-up areas does not exceed 200 meters, but in the region of Riga – 100 meters. However, “conceptual construction” most often implies construction, which includes buildings, constructions, roads, streets, engineer networks and commodities located together in one place both, in populated areas and outside them, having high intensity of use of the space and high density of construction.

The Ministry explains that on March 15, 2007, also taking into consideration the letter of February 12, 2007 by the Public Benefit Organization “Delna”, it has organized an inter-institutionary meeting, and one of the tasks thereof was discussion of the judgment of February 8, 2007 by the Constitutional Court in the case No. 2006-09-03. The most important issue under discussion was identification of deficiencies in the preparation process of the Spatial Plan, for instance, lack of comprehensive information regarding the risk of water body floods.

The Ministry also states that it has several times indicated the necessity for the Ādaži Parish Council to take into account the judgment of February 8, 2007 by the Constitutional Court in the case No. 2006-09-03. The Council has replied that it “does not agree to the interpretation of the Judgment of the Constitutional Court provided in the letter”.

9. The Ministry of the Environment indicates that it discusses possible amendments to the Protection Zone Law with local governments and associations in order to concretize the explanation of flood-land included in Sub-section “o” of Item 1 of the second part of Section 7 of the abovementioned Law, as well as wording of Item 4 of the first part of Section 37 thereof. No concrete wordings of the above norms have

been elaborated. The wording included in Sub-section “o” of Item 1 of the second part of Section 7 of the Protection Zone Law “for a reservoir or water course with explicit flood-lands” is ambiguous because not every used of the Law can determine flood-lands in nature.

As to the notion “explicit flood-lands”, the Ministry indicates that the notion “flood-land” in different sources of literature is differently defined. Therefore the Ministry of the Environment reflects on a possibility to concretize this norm and give up the use of the word “flood-land”.

In Sub-item 1.41 of the Regulations No. 631 of August 23, 2005 by the Cabinet of Ministers “Regulations regarding Building Regulations of Latvia LBN 224-05 “Land Amelioration Systems and Hydrotechnical Constructions””, flood-lands are defined as “the valley part of the water source, which periodically floods during inundation or floods”. The Ministry of the Environment holds that definitions of the term “flood-lands” in the specialized literature are comprehensible and adequate. Therefore the understanding of the Ministry of the notion of flood-lands is similar. Moreover, flood-lands may not flood in some or during several years under certain meteorological conditions, and in this case the fauna characteristic for flood-lands is no more that explicit. Yet, development of flood-lands is determined exactly by annual periodic flooding.

The Ministry also recognizes that the words used in Item 2 of the Second part of Section 7 of the Protection Zone Law “on each bank”, according to their grammatical meaning, apply only to rivers. However, this norm applies to all surface water bodies and water bodies, and hence is applicable to the entire margin of the lake.

The Ministry also indicates that no responsibility of the Ministry of the Environment to carry out any activities after the judgment of February 8, 2007 by the Constitutional Court in the case No. 2006-09-03 regarding valid spatial plans from the normative acts. However, for spatial plans to be elaborated at a high quality, the State Environmental Service subject to the Ministry of the Environment has informed employees of regional administration institutions on the above mentioned judgment and its application to the cases when the regional environmental administration issues conditions or opinions regarding spatial plans of the local government and amendments thereto.

10. The Public Administration and Local Government Committee of the Saeima of the Republic of Latvia (the latter hereinafter – Saeima) indicates that according to the wording of Section 11 of the effective Law “On Creation of Administrative Territories of the Republic of Latvia and Establishment of the Status of the Populated Areas”, the category of villages include rural populated areas only if the local government has an effective spatial plan. Whilst villages that are located according to the previous order shall not be considered as unlawfully formed.

11. The Saeima Agrarian Policy, Environment and Regional Policy Development Commission indicates that the main considerations, when applying a different width of a protective zone for villages (cities) and rural areas, are as follows:

First of all, the will to protect and rationally use resources of the nature, minimize negative impact of pollution on water ecosystems, eliminate erosion, limit economical activities in flooding zones, preserve the characteristic landscape of the area. These objectives of determination of protective zones can largely be implemented in rural areas – in the places where there is no dense construction and that are not densely populated.

Second, the will to equalize the requirements of environmental protection with economical development.

Moreover, the Commission indicates that establishing of a protective zone is restriction of property rights, and in densely populated areas it would affect a greater number of landowners if compared to rural areas. Similarly, a greater number of people would be affected by restriction of economic activities in the places where such activities have already been developed.

The Constitutional Court has established:

12. The Applicants, in the constitutional complaint, asks the Constitutional Court to recognize the part of the Ādaži Parish Spatial Plan regarding real estates “Ziemeļi” and “Lībieši – 1”, which provides for construction of the flooding territories of the Big Baltezers Lake in these objects, as being non-compliant with Article 115 of

the Satversme and invalid from the date of adoption thereof. Yet, the Panel of the Court, when deciding on initiation of proceedings, established as necessary initiation of a case on compliance of construction in the entire flooding territory of the Big Baltezers Lake located in the Ādaži Parish with Article 115 of the Satversme. It also follows from the materials – opinions of the institutions – obtained during preparation of the case that the planned construction in the flooding territory of the Big Baltezers Lake is of a complex character and it affects the entire margin of the Lake.

On the one hand, the constitutional complaint *expressis verbis* addresses assessment of lawfulness of construction in the real estates “Ziemeļi” and “Lībieši – 1”. However, on the other hand, these real estates occupy only a small part of the margin of the Lake. All real estates located on the margin of the Big Baltezers Lake are in similar conditions.

Hence the Constitutional Court recognizes that the compliance of construction in the entire flooding territory of the Big Baltezers Lake located in the Ādaži Parish must be assessed in the case under review. There are sufficient case materials in order to assess compliance of construction in the entire flooding area of the Big Baltezers Lake with the above mentioned Article. Argumentation regarding non-compliance of construction in the real estates “Ziemeļi” and “Lībieši – 1” with Article 115 of the Satversme and Item 4 of the first part of Section 37 of the Protection Zone Law, as mentioned in the constitutional complaint, can also be applied when assessing lawfulness of construction in the entire flooding area of the Big Baltezers Lake located in the Ādaži Parish.

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

The above Satversme norm, first of all, assigns to the institutions of public power the duty to create and secure an effective system of environment protection. Secondly, the right to live in a benevolent environment by this norm has been included in the fundamental rights. The right to live in a benevolent environment, just as the other fundamental rights, which are included in Chapter VIII of the

Satversme, shall be directly and immediately applied. (*see: Judgment of February 14, 2003 by the Constitutional Court in the Case No. 2002-14-04, Para 1 of the Concluding Part and Judgment of February 8, 2007 in the case No. 2006-09-03, Para 11*).

The duty of institutions of public power to create and secure an effective system of environment protection implies a duty to take into account the interest of environment protection when elaboration and adoption of objectives of a policy or legal enactments takes place, as well as when the adopted legal enactments are applied and political objectives – implemented.

The rights to live in a benevolent environment, line other basic rights included in Chapter 8 of the Satversme, shall be applied directly and immediately (*see: Judgment of December 5, 2001 by the Constitutional Court in the case No. 2001-07-0103, Para 1 of the Concluding Part*). Namely, a private person, on the basis of Section 115 of the Satversme has the right to address the court about the action (inactivity) by the subject of public rights, which violates the rights and legitimate interests of this private person (*see: Judgment of February 8, 2007 by the Constitutional Court in the case No. 2006-09-03, Para 11*). Such subjective public rights for a natural person as an element of the society follow from the specific character of environment rights.

14. The rights established in Article 115 of the Satversme are concretized in international legal norms, laws and other external normative enactments binding on Latvia. For instance, Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter – Convention) provides for the rights of the society to assess information related to the environment, participation in decision making related to the environment, as well as the rights to access the judicial power. Whist, the Law on Environmental Protection concretizes the rights established in Article 115 of the Satversme, as well as it even widens several rights of the society established by the Convention in the field of the environment.

The Constitutional Court has established that in our days spatial planning is one of the measures for reaching aims of the State environmental policy and thus –

also the sector, which is connected with the environment and the sector in which Section 115 of the Satversme endows the society with extensive rights (*see: Judgment of February 8, 2007 by the Constitutional Court in the case No. 2006-09-03, Para 11*).

In the field of spatial planning, the rights of the society established by Article 115 of the Satversme, as well as the duty of the State are basically concretized by the Spatial Planning Law. For example, Section 2 of the Spatial Planning Law provides for the duty of the State is to favour a sustainable and balanced development of the State by utilizing an effective spatial planning system. Whilst Sections 8 and 9 regulate one of the most important preconditions of legitimacy of decisions regarding the environment – participation of the society in the decision making process related to special planning. Whereas, the requirements included in the Spatial Planning Law are described in more details in legal enactments subordinate to the Law, for example, Regulation No. 883.

15. The Applicants, by referring to violation of the rights established in Article 115 of the Satversme, indicate that the part of the Ādaži Parish Spatial Plan, which provides construction in the flooding territory of the Big Baltezers Lake in real estates “Ziemeļi” and “Lībieši – 1” does not comply with Item 4 of the first part of Section 37 of the Protection Zone Law. Whereas the Ādaži Parish Council indicates that that it has fulfilled its duty to take care of preservation and amelioration of the surrounding environment and hence activities made by the Council are not in conflict with the duty established by Article 115 of the Satversme.

The Constitutional Court has established that the duty of the State to care for conservation of the environment, which is incorporated into Section 115 of the Satversme, has been specified also in the Protection Zone Law, inter alia also in Section 37, Paragraph 1, Item 4 of the Law. Second, the term ”the State”, used in Section 115 of the Satversme shall not be narrowly interpreted, but in it are included also local authorities, whose duty- together with that of the State institutions - is to protect the right of everybody to live in a benevolent environment and take care for the maintenance and improvement of it. Third, the fact whether the respective part of the parish Spatial Plan, which provides construction in the flooding territory of Lielais

Baltzers, complies with Article 115 of the Satverme, it shall be assessed in conjunction with other legal norms on environment rights (*see: Judgment of February 8, 2007 by the Constitutional Court in the case No. 2006-09-03, Para 11*).

Thus, to establish whether that part of the Garkalne Parish Spatial Plan, which envisages erection of buildings on the flood zones, complies with Section 115 of the Satversme, it shall be assessed in conjunction with other legal norms on environment rights.

16. The Constitutional Court agrees to the argumentation included both, in the constitutional complaint and in the reply by the Ādaži Parish Council, that the interpretation of Item 2 of the second part of Section 7 and Item 4 of the first part of Section 37 of the Protection Zone Law plays a great role in adjudication of the case. The Applicants indicate that Item 4 of the first part of Section 37 of the Protection Zone Law, taking into account what has been established in the judgment of February 8, 2007 by the Constitutional Court in the case No. 2006-09-03, prohibits the Ādaži Parish Council to determine the flooding areas of the Big Baltezers Lake with probability of flooding at least one a hundred years as territories for construction.

Whereas, the Ādaži Parish Council indicates that conditions of the case under review, if compared to the case No. 2006-09-03, are different.

As it can be concluded from Para 1 of the Judgment by the Constitutional Court in the case No. 2006-09-03, Volume III of the Spatial Plan "The Graphic Materials" in the map "Spatial Plan for the Territory of the Garkalne Parish for 2004-2016. Protection Zones of the Garkalne Parish", scale 1 : 25 000 (page 5) around the Big Baltezers Lake is marked a 300 meter wide surface water body protection zone; a 100 meter wide potential flood zone as well as a 50 metre wide construction moratorium zone.

One can agree to the Ādaži Parish Council that conditions of the case under review, if compared to that of the case No. 2006-09-03, are different. Namely, in the Spatial Plan of the Garkalne Parish, there is a 300 meter wide surface water body protective zone marked around the Big Baltezers Lake, whereas in the Ādaži Parish Spatial Plan, there is a 50 meter wide surface water body protective zone marked around the Big Baltezers Lake and about 100 meter wide flooding territory zone.

However, the fact that the conditions of the above mentioned cases differ, neither disprove the arguments expressed by the Applicants in the constitutional complaint, nor justifies objections of the Ādaži Parish Council.

The Constitutional Court holds that in this case it is necessary establish whether in the Ādaži Parish Spatial Plan the entire territory adjacent to the Big Baltezers Lake with the probability of flooding at least one a hundred years shall be established as a non-construction territory, or the local government was entitled (freedom of action) to determine a part of the flooding area as a construction zone. Namely, whether there has a situation arisen that the territory with the probability of flooding at least once a hundred years is established, in the Parish Spatial Plan, as fully or partially construction territory.

17. The Ādaži Parish Council indicates that it was entitled to establish a 50 meter wide protective zone around the Big Baltezers Lake. Such rights are said to be conferred by Item 4 of the first par of Section 37 and Item 2 of the second part of Section 7 of the Protection Zone Law.

The content of Item 4 of the first part of Section 37 of the Protection Zone Law has already been established by the Constitutional Court in the case No. 2006-09-03, and the Court has held that the above mentioned norm:

first of all, prohibits constructing of buildings and structures in the territories with probability of flooding at least once in a hundred years, except structures for short-term utilization and small buildings in rural areas;

second, prohibits construction of protection structures especially provided for this purpose or the raising the ground level, inter alia also the construction of structures for short-term utilization and small buildings;

third, does not prohibit the raising of the ground level of the flood zone or construction of protection structures with an aim of protecting from floods buildings and structures, which were located in the territory before of this norm taking effect. In this case permits for the raising the ground level or building protection structures shall be granted in such a way that the above actions change the flood zones as little as possible (*see: Judgment of February 8, 2007 by the Constitutional Court in the case No. 2006-09-03, Para 13*).

The Constitutional Court does not provide for any grounds for another interpretation of the norms mentioned in the case under review.

Whilst it follows from the Letter No. 01-12-10/31 of October 5, 2007 by the Ādaži Parish Council that the Council, even after coming into effect of Item 4 of the first part of Article 37 of the Protection Zone Law, has allowed to carry out raising of the ground level of the territory adjacent to the Big Baltezers Lake with the probability of flooding at least once a hundred years (*see: case materials, Vol. 2, pp. 50*). For example, although raising of the ground level in the real estate “Lībieši – 1” is characterized as location of construction materials, which is not regulated by normative enactments, it follows from the case materials that in fact levelling of gravel or sand takes place (*see: case materials, Vol. 1, pp. 128 – 134*). According to Items 6 and 12 of Section 1 of the Construction Law, works that are carried out for preparation of a construction site, are regarded as construction.

Consequently, raising of the ground level in the territories with the probability of flooding at least once a hundred years with the view to carry out construction is considered as construction in the sense of the Construction Law, and such activities are not *expressis verbis* prohibited by Item 4 of the first part of Section 37 of the Protection Zone Law.

18. However, Item 2 of the second part of Section 7 of the Protection Zone Law provides that the minimum width of surface water body protective zones are established for cities and towns in spatial plans, but not less than a 10 meter wide protective zone in each bank, except for cases when it is not possible due to existent buildings.

The Constitutional Court has established that in cities and villages, where the width of the surface water body protection zone in accordance with Section 7, Paragraph 2, Item 2 shall be determined in the spatial plan, the local authority has to be guided by the consideration that to carry out the raising the ground level of the flood zone with the purpose of constructing structures on it is prohibited. A different interpretation of the norm will be at variance with the purpose of determination of the above protection zone (*see: Judgment of February 8, 2007 by the Constitutional Court in the case No. 2006-09-03, Para 13*).

19. The Ādaži Parish Council indicates that Item 2 of the second part of Section 7 of the Protection Zone Law permits it to establish a 50 meter wide protective zone for the Big Baltezers Lake.

In order to assess validity of the objections of the Ādaži Parish Council, it is necessary to find out the content of Item 2 of the second part of Section 7 of the Protection Zone Law.

When interpreting Item 2 of the second part of Section 7 of the Protection Zone Law by means of a grammatical method, it is possible to conclude that a local government is entitled to freely determine the width of protective zones for surface water bodies. Namely, the rights of local governments are *expressis verbis* restricted only by the 10 metres established by the norm. Moreover, this distance can be established in a lesser extent in the places that have already been built on before coming into force of the abovementioned norm.

However it must be admitted that the use of grammatical methods of interpretation in the majority of cases can nor be considered as sufficient to reveal the content of a legal norm, and therefore other interpretation methods should also be used – systemic, historical or teleologic method. It must also be taken into account that the freedom of action follows from the fundamental principles of territorial planning. However it is not unlimited. General legal principles, principles for state management as well as principles of territorial planning shall serve as the guiding lines for accurate and adequate use in the sector of territorial planning (*see: Judgment of March 9, 2004 by the Constitutional Court in the case No. 2003-16-05, Para 5*).

The use of a systemic method of interpretation provides a possibility to find out the meaning of a legal norm in relation with other norms of the Protection Zone Law. For example, the Constitutional Court has established that the restrictions on construction, determined in Article 36 of the Law on the Protected Zones shall be interpreted only if read together with Article 6 of the Law. With a view to reach the aim, mentioned in Article 6, Article 36 in total forbids building new constructions on the coastal zone. Even though the norms, incorporated in the Article envisage the right for the municipality to take a different decision, its freedom of activities is restricted by the aim of determination of the protected coastal zone (*see: Judgment of March 9,*

2004 by the Constitutional Court in the case No. 2003-16-05, Para 5.4).

The Constitutional Court recognizes that Item 2 of the second part of Section 7 of the Protection Zone Law, regarding determination of a protective zone for surface water bodies, shall also be interpreted in relation with the first part of Section 7 of the Protection Zone Law. It reveals the objective of determination of a protective zone for surface water bodies - to decrease the negative effects of pollution to water ecosystems, to eliminate the development of erosion processes, and to restrict economic activity in the flood zones, as well as to preserve the characteristic landscape of the area.

Item 2 of the second part of Section 7 of the Protection Zone Law also provides for the rights of a local government to determine the minimum width of protective zones for surface water bodies, however these rights considerably restrict other norms of the law, as well as principles established by Law. When determining the protective zone, a local government does not act free – it is obligated to reach the objective established in the first part of Section 7 of the Protection Zone Law. However, the legislator has concretized, in Item 4 of the first part of Section 37 of the same Law, the amount of protection of flooding areas.

Consequently, the rights of local government to freely apply Item 2 of the second part of Section 7 of the Protection Zone Law restricts other norms of the Law, especially the objective to determine surface water body protection zones established in the first part of Section 7 and Item 4 of the first part of Section 37 of the Protection Zone Law.

20. One can agree to the argumentation of the Ādaži Parish Council that both, “the territory with the probability of flooding at least once a hundred years” and “explicit periodical flood-lands” *per se* can not be recognized as a specially protected territory in the sense of the Law “On Specially Protected Nature Territories”. Protected territories, for the purpose of this Law, are protected territories are geographically specified areas that, in accordance with a decision of competent State authorities and administrative bodies, are under the special protection of the State and are established, protected and managed for the purpose of protection and preservation of natural diversity (rare and typical natural ecosystems; living environment of protected species;

original, beautiful landscapes characteristic of Latvia; geological and geomorphological formations, etc.), ensuring supervision of scientific research and the environment; and preservation of territories significant for the recreation, education and instruction of society (*see: Law “On Specially Protected Nature Territories”, second part of Section 2*). Moreover, the Law “On Specially Protected Nature Territories” include an exhaustive enumeration of categories of specially protected nature territories.

According to Section 7 of the Protection Zone Law, protection zones around surface water bodies fulfil a substantial function, namely it serves as a buffer zone, which protect the respective water body from pollution. It also has to be indicated that in the case if intensive works of raising of the ground level takes place near the banks of a surface water body, it causes additional flood risk in places where there have always been floods and they were insignificant.

Also from the ecologic point of view of town planning it is necessary to take into account the fact that a populated area may not be a bogged-up area and flooded with melt water (*see; Briņķis J., Buka O. Teritoriālā plānošana un pilsēt būvniecība. Rīga, Rīgas Tehniskā universitāte, 2001, pp. 181*). However, it follows from the case materials and explanations provided by the Ādaži Parish Council that the Big Baltezers Lake floods even several times per year by flooding a large area of its marginal territory.

Consequently a reasonable restriction of raising of the ground level in the territories near water bodies with the probability of flooding at least once a hundred years follows from the Protection Zone Law.

21. The Ādaži Parish Council indicates that determination of a 50 meter wide protective zone ensures protection of the Big Baltezers Lake at, at least, minimum extent, namely, in the result of construction flood-lands would not be substantially affected (degraded). Margins of the Big Baltezers Lake have already been degraded so far that they can no more be recognized as intact and it is impossible to make the changes undone.

The objective of norms regulating environment protection, as well as spatial planning is to ensure uniform observance of the requirements of environment

protection in all local governments of the Republic of Latvia. Unless provided otherwise by law, the requirements of the Protection Zone Law are equally binding on all local governments of the Republic of Latvia. Therefore they are not entitled to freely apply the norms of binding laws.

No rights to freely determine the protective zone around surface water bodies and to ensure “their protection at, at least, minimum extent” are *expressis verbis* conferred to local governments by the Protection Zone Law or by any other law. On contrary – normative enactments regulating environment protection provide that the duty of performers of a certain activity is to ensure the highest possible level of environment object protection, as well as a possibility to ameliorate the existent situation as far as possible.

It is also necessary to take into consideration that Article 115 of the Satversme provides for an equally important aspects of the duty of the State, namely, the State is obligated to take care of preservation of the condition of the environment and to ameliorate the conditions of the environment. There exists a principle in the European Union environment law, which obligates the Member States to ensure the highest possible level of environment protection and ameliorate the existent condition (*see: Kramer L. EC Environmental Law. London: Sweet&Maxwell, 2003, pp. 10 – 12*).

The argumentation by the Council regarding the fact that the margin of the Big Baltezers Lake has already been degraded so far that it can not be recognized as intact and it is impossible to make changes undone, in facts does not create basis for determination of the territory as meant for construction, but it indicates the opposite. Namely, according to the duty of the State to ameliorate the conditions of the environment established in Article 115 of the Satversme, a local government is obligated to taka care of recovery of such territories within its abilities. It is also necessary to take into account that the most salubrious and, from the viewpoint of the nature, the best and, from the point of view of relief, the highest city territories should be selected as dwelling areas (*see: Teritoriālā plānošana un pilsētībūvniecība, pp. 82*).

Consequently, protection of the territories adjacent to the Big Baltezers Lake with the probability of flooding at least once a hundred years shall be ensured within the limits of 50 meters, but not in its entire width.

22. The Ādaži Parish Council additionally indicates that it has planned a concentrated construction in the territories with the probability of flooding at least once a hundred years. Such construction, according to the viewpoint of the Ādaži Parish Council, is permitted.

When assessing whether planning of a concentrated construction in any of the previously non-built-up areas and their recognition as construction territories is permitted, it is necessary to take into account the fact that a local government is not entirely free as to its rights. The first part of Section 22 of the Law “On Creation of Administrative Territories of the Republic of Latvia and Establishment of the Status of the Populated Areas” provides:

“The category of villages includes rural populated areas, wherein a conceptual construction had been historically created or is planned and residents live. Borders of villages shall be established in the spatial plan of a local government”.

In such a case, if construction is being planned outside the territory with the probability of flooding at least once per hundred years, the above mentioned norm shall be assessed in conjunction with the responsibility of a local government established by the Law “On Local Governments” regarding creation of systems of water supply and sewerage, as well as infrastructure (*see: Law “On Local Governments”, Item 1 and 2 of Section 15*).

Although it is not *expressis verbis* established in normative acts, only such planning of populated places comply with the concept of sustainable development, when the necessary infrastructure, including central water supply and sewerage systems, waste collection and transport systems, road infrastructure, as well as access to services is ensured before construction of buildings. Favouring of inconsiderate (chaotic) dwelling areas would in future raise a necessity for substantial expenses from the budget of the local government.

For example, Section 17 of the Law “On Pollution” provides for an action programme for reduction of pollution in the cases when the requirements of environment quality of a certain type of pollution are violated. Based on this norm, as well as Paras 21 and 47 of the Regulation of January 22, 2002 by the Cabinet of Ministers No. 34 “Regulations regarding Discharge of Polluting Substances into Water, the Cabinet of Ministers, on March 31, 2004, has passed “On the action

programme for reduction of surface water pollution caused by urban waste water and dangerous substances” (see: *Cabinet of Ministers Order No. 181 “On the action programme for reduction of surface water pollution caused by urban waste water and dangerous substances”*. *Latvijas Vēstnesis*, April 5, 2004. pp. 53).

This programme is one of the instruments, by means of which implementation of the Council Directive 91/271/EEC concerning urban waste-water treatment was adopted on 21 May 1991 in Latvia.

One of the tasks of the Action Programme is to ensure collection of waste waters in populated areas and water treatment according to the requirements of normative acts. Another result of the programme to be attained also is the fact that in populated areas with not more than 2000 inhabitants, 59 percent of communal waste water are collected and treated in accordance with the requirements of normative enactments.

The Environment State Bureau of the Ministry of the Environment has concluded in Para 3.4.5 of the Resolution No. 24 “On Environment Report of the Riga City Development Plan (2006 – 2018)” that lack of a centralized water supply and sewage system in new territories under development may lead to pollution of surface water bodies and underground water. In the result of this a non-balanced development or hindering of development of new territories under development is possible (see: <http://www.vidm.gov.lv/ivnvb/sivn/atzin/Lriga.htm>).

Section 6 of the Spatial Planning Law, as well as Para 27.5 and 27.7 of the Regulation No. 883 provides that local governments, when elaborating spatial plans, shall observe national programmes, field development plans, as well as planning documents of state institutions. Hence local governments are obligated to take into account what has been established in policy planning documents. Such duty of reduction of pollution of surface water bodies is particularly important in the case when a local government plans a concentrated construction in any of the new territories under development.

The Constitutional Court recognizes that it is of no importance what kind of construction is planned to be implemented by a local government in territories with the probability of flooding at least once a hundred years. In any case, the general principle is valid, which stipulates that construction (raising of the ground level) in these

territories is forbidden.

Consequently the arguments by the Ādaži Parish Council saying that planning of a concentrated construction is a sufficient basis for determining of a previously non-built-on territory as a construction territory is ungrounded.

23. The Ādaži Parish Council in its reply mentions also other arguments why it is permitted to determine the territory adjacent to the Big Baltezers Lake with the probability of flooding at least once a hundred years as a construction territory. However they, in fact, repeat the arguments that are already assessed in the case under review.

Since the part of the Ādaži Parish Spatial Plan, which provides for construction in the territory adjacent to the Big Baltezers Lake with the probability of flooding at least once a hundred years, does not comply with the legal norm of a higher force, the Ādaži Parish Council is obligated to implement all necessary and reasonable measures in order to eliminate the consequences that have arisen after coming into force of Item 4 of the first part of Section 37 of the Protection Zone Law by allowing raising the ground level in the territories adjacent to the Big Baltezers Lake with the probability of flooding at least once a hundred years.

Consequently, the Constitutional Court established that the part of the Ādaži Parish Spatial Plan, which provides for construction in the territory adjacent to the Big Baltezers Lake with the probability of flooding at least once a hundred years, does not comply with Item 4 of the first part of Section 37 of the Protection Zone Law, and hence with Article 115 of the Satversme, too.

24. According to Section 31 (11) of the Constitutional Court Law, the Court shall establish the time by which the disputed legal norm (act) is no longer in effect.

The Applicants have asked to recognize the contested act as invalid from March 30, 2006, i.e. from the time of coming into force thereof. The Constitutional Court has recognized that, when establishing the time by which the disputed legal norm (act) is no longer in effect, it is necessary to take into account the fact that its task is to prevent violation of the basic rights of the Applicants as far as possible (*see: Judgment of December 16, 2005 by the Constitutional Court in the case No. 2005-12-0103, Para*

25). The Court has also concluded: If the part of the Spatial Plan, which envisages constructing buildings on the flood zones of the Big Baltezers Lake, is not declared as null and void from the moment of the norm taking effect, then the activities of the local authority Council, which have been carried out as the result of incorrect interpretation of Section 37, Paragraph 1, Item 4 of the Protection Zone Law up to the time of the announcement of the Judgment – would be legalized. To reach the aim of the above norm – to protect the flood zones from operative actions as much as possible – the impugned act on the construction of buildings on the flood zones shall be declared as null and void as of the moment of it taking effect (*see: Judgment of February 8, 2007 by the Constitutional Court in the case No. 2006-09-03, Para 16*).

Consequently the part of the Ādaži Parish Spatial Plan, which provides for construction in the territory of the Big Baltezers Lake with the possibility of flooding at least once a hundred years, shall be recognized as invalid from the date of its coming into force.

25. Item 5 of Para 4.30.1 a) (1) of the binding part of the Ādaži Parish Spatial Plan is directly related to the claim included in the constitutional complaint to recognize the part of the Ādaži Parish Spatial Plan, which provides for construction in the flooding zone of the Big Baltezers Lake, as being non-compliant with Article 115 of the Satversme. The second sentence of the above mentioned norm permits to amend the permitted (planned) way of use of a territory even in the 50 meter wide protective zone of the Big Baltezers Lake established in the Ādaži Parish Spatial Plan.

The fifth part of Section 6 of the Spatial Planning Law provides: If a territorial local government spatial plan does not adequately determine the spatial utilisation and building conditions of a concrete unit of land, they shall be determined in the detailed plan. A detailed plan is a spatial plan of a part of administrative territory of the territorial local government; it is developed in accordance with a decision of the territorial local government city council (county or parish council) in respect of a specific territory and is approved after the coming into effect of the territorial local government spatial plan, taking into account the planned (permitted) utilisation of the specified territory in the territorial local government spatial plan.

Whilst Para 7 of the Regulation No. 883 provides that a detailed plan is a plan

for a part of the administrative territory of a territorial local government and it is drawn up in accordance with the territorial local government spatial plan, pursuant to the scale determination in detailing and clarifying the planned (permitted) utilisation of the part of the territory specified therein and restrictions upon such utilisation. According to the fifth part of Section 6 of the Spatial Planning Law and Para 9 of the Transitional Provision, since August 20, 2004, a detailed plan shall be elaborated by providing details and concretizing the planned (permitted) utilization of the territory established in the parish spatial plan. Restriction of utilization established in a parish spatial plan may not be amended. By means of a detailed plan, it is possible to provide details and concretize utilization of certain part of the territory and building regulations, rather than introduce changes in the spatial plan of a local government.

Consequently, Item 5 of Para 4.30.1 a) (1) of the Ādaži parish Spatial Plan, against the objective of elaboration of the detailed plan and meaning thereof, allows illegally amend the permitted (planned) utilization of the territory established by the Spatial Plan.

26. Binding regulations of local government substantially differ, for example, from a law of Cabinet regulations, because they are generally valid not in the entire territory of the State, but in the administrative territory of a certain local government. Hence several local governments can include similar regulations in their binding regulations.

The valid or applicable territory of the respective external normative enactment becomes substantial in the cases when the Constitutional Court recognizes any norm (act) as being non-compliant with a legal norm of a higher legal force. Namely, then such norm of, for instance, a law or a Cabinet regulation becomes invalid in the entire State territory, unless the Court has established otherwise. Whilst in the case, if the Court has recognized any norm of binding regulations of a local government as being non-compliant with a legal norm of a higher legal force, this automatically leads to invalidity of norms of binding regulations of the same content adopted by the local government. Moreover, a practice when the Constitutional Court would repeatedly assess the same regulation, which has already been recognized as being non-compliant with a norm of a higher force in another case but is included in binding regulations of

other local governments and hence remains valid, would be in conflict with the procedural economy principle.

As it follows from the case materials, after adoption of the judgment of February 8, 2007 by the Constitutional Court in the case No. 2006-09-03, the Ministry of Regional Development and Local Government has organized an inter-institutional meeting “in order to discuss the risen situation”. The Ministry, when submitting its opinions regarding spatial plans of local governments, has emphasized the necessity to take into consideration the above mentioned judgment by the Constitutional Court. For instance, the Ādaži Parish Council was sent a letter, wherein it was asked to suspend the task of planning and architecture and issuing of building permissions in the territories with the probability of flooding at least once in a hundred years (*see: case materials, Vol. 2, pp. 77 – 81*).

The Ministry also indicates that no responsibility of the Ministry of the Environment to carry out any activities after the judgment of February 8, 2007 by the Constitutional Court in the case No. 2006-09-03 regarding valid spatial plans from the normative acts. For spatial plans to be elaborated at a high quality, the State Environmental Service subject to the Ministry of the Environment has informed employees of regional administration institutions on the above mentioned judgment and its application to the cases when the regional environmental administration issues conditions or opinions regarding spatial plans of the local government and amendments thereto (*see: case materials, Vol. 2, pp. 45 – 46*).

In the basis of implementation of normative legal acts adopted by the Saeima there lies an executive function, which is ensured by the Cabinet of Ministers. Supervision of activities (inactivity) of local governments falls within the competence of the Cabinet of Ministers and the Cabinet implements it by mediation of public administration institutions. Whereas, in the field of spatial planning, the above mentioned supervision of local governments is ensured by the following institutions or officials Ministry of Regional Development and Local Government, the respective Minister and planning regions.

It is also necessary to take into consideration the fact that it is possible to reach the aims of public administration, as well as those of environment protection the most efficiently by means of collaboration of public administration institutions. Chapter VII

of the Public Administration Structure law also provides for collaboration as a process, which helps public administration institutions to fulfil their functions and accomplish tasks more efficiently.

The fact that the part of the Ādaži Parish Spatial Plan contested in the case under review still remained valid almost one year after the judgment of February 8, 2007 by the Constitutional Court in the case No. 2006-09-03 does not manifest that individual activities of public administration institutions, as well as their collaboration has been efficient. The second part of Section 32 of the Constitutional Court Law provides that A judgment of the Constitutional Court shall be binding on all state and municipal institutions, offices and officials, including the courts, also natural and juridical persons, not only on the participants of the case.

Consequently, the Constitutional Court draws the attention of the Cabinet of Ministers to the necessity to take care of collaboration between public administration institutions with the view to ensure an effective control of spatial planning, as well as to the duty to ensure the binding force of judgment by the Constitutional Court.

The Substantive Part

Under Articles 30 – 32 of the Constitutional Court Law, the Constitutional Court

holds:

1. The part of the Ādaži Parish Spatial Plan, which provides for construction in the territory of the Big Baltezers Lake with the probability of flooding at least once a hundred years, does not comply with Article 115 of the Satversme and invalid as of March 30, 2006.

2. The words of Item 5 of the binding part 4.30.1 a) (1) of the Ādaži Parish Spatial Plan “except for cases when a detailed plan, by justifying it appropriately and observing the requirements established in the Protection Zone Law, establishes the building setback line closer to the water body” do not comply with the fifth part of Section 6 of the Spatial Planning Law and invalid as of March 30, 2006.

The Judgment is final and not subject to appeal.

The Judgment takes effect as of the day of publishing it.

The Presiding judge

U. Kınis