CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

DISSENTING OPINION

OF THE CONSTITUTIONAL COURT JUSTICES

KASPARS BALODIS AND VIKTORS SKUDRA

Riga, 23 January 2008

in the Case No. 2007-11-03

"On Compliance of the Part of Riga Land Use Plan 2006 – 2018 Covering the Territory of the Freeport of Riga with Article 115 of the Satversme [Constitution] of the Republic of Latvia".

On 17 January 2008, the Constitutional Court announced the judgment in the case No. 2007-11-03 "On Compliance of the Part of Riga Land Use Plan 2006 – 2018 Covering the Territory of the Freeport of Riga with Article 115 of the Satversme [Constitution] of the Republic of Latvia" (hereinafter – the Judgment). The case was initiated having regard to the constitutional claim of "Coalition for Nature and Cultural Heritage Protection" *(„Koalīcija dabas un kultūras mantojuma aizsardzībai"*).

The Constitutional Court resolved to recognize the part of the Riga Land Use Plan 2006 – 2018 covering the territory of the Freeport of Riga as non-compliant with Article 115 of the Satversme of the Republic of Latvia and invalid as from the date of coming into force, i.e. 4 January 2006, as well as established that the Riga City Development Plan 1995 – 2005 and the respective Riga City building regulations are valid within the boundaries of the Freeport of Riga established by the Regulation No. 690 of 22 August 2006 by the Cabinet of Ministers "Regulations on Delimiting the Boundaries of the Freeport of Riga".

Unfortunately, we cannot agree with the establishing part of the Judgment, as well as with many other conclusions made in the Judgment, including interpretation of Article 115 of the Satversme and the Constitutional Court Law.

According to our mind, in the Judgment, the Constitutional Court has not looked into the actual essence of the rights established in Article 115 of the Satversme, it has not taken into account the principle of unity of the Satversme and other values established in the Satversme, it has not studied enough factual circumstances of the case, as well as it has exceeded its jurisdiction when examining the case, which in fact did not fall within its scope particularly when deciding on issues that are beyond the competence of the Constitutional Court.

We hold that the part of the Riga Land Use Plan 2006 – 2018 covering the territory of the Freeport of Riga complies with Article 115 of the Satversme of the Republic of Latvia.

In this Dissenting Opinion, we will express our points of view only regarding the most important issues included in the Judgment that have lead to an erroneous adjudication. When substantiating this opinion, we will use the same abbreviations used in the Judgment.

1. In the Judgment, no sufficient constitutional and judicial analysis of Article 115 of the Satversme has been carried out. Namely, no limits and position of the basic rights in the entire Satversme, as established in this Article, have been determined. Such legal norms who are not of the constitutional rang, have been raised to the level of basic rights without sufficient justification by thus breaking the balance of the Satversme as a single document.

1.1. The case No. 2007-11-03 is the first case in the case-law of the Constitutional Court initiated according to a constitutional claim that asked to assess compliance of the contested provision only with Article 115 of the Satversme (the case No. 2002-14-04 was initiated having regard to an application of members of the Saeima regarding compliance of regulations of the Cabinet of Ministers with Article 111 and Article 115 of the Satversme, whilst the case no. 2006-09-03 and the case No. 2007-12-03, though being initiated according to constitutional claims, were examined in the body of three justices). Consequently, the Constitutional Court had to provide an extended and thorough analysis of the content of Article 115 of the Satversme. Unfortunately, the Constitutional Court did not carry out such a detailed analysis, by confining itself to the references to the cases mentioned in Article 10 of the Judgment, considering only the aspects of law established in Article 115 of the Satversme.

The Constitutional Court had concluded in these cases that "In Latvia, as in many other states the right to live in a benevolent environment has been declared as the fundamental right of the person. In accordance with Article 115 of the Satversme the State shall protect this right by providing information about environmental conditions and by promoting the preservation and improvement of the environment. The above norm of the Satversme first of all obliges the State with the duty of creating and ensuring an efficient system of environmental protection. Secondly, it endows the individual with the right of obtaining information on the environment and co-operating in the process of adoption of

decisions on environmental issues. The Law "On the Environmental Protection" specifies the right of a person to a qualitative environment and the duty of the state institutions to ensure it" (*Judgment of the Constitutional Court of 14 February 2003 in the case No. 2002-14-04, Para 1 of the Concluding Part*).

Both, in the abovementioned judgment of the Constitutional Court, as well as in Para 10 of the Judgment, the notion that complies with Article 115 of the Satversme "the rights to live in a benevolent environment" is used. Unfortunately, Para 12 of the Judgment and several other paras do not take into consideration this notion by substituting it with the notions "the rights to a benevolent environment" (*Para 11 of the Judgment*) and "the rights of a legal person to a benevolent environment" (*Para 13.1 of the Judgment*).

It has been indicated in Para 11 of the Judgment:

„Moreover, the responsibility of the public authorities to create and ensure an effective system and environmental protection implies responsibility to take into account the interests of environmental protection in cases when policy planning documents or legal acts are drafted or adopted, as well as in the cases if legal acts adopted are applied and the objectives of the policy are implemented" (*see: Judgment of 21 December 2007 by the Constitutional Court in the Case No. 2007-12-03, Para 13).*

Consequently, Article 115 of the Satversme does not only establish the rights for a person to a benevolent environment, but it also obligates public institutions, including local governments, to ensure implementation of these rights (*Para 11 of the Judgment*).

It cannot be understood from this conclusion, whether the abovementioned rights to a benevolent environment are the same rights to live in a benevolent environment mentioned in Para 10 and the beginning of Para 11 of the Judgment, or these are different rights.

1.2. The Satversme is a laconic document. "The Satversme Commission agreed on the fact that certain opinions shall be stated in the Satversme in a certain way. If we do not find an article that provides what is the Saeima etc, then we still know how it is formed and we are aware of the rights of the Saeima from separate articles" (*Transcripts of the Constitutional Assembly of Latvia, Issue 14, pp. 1309*). Also, when elaborating Chapter 8 of the Satversme, the legislator has tried to preserve this style of the Satversme and has stated certain opinion in separate articles in a certain way. The word "to live" is not included in Article 115 of the Satversme by accident. By including this word into the text of the Satversme, an important and precise opinion is expressed, which should be taken into consideration and accentuated when interpreting this Article. The word "to live" reflects connection of the rights established in Article 115 of the Satversme with other important basic rights, first of all with the rights of a person to life.

1.3. Article 115 of the Satversme is constructed by including therein a participial clause. This participial clause neither is verbosity of the legislator, but it is included into the provision of the Satversme on purpose. Article 115 of the Satversme, like Article 92 of the Satversme, contains a restriction already in its text. As to Article 92 of the Satversme, the Constitutional Court has already concluded:

"However it does not mean that the person is guaranteed the right of adjudicating any important to it issue in a court. Article 92 of the Satversme guarantees that the person has the right of protecting only its "rights and lawful interests" in a fair court. Therefore, to ascertain whether the challenged norms are conformable with this Satversme Article, one has first of all to establish whether the challenged norms violate persons' rights and lawful interests" (*Judgment of the Constitutional Court of 20 April 2003 in the case No. 2002-20-0103, Para 1 of the Concluding Part*).

The constitutional legislator, at the level of basic rights, has established not all possible rights of a person and duties of the State that could be related with the rights of a person to live in a benevolent environment, but the rights of a person and the duties of the State at a certain extent and structure. Namely, Article 115 of the Satversme protects the rights of a person to live in a benevolent environment:

1) by providing information about environment conditions.

2) promoting the preservation of the environment,

3) promoting improvement of the environment.

The duty to provide information about environment conditions provided for in Article 115 of the Satversme is related with the rights established in Article 100 of the Satversme to freely receive information. Unfortunately, in the Judgment, no mutual relation and extent of these two basic rights established in the Satversme is examined. Such examination would be of great importance particularly as to the aspect that the rights established in Article 100 of the Satversme can be restricted according to the procedure established in Article 116 of the Satversme, whereas Article 115 is not mentioned in Article 116 of the Satversme.

Positive duties of the State follow from Article 115, like from Article 110 and several other Articles of the Satversme. First of all, the duty not only to ensure access of a person to information available to the State, but also to carry out measures in order to provide persons, in certain cases, with information about environment conditions, especially in the cases when life or health of persons is endangered. Second, the duty to carry out certain measures for preservation and improvement of the environment. The constitutional legal status was not *per se* determined for the abovementioned duties of the State, but it was determined insofar as they serve the rights of a person to live in a benevolent environment.

However, when establishing what shall be regarded as “a benevolent environment”, “environment to be preserved” and “amelioration of the environment” in each particular situation, as well as determining how intense and thorough this care should be, the State enjoys a broad freedom of action. It has been justly indicated in the Judgment that Article 115 of the Satversme does not provide for the rights of a person to an unchanging environment.

In order to fulfil the positive duties of the State included in Article 115 of the Satversme, the State is obligated to form and maintain an efficient environment protection system. However, norms issued in the frameworks of this system do not *per se* acquire constitutionally legal status.

Beginning with the judgment in the case No. 2002-14-04, it was established in the case-law of the Constitutional Court that normative acts concretize Article 115 of the Satversme, and the compliance of the contested act with Article 115 of the Satversme was assessed by assessing its compliance with certain laws and regulations of the Cabinet of Ministers in the field of environment. Initially it was concluded that “The Law "On the Environmental Protection" specifies the right of a person to a qualitative environment and the duty of the state institutions to ensure it (*Judgment of the Constitutional Court of 14 February 2003 in the case No. 2002-14-04, Para 1 of the Concluding Part*). It was also acknowledged in the Judgment that “the right to live in a benevolent environment and the respective obligation of the State to take care for conservation of the environment, as established in Article 115 of the Satversme, is specified in laws and other acts [..]” (*Para 12 of the Judgment*). However, the case No. 2002-14-04 “On the Compliance of the Cabinet of Ministers August 8, 2001 Decree No.401 "On the Location of the Hazardous Waste Incineration Facility in Olaine" with Articles 111 and 115 of the Satversme, Articles 5 and 6 (Items 1-3) of the Waste Management Law, Articles 3 and 11 of the Law "On the Environmental Impact Assessment", Articles 14 and 17 (the First Part) of the

Law on Pollution as well as Article 11 of the Law "On Environmental Protection" may not be applied in the case of the constitutional claim.

1.4. Beginning with the judgment of the Constitutional Court of 30 August 2000, the Constitutional Court has constantly indicated that the objective of the Constitutional Court was not to oppose the norms included in the Satversme with the norms of international law; therefore the first shall be interpreted in accordance with the norms of international law binding to Latvia. The Constitutional Court has established *expressis verbis* in the abovementioned judgment: "In cases, when there is doubt about the contents of the norms of human rights included in the Satversme, they should be interpreted in compliance with the practice of application of international norms of human rights. The practice of the European Court of Human Rights, which in accordance with liabilities Latvia has undertaken (Article 4 of the Law "On November 4, 1950 European Convention for Protection of Human Rights and Fundamental Freedoms and its Protocols 1, 2, 4, 7 and 11") is mandatory when interpreting the norms of the Convention. This practice shall be used also when interpreting the respective norms of the Satversme" (*Judgment of the Constitutional Court of 30 August 2000 in the case No. 2000-03-01, Para 5 of the Concluding Part*). Namely, the Constitutional Court has *inter alia* emphasized that the respective international law have already existed at the moment of adoption of Chapter 8 of the Satversme, therefore the Constitutional Court could presume that the constitutional legislator has taken it into account in the norms of Chapter 8 of the Satversme.

However, the international liabilities that Latvia has undertaken by the Aarhus Convention did not exist at the moment of adoption of Chapter 8 of the Satversme. Moreover, draft Chapter 8 of the Satversme was elaborated before adoption of the Aarhus Convention. Namely, the first was adopted by the Saeima already on 21 May 1998, whereas the Aarhus Convention

was adopted on 25 June 1998. Consequently, "reading" of the liabilities that follow from the Aarhus Convention in Article 115 of the Satversme must be done with caution and only insofar as the content of this Article demands and permits.

Moreover, during adoption of Chapter 8 of the Satversme, there existed a viewpoint in the law of Latvia that "the rights to a benevolent environment are not yet admitted as adherent to the "canon" of human rights, although there are many discussions about it. The problem is the unbounded consequences of these rights, because persons could block many economic projects. On the other hand, if such avant-garde rights would exist in Latvia, this would serve as an example for other countries" *(Levits E. Piezīmes par Satversmes 8. nodaļu – Cilvēka pamattiesības, Cilvēktiesību žurnāls, 1999, No. 9-12, pp. 37).*

1.5. The Preamble of the Aarhus Convention contains a reference to many important international documents, wherein essential rights in the field of the environment are established and particular measures in this field are provided. It follows from the structure of the Preamble of the Aarhus Convention that it recognizes participation of the society as an efficient took in guaranteeing the rights to live in a benevolent environment. The scientists consider that Article 7 of the Convention is the most important one, since it recognizes that: "every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations." One of the measures in order to implement these rights and to observe the duty to protect the environment, is the specific rights guaranteed in the Convention (*see: Stec S., Casey- Lefkowitz S., Jendroska J. The Aarhus Convention: An Implementation Guide. New York and Geneva, United Nations, 2000, p.11.*).

Namely, the Aarhus Convention indicates to the rights to live in a benevolent environment as to already existing, pre-established rights recognized by the States. Article 1 of the Aarhus Convention establishes its objective: "In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention". Consequently, the rights established in the Aarhus Convention are not an objective in itself, but it only serves as means for implementation the rights to live in a benevolent environment. The rights established in the Aarhus Convention forms a procedural framework for the abovementioned basic rights. However, they do not substitute the essence of the rights to live in a benevolent environment, including the duty of the State to take care of protection and improvement of the environment, and they shall not be considered separately from the objective, wherewith they were established. Article 115 of the Satversme does not protect these rights *per se*, bet only insofar as they are directed towards protection of the values established in Article 115 of the Satversme.

1.6. "The Satversme is a cohesive whole and the legal norms, incorporated into it, are mutually closely connected. To establish the contents of the above norms more completely and more impartially, the norms shall be interpreted as read together with other norms of the Satversme" (*see: Judgment of the Constitutional Court of 16 December 2005 in the case No. 2005-12-0103, Para 13*).

„The principle of oneness of the Satversme forbids interpreting a separate constitutional norm as detached from the other norms of the Satversme, because the Satversme as an undivided document influences the contents and comprehensiveness of every separate norm. Therefore, the less freedom of action

the Satversme endows legislator with, the stricter the Constitutional Court shall control use of the above freedom of action, and vice versa: the more extensive the freedom of action of the legislator, the less the Constitutional Court shall interfere in use of the above freedom of action" (*see: Judgment of the Constitutional Court of 8 November 2006 in the case No. 2006-04-01, Para 15.1*).

Article 115 of the Satversme provides the legislator a broad freedom of action in creation of an environment protection system. Intervention of the Constitutional Court in the use of this freedom is admissible only if the environment protection system would apparently not comply with fulfilment of the duties of the State that follow from Article 115 of the Satversme. Simultaneously, the Constitutional Court should also examine whether this system complies with the principle of oneness of the Satversme. Namely, whether other rights established in the Satversme are inadmissibly restricted when creating this system.

1.7. It follows from the Judgment that in the case-law of the Constitutional Court there have already been criteria elaborated in order to assess compliance of a land use plan with Article 115 of the Satversme. This opinion is based on the conclusions made in the case-law of the Constitutional Court by quoting them separately from the context of the respective judgments.

1.7.1. The Judgment contains the following reference to the case-law of the Constitutional Court: "In order to ensure lawfulness of a land use plan, first, should be properly drafted and adopted, and, second, should comply with law (*see: Judgment of 9 March 2004 by the Constitutional Court in the case No. 2003-16-05, Para 4 of the Motives*). A land use plan or a part of it has not been adopted according to the established procedure if manifest procedural

defects are made during the land use planning process" (*see: Para 16 of the Judgment*).

The reference to this case as case-law of the Constitutional Court regarding criteria for assessing a land use plan in the context of Article 115 of the Satversme is not correct, because in the abovementioned judgment the Constitutional Court was not assessing compliance of a land use plan with Article 115 of the Satversme, but decrees of the Minister of Regional Development and Local Government regarding several binding regulations of the Council of Jūrmala on detailed plan of separate territories.

1.7.2. Simultaneously, the Judgment contains the following reference to the case-law of the Constitutional Court: "Several criteria determine manifest defect. First, a manifest defect of the land use planning process is in case when a decision made differs from the one which could have been made if the procedure would have been observed. Second, a manifest defect is made in cases when the rights of the public participation are considerably disregarded during the process of land use planning. Third, manifest defect is constituted also when other principles of land use planning are violated (*see: Judgment of 26 April 2007 by the Constitutional Court in the case No. 2006-38-03, Para 14*). When referring to this judgment, it has not been taken into consideration that the case No. 2006-38-03 was not initiated regarding violation of the basic rights established in Article 115 of the Satversme, but regarding violation of the basic rights established in Article 105 of the Satversme. The Constitutional Court has established in this case that the rights to property of the applicant were restricted in that case. In order to assess compliance of the restriction of the rights to property with certain criteria, it was assessed whether the restriction has been established according to a law property adopted. The Constitutional Court has established that it is necessary for a land use plan of a local government to be elaborated observing the procedure established in the Spatial Planning Law and other normative acts, as well as it should be adopted and announced observing

the requirements of the Law “On Local Governments” and Spatial Planning Law, in order to fulfil this criteria. In this judgment, the Constitutional Court elaborated characteristics of a considerable violation and established violations of the rights established in Article 105 (not in Article 115) of the Satversme.

Consequently, the verification criteria established in the Judgment are lacking a sufficient tieback with the essence of the rights established in Article 115 of the Satversme in order to establish compliance of the Contested Plan with Article 115 of the Satversme.

It can be concluded form the Judgment that the most important component of the basic rights established in Article 115 of the Satversme is unrestricted rights of everyone to land use plan without substantial procedural violations. However, this conclusion that follows from the Judgment, evidently does not comply with the actual content of Article 115 of the Satversme.

2. In the case-law of the Constitutional Court, it is not observed that in each judgment such procedural issues that are related with the limits of the claim of the rights of an applicant to submit an application must be assessed. This assessment is included into a judgment only if during initiation, preparation or adjudication of the case there raises doubt regarding procedural aspects of the case. Though we fully agree to the fact that in the case under review it was necessary to assess the rights of the Applicant to address the Constitutional Court by submitting a constitutional claim, we do not agree to, according to our mind, incomplete and sometimes erroneous assessment of procedural rights of the Applicant included in Para 11 and Para 12 of the Judgment.

2.1. It follows from the Judgment that the rights of a person to address the Constitutional Court by submitting an application regarding the field of the environment are indirectly established by the Aarhus Convention. We cannot agree to this point of view.

The first sentence of Article 85 of the Satversme provides that "Latvia, there shall be a Constitutional Court, which, within its jurisdiction as provided for by law, shall review cases concerning the compliance of laws with the Constitution, as well as other matters regarding which jurisdiction is conferred upon it by law." The jurisdiction of the Constitutional Court, according to this Article, can be established by the Constitutional Court Law or any other law of Latvia, however it cannot be established by any international treaty. Not denying that the Aarhus Convention could be used as an instrument for interpretation of certain norms of law, the situation what this international document would substitute the norms of the Constitutional Court Law and would cancel the restrictions provided therein would not comply with Article 85 of the Satversme.

Moreover, unlike, for instance, the European Convention on Human Rights, the text of which is formulated as the rights or particular person, the text of the Aarhus Convention is formulated as duties of the parties, for example, "each party shall ensure that...". Legal experts, too, hold that the Aarhus convention, first of all, establishes obligations of the contracting parties (Member States of the Aarhus Convention) and public institutions (government institutions and persons or institutions). Along with national government institutions, "public institution" may be related with regional economic integration organizations, such as the European Community, however it cannot be distinctly related to the institutions that act in the capacity of a court or a legislator (*see:. Stec S., Casey-Lefkowitz S., Jendroska J. The Aarhus Convention: An Implementation Guide. New York and Geneva, United Nations, 2000, p.5).*

Consequently, ratifying the Aarhus Convention, Latvia has undertaken to ensure the rights of natural and legal persons, as well as that of organizations, as mentioned in the Convention, to address court or other institutions provided for in the Convention; however, if no respective amendments are made to legal acts, the Aarhus Convention does not *per se* grant the rights to a particular person to address a particular court, for instance, the Constitutional Court.

Moreover, the second part of Article 9 of the Aarhus Convention provides that “Each Party shall, within the framework of its national legislation, ensure that members of the public concerned [..] have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law [..]”.

Consequently, the procedural issues regarding the fact whether and at what extent the case initiated having regard to the constitutional claim of the Applicant shall be examined at the Constitutional Court must be decided in accordance with the requirements of the Constitutional Court.

2.2. The following opinion is expressed in the Judgment: “In order to establish whether the contested legal act infringes the rights of the legal person to a benevolent environment, first of all the aims of activities of the legal person, which could be defined in its statutes, should be assessed. It is also indicated in Article 2 of the Aarhus Convention that “the public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making. Consequently, such non-governmental organizations (legal persons under private law) the aim of activities of which is protection of the environment are to be regarded as the public concerned” (Para 13.1 of the Judgment).

Such scope of assessment of procedural rights of the Applicant coincides with the judgment of the Constitutional Court of Slovenia of 21 December 1995 in the Case No. U-I-30/95, which is often mentioned in the science of law when analysing the rights of a person to address a constitutional court. In the abovementioned judgment, the Constitutional Court of Slovenia recognized the interest of the Slovenia Ecologist society by referring to the Environment Protection Law. In the abovementioned case, compliance of a regional planning

act with laws was assessed. Having established the non-compliance with the law, the Constitutional Court of Slovenia recognized the contested act as invalid without assessing its compliance with constitutional norms (*see: http://www.odlocitive.us-rs.si*).

From procedural point of view, such construction complies with the legal system of Slovenia. First of all, it is provided in Article 160 of the constitution of Slovenia that the Constitutional Court inter alia shall adjudicate compliance of normative acts with laws and the Constitution, and, secondly, the second sentence of the second part of Article 162 of the Constitution of Slovenia proves that „anyone who demonstrates legal interest may request the initiation of proceedings before the Constitutional Court".

The second part of the Aarhus Convention offers two alternative choices. It provides: "Each Party shall, within the framework of its national legislation, ensure that members of the public concerned (a) Having a sufficient interest or, alternatively, (b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law [..]".

Namely, the Aarhus Convention has taken into consideration the different criteria that exist in the Member states.

Unlike the procedure of the Constitutional Court of Slovenia, the Latvian law provides for the rights to address the Constitutional Court not for the persons who have a sufficient interest, but in the case of violation of certain rights. It is not enough only to conclude that a person has a sufficient interest in order to establish that there exists violation in the sense of procedure of the Constitutional Court.

2.3. When assessing whether and how far a case regarding compliance of a particular act with legal norms of higher legal force must be examined in the

Constitutional Court having regard to an application, the Constitutional Court has assessed the following criteria in its former case-law:

1) whether the respective case, according to Article 16 of the Constitutional Court Law, can at all be examined in the Constitutional Court, namely:

a) whether the case regarding compliance of a contested act is to be examined in the Constitutional Court;

b) whether the case regarding compliance with a particular act is tot be examined in the Constitutional Court, namely, whether the act, compliance with which is contested, is an act of a higher legal force if compared with the contested act;

2) whether the applicant, according to Article 17 of the Constitutional Court Law, has the right to submit an application to the Constitutional Court;

3) whether there exist any special requirements regarding the particular application. In the case of a constitutional claim, compliance of the application with the requirement "in the case of violation of the basic rights" included in Item 11 of the first part of Article 17 of the Constitutional Court Law, as well as with the requirements of Article of $19.^2$ of the Constitutional Court Law is assessed. Namely, first of all it is examined:

a) whether, in the constitutional claim, precise basic rights established in the Satversme are indicated;

b) whether the submitter of the constitutional claim is a person that has been provided with the particular basic rights established in the Satversme;

c) whether the contested provision concerns the applicant, namely, whether it:

- infringes directly the submitter of the constitutional claim;

- is infringing the applicant, namely, the violation exists at the moment or it is necessary to prevent it at once;

- infringes, i.e. causes or may cause unfavourable consequences for the applicant,

d) whether the requirements of Article 19.^{2} of the Constitutional Court Law regarding protection of rights by general means of rights protection;

4) whether the application complies with the requirements of Article 18 of the Constitutional Court Law.

3. Considering the abovementioned aspects in relation to the conclusions made in the Judgment, we have come to the following conclusions:

3.1. We fully agree to the opinion that "the land use plan of a local government is a normative act, and it is binding on each natural and legal person, and serves as a legal basis for making decisions regarding development" and „falls within the jurisdiction of the Constitutional Court to assess compliance of the Contested Plan with the Satversme" (Para 12.1 of the Judgment).

We also agree to the position of the Constitutional Court regarding assessment of the Regulation No. 690 in the frameworks of this case, as well as to the position that "the Constitutional Court should not re-consider the conclusions made by the State Environment Bureau regarding the necessity to carry out a strategic assessment for the land use plan" (Para 21. of the Judgment).

It has been justly indicated in the Judgment: "In specific cases the Constitutional Court may or even must go beyond the strict formulation of a claim in order to ensure effective protection of individual rights and enforcement of a judgment. However, assessment of compliance with Satversme of such acts, which are not subject to review in the respective case, would be contrary to the procedural principles of the Constitutional Court

(*see: Judgment of 19 December 2007 by the Constitutional Court in the case No. 2007-13-03, Para 6*).

Unfortunately, the abovementioned conclusion has not been taken in Para 23.2 of the Judgment, wherein the activities of the State Environment Bureau has been assessed and recognized as non-compliant with the seventh part of Section 23.[5] of the Law on Environmental Impact Assessment, namely, the fact that the Bureau, when drawing attention to the shortcomings to be eliminated, did not submit the environmental report for its revision. The case regarding compliance of the activities of a State administration institution – the State Environment Bureau – with normative acts does not fall within the jurisdiction of the Constitutional Court. Such case was not and could not be initiated in the Constitutional Court. The Constitutional Court was not authorized to recognize the activities of the State Environment Bureau as non-compliant with normative acts.

3.2. The case was initiated regarding compliance of the Contested Plan with Article 115 of the Satversme. However, in this case, compliance of the Contested Plan with separate environmental laws, rather than with Article 155 of the Satversme is assessed. Both, the case on compliance of the Contested Plan with the Satversme and the case on compliance of the Contested Plan with a "simple" law falls within the jurisdiction of the Constitutional Court. However, it must be taken into consideration that Item 11 of the first part of Article 17 of the Constitutional Court Law authorizes a person to submit an application only "in the case of violation of the basic rights".

The Constitutional Court could initiate and adjudicate, according to a constitutional claim, a case insofar as it concerns the basic rights of a person established in the Satversme and insofar as the application complies with the requirements provided by law.

3.3. The Constitutional Court, in the judgment of 26 April 2007 in the case No. 2006-38-03 has drawn attention to separate problematic aspects in cases on compliance of land use plans with legal norms of a higher legal force. After this judgment, there has been a discussion initiated in the science of law of Latvia regarding compliance of the procedure of the Constitutional Court for rights protection in the cases when a council of a local government adopts a land use plan that does not comply with legal norms. Attention is also drawn to the fact that access to the Constitutional Court is hampered by the requirement to justify violation of the basic rights established by the Satversme. Professor A. Endziņš indicates: "The present procedure of the Constitutional Court is not optimal in the cases of examination of these cases when there are such norms contested that, according to the terminology used in the judgment, "resemble not normative legal acts, i.e. acts that would comprise legal norms, but individual acts, i.e. acts for application of legal norms". Namely, a person may defend its rights not in each case when a land use plan does not comply with laws, but only in the cases when the basic rights established in the Satversme are violated. This causes additional difficulties for a person when preparing an application. Namely, a person, in the application, must justify not only the fact that a land use plan does not comply with the law, but also the fact that the basic rights established in the Satversme are violated. Hence there raises a question whether such requirements do not establish a certain restriction of the basic rights of a person to a fair court" [*Endziņš A. Kā vērtēt jaunāko Satversmes tiesas praksi. Jurista Vārds, 09.10.2007., No. 41(494)]*.

However this discussion does not mean that the Constitutional Court could ignore the requirements of the Constitutional Court Law.

In two cases when the Constitutional Court had to decide on controversial issues regarding its jurisdiction, it has recognized that "one of the fundamental principles of a democratic state is the principle of separation of power. It follows that there exists control of the judicial power over the legislative and executive

power. No legal norm or activity of the executive power shall remain out of control of the judicial power, if it endangers interests of an individual" *[see: Judgment of the Constitutional Court of 9 July 1999 in the case No. 04-03(99) and Judgment of 22 February 2002 in the case No. 2001-06-03, Para 1.2 of the Concluding Part]*. However, unlike the abovementioned judgments wherein the considered contested acts did not fall within the jurisdiction of any of courts, compliance of the Contested Plan with a "simple" law can be adjudicated in the Constitutional Court if the application is submitted by, for instance, the Ombudsman or the Prosecutor General.

3.4. Item 11 of the first part of Article 17 of the Constitutional Court Law provides that "a person whose fundamental rights established by the Constitution have been violated has the rights to submit an application to the Constitutional Court". The applicant is the very person for the purpose of this article.

However, the first part of Article 19.^{2} of the Constitutional Court Law allows submitting a constitutional claim only to a person who thinks that the basic rights established in the Satversme are violated. Item 1 of the sixth part of the abovementioned article asks to justify that the basic rights of the applicant in particular have been violated.

It has been indicated in the case-law that "a constitutional claim shall only be used for protection of the basic rights (of both, natural and legal persons). If a person wants to act on behalf of any other person then in such cases the respective representation norms shall be observed" *(Rodiņa A. Konstitucionālā sūdzība: teorija un prakse Latvijā. Tiesību harmonizācija Baltijas jūras reģionā 20.-21. gadsimta mijā. Rīga, 2006, pp. 491.).*

In order to establish whether the particular case shall be examined having regard to the constitutional claim of the Applicant, it is necessary to find out whether the Applicant is "everyone" for the purpose of Article 115 of the Satversme and "any person" for the purpose of Article 19.^{2} of the Constitutional

Court Law. Namely, whether the Applicant has submitted a constitutional claim in order to protect her basic rights. I.e. whether the particular legal person enjoys the rights to live in a benevolent environment.

In the Judgment, by imprecisely referring to Para 1 of the Concluding part of the judgment of the Constitutional Court of 3 April 2001 in the case No. 2000-07-0409, it has been indicated: "The Constitutional Court has declared that legal person under private law has the right to address the Constitutional Court, and the Court has acknowledged that the individual rights, freedoms and obligations, included in the Satversme are applicable to legal persons as far as they can be by their very nature applied to legal persons. Namely, as far as the nature of these rights, freedoms and obligations allows to enact them not only by an individual but also by legal person (*see: Judgment of 3 April 2001 by the Constitutional Court in the case No. 2000-07-0409, Para 1 of the Motives).*

A deceptive conception follows from Para 12.2 of the Judgment that there are pre-established criteria in the case-law of the Constitutional Court, as well as all cases when legal persons are authorized to implement the basic rights established in the Satversme, including the basic rights established in Article 115 of the Satversme, are examined. However, in the case mentioned in the Judgment, the case No. 2000-07-0409, no such general conclusions have been made. The conclusion has been made only regarding the basic rights established in Article 91 of the Satversme.

It follows from the Judgment that the Satversme provides for "the rights of a legal person to a benevolent environment" (*Para 13.3 of the Judgment*).

Both, in the case-law of the Constitutional Court and the case-law of the European constitutional courts and the European Court of Human Rights it has been established that certain basic rights (for instance, the rights to property, the rights to a fair court) are also enjoyed by legal persons.

Simultaneously, legal scientists indicate that legal person are not conferred those rights of persons that cannot in fact be applied to legal persons. It is related with the rights to life, prohibition of torture and inhuman treatment, the rights to life and security, prohibition of capital punishment, the rights to family rights, marriage. In this case, the European Convention for Protection of Human Rights and Fundamental Freedoms in fact are related with qualities that pertain only to living beings and are not characteristic to legal persons (*see: Grabenwarter C. Europäische Menschenrechtskonvention. Verlag C.H. Beck, München, Manz`sche Verlags- und Universitätsbuchhandlung, Wien, 2005, S. 102)*.

The rights to live in a benevolent environment are directed towards ensuring of the rights and living conditions of a person as a living being, favouring of welfare of persons and the possibility to exercise the basic rights of persons, including the rights to life. These rights, in fact, cannot be enjoyed by legal persons.

In the Judgment, the emphasis is shifted from the actual legal subjects provided for in Article 115 of the Satversme to those persons who have the interest to achieve implementation of these rights on behalf of other persons. The opinion that a legal person has the right to live in a benevolent environment could for instance, lead to a false assumption that a commercial society has the rights to an environment favourable for commercial activities, which is not and may not be the rights established in Article 115 of the Satversme.

A legal person does not have the rights to live in a benevolent environment, as provided in Article 115 of the Satversme.

Consequently, the Applicant has not been conferred the basic rights established in Article 115 of the Satversme, and she may not submit a constitutional claim to in the case of violation of these rights.

3.4.1. Still, this conclusion does not mean that we would consider initiation of this case as non-compliant with the norms of the Constitutional Court Law.

When initiating a case, the Panel shall take into consideration the principle that all doubts shall be interpreted in favour of initiation of a case. "Namely, in the case of doubt, a case shall be initiated by verifying, at the Panel level, whether the application contains a sufficient legal justification for the possibility that it is as the submitter of the application thinks. The controversial procedural issue shall be settled by the Constitutional Court in its judgment." [*Endziņš A. Kā vērtēt jaunāko Satversmes tiesas praksi. Jurista Vārds, 09.10.2007., No. 41(494)]*.

3.4.2. Examination of the case was also possible having regard to the particular application, however not in relation to possible violation of the basic rights of legal persons, but in relation with that of a particular natural person – the director of the society "Coalition for Nature and Cultural Heritage Protection", Sandra Jakušonoka. It is testified by the case materials that she was in correspondence, regarding the Contested Plan, as the President of the society "Coalition for Nature and Cultural Heritage Protection", as the director of the Riga bureau of the Latvian Green Movement (*Latvijas Zaļā kustība), as well as a natural person (case materials, Vol. 1, pp. 48*). It was also testified by her speech at the Constitutional Court proceedings that she regards the Contested Plan as a violation of the basic rights of a legal person, as well as that of her own basic rights.

3.4.3. Not denying that protection of the rights established in Article 115 of the Satversme would be more effective at the Constitutional Court if, when submitting a constitutional claim regarding violation of the basic rights

established therein, the requirement regarding violation of the basic rights of the applicant would not apply to organization that comply with the criteria listed in the Aarhus Convention, we hold that the Constitutional Court, in the Judgment, has in fact examined, exceeding the procedure established by law, a case regarding compliance of the words "his/her own" of the first part of Article 19.^{2} and the words "the applicant" of Item 1 of the sixth part of Article 19.^{2} of the Constitutional Court Law with the Aarhus Convention, by recognizing these words as invalid as from the date of submitting of the application. Such activities violate the principle of separation of powers that follows from Article 1 of the Satversme, a well as the limits of the judicial power.

Moreover, in the Judgment, compliance of the abovementioned norms with Article 92 of the Satversme has not been thoroughly examined. It has been indicated in Para 12.2 of the Judgment: "If a person, i.e., a private law person, a legal person governed by private law or an organization of these persons were denied the right to ask for review of compliance of a land use plan with Article 115 of the Satversme, the right of person to a fair trial that provided in Article 92 of the Satversme would be violated". However, as it has been established in the case-law of the Constitutional Court, the basic rights established in Article 92 of the Satversme can be restricted, but this restriction must comply with certain criteria.

3.5. Disregarding the fact whether the case would have been examined having regard to the constitutional claim of S. Jakušonoka as a natural person or it would have been established that the words of Article 19.^{2} of the Constitutional Court Law are invalid, the constitutional claim must be justified regarding the existence of violation of particular basic rights.

Neither in the case-law of the Constitutional Court, nor in the jurisprudence of Latvia there have been unambiguous criteria elaborated in order to be able to establish whether there exist any violation of the basic rights. It has already been

established in the former case-law of the Constitutional Court that the violation is possible in future, i.e. it is “potential” or “possible”.

We agree to the opinion expressed in the Judgment that” breach of the rights established in Article 115 of the Satversme are to be interpreted broadly by including ongoing activities that may cause imminent threats to human health or the environment, as well as the future, proposed activities” (*Para 13 of the Judgment*). Still, the violation must manifest itself through restriction of jeopardy of those values that are protecting the basic rights established in the Satversme.

As to the rights to live in a benevolent environment, it means that it is possible to contest not only an act that is directed towards debasement of the environmental quality (in the sense of a particular person), namely, it provides for fulfilment or not fulfilment of any action which would deteriorate environmental quality or in the result of which negative consequences are possible.

Only the fact that a person “has participated in drafting and adoption of the contested normative act, for instance, a land use plan, as far as legal acts provide for such possibility and it has been possible to implement it in practice” (Para 13.2 of the Judgment) does not confer this person *a priori* rights to contested the entire adopted act or any selected norm of the adopted act.

There are several moments to be noted that must be assessed in the case under review without claiming for an exhaustive enumeration of theoretically possible cases and abstracting from abovementioned procedural problems that involve the rights of a person to submit a constitutional claim only regarding violation of his or her own basic rights.

The Contested Plan includes a considerable territory. The situation in various places of the Contested Plan differs. As to the contested norms, the Constitutional Court, when initiating a case in other matters, has often

divided the claims put forward in applications without initiating or terminating a case regarding any part of the claim and examining the case only on that part of the claim, in respect to which there exists a justified violation of the basic rights for the purpose of Article 19.[2] of the Constitutional Court Law. Unfortunately, it has not been done in the case under review.

3.5.1. The former land use plan provided for a bank in the sea, which was established in the plan as "a port territory", as well as for such a territory in the dunes stretching from the left bank of the mouth of the Daugava river to the border of the port. Moreover, the Contested Plan in this part provides for a greenery and nature territory.

Not denying that deterioration of the environment in certain cases or according to conception of separate persons may take place also if such territories, where economic activities are planned, are turned into greenery and nature territories, it must be emphasized that it was necessary to be justified in the application why the Applicant considers that in this territory the Contested Plan violates the rights to live in a benevolent environment.

The Applicant has not at all justified violation of the basic rights as to this territory, and the case on the Contested Plan had to be terminated regarding as to this part. The result provided by the Judgment does not comply with the basic rights established in Article 115 of the Satversme, as well as all international liabilities of Latvia.

3.5.2. Justification of violation of the Basic Rights is neither provided in the part regarding the Contested Plan of the left bank of the River Daugava near the mouth of the Vecmīlgrāvis Canal, which was established as "a territory with special provisions" in the former plan, and as a greenery and nature territory in the Contested Plan. Also in this regard the case had to be terminated.

3.5.3. The case had to be terminated also regarding that part of the Contested Plan, where the former plan provided for a green zone territory, but the Contested Plan – greenery and nature territory. The Applicant has not justified what kind of violation was caused by such permitted (planned) use of the territory.

4. As it has been mentioned before, we do not agree with the interpretation of Article 115 of the Satversme made by the Constitutional Court, as well as to the structure and scope of examination of the basic rights of this Article included in the Judgment, as well as many other procedural aspects when examining a case initiated having regard to a constitutional claim regarding compliance of a normative act with the rights established in Article 115 of the Satversme. Now we will express our position regarding certain conclusions made in the Judgment when assessing compliance of the Contested Plan with separate normative acts by abstracting from the abovementioned conclusions on the Judgment in general.

5. It has been justly indicated in the Judgment that land use planning is an autonomous function of a local government. The status of the Riga City Council complies with the criteria established in the European Charter of Local Self-Governments and the rights established in this Charter fully apply thereto. The fourth part of Article 4 of the Charter provides that "powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law." Whilst, the third part of Article 8 of this Charter requires that administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

According to the Regulation No. 883, the following shall be established in a land use plan of a local government: the planned (permitted) utilisation of the

territory; provisions for the utilisation and building up of the territory, which include requirements for the land units and the building up thereof, as well as for utilities for each part of the territory (with a specified different planned (permitted) utilisation); the boundaries of the planned administrative territory, towns and villages; and the development of the structure of distribution of the population of the territory, as well as other issues. However, during examination of the case it has not been affirmed that there exists any administrative act that would establish what kinds of use of the territory in particular shall be provided fro in a land use plan. Consequently, the local government, when implementing its autonomous function, may choose whether to provide separately for "nature territories" and "greenery" territories, or "greenery and nature territories", or to provide separately for "port", "light industry enterprises", "general manufacturing enterprise" and other territories, or to provide for a unified "industry and manufacturing territories".

In general, we do not object to the following opinion expressed in the judgment: "When planning the zoning, namely, how diverse the authorised use of the respective territory should be set, the discretionary power of a local government is restricted by both, the objectives of land use planning – to promote sustainable and balanced development, as well as the principles of land use planning – *inter alia*, the principle of diversity. According to that, the diversity of the nature, the cultural environment, human and material resources and economical activities should be taken into account when drafting the land use plan. This *inter alia* means that the authorised use must be adjusted so that the development potential of this territory is revealed in the best possible way by observing the diversity existing in the territory, as well as its peculiarities and specificity." (*Para 24.4 of the Judgment*).

Not objecting the fact that the land use plan "should be clear and understandable" and in ideal situation "the planned (permitted) use of the

territory as provided in the land use plan must be established so that everyone could plan their life, as well as economic activities in a long term" (*Para 24.4 of the Judgment*), we would like to draw attention to the aspect that has not at all been taken into consideration in the Judgment. From the point of view of constitutional law, each land use plan shall at first be regarded as restriction to development of the rights of a person to life, the rights to property, as well as several other basic rights. Both, in the case-law of the Constitutional Court and that of the European Court of Human Rights, there have been strict criteria established in regards to restriction of these rights. Such situation when a local government would prohibit the owner to use his or her property in a certain way in order to ensure a possibility for person to foresee the action of other persons would not comply with the principle of proportionality. In a land use plan it should be taken into consideration that each restriction established for the owner must comply with the principle of equality, by comparing other owners who enjoy equal or comparable conditions.

Even if the basic right to an explicit and unchanging land use plan for at least 10 subsequent years would follow from Article 115 of the Satversme, these rights would be restricted in order to ensure the basic rights of other persons established in the Satversme by observing the principle of oneness of the Satversme. Not denying that the rights to property can be restricted in favour of the interest of the society and in order to ensure a diverse, foreseeable and benevolent environment that would be fit for development of different persons, it still must be taken into account that such restrictions must be justified and necessary. It is impossible to return to the society, development of which and initiative of the members of which was restricted in the frameworks of administratively commanding system.

The choice how to use one's property first of all must be left to the owner. The restriction established by the local government must be reasonably balanced

with the interests of the owner. When providing for different provisions of land use in various territories wherein it is allowed, the environment that fits to initiative and development is created, which is regarded as a benevolent environment by many inhabitants of Riga. The interest of foreseeability of the territory *per se* cannot be superior to the basic rights established in the Satversme.

Moreover, it must be taken into consideration that no development of the city environment that would comply with the principles of a law-governed State was possible in Riga due to historical circumstances. When planning the territory in such city, the specific conditions that are created by the change of socio-economical and political situation must be taken into consideration.

When trying to find balance between the different basic rights and legal principles, the Riga City Council as a directly elected municipal institution enjoys a broad freedom of action. When establishing the structure of the Land Use Plan and providing for one kind of planned (permitted) use of the territory including many purposes of the use of the territory, the Riga City Council has acted in the frameworks of the freedom of action provided for it.

6. The Freeport of Riga plays an important strategic role in the infra structure of the State. Its free development and functioning is not a local or private-level interest. The Saeima has by law established a special legal regime for the Freeport of Riga in order to favour participation of Latvia in international trade, attraction of investments, development of production and services, as well as creation of new working places. The Freeport of Riga is not only a subject of private law, but also that of the public law. Moreover, the Port was fulfilling economic functions, as well as it was used for fulfilment of functions related with State security. The Saeima has provided the Freeport of Riga as a subject of public law with a broad authority, including the authority that significantly impact the rights of private persons in the territory of the Port.

Not only those persons who realize business activities in the territory of the Port, but also entrepreneurs in different regions of the State who send or receive their foods through the Port to ensure their business activities (and thus also to ensure working places and social welfare), as well as private persons who exercise their rights by means of the Port are interested in free functioning and development of the Freeport of Riga. Consequently, ensuring of the best possible functioning of the Port shall be regarded as welfare of the society for the purpose of Article 116 of the Satversme. Namely, ensuring of functioning and development of the Port may serve as a legitimate objective in order to restrict the rights established in Article 116 of the Satversme.

Constitutional courts of other states have also recognized the importance of functioning of objects related with ports when ensuring welfare of the society. Thus the Court of Arbitration of Belgium (Constitutional Court of Belgium), in its judgment of 2 July 2003 in the case No. 94/2003 (*see: http:www.codices.coe.int),* examined the case on the Government Decree of the Flemish Region, which, based on important interests of the society, provided for extraordinary procedure for granting construction permission for construction of "Deurganckdok", an object related with the port. The Decree, among the rest, provided not only for a shortened and special procedure for granting of construction permissions, but also for the possibility that the government shall grant a permission also when the permission does not comply with the document of land use plan. Construction works also covered those territories, to which the Directive 79/409/EEC and the Directive 92/43/EEC, as well as the Natura 2000 territories. Disregarding the fact that the applicant has indicated that many basic rights established in the Belgian Constitution and norms of the abovementioned directive, the Court of Arbitration of Belgium concluded that the Parliament of the Flemish Region could provide for the rights to the government to grant construction permissions in the cases when it is required by important social and strategic interests. The applications were rejected. It is to be noted that Item 4 of

the third part of Article 23 of the Belgium Constitution provides for the rights to live in a benevolent environment.

However, the Constitutional Court of Austria recognized as non-compliant with the Constitution the norm of the Lower Austria Nature Protection Law (nature protection in accordance with the Constitutional or Austria falls within the scope of competence of the federal land), which did not ensure the interests of the society protected by the Constitution by prohibiting constructing a railway tunnel.

7. Section 5 of the Land Use Planning Law provides for the levels of land use planning and document necessary by providing that land use planning shall be implemented at several levels by elaborating mutually coordinated land use plans. In an ideal situation, the Port as an important object of infrastructure would be provided in land use plans of national and regional level, and local government could guide themselves according to it.

Unfortunately, no such situation of ideal type exists now in Latvia. However, this does not mean that by adopting the Contested Plan the local government should not take into consideration the particular status of the Freeport of Riga established by Law. Section 1 of the Law on Freeport of Riga provides that a part of the Republic of Latvia, not that of the Riga City, by thus indirectly emphasizing the particular character of the Freeport.

Well-grounded is the opinion of the representative of the Riga City Council that "the main purpose of the Land Use Plan is to establish the limits of operations of the Port in the common scheme of the city infrastructure plan. The purpose of the Development Programme, however, is to specify the land exploitation options for the territory of the Port thus allowing businesses who are currently or potentially working in the port to plan their operations and development thereof in the territory of the port".

The Cabinet of Ministers, by means of its regulations, may denote such territory as the territory of the port, which can in future be developed for the needs of the Port. Other way of use of the territory could be determined by the local government only insofar as it is provided for in normative acts or insofar as it has been coordinated with the Port. Consequently, as to the territory, wherein the borders of the Port were established at the moment of adoption of the Contested Plan, the Riga City Council could not at all provide for any other way of use of the territory but industrial and manufacturing territory, apart from the territories of nature parks and protected areas established according to the procedures provided for by law.

After the Regulation No. 690 were adopted, the freedom of action of the Riga City Council regarding the entire territory of the Contested Plan is limited.

8. It has been indicated in the Judgment: "Neither in the Land Use Planning Law, nor in the Law On Ports, nor in any other law, there is authorization granted to a local government to delegate its competence of land use planning to the port's authority. In accordance with the Land Use Planning Law, the planned (authorised) use of the territory provided in the land use plan of a local government may be specified only with a detailed plan, which is drafted according to the procedure established in the Regulation No. 883" (*Para 24.3 of the Judgment*).

We have already indicated that, when selecting the structure of land use plan, as well as providing for a certain planned (permitted) use that covers many purposes of use of the territory, the Riga City Council has acted within the frameworks of the freedom of action conferred to it. The Riga City Council has not delegated, neither had it to delegate establishment of internal functional structure of the territory covered by the Freeport of Riga. The Riga City Council has fulfilled its function of land use planning by means of the Contested Plan.

When interpreting the Land Use Planning Law, the Law on Ports and the Law on Freeport of Riga jointly, it can be concluded that the legislator has, on the one hand, obligated the Freeport of Riga to take the responsibility of development of the port territory but, on the other hand, provided for duties that are related with additional procedures for elaboration of port programme, if compared to simple activities of the subjects of private law.

The procedure of adoption of a land use plan ensures transparency, participation of the society, and, from the point of view of an individual, it has an advantage over the programme of the Port. However, one cannot distinguish any infringement committed by the Constitutional Court in the circumstance that the legislator has provided for a slightly different legal regulation for the territory and activities of the Port, if compared with other territories of the local government. The basic rights "to the most detailed possible land use plan" do not follow from Article 115 of the Satversme. And even if similar basic rights would follow from it, they could not ensure reaching of the above mentioned legitimate objective. The Restriction shall be regarded as proportionate taking into consideration the benefit that the society receives from functioning of the Port as a strategically important object, as well as the fact that possible restriction of the rights established in article 115 of the Satversme is insignificant – the programme of the Port also requires assessment of environmental impact. The fact that, according to the law, the programme of the Port requires mandatory assessment of environmental impact, reduces (but does not exclude) the possibility of the society to participate in this process. However, in this case, the representative of the Bureau has indicated that on 10 August 2004 there has been the Decision No. 2 adopted "On the Application of the Strategic Assessment Procedure to the Freeport of Riga Development Programme".

9. In the case under review, there is no dispute about the fact that the strategic environmental impact assessment has been carried out for the Contested

Plan. In the procedure, the competent institution is granted a broad authority by the strategic environmental impact assessment regarding influence on the quality of documents to be elaborated. As to any document elaborated according to the second part of Section 23.[2] of the Law "On Environmental Impact Assessment", it is necessary to consult upon the degree of detailed elaboration of an environment report.

When examining the issues related with the strategic environmental impact assessment, the law grants the Bureau a broad freedom of action. According to the transitional provision of the abovementioned draft law, the Bureau is authorized to decide "unilaterally" whether the strategic environmental impact assessment shall be applied.

According to the sixth and the seventh part of Section 23.[5] of the Law "On Environmental Impact Assessment", the environment report shall be submitted within the term established by the Cabinet of Ministers taking into consideration compliance of the report with the requirements of normative acts and justification of the selected solution, as well as terms shall be established, within which the developer of the document, after confirmation of the planning document, shall submit a report on direct or indirect impact on the environment of implementation of the planning document, as well as on the impact not established in the environment report. If the environment report does not comply with the requirement or the selected solution substantially impacts health of persons and the environment, if it is not sufficiently justified or the society has not been informed and the environment report has not been discussed at the Cabinet of Ministers according to proper procedure, or the received commentaries and suggestions have not been examined, the competent institution shall submit the environment report to the developer thereof for its revision by indicating to the shortcomings or by making the development to ensure information of the society or public discussions.

At the Court session, the representative of the Bureau indicated that the strategic assessment of the Development Plan has been carried out according to the requirements of normative acts.

It has been established in Para 1 of the conclusions of the Resolution No. 24 of 16 December 2005 "On the Environmental Report of the Riga City Development Plan 2006 – 2018":

"1. The Environment Report for the strategic environmental impact assessment of the Riga Development Plan 2006 – 2018 includes environmental impact assessment of two mutually related planning documents – " Riga Development Programme 2006 – 2012" and "Riga Development Programme 2006 – 2018", and no assessment is singled out for each of the documents. Therefore this assessment can at great extent be applied to the Environment Report and both abovementioned planning documents.

2. The Environment Report is generally elaborated in accordance with the requirements of Para 8 of the Cabinet of Ministers Regulation of 23 March 2004 No, 157 "Procedures for Strategic Environmental Impact Assessment". It includes a well-structured and extensive information regarding the environmental condition in the Riga City, it assesses possible environmental impacts of implementation of planning documents, includes recommendations for elimination and reduction of identified impact, as well as draws attention to contradictions and shortcomings of the Development Plan" (*case materials, Vol. 3, pp. 49 – 50*). Whilst, Para 4 of the conclusions provides for the terms for submission of monitoring (*case materials, Vol. 3 pp. 56*). Although, in the assessment, separate shortcomings are indicated and recommendations provided, they cannot be assessed separately from other conclusions made in Para 2 and 4.

It fell within the freedom of action of the Bureau to examine whether the recommendations provided and shortcoming established are important enough to

request revision of the documents, or they can be regarded as sufficient. In the case under review, the Bureau adopted a decision within the framework of its freedom of action. Consequently, any statements regarding the fact that no strategic environment impact assessment has been carried out for the Contested Planned are not grounded.

The objective of the procedure of a strategic environmental impact assessment is not and may not be "most positive assessment possible". The aim of this procedure first of all is acquisition of information, assessment, development and finding of a solution. Providing of recommendation and establishment of shortcomings even if the documents must not be revised would positively influence the respective planning document. If such indications shall be regarded as the ones reducing the force of the assessment, there can a situation be formed when the Bureau would refuse to provide such recommendations that would not comply with the essence and objective of a strategic environmental impact assessment.

In the assessment, like in a judgment, there must be those arguments mentioned that the Bureau has emphasized when making a decision whether the document should or should not be revised. The essence of a strategic environmental impact assessment is not to hamper development of project, if it is possible, during their elaboration, to find solutions that could prevent possible risks.

According to Section 2 of the Law "On Environmental Impact Assessment", its objective is to prevent or reduce the negative impact of activities of natural or legal persons of that of planning documents on the environment. Implementation of a land use plan, which manifests itself through development and assessment of the following planning document, does not *per se* have a negative impact on the environment. Therefore, in the assessment, the Bureau has justly included the arguments regarding the fact that the strategic environmental impact assessment shall be applied to the programme of the Port.

Not denying the great importance of the precaution principle in the environment law, it must be emphasized that it shall be applied conjointly with other principles and it provides for a certain freedom of action when interpreting reasonably, at what moment it is possible to assess each planned project of activity. Moreover, under Item 6 of Section 3 of the Law "On Environmental Impact Assessment", the assessment shall be carried out observing not only the principle of sustainable development and the precaution principle, but also the principle of assessment.

The opinion of the Riga City Council that "the situation would be absurd if a project planned in the territory of the Freeport of Riga were subject to two strategic assessments and furthermore to the environmental assessment" is justified.

Consequently, not only according to the procedure, but also according to its terms, the opinion expressed in the Judgment that "the State Environment Bureau violated Article $23.^5$ (7) of the Law On Environmental Impact Assessment by identifying the defects to be eliminated while simultaneously deciding that the Environmental Report should not be given back for revision" (*Para 23.2 of the Judgment*).

10. It has been stated in the Judgment that "when working on the Contested Plan, the procedure of obtaining and evaluation of opinions requested by the Regulation No. 883 was not observed. In the case under examination, the opinion of the Public Administration of Cultural Heritage was important for the drafting and adoption of the Land Use Plan because, if this opinion would be observed another version of the final Land Use Plan would have been adopted. Moreover, the Administration was not able to provide its opinion due to omission of the Riga City Council". (*Para 27 of the Judgment*).

Such opinion is included into the Judgment without reason, and it can be regarded neither as violation of Article 115 of the Satversme, nor as that of any other rights in relation with protection of cultural monuments. It is not sufficient to assess the Contested Plan by using only the grammatical method of interpretation of legal norms, which in the case under review manifests itself through examining the "colour" by which the territory concerned is marked in the graphical part of the Land Use Plan and by reading the permitted way of use of the respective territory. The Contested Plan must be interpreted systematically.

10.1. Regulations on Land Use Planning and Construction in the Territory of Riga include Para 5 "Regulations Regarding Protection of Cultural Heritage", which provides the following:

"5.1 General provisions of this chapter shall be applied to all territories marked, in the land use plan, as historical territories of the territory of the City that have been conferred the status of cultural heritage already before elaboration of the Land Use Plan or it has been conferred by thereby and that are planned to be protected as both, world cultural heritage and national cultural heritage monuments having the official status of a monument, and potential monuments or separate special historical construction territories to be protected.

5.2 General requirements for protection of cultural heritage monuments are provided for by the Law "On the Protection of the Cultural Monuments" and regulations of the Cabinet of Ministers.

5.3 Regulations for protection of cultural heritage regarding other land use and construction regulations are exclusive regulations, and they have a greater force.

5.4 Cultural monuments and protected construction territories

[…] 5.4.4.1. Largest cultural monuments of Riga under supervision of the State are:

5.4.4.1.1. State cultural monument No. 8538 “The complex of fortification buildings of the banks of Daugava entry”. A part of the monument is located in the Daugavgrīva, in the Buļļu Island, but the other part – in Mangaļsala.

5.4.4.1.2. Local cultural monument No. 8539 “Komētforts Dike”. The monument is located in the Buļļu Island near the entry of the Daugava River into the sea [..]”.

Taking into consideration what has been established in Para 5.4 that provisions on protection of cultural heritage regarding other regulations of land use and construction are exclusive regulations, and they have a greater force, as well as taking into consideration the fact that both statuses mentioned in the application are provided for in paras 5.4.4.1.1 and 5.4.4.1.2, the Contested Plan, even if its graphical part does not precisely show the borders of these cultural monuments, could not cause such violation of the rights of any person to live in a benevolent environment that would be related with such use of these monuments that would not comply with the requirements of the law or change of the borders of the monuments.

Even if the State Inspection for Heritage Protection would have reassessed the Contested Plan, the regulations established in Para 5 of the Regulations on Land Use Planning and Construction in the Territory of Riga would not have been changed.

10.2. The Conclusion regarding inaction of the Riga City Council is biased and it does not pertain to the context. The Riga City Council was not intending to avoid submitting of the materials to the State Inspection. It can be concluded from the case materials that the State Inspection has submitted five letters regarding the different wordings of the Land Use Plan and Protection and Development Plan of the Riga Cultural Centre, the last of which was a letter of 21 October 2005 on the second wording of the Riga Development Plan.

10.3. The State Inspection has drawn attention to the shortcomings in the graphical depiction of the abovementioned cultural monuments, however the State Inspection has not objected against the land use regulations neither in the territory of the monuments, nor it the adjacent territories. Consequently, reassessment of the Plan could not impact protection of these monuments in its terms.

10.4. Even if it would be assumed that there have been violations admitted in relation to the abovementioned cultural monuments that would require acknowledging of the Land Use Plan as invalid, no such violation could serve as the grounds for admitting as invalid the Contested Plan.

Taking into consideration the aforesaid, we hold that the part of the Riga Land Use Plan 2006 – 2018 covering the territory of the Freeport of Riga complies with Article 115 of the Satversme.

Justice of the Constitutional Court K. Balodis

Justice of the Constitutional Court V. Skudra