THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

JUDGMENT
ON BEHALF OF THE REPUBLIC OF LATVIA
in Riga, April 11, 2007
in Case No. 2006-38-01

The Constitutional Court of the Republic of Latvia represented composed of the chairman of the Court session Uldis Ķinis, as well as the justices Juris Jelāgins and Viktors Skudra,

having regard to the constitutional complaint submitted by Ojārs Karčevskis,

under Section 85 of the Satversme (Constitution) of the Republic of Latvia and on Item 3 of Article 16, Item 11 of the first part of Article 17, and Articles 19.^{2} and 28.^{1} of the Constitutional Court Law,

on March 27, 2007 at the Court session writing examined the case

"On the Compliance of the Plan of the Binding Regulation No. 4 of January 25, 2006 by Limbaži City Council on "Graphical Section of the Spatial Plan of Limbaži City and Regulations of Utilization and Construction of the Territory", wherewith the Land Parcel of 24 Cēsu Street is Included in the Territory of Natural Foundation of the Target Group of Territorial Utilization and Real Estate or of Free Construction Territory for Wood Parks and Parks, with Section 105 of the Constitution of the Republic of Latvia".

The Constitutional Court has established:

1. On January 25, 2006, Limbaži City Council (hereinafter - the Limbaži Council) adopted the binding Regulation No. 4 on "Graphical Part of the Spatial Plan of Limbaži City and Regulations of Utilization and Construction of the Territory".

With the spatial plan of the Limbaži City territory,the Limbaži Council has included the real estate - the land parcel of 24 Cēsu Street - in the territory of natural foundation of the target group of territorial utilization and real estate or of free construction territory for wood parks and parks.

2. The submitter of the constitutional complaint, Ojārs Karčevskis (hereinafter - the Applicant) requests to recognize the spatial plan of the Limbaži City, wherewith the land parcel of 24 Cēsu Street is included in the territory of natural foundation of the target group of territorial utilization and real estate or of free construction territory for wood parks and parks, (hereinafter - contested plan) as being in conflict with Section 105 of the Satversme of the Republic of Latvia (hereinafter - Satversme).

It has been indicated in the application that the property rights of the Applicant in respect to the real estate of 24 Cēsu Street have been registered at the Land Registry on November 1, 2004. Prior to that, on October 18, 2004, the Limbaži Council had refused to exercise the pre-emption rights to purchase the real estate of 24 Cēsu Street.

The Applicant maintains that the spatial plan of the Limbaži City, including the contested plan, has been adopted through violation of the Spatial Planning Law and Section 41 of the Law on Local Governments, and violates the rights to property of the Applicant as provided by the Satversme.

As the spatial plan of the Limbaži City has been elaborated as a correction of the master plan of the Limbaži City, the requirements of Item 3 of the first part of Section 1, 4, and 7 of the Spatial Planning Law have been violated, according to the Applicant. The condition that in the spatial planning work task confirmed on August 27, 2003, the Limbaži Council has provided for the new spatial plan as a correction of the master plan of the Limbaži City means that the Sections 3 and 4 of the Spatial Planning Law have been violated.

Furthermore, the Limbaži Council has violated the second part of Section 9 of the Spatial Planning Law, since, during the spatial planning process, it had not given timely responses to written proposals and references about the spatial plan submitted by the Applicant.

The Applicant holds that Limbaži Council was not entitled to use the master plan of Limbaži City of 1985 to determine the restrictions of property rights for the Applicant in use of the real estate. The master plan adopted during the period of SSR (Soviet Socialist Republic) of Latvia could not be evaluated as an external normative act, which could be binding on the residents of the local government, since it had not been passed in compliance with the legal norms of the Republic of Latvia.

The Limbaži Council has evaluated the proposals of the Applicant formally. Historically, the land parcel owned by the Applicant had been covered with buildings, and even the 1985 master plan had prescribed a parking lot at the land parcel.

In the application, it is mentioned that the Limbaži Council has justified the approval of the contested plan by the necessity to use the land parcel of the Applicant for performance of its functions – for organizing large events. The Limbaži Council had made such decision ignoring the needs of the society, because during the spatial planning process, the Applicant was the only one who had submitted proposals in respect to the possible ways of utilization of the real estate owned by the Applicant.

In addition to that, the Applicant emphasizes that in the spatial planning process, the Limbaži Council has applied the "incorrect" legal norms, namely, Regulation No. 34 of January 13, 2004 of the Cabinet of Ministers on "Regulations regarding Territorial Local Governments Spatial Planning" (hereinafter - Regulation No. 34) had to be applied also after October 19, 2004, when Regulation No. 883 of October 19, 2004 of the Cabinet of Ministers on "Regulations regarding Territorial Local Government Spatial Planning" (hereinafter - Regulation No. 883) became effective.

3. The institution, which has passed the contested act – the Limbaži Council – indicates in the response letter that proceedings in the case, which was initiated based on the application submitted by the Applicant, is to be terminated, since the submitted application does not conform to the requirements of Article 18 and 19.^{2} of the Constitutional Court Law.

The Limbaži Council holds that the Applicant has not observed the deadline indicated in the fourth part of Section 19.^{2} of the Constitutional Court Law, up to which the application is to be submitted at the Constitutional Court. The application can be submitted at the Constitutional Court within 6 months after the date of the last institution decision becoming effective. The spatial plan of the local government shall be enforced on the day, when the decree of the municipal council, whereby the respective plan is approved and the binding regulations on the local government are issued, is published in the newspaper "Latvijas Vēstnesis". The contested plan was enforced on February 11, 2006. The stamp of the chancellery of the Constitutional Court in the complaint submitted by the Applicant is indicative of the fact that the application was submitted at the Constitutional Court on October 24, 2006, which is one month and thirteen days beyond the six-month term established in the fourth part of Section 19.^{2} of the Constitutional Court Law. Therefore, the term for submission is exceeded and the Constitutional Court is not entitled to initiate the case.

Moreover, the Applicant had not taken all opportunities to protect the violated basic rights by general means of protection of rights. The Applicant is entitled to request amendments for the planned (permitted) purpose of utilization of the land parcel in compliance with Regulation No. 344 of July 31, 2004 of the Cabinet of Ministers on "Real Estate Exploitation Purpose Systematization Order" and with Regulation No. 496 of June 20, 2006 of the Cabinet of Ministers on "Real Estate Exploitation Purpose Classification and Real Estate Exploitation Purpose Establishment and Change Order". Likewise, in compliance with Paragraph 5 of Regulation No. 883, the Applicant is entitled to initiate amendments in the spatial plan of the local government. The Applicant had not exercised these rights, therefore the application does not comply with the second part of Section $19.^2$ of the Constitutional Court Law.

The Regulation No. 194 of September 6, 1994 of the Cabinet of Ministers "Regulations of the Spatial Planning" (hereinafter - Regulation No. 194) permitted local governments to make decisions, until the date of accepting the new spatial plan, regarding extension of term of validity of the master plan, which is effective at the given moment. The Limbaži Council had made such decision on July 13, 1995; before elaboration of a new spatial plan, the term of validity for the 1985 master plan of Limbaži City was thereby extended.

Section 1082 of the Civil Law provides that restrictions to use of a property can be established by law. According to the opinion of the Limbaži Council with regard to the concept "law", this norm refers to any external normative act, including binding regulations on local governments. Therefore, the Applicant cannot use its real estate by ignoring the restrictions of property rights established in the spatial plan.

4. In additional explanations, the Limbaži Council indicates that the Applicant has planned to use his own real estate against the interests of the society. The land parcel owned by the Applicant is supposedly the only place where the children of the city and the nearby rural local governments can visit recreational undertakings – travelling carousels, circus performances, and other mass events on daily basis, as well as on festivities. By permitting construction on the respective land parcel, the Limbaži Council would incur inadequate loss onto the surrounding pieces of real estate, would irreversibly damage the scenic environment and location for children to play and divert themselves.

The Limbaži Council indicates that during the spatial planning process, the arguments of the Applicant have been heard out and assessed.

The Limbaži Council with its actions has not created judicial confidence for the Applicant in respect to that the land parcel owned by him could be used for commercial construction.

The Limbaži Council could not have exercised the pre-emptive rights, since it is forbidden by Section 8 of the Law on Prevention of Squandering of the Financial Resources and Property of the State and Local Governments, which *inter alia* prohibits to acquire property for an increased price. In the opinion of the Limbaži Council, the price for the respective real estate had been inadequate and inappropriate for the market value of the parcel at the time.

5. The Ministry of Regional Development and Local Government (hereinafter - the Ministry) indicates that under Paragraph 42 of Regulation No. 883 it has issued a statement in respect to the spatial plan of the Limbaži City. In the statement, it indicates certain deficiencies of the graphical part of the plan, which have been suggested to be eliminated.

Under Paragraph 2 of the transitional provisions of Regulation No. 194, the Limbaži Council had to make a decision in respect to extension of term of validity of the master plan of the Limbaži City before December 31, 1994.

According to the Ministry, the spatial plan of Limbaži City could have been completed in compliance with the provisions established in Regulation No. 883.

6. After having got acquainting with the case materials, the Applicant submitted additional explanations.

Therein, the Applicant indicates that by refusing to exercise the pre-emptive rights, the Limbaži Council has created judicial confidence in respect to that the real estate located at 24 Cēsu Street will be available for commercial construction.

In the additional explanations, it has been repeatedly indicated that the Limbaži Council has applied Regulation No. 833 rather than Regulation No. 34 in the spatial plan, and therefore it is to be considered as a material breach in the process of spatial planning.

The Constitutional Court holds that:

7. In the response letter, the Limbaži Council requests termination of the proceedings, since the case has been initiated by violating the requirements established in the fifth part of Section 20 of the Constitutional Court Law.

Item 3 of the first part of Article 29 of the Constitutional Court Law provides that Proceedings in the case may be closed before the judgment is announced by a decision of the Constitutional, the Constitutional Court finds that the decision to initiate the case does not comply with the provisions of Part 1, Article 20 of this Law.

This Article *inter alia* provides that the application must comply with the requirements of Section 18 or Section $19.^2$ of the Constitutional Court Law.

The Limbaži Council indicates that the Applicant has not taken all opportunities to protect the basic rights established in the Satversme by general means of protection of rights. Therefore, according to the Limbaži Council, the application submitted by the Applicant is incompliant with the provisions established in the second part of Section $19.^2$ of the Constitutional Court Law. Moreover, the time limit for submitting the constitutional complaint (application) to the Constitutional Court established in the fourth part of Section $19.^2$ of the Constitutional Court Law has been exceeded.

Taking into consideration of the above-mentioned, first, it is necessary to establish, whether any conditions exist, which would make continuation of the legal proceedings in this case impossible.

8. The second part of Section $19.^2$ of Constitutional Court Law establishes that a constitutional complaint (application) can be submitted only if all opportunities to protect the basic rights established in the Satversme by general means of protection of rights have been used (a complaint to a higher official, a complaint or an application of a claim at a court of general jurisdiction, etc.) or in cases if such opportunities do not exist.

8.1. The requirement to take all opportunities to protect the violated basic rights by general means of legal protection refers to cases, when the basic rights have been violated through an act of right application. In this case, a person must employ general means of right protection, which involves an option to contest or appeal against the act of application of rights, wherewith the legal norm has violated the basic rights of the person. The constitutional complaint generally is a subsidiary (additional) mechanism of protecting the basic rights of a person in cases, when it is impossible to prevent violation of basic rights with general means of rights protection.

In compliance with Section 1 of the Saptial Planning Law, spatial plan is a long-term spatial planning document or a set of planning documents, which have been elaborated and have been enforced according to the procedure established in normative acts and wherein in accordance with the planning level and planning type in writing and graphically represented is

the current and certain planned (permitted) use of the territory, as well as restrictions of use of the respective territory.

However, Section 45 of Regulation No. 883 establishes that a territorial local government city council shall approve the territorial local government spatial plan and shall issue the graphical part thereof and the rules for the utilisation and building up of the territory as local government binding regulations .

Hence, the spatial plan of the local government is an external normative act, which is binding on any natural and legal entity and serves as the legal basis for making specific decisions, for instance, initiation of a construction process.

However, certain sections of the spatial plan of the local government as to their character might seem less like normative act, i.e., legal acts that includes legal norms, but rather individual acts, i.e., acts of application of legal norms. By application of legal norms and principles of spatial planning, the local governments establish the ways of planned (permitted) use of specific territories by a spatial plan. Therefore, the extent of usage rights of the real estate pertaining to each land owner is established by the permitted use of the territory, wherein is located the relevant parcel of real estate.

The restrictions of property rights established by the saptial plan of the local government are direct, because the plan restricts the rights of a person to the property in favour of interests of the society in an immediate manner.

8.2. The Limbaži Council indicates in the response letter that the Applicant has not taken the opportunities to protect the violated basic rights according to the procedures established in Paragraph 5 of Regulation No. 883. It is established in this paragraph that amendments to a territorial local government spatial plan are changes to the planned (permitted) utilisation of a part of the administrative territory of the territorial local government or to the restrictions upon such utilisation.

The Limbaži Council holds that addressing the local government council by the Applicant, in order to request for amendments of the spatial plan of the local government, could be considered as means of legal protection.

The rights pertaining to a person in respect to propose amendments in a legal act are not to be considered as general means of rights protection, since such procedure does not examine the legality of the legal norm, i.e., compliance with a legal norm of higher legal power.

8.3. The Limbaži Council holds that the Applicant has not taken the opportunity established by Regulation No. 344 of July 31, 2001 of the Cabinet of Ministers on "Real Estate Exploitation Purpose Systematization Order" and Regulation No. 496 of June 20, 2006

of the Cabinet of Ministers on "Real Estate Exploitation Purpose Classificarion and Change Order" as mans of legal protection, i.e., the Applicant has not addressed the local government council with a request to amend the planned (permitted) purpose of utilization of the land parcel.

The above regulations of the Cabinet of Ministers regulate the procedure, according to which the purpose of utiliztion of real estate (unit of land) is established or amended for the needs of cadastral appraisals. Taking into consideration the cadastral value of the land parcel, the amount of the real estate tax is established. However the purpose of utilization of a specific real estate can be established only by considering the purpose of utilization of a territory permitted by the spatial plan. As these regulations of the Cabinet of Ministers refer to fiscal (tax collection) rather than spatial planning sphere, the procedure regulated therein cannot be connected with the procedure, according to which the amendments in the spatial plan of the local government are to be made.

Thus, with the aid of this mechanism, the Applicant cannot prevent the possible violation of the basic rights established in the Satversme and accomplish repeal of the spatial plan.

The first part of Section 49 of the Law on Local Governments provides for the rights of the Minister of Regional Development and Local Government to suspend (with a motivated decree) an illicitly issued regulation binding on a council or a normative act or validity of certain paragraphs thereof issued by a council (board). After having received such decree, the council (board) of the local government must consider the issue on repeal of relevant binding regulations or other normative act, or certain paragraphs thereof. In respect to the spatial planning documents adopted by the local governments, these powers of the Minister of Regional Development and Local Government are specified also by Section 7.[1] of the Spatial Planning Law.

Therefore, a person is entitled to address the Minister of Regional Development and Local Government with an application, requesting the Minister to exercise the rights to suspend validity of an illicit spatial plan. However, the rights to suspend action of an illicit territorial planning are to be considered as a specific means of rights protection, the utilization whereof is dependent on considerations of usefulness made within framework of freedom of activity pertaining to the Minister, rather than an efficient means of rights protection for the purpose of the Constitutional Court Law.

Therefore, the only efficient means of rights protection, which a person can employ, in order to achieve repeal of such spatial plan of the local government, which a person considers to be illegal, is submission of an application to the Constitutional Court.

9. The fourth part of Section 19.^{2} of the Constitutional Court Law establishes that constitutional claim may be submitted to the Constitutional Court within six months from the date of the decision of the last institution becoming effective.

9.1 In accordance with the sixth part of Section 6 of the Spatial Planning Law, a district local government spatial plan, territorial local government spatial plan and detailed plan shall be in effect the next day after the decision regarding the issuing of local government binding regulations is published in the newspaper "Latvijas Vēstnesis"

The decree of January 25, 2006 of the Limbaži Council, wherewith the regulation No. 4 on "Graphical Section of the Spatial Plan of Limbaži City and Regulations of Utilization and Construction of the Territory" binding on the local government was confirmed, has been published in the official newspaper "Latvijas Vēstnesis" on February 10, 2006.

Due to the fact that the application of the Applicant has been submitted at the Constitutional Court of October 24, 2006, i.e., seven months and 13 days after the above date, the Limbaži Council therefore concludes that the Applicant has submitted the constitutional complaint after the end of six-month term established in the fourth part of Section 19.^{2} of the Constitutional Court Law (*see case materials, pp. 69*).

9.2 General procedural terms are established for legal stability, namely, in order to ensure hearing of the cases within reasonable time period and to protect the reliance of the other party that later the conflict will not be reviewed at (*see Paragraph 1 of Conclusions of judgment in the case No. 2002-09-01 of November 26, 2002 by the Constitutional Court*).

If an opportunity to employ general means of legal protection is not provided for protection of the basic rights established in the Satversme, then the individual legal act, which has caused the possible violation of rights, is to be considered as "the decision of the last institution".

The graphical section of the spatial plan is to be acknowledged as "decision of the last institution" for the purpose of the fourth part of Section 19.^{2} of the Constitutional Court Law. However, formally the spatial plan in general is a normative act and therefore the six-month term established in the Constitutional Court Law cannot be applied thereto.

Neither the Constitutional Court Law, nor the Spatial Planning Law, or other normative acts regulating spatial planning do not provide for the term, during which a person can appeal against the saptial plan of the local government in the Constitutional Court. Lack of such term could be in conflict with the principle of legal stability, especially in cases, when the spatial plan of a local government is appealed against a considerable time after

confirmation thereof, while other persons have counted on permanence of the spatial plan and have planned their actions according to it.

However establishing of the term, during which persons can address the Constitutional Court in respect to a spatial plan, wherein the basic rights of individuals established in the Satversme are violated, is the jurisdiction of the Legislator.

Considering the above-stated, there are no grounds for terminating proceedings in the case.

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

Section 105 of the Satversme, similar to Section 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, provides for unhampered implementation of property rights, as well as for rights of the state to restriction of utilization of property in favour of interests of the society. The property rights can be restricted, if the restrictions are justifiable, i.e., if they have been established by law, they have a legitimate objective, and they are proportionalte (*see judgment in the case No. 2002-01-03 of May 20, 2002 of the Constitutional Court*).

Regardless of the fact that Section 927 of the Civil Law establishes that ownership is the full right of control over property, a property in the modern civil rights is considered to be not only an individual category, but also a social value. The social function obligates each owner to take into account interests of others (*see: Rozenfelds J. Lietu tiesības. Riga: Zvaigzne ABC, 2000, p. 59*). Already profession Konstantīns Čakste has concluded that "the property rights are not complete – they do not grant absolute freedom, since otherwise the property rights could be harmful for the society and as such should be cancelled. The property rights entail many restrictions in favour of generality, for interests of neighbours, which deprives it from antisocial character. These restrictions continue growing, regarding which the most recent literature refers to the idea that property, first, creates an obligation and only then rights" (*Čakste K. Civiltiesības. Lekcijas. Riga: [w/out publ.], 1937, p. 41*). This idea has been expressed in the second sentence of Section 105 of the Satversme – property shall not be used contrary to the interests of the public.

One of the ways of restricting the property rights in favour of the interests of the society is spatial planning (*see Paragraph 8 of judgment in the case No. 2005-10-03 of*

December 14, 2005 by the Constitutional Court). A spatial plan in a way can be considered as limitation of rights to utilize the property, since free and unhampered utilization of the real estate is limited therewith.

A spatial plan posessed a property-limiting social aspect, which is established in the second sentence of Section 105 of the Satversme and considerably narrows the seemingly absolute property rights. In addition to rights to unhampered utilization of real estate owned by certain persons, implementation of environmental protection requirements, correct infrastructural construction and functioning, as well as preservation of the cultural environment is ensured by a spatial plan (*see: Čepāne I., Statkus S. Pašvaldības teritorijas plānojums kā nekustamā īpašuma tiesību aprobežojums // Jurista Vārds, January 25, 2005, No. 3, p. 6*).

11. Among other things, Section 927 of the Civil Law establishes that ownership is right to possess and use it and obtain all possible benefit from it. As it has been indicated in jurisprudence, it implies that the owner can rule over the object, obtain fruits of it, as well as use it at own discretion for increasing the possessions (*see: Sinaiskis V. Latvijas civiltiesību apskats. Riga: [w/out publ.], 1995, p. 32*). Moreover, the rights to property established in the first sentence of Section 105 of the Satversme include the rights of the owner to use his or her own property in such way to gain as great economic benefit as possible.

It follows from the case materials, that the Applicant had purchased the real estate located at 24 Cēsu Street with an intention to use this land parcel for commercial construction (*see case materials, pp. 1-12*). However, the contested plan prohibits the Applicant to utilize the land parcel for commercial construction and therefore the possibilities of the Applicant to gain profit from his own object have been considerably restricted.

Therefore the rights of the Applicant to the property have been restricted by the contested plan.

12. The rights to property, which are guaranteed by the State for persons, in a democratic, judicial country are not absolute.

First, the rights to property also include the social obligation of the owner towards the society – the property cannot be used for purposes that are in conflict with interests of the society.

Second, the rights to property can be limited. The third sentence of Section 105 of the Satversme establishes that property rights may be restricted only in accordance with law.

Hence the property rights can be restricted if restrictions are established by law in favour of a legitimate objective and if restrictions are proportionate with this objective.

13. The rights of the Applicant to property are restricted by the spatial plan of the local government having the power of regulations binding on the local government.

The Limbaži Council in the response letter has justly indicated that the restriction of property rights of a person can be established by an external normative act, *inter alia* including regulations binding on the local government. The rights established in Section 105 of the Satversme can be restricted not only by a law passed by the Parliament or people, but also by other generally binding (external) normative act. Such normative act must be issued, based on the law, published, or in any other way available, and sufficiently clearly formulated, in order for the addressee to be able to understand the rights and obligations; furthermore, this normative act must conform with the principles of a judicial state (*see judgment in the case No. 2002-01-03 of May 20, 2002 of the Constitutional Court*). In respect to the spatial planning documents of a local government, *expressis verbis,* it is established by Section 1 and Paragraph 2 of the sixth part of Section 7 of the Spatial Planning Law.

Hence, the restrictions of property rights can be established by regulations binding on a local government**.**

14. In order to acknowledge such restriction as established by law adopted in accordance with proper procedures, it is necessary for the spatial plan of the local government to be elaborated observing the procedure established in the Spatial Planning Law and other external normative acts, as well as it must be passed and announced observing the requirements of the Law on Local Governments and the Spatial Planning Law.

In the constitutional complaint, the Applicant has indicated several violations of the procedure of the spatial planning process made by the Limbaži Council (*see case material, pp. 1-12).* In order to acknowledge that the contested plan has not been established by law adopted in accordance with a proper procedure, it must be concluded that material breach has been made during the spatial planning process. The material breach in the spatial planning is a violation, which results in making a decision that differs from the decision, which would be made if the procedure would have been observed; in materially breaking the rights of the society to express the opinion about discussion of possible territory, as well as in making other violations of spatial planning principles.

14.1. It is indicated in the application that the effective spatial planning of the Limbaži City has been elaborated by improving and developing the 1985 master plan of the Limbaži

City. According to the Applicant, such conducts should not be permissible, since the master plan is a legal act of the SSR of Latvia and cannot be binding on the Republic of Latvia.

Paragraph 2 of the transitional provisions of Regulation No. 194 permitted local governments to maintain the legal power of the spatial planning of the Soviet period and elaborate the new spatial plans by improving and developing of the latter. In accordance to Regulation No. 194, up to December 31, 1994, the local governments of districts, parishes, and cities had the obligation to assess the effective spatial plans, master plans, village palns and construction projects, minute plannings, parcelling and land utilization projects and construction regulations, as well as to make a decision on extension of the validity term thereof, preparation of amendments, or elaboration of a new spatial plan and construction regulations, and termination of validity of the effective spatial plan.

Such regulation conforms to one of the spatial planning principles, namely, the principle of succession established in the Spatial Planning Law. The principle of succession implies that when changing justification of the effective plan, the spatial plan is to be amended by maintaining those sections of spatial plan, justification whereof has not been amended. The principle of succession permits cancellation of the spatial plan of the local government only in such case if it is substituted by a new spatial plan. Such situation cannot exist when the use of real estate is not regulated by any spatial plan.

The Limbaži Council made a decision of maintaining the 1985 master plan valid until elaboration of new spatial plan of the Limbaži City on July 13, 1995 (*see case materials, pp. 97).* Such decision has been made by violating the term established in Paragraph 2 of the transitional provisions of Regulation No. 194. Although non-compliance with this term is to be considered as a violation of spatial planning procedure, however, in accordance with the principle of succession, it cannot be concluded that due to the delay by the local government council, territory of the local government would have no effective spatial plan.

Likewise, normative acts regulating spatial planning do not prohibit local governments to elaborate spatial plans by improving the previously existing spatial plans, including those that have been elaborated during the Soviet period.

Hence it is to be concluded that the Limbaži Council has not committed material procedural breaches, by extending validity of the 1985 master plan and by elaborating the new spatial plan on basis of the master plan.

14.2. The Applicant has indicated that after Regulation No. 883 became effective, the process of spatial planning had to be completed by applying the norms of Regulation No. 34, however the Limbaži Council has applied the norms of the latter after Regulation No. 883 became effective.

Regulation No. 883 were enforced on November 4, 2004. On this day, the Regulation No. 34 became invalid (Paragraph 75 of Regulations No. 883). Paragraph 80 of Regulation No. 883 established the cases, when elaboration of the spatial plans of the local governments that are in the stage of elaboration and amendments thereof is to be continued in accordance with requirements of Regulation No. 883. It could follow from this formulation of legal norm that in other cases that *expressis verbis* are not indicated, the spatial plan is to be continued in accirdance with norms of Regulation No. 34.

After Regulation No. 883 became effective, the Limbaži Council applied the norms of these regulations only. That, however, is not to be considered as a material procedural breach, since Regulation No. 883, in comparison with Regulation No. 34, regulated the spatial planning procedure in more detail, providing for broader options to express one's opinion both for persons, whose property rights are restricted by the spatial plan, as well as the interested society. The norms of Regulation No. 883 provide for a clearer, more precise, and more through regulations of the spatial planning process than the process, which was established by the norms of Regulation No. 34. By applying the norms of Regulation No. 883, the local governments could ensure the principle of spatial planning, the principle of coordination of sustainable development and interests, proper implementation in the spatial planning. Therefore in the initiated process, the norms of the Regulation No. 883 could be applied. Such provision is ensured *expressis verbis* with Paragraph 80 of Regulation No. 883.

The Applicant has not justified the fact how his rights could be violated by the condition that the local government has applied norms of Regulation No. 883 in the spatial planning process, namely, it can not be concluded that the restriction of the property rights of the Applicant would not be prescribed in case, if Regulation No. 34 rather than Regulation No. 883 would have been applied.

Therefore, the fact of applying the norms of Regulation No. 883 in the process of spatial planning is not a material violation of the process of spatial planning.

14.3. The Applicant has indicated that during the spatial planning process, he has not been adequately heard out and his opinion has been ignored.

The principle of coordination of interests requests that during the elaboration progress of the spatial planning the interests of the State, regions and individuals are coordinated. During the coordination, it is particularly necessary to assess the interests of the society and the opinion of those persons, whose real estate is subject to restrictions of the property rights. Under the first part of Section 9 of the Spatial Planning Law, any natural and legal entity is entitled to acquaint themselves with the effective spatial planning documents, as well as with those that have been provided for public discussion, participate in public discussion thereof,

express and protect one's opinion, and submit suggestions. However, the second part of this section provides for the rights of natural and legal entities to submit written suggestions in respect to the spatial plan and receive written responses in reply thereto.

The Applicant has several times submitted suggestions about the possible way of planned (permitted) utilization of real estate owned by him. The Limbaži Council has not provided with the replies within the term established in the Law "On Procedure of Application, Complaint, and Proposal Examination at State and Municipal Institutions: . However failure to provide with replies within the established term can be the grounds for that an official is imposed with a penalty for the breach of the law, however it cannot be a reason for calcellation of the spatial plan. Within the framework of the spatial planning, it is important that the Limbaži Council did get acquainted with the opinion of the Applicant and assessed it by establishing the permitted (planned) utilization of the real estate.

The planning decision-maker does not always have to follow the suggestions expressed or objections submitted by persons. However, it should not be forgotten that such suggestions of perons are to be carefully considered based on reasons of expediency. One has to consider suitability, necessity, and conformance of these proposals to the objection of elaborating the specific planning. On the one hand, the local government is entitled to refuse the opinion of certain institutions, persons, or the interested society, providing for another, more expedient result, which in general complies at greater extent with the initial objective of elaboration of the plan. On the other hand, such rejection should be sufficiently substantiated – when refusing the opinion expressed by the society, the local government must provide with a justification of such refusal (*see Paragraph 5 of conclusions of judgment in the case No. 2003-16-05 of March 9, 2004 by the Constitutional Court*).

The case materials are indicative of the fact that the Limbaži Council was informed about the opinion of the Applicant and assessed it during the spatial planning process. For instance, at the meeting of December 14, 2004, the Committee of City Development and Planning of Limbaži examined the suggestions submitted by the Applicant in regards to an option to establish the status of a commercial character construction to the land parcel owned by him. An extract from the committee meeting protocol indicates that the Committee evaluated the argumentation of the Applicant, the existing situation, and refused the proposal of the Applicant (*see case materials, pp. 25*). The Applicant has submitted his suggestions at the Limbaži Council several times, too. It assessed his suggestions at the meeting of June 22, 2005 and accepted the opinion of the Committee of City Development and Planning of Limbaži (*see case materials, pp. 43*).

Therefore, it cannot be agreed with the Applicant that during the spatial planning process he was not heard out and his suggestions were not assessed.

14.4. The Applicant indicates that he had been the only person, who had submitted suggestions in respect to the further ways of utilization of the land parcel located at 24 Cēsu Street. No other suggestions had not been submitted, therefore the local government had unjustly ignored the suggestions by the Applicant.

The fact that nobody else had submitted suugestions regarding the possible ways of use of the territory does not imply that the local government had to follow the suggestions provided by the Applicant. The local government *ex officio* is obliged to assess the needs of the society and to take these needs into account during the process of spacial planning. In this case, the local government considered that the land parcel located at 24 Cēsu Street is to be maintained as a territory of natural foundation or a free construction territory for wood parks and parks.

14.5. When assessing the spatial planning process, it is not possible to establish such material breaches that it could be concluded that the contested plan has not been elaborated according to an adequate procedure. The spatial plan and the contested plan included therein is passed and announced in accordance with the procedures established in the normative acts.

Hence the restriction of property rights is established by law.

15. In order to make the restriction of the basic rights be justifiable, it must serve a certain legitimate objective – for protection of other values of the constitutional level (*see Paragraph 9 of the judgment in the case No. 2005-19-01 of December 22, 2005 by the Constitutional Court*). The restrictions of a person's property rights can be established in order to ensure rights of other people, to ensure a democratic regime of the country, public safety, welfare, and morality.

In this case, the rights of the Applicant to property have been restricted in order to ensure rights of other people. In the spatial plan, it is planned to improve the public garder near the crossing of Cēsu and Stacijas streets, which includes also the land parcel located at 24 Cēsu Street, since it creates the first impression about the town for those who enter it from the direction of Aloja and Cēsis. Likewise, the public garden has to stimulate air purification, since it is located near an important crossing, furthermore, a bakery and multi-storey buildings are located near it. The public garden is planned to be a the place for recreation of the inhabitants of the surrounding houses (*see pp. 13 of the Concept of Landscaping Development of Limbaži City; case materials – pp. 177*).

The restriction of the property rights of the Applicant has been established in favour of interests of other people (the society). The local government has not only established the restrictions of rights of a person, but it has also elaborated a concept about development of the respective territory in favour of interests of the whole society.

Hence the contested planning has a legitimate objective.

16. The principle of proportionality requires that reasonable balance between the society and a person is maintained if the public power restricts the rights and legal interests of a person.

In order to establish, whether the principle of proportionality has been observed, it must be clarified, whether the means selected by the Limbaži Council are adequate for achieving the legitimate objective, whether more lenient means are available for achieving the objective, and whether the conduct of the Council is adequate. If, when evaluating the legal norm, it is established that it does not comply with at least one of these criteria, it neither complies with the principle of proportionality and is illegal (*see Paragraph 3.1 of the conclusions of judgment in the case No. 2001-12-01 of March 19, 2002 of the Constitutional Court*).

17. For achieving the legitimate objective, the Limbaži Council has restricted the rights of the Applicant to deal freely with the land parcel owned by him, namely, by establishing the planned (permitted) purpose of utilization for this land parcel, which involves a prohibition to construct on this land parcel.

The established restriction of the land parcel – inclusion thereof in the territory of natural foundation or free construction territory of wood parks and parks, permits maintaining the respective land parcel at the same condition as it is at the moment, creating a public garden near the crossing of Cēsu and Stacijas streets as a united ensemble and improving greeneries in it, as well as improving the opportunities of recreation for the inhabitants of the city.

Hence the restriction has been applied for achieving the legitimate objective.

18. The restriction established by the contested plan is proportionate only in such situation, when no other means are available, which would have been equally effective and by selection whereof the basic rights would have been restricted to a lesser extent (*see Paragraph 19 of the conclusions of judgment in the case No. 2004-18-0105 of May 13, 2005 by the Constitutional Court*).

The Applicant has indicated that the Limbaži Council has not selected the most lenient instrument for restricting the basic rights of a person. When the Applicant purchased the land parcel at 24 Cēsu Street, he, in compliance with the requirements of normative acts, had proposed the local government to exercise the pre-emptive rights. The Limbaži Council had the opportunity to purchase this land parcel. According to the Applicant, exercising the pre-emptive rights by the local government would have been a more lenient means than setting restrictions of property rights by the contested planning.

Moreover, it has been acknowledged in the jurisprudence that a purposeful use of pre-emptive rights would permit the local government to purchase certain parcels of land and thus directly control development of the relevant territory (*see: Čepāne I., Statkus S. Pašvaldības teritorijas plānojums kā nekustamā īpašuma tiesību aprobežojums // Jurista Vārds, January 25, 2005, No. 3, pp. 7*). However, the purpose of exercising the pre-emptive rights is not releasing the owner from restrictions of rights to use the real estate, but rather more active participation by the local government in development of its administrative territory, by creating infrastructures that are necessary for sustainable development.

Therefore the pre-emptive rights of the local government are not to be considered as a more lenient instrument, which would permit achieving the legitimate objective equally efficiently. Furthermore, exercising the pre-emptive rights is interference of a subject of public rights into the civil cycle, as a result whereof it is prohibited for a person to purchase a land parcel, which he/she might desire. Thus, the interests of the persons, who might wish to purchase the land parcel are violated.

However, by maintaining the restrictions of property utilization by the contested planning, the local government does not violate the property rights and opportunities of a person to purchase the land, which he/she might wish to purchase. Likewise, the restrictions to the real estate are established by the spatial plan for a specific term, after the end of validity whereof the local government is obliged to elaborate a new plan. During this time, such situation can form, where the prescribed restriction is not required anymore, and the person can obtain the rights dealing less restrictedly with his or her own real estate.

Hence other, more lenient instruments, which would permit achieving the legitimate objective by restricting the rights of the Applicant to a lesser extent, do not exist.

19. When assessing the compliance of the contested plan with the principle of proportionality, it is necessary to assess the compliance of the activities of the Limbaži

Council, i.e., it must be considered, whether the contested plan does not incur more loss to the rights and legal interests of a person than benefits gained by the society.

When assessing the situation of the Applicant, it must be taken into account that he purchased the land parcel at 24 Cēsu Street, when the 1985 master plan of Limbaži was still effective. In the master plan, the greatest part (approximately 90%) of the purchased land parcel (*see Paragraph 4.9 of the judgment in the case No. A42369305 of April 21, 2006 of the Administrative District Court; pp. 85 of the case materials*) was subjected to a specific purpose of utilization – common use green areas (*зелень общего пользования*) (*see case materials, pp. 98-99*). Since this restriction of the land parcel was effective at the time of purchasing the real estate, prior to the contested plan taking effect, the Applicant was not entitled to erect buidings in this territory. It must be concluded that the Applicant had purchased the real estate with already existing restriction of use established by the spatial plan. The restriction provided by the saptial plan is of a public character and it is binding on both, the existing owner of the respective real estate, as well as on all next owners. Nobody can excuse oneself for not knowing the restrictions of rights to use the public real estate as provided by the spatial plan.

The restriction of the real estate utilization applied for the Applicant by the contested plan was maintained, rather than set forth anew. The Applicant was informed about existence of such restriction of property rights.

Hence the conduct of the local government in adopting the contested plan conforms to the principle of proportionality.

The Substantive Part

Under Sections 30-32 of the Constitutional Court Law, the Constitutional Court

holds:

the plan of the regulations No. 4 of January 25, 2006 of " Graphical Part of the Spatial Plan of Limbaži City and Regulations of Utilization and Construction of the Territory" binding on the Limbaži City Council, wherewith the land parcel at 24 Cēsu Street has been included in the territory of natural foundation of the target group of territorial use and real estate or of free construction territory for wood parks and parks, complies with Section 105 of the Satversme of the Republic of Latvia.

The Judgment is final and not subject to appeal.

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

The Presiding Judge Uldis Ķinis