



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT

IN THE NAME OF THE REPUBLIC OF LATVIA

Riga, February 8, 2007

in case No. 2006-09-03

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session Gunārs Kūtris, justices Juris Jelāgins and Aija Branta

on the basis of the constitutional claim by Dace Amoliņa, Dita Amoliņa, Marita Andersone, Jurijs Avdjukevičs, Ārija Balode, Vera Brice, Marta Cvetkova, Nadežda Djačuka, Nadežda Dolgoviha, Normunds Goldbergs, Valda Goldberga, Iraida Golubeva, Aigars Grīslis, Ariona Ikera, Juris Indulēns, Svetlana Kalabanova, Dmitrijs Karancevs, Mirdza Kāpa, Vladimirs Kārkliņš, Dace Kārkliņa, Aiva Klajuma – Andersone, Andrejs Kovaļovs, Nadežda Kovaļova, Ivars Kozlovskis, Jānis Kozlovskis, Benita Kozlovska, Kaspars Krauze, Ilgvars Kronbergs, Lolita Kronberga, Iveta Ķiepe-Ķipge, Lilija-Mudīte Goldberga, Mairita Nuka, Artūrs Osis, Marija Oša, Armīns Pētersons, Roberts Putnis, Valdis Riņķis, Anda Riņķe, Anita Riņķe, Aija Rozeniece, Gaļina Samsonova, Vasilijš Sergejenkovs, Ņina Strautmane – Strautniece, Raimonds Stūrmanis, Vilnis Šaicāns, Velta Šaicāne, Valda Ilona Vasiļevska, Iveta Zeltiņa un Lienīte Zinare (hereinafter –the submitters of the claim)

under Section 85 of the Republic of Latvia Satversme (Constitution) and Sections 16 (Item 3), 17 (Item 11 of the first Paragraph), 19² and 28¹ of the Constituitional Court Law

in written proceedings at January 9, 2007 Court session reviewed the matter

” On the Compliance of the Part of the Garkalne Pagasts (a small rural district) Council Spatial Plan, which Envisages Construction of Buildings in the Flood Zone of the Big Baltezers Lake with Sections 1 and 115 of the Republic of Latvia Satversme”.

The establishing part

1.Elaboration of the Spatial Plan for the Garkalne Pagasts was commenced in 1995.

On December 15, 2004 the Ministry for the Regional Development and Local Government Matters prepared its opinion on the Draft of the Spatial Plan of the Garkalne Pagasts (confirmed in its final wording by the Garkalne Pagasts Council September 29, 2004 Decision, Protocol No. 1, § 9).

In it the Draft of the Garkalne Pagasts Spatial Plan has on the whole been positively assessed, but simultaneously it has been stressed that it is necessary to eliminate several drawbacks till the time of confirming the Draft by binding provisions. Inter alia in Item 21.6 it is pointed out that the protection zones of surface water bodies have not been determined for the whole width of the flood zone

On December 30, 2004 the Garkalne Pagasts Council confirmed the Spatial Plan for 2004-2016 by adopting Binding Provisions No. 13 (Minutes No. 13, § 1 of the extraordinary session).

In Chapter 8 of Volume I ”Paper of Explanation” it is envisaged that a 200-meter wide flood zone shall be determined around the Big Baltezers Lake.

Item 30.1 a, Sub-item 4 of Volume II, Chapter 4 of the Spatial Development Plan determines that any construction of buildings shall be prohibited in a 50-meter wide zone at the Big Baltezers Lake, save the erections, allowed in the tow belt. It is

allowed to locate buildings, which are connected with utilization of water bodies (boat houses, bath-houses etc.) closer to the coast, but not closer than 30 meters from the coastline; in every particular case, substantiating the above with the analyses of the coastline landscape.

Volume III of the Spatial Plan "The Graphic Materials":

- 1) in the map "Spatial Plan for the Territory of the Garkalne Pagasts for 2004-2016. Protection Zones of the Garkalne Pagasts", scale 1 : 25 000 (page 5) around the Big Baltezers Lake is marked a 300 meter wide surface water body protection zone; a 100 meter wide potential flood zone as well as a 50 metre wide construction moratorium zone;
- 2) in the map "Spatial Plan for the Territory of the Garkalne Pagasts for 2004 – 2016. Planned usage of the territory of the Garkalne Pagasts", scale 1 : 5000 (page 12) the same protection zones have been marked.
- 3) In the map "The Risky Flood Zones of the Water Bodies in the Garkalne Pagasts", scale 1 : 25 000 (page 18) around the Big Baltezers Lake is marked the flood risk zone, the width of which in separate places reaches even 200 meters.

In its August 22, 2005 letter the Ministry for the Regional Development and Local Authority Matters asked the Garkalne pagasts Council to give an explanation about the fact why the Council had issued the Binding Provisions No. 13 without averting the defects mentioned in the conclusion. Inter alia the Ministry pointed out that the development of the plan, which permitted construction in the potential flood zone, was inadmissible.

On October 26, 2005 the Garkalne Pagasts Council adopted Binding Provisions No. 42A "On Termination of the Activities, Envisaged in Binding Provisions No. 13 within the Flood Zones of the Great Baltezers Lake and within the Territory of the Protected Nature "Woods of Garkalne" (Protocol of the session No. 16 §1) (hereinafter – Regulations No. 42A).

In the above Regulations it has also been mentioned that in the Spatial Plan for the Garkalne Pagasts for 2004 –2016 ” interpretation of Section 37 of the Protection Zone Law is not precise”.

On February 1, 2006 the Garkalne Pagasts Council added to its October 26, 2005 Protocol a supplement, in which it was specified that termination of the activities envisaged in Binding Provisions No. 13, would refer to the territories, for which elaboration of the Spatial Plan had already been started.

2. The submitters of the claim point out that the part of the Garkalne Pagasts Spatial Plan, which envisages construction of buildings in the territory of the Big Baltezers Lake flood zone, is at variance with Section 115 of the Republic of Latvia Satversme (hereinafter – the Satversme) as well as does not comply with Section 37, Paragraph 1, Item 4 of the Protection Zone Law.

It is stressed in the constitutional claim that - as in many other states - in the Republic of Latvia the right of living in a benevolent environment is considered to be one of the fundamental rights of a person. Section 115 of the Satversme establishes that the State shall protect the right of everyone to live in a benevolent environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment. To their mind the above norm first of all assigns to the State the duty of creating and securing efficient system for environment protection. Secondly, it – in accordance with the procedure determined by law - entitles private persons to appeal against such decisions on public legal subjects, which refer to the rights of persons in the sector of use and protection of the environment. They hold that spatial planning shall be regarded as one of the norms of environmental rights, thus, private persons by making reference to Section 115 of the Satversme and the Law ”On Environmental Protection” experience the right of appealing against such illegitimate action of the local government, which restricts their rights in the sector of environmental protection.

It is pointed out in the constitutional claim that – in accordance with Section 37, Paragraph 1, Item 4 of the Protection Zone Law the construction of buildings and structures in the territories with probability of flooding at least once in a hundred years is prohibited, except structures for short-term utilization, small buildings in rural areas and protection structures especially provided for this purpose or the raising ground level; however, the Garkalne Pagasts Council in the graphic part of its Spatial Plan has envisaged building of private houses in the flood zone of the lake. Thus, to their mind the prohibition to construct buildings in the flood zones has been violated. The 50-meter prohibition of constructing buildings around the Big Baltezers Lake, which has been determined in the Garkalne Pagasts Spatial Plan, is insufficient as the periodically flooded territory around the lake is much bigger.

When interpreting Section 37, Paragraph 1, Item 4 of the Protection Zone Law, the submitters of the claim conclude, ” a universal prohibition to construct buildings and structures as well as the raising of the ground level has been determined for cities and villages in the surface water body protection flood zones”.

The submitters of the claim stress that during the period of elaboration of the Spatial Plan the Garkalne Pagasts Council has not observed the Protection Zone Law. It has confined itself only to formal hearing out of the objections, voiced by the concerned public, but has not carefully assessed them.

3. The institution, which has passed the impugned act – the Garkalne Pagasts Council points out that when adopting the Garkalne Pagasts Spatial Plan for 2004 – 2016, it has acted in accordance with the Laws ”On Local Governments”, ”The Protection Zone Law” and the Cabinet of Ministers October 19, 2004 Regulations No. 883 ”Provisions on Local Government Spatial Planning” (hereinafter – Regulations No. 883). Thus, it holds that the Spatial Plan complies with Sections 1 and 115 of the Satversme.

The Garkalne Pagasts Council remarks that in the territories located at the Big Baltezers Lake historically have been built small farms and public objects, like the

rehabilitation center of the Ķuže Sweets Factory, cycle track and parson's house of the Ādaži congregation. During the years of the Soviet power began intensive construction of new private houses and cottages. A new stage of construction started in the 90-ties after denationalization of the lands and buildings.

To determine the potential for the development and the needed requirements and restrictions for usage of concrete territories in the pagasts, elaboration of the Garkalne Pagasts Spatial Plan began in 1995. Planning has been completed at the end of 2004.

The Council acknowledges that – when making further specification of the Plan - several contradictory viewpoints have sprung up, among them also about the possibility of construction in the flood zones. After assessing the complaints of the inhabitants, the Garkalne Pagasts Council has adopted Provisions No. 42A. At the present moment applications on construction projects in the flood zones around the Big Baltezers Lake are not being considered.

The conformity of the Garkalne Pagasts Spatial Plan for 2004-2016 with the normative acts will be verified and, if necessary, it shall be accordingly corrected. Elaboration of the Amendments to the Garkalne Pagasts Spatial Plan for 2004-2016 has been commenced on December 28, 2005 (Protocol of the session No. 19, § 18). It is planned to complete the elaboration of the first wording of the Amendments to the Spatial Plan in the fourth quarter of 2007.

When answering to the question of the Constitutional Court, what is the legal basis for determining the 50-metre construction zone moratorium in the flood zones of the Big Baltezers Lake, the Garkalne Pagasts Council explains that in accordance with Section 37, Paragraph 1, Item 5 of the Protection Zone Law it is prohibited to build constructions in the 10-metre surface water body protection zone. As concerns the Big Baltezers Lake this distance is 50 meters from the coastline, but for structures, which are connected with the use of the water body – not nearer than 30 meters from the coastline. In accordance the 30-metre construction zone moratorium has been determined in accordance with Section 7, Paragraph 1 of the Protection Zone Law in

order to preserve the characteristic lake landscape. The above prohibition of construction on the coast has been determined for the period from 2004 – 2016, i. e. for the time of the Garkalne Pagasts Spatial Plan being in effect.

The Garkalne Pagasts Council did not acquaint itself with the materials in the case and did not express its viewpoint on them.

4. The Ministry for Regional Development and Local Authority Matters informed the Constitutional Court about the interpretation of Section 37, Paragraph 1, Item 4.

To their mind from the above norm follows that raising of the ground level in the surface water body protection zones is permissible only for building structures for short-term utilization or small buildings in rural areas, but not for building structures of other types, including living-houses. Construction of protecting buildings and raising the ground level might be permissible, if the above activity has been envisaged in the Spatial Plan and Land Use Plan.

5. The Ministry for the Environment also informed the Constitutional Court about the interpretation of Section 37, Paragraph 1, Item 4 of the Protection Zone Law.

The Ministry explains that the purpose of the above norm is to restrict construction of any structures, including the living-houses in the territories with probability of flooding at least once in a hundred years as well as the raising the ground level.

The norm envisages also separate exceptions, namely, it allows building structures for short-term utilization and small buildings in the surface water body protection zone by raising the ground level. The Ministry stresses that the above exception refers only to the surface water body protection zones in rural areas, but not to surface water body protection zones in cities and villages.

When elaborating spatial plans and envisaging in them territories for construction, the local authorities shall observe the prohibition of the construction of structures in the

surface water body protection zones as well as the prohibition of raising the ground level for further construction, which is determined in Section 37, Paragraph 1, Item 4 of the Protection Zone Law.

The Ministry holds that raising the ground level within the surface water body protection zones shall be permitted only in rural areas and in cases when structures for short-term utilization and small buildings are built in the territories with probability of flooding at least once in a hundred years.

Any protecting structure in the surface water body protection zones shall have just one purpose – to protect the territory from floods but by no means further construction on the protected zone.

The Ministry draws the attention to the fact that in the whole territory of the State, especially in the vicinity of Riga, the requests of the developers of projects to receive permits for construction of structures in the flood zones are becoming more and more insistent, as the land market has "stirred to activity". The developers of projects very often do not take into consideration the necessity of protecting and retaining flood lands at rivers and lakes, which gather floods. As the result of inconsiderate spatial planning and construction the situation of landowners also changes – their previously built houses and other structures are flooded, even though earlier the floods did not hit them.

6. The Greater Riga Regional Environment Board of the State Environment Service when expressing their opinion on spatial planning has used the following interpretation of Section 37, Paragraph 1, Item 4: raising the ground level changes the flood zone, thus it is not any more subjected to floods and the above norm of the Protection Zone Law shall not be applied to it.

At the present moment the Board has at its disposal the Ministry of Environment May 31, 2006 letter, in which it is explained that raising the ground level in surface water body protection zone shall be permitted only for constructing buildings for short-term

utilization or small buildings in rural areas, but not buildings and structures of other types, including the dwelling houses.

7. The environment expert – the Corresponding Member of the Latvian Academy of Sciences, Dr.Habil. geogr., professor Aija Melluma points out that raising the ground level with the purpose of averting flooding could be permitted in densely populated places. However, in such a case it is necessary to elaborate the concept on the development of the whole coastline of the lake and a unified project for changing of the coastline, which would solve also other problems, for example, the problem of collecting surface water and waste water.

The expert explains that flood zones have been determined because they are risk zones for construction and living. The specific of the Big Baltezers Lake is that it is connected with the Riga Gulf and during big storms its water level rises.

The idea on raising the ground level of flood lands began to realize in the last years. However, if actions for changing nature are carried out intensely (and raising as well as drifting the ground level of flood lands shall be regarded as such), then the greatest precaution shall be observed.

The coastline of the Big Baltezers Lake is different in different places, thus the consequences of raising or drifting the ground level may be different. In one case in such a way the places of protected and rare plants and animals, in another – specific coastline biotopes and flood land meadows will be destroyed, in some more – ground water flows will be changed (and its is hard to foresee the consequences of it). The result will be changing of the whole coastline from a relatively natural environment to the environment of the city type with all the consequences, following from it.

8. The environment expert – the Master in Biology Lelde Enģele – explains that the ecological significance of the natural, unchanged territories on the coast of the Big Baltezers Lake is characterized by:

- 1) a naturally developed relief – the slope of the lake ancient coast and flood lands, as well as the hydrologic regime characteristic of such territories – the level of ground water and the connection of the flow with the water level of the lake ;
- 2) the complex of biotopes and species, which may develop only in such flood zones and territories, which are closely connected with it;
- 3) flood land, which acts as a natural filter, which holds back the inflow of the compound of nutritives (phosphorus and nitrogen), accessible to the plants, as well as other pollutants in the lake as well as regulates water flow during the spring flood;
- 4) natural biotopes (forests and meadows), which are significant for the landscape of the lake coastline, which cover up the structures, which are further off and thus allow the vacationers and anglers – mainly the inhabitants of Riga – to take a rest in natural environment.

The planned raising the ground level and construction may completely and irreversibly destroy natural biotopes and the landscape, cause additional inflow of pollutants in the lake and change the hydrologic regime of the territory.

Taking into consideration the above and the fact the Big Baltezers Lake is the biggest water body in Garkalne area, where no special protected nature territories have been determined for flood lands, the expert holds that preservation of the natural flood land on the coast of the Big Baltezers Lake is significant for biological diversity and maintenance of landscape in the above territory.

L.Engēle points to the necessity of complex assessment of the Big Baltezers Lake coastline for determination of environment values of the territory as well as the potential ecological risks by observing the requirements of Regulations No. 883 and Spatial Planning Law.

9.The environmental expert - the Faculty of Biology Department of Botany and Ecology of the Latvian University assistant Vija Znotiņa informs that the planned

construction on the coast of the Big Baltezers Lake will certainly influence the quality of the lake water, as the nutritives, accessible to the flora, flow through the soil from the territories with structures on it to the lake. The flora zone between the buildings and the lake serves as a buffer zone; namely, the plants "use up" the nutritives and thus purify the polluted ground water. Therefore, to protect the lake water from pollution, it is necessary to leave a vacant, natural zone along the coast.

V.Znotiņa does not agree with the viewpoint that flood zones may be covered with buildings, if before that raising the ground level has been carried out. If such a viewpoint exists, then protection of surface water bodies loses its sense, as it is possible to raise the ground level and build constructions on any flood land; however such an activity would be at variance with the approach of non- impoverishing development.

The concluding part

10. The matter was prepared for review on October 16, 2006 and at the organizational sitting it was decided to review it in the process of written proceedings on January 9, 2007.

In accordance with Section 28¹, Paragraph 2 of the Constitutional Court Law, fifteen days after receiving the announcement on Court proceedings in writing, the participants in the case have the right of examining the case material and express their viewpoint on it in a written form.

On November 10, 2006 the representative of the submitters of the claim submitted her viewpoint on the materials in case.

On November 24, 2006 the Minister for the Regional Development and Local Authority Matters, on the basis on Section 49, Paragraph 1 of the Law "On Local Governments" passed a Decree No. 2-02/536 "About the Interruption of the Garkalne

Pagasts Council December 30, 2004 Binding Provisions No. 13 "On Spatial Planning of the Garkalne Pagasts for 2004 –2016"" (hereinafter – Decree No. 2-02/536). It was published in the newspaper "Latvijas Vēstnesis" on December 5, 2006 (No. 193).

In its turn, on January 8, 2007 – one day before reviewing of the matter – the letter on the Garkalne Area Dome was received by the Constitutional Court. In it is expressed the request to terminate proceedings in case No. 2006-09-03 because on December 19, 2006 the Garkalne Area Dome in its extraordinary sitting had taken the decision "On Abrogation of The Garkalne Pagasts Council December 30, 2004 Binding Provisions No. 13 "On Spatial Planning of the Garkalne Pagasts for 2004 – 2016". The request was substantiated by the fact that the impugned legal act - The Garkalne Pagasts Council Territorial Plan – had lost effect.

Under such circumstances and on the basis of Section 29, Paragraph 1, Item 2 of the Constitutional Court Law the Constitutional Court has the right to take the decision on termination of the matter. However, there are other vital circumstances, which should be taken into consideration.

First of all, the submitters of the claim have requested to declare the part of the Garkalne Pagasts Spatial Plan, which envisages construction on the flood zones of the Big Baltezers Lake invalid as of the date of its adoption.

Secondly, one of the reasons for the Minister to pass Decree No. 2-02/536 was the incorrect interpretation of Section 37, Paragraph 1, Item 4 of the Protection Zone Law by the Garkalne Pagasts Council.

Thirdly, in Item 4 of the Garkalne Pagasts Council December 19, 2006 decision it is envisaged to analyze the reproof, expressed in the Minister for Regional Development and Local Authority Matters Decree No. 2-02.536 (also about the interpretation of Section 37, Paragraph 1, Item 4 of the Protection Zone Law) as well as to prepare proposals for elimination of defects and further activities.

Fourthly, from the principle of legal stability follows the right of the local authorities, as the ones, who elaborate spatial plans and also the right of the landowners to be informed about the contents of the restriction of property rights, which is incorporated in Section 37, Paragraph 1, Item 4 of the Protection Zone Law.

Thus, the Constitutional Court holds that to adopt the decision on termination of the proceedings of this matter is not purposeful.

11. Section 115 of the Satversme determines: ” The State shall protect the right of everyone to live in a benevolent environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment”. The above Satversme norm, first of all, assigns to the institutions of public power the duty to create and secure an effective system of environment protection. Secondly, the right to live in a benevolent environment by this norm has been included in the fundamental rights. The right to live in a benevolent environment, just as the other fundamental rights, which are included in Chapter VIII of the Satversme, shall be directly and immediately applied. (*sk., piemēram Satversmes tiesas 2001. gada 5. decembra sprieduma lietā No. 2001-07-0103 secinājumu daļas 1. punktu // see, for example, the Constitutional Court December 5, 2001 Judgment in case No. 2001-07-0103, Item 1 of the concluding part*). Namely, a private person, on the basis of Section 115 of the Satversme has the right to address the court about the action (inactivity) by the subject of public rights, which violates the rights and legitimate interests of this private person (*sk. , piemēram: Levits E. Piezīmes par Satversmes 8. nodaļu – Cilvēka pamattiesības. Cilvēktiesību žurnāls Nr. 9 – 12, 37. lpp. // see, for example: Levits E. Comment on Chapter VIII of the Satversme - Fundamental Human Rights, Human Rights Journal, No. 9 – 12, p. 37*).

Aims and tasks, which are envisaged for the contemporary society, may be reached only by close cooperation of the State, the local authorities as well as non-governmental organizations and the private sector. Thus, the term ”the State”, used in Section 115 of the Satversme shall not be narrowly interpreted, but in it are included also local authorities, whose duty- together with that of the State institutions - is to

protect the right of everybody to live in a benevolent environment and take care for the maintenance and improvement of it. This thesis is stressed also in the Plan of the National Environment Policy for 2004 – 2008. In it is stated that the issues on the protection of environment occupy a more and more significant place in the economic development of the State, especially in such sectors as production, transport and ensurance of public services as well as in the social field. Thus, successful realization of the above issues and problems will be possible only by close cooperation of the State administration and local authorities (*sk.: Precizētais Nacionālās vides politikas plāns 2004. – 2008. ; see: The Specified Plan of the National Environment Policy for 2004 –2008 // <http://www.vidm.gov.lv>*).

The content of Section 115 of the Satversme as well as the right to benevolent environment and the relevant duties of the state are specified in international agreements, binding on Latvia, inter alia also in national legal acts, the Convention on Access to Information, public participation in the process of taking decisions and the possibility to address the court concerning the environment issues.

Section 6 of the Environment Protection Law determines that every private person, as well as the unions, organizations and groups thereof inter alia have the right:

- 1) to request that State institutions and local authorities, officials or private persons interrupt such actions or inaction as causes the environment to deteriorate, does harm to the health of the inhabitants or endangers their life, legitimate interests and property;
- 2) to support environmental protection measures and cooperate with State institutions and local authorities to avert carrying out such actions, also taking such decisions, which might worsen the environment quality or are at variance with the requirements of the environmental normative acts.

In Section 1, Item 23 of the Environment Protection Law not only normative acts, which refer directly to the environment, are considered as normative acts, but also such normative acts, which help to reach the aims of the State environment policy – to conserve, protect and improve the quality of the environment. In accordance with

Section 2 of the Spatial Planning Law, the spatial planning shall ensure sustainable development. By taking into consideration the principle of sustainability, determined in Section 3 of the Spatial Planning Law, it shall ensure not only economic development but also rational utilization of natural, human and material resources, preservation of the natural and cultural heritage, as well as life in qualitative environment. Thus in our days spatial planning is one of the measures for reaching aims of the State environmental policy and thus – also the sector, which is connected with the environment and the sector in which Section 115 of the Satversme endows the society with extensive rights.

The duty of the State to care for conservation of the environment, which is incorporated into Section 115 of the Satversme, has been specified also in the Protection Zone Law, inter alia also in Section 37, Paragraph 1, Item 4 of the Law.

The submitters of the claim point out that because of incorrect application of this legal norm during the time of elaboration of the Garkalne Pagasts Spatial Plan, ungrounded erection of buildings on the flood zones of the Big Baltezers Lake had taken place.

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

12. In accordance with Section 33, Paragraph 1 of the Protection Zone Law all types of protection zones shall be determined by taking into consideration the requirements of regulatory enactments. To assess the conformity of the Garkalne Pagasts Spatial Plan with the requirements of Section 37, Paragraph 1, Item 4 of the Protection Zone law, it is necessary to establish the content of the legal norm included in it.

This norm determines: ” The construction of buildings and structures in the territories with probability of flooding at least once in a hundred years is prohibited, except

structures for short term utilization, small buildings in rural areas and protection structures especially provided for this purpose or the raising ground level”.

When making use of the method of grammatical interpretation, it can be concluded that the norm allows raising the ground level in the territory for constructing structures for short-term utilization and small buildings in rural areas. The Ministry for the Environment and the Ministry for Regional Development and Local Governments Matters has also expressed analogous interpretation of this norm (*sk. lietas materiālu 2. sēj. 121., 122. un 135 lpp. // see Vol. II, pp. 121, 122 and 135 of the materials in the matter*).

It follows from the materials in the matter that during the process of elaboration of the Garkalne Pagasts Spatial Plan one part of the interpretation of the norm was understandable to all the institutions –construction of buildings and structures in the potential flood zone was prohibited. However, permissibility of raising ground level in the territory was interpreted differently, namely, if raising of ground level has been initially done then the territory ceases to be flood zone and the prohibition of constructing buildings and structures on it does not refer to it. In technical documentation raising the ground level is called the improvement of the coast zone. Such a construction project envisages raising the ground level of the flood land with the purpose to prepare the territory for further construction work.

As the grammatical method of interpretation cannot be in many cases regarded as sufficient for complete revealing of the content of the legal norm, then other methods of interpretation shall be used (*sk., piemēram, Satversmes tiesas 2003. gada 4. februāra sprieduma lietā Nr. 2002-06-01 secinājumu daļas 3. punktu // see, for example, the Constitutional Court February 4, 2003 Judgment in case No. 2002-06-01, Item 3 of the concluding part*).

Use of the systemic method of interpretation gives the possibility of establishing the sense of the legal norm in the connection with other legal norms, included in the Protection Zone Law.

The term "protection zones" is explained in Section 1 of the Law. It states that protection zones "are certain areas, the task of which shall be to protect different types of objects (natural as well as artificial) from undesirable external effects, to ensure the exploitation and safety thereof or to protect the environment and people from the harmful effect of an object".

In this matter one of the objects of the protection zone, needed for the protection of the environment and nature resources – the protection zone of the surface water body (Big Baltezers Lake).

Section 7, Paragraph 1 of the Law determines that "surface water body protection zones shall be determined for reservoirs, watercourses and artificial water bodies, in order to decrease the negative effects of pollution to water ecosystems, to eliminate the development of erosion processes, and to restrict economic activity in the flood zones, as well as to preserve the characteristic landscape of the area".

The analyses of the above norms, as read in conjunction with Section 37, Paragraph 1, Item 4, testifies that the interpretation of the norm, in accordance with which there is the possibility of raising the ground level with the purpose of building structures on it, is at relevant unconformity with the objective of protection of the water bodies and the territories around it, which has been determined by law.

In the annotation to the Draft Law, in which the adoption of the legal norm has been substantiated, it has been pointed out that it shall further re-establishment and management of flood lands of the zone of surface water bodies and watercourses as well as lessen pollution (*sk. 2001 gada 10. maijā Saeimā iesniegtā likumprojekta "Grozījumi Aizsargjoslu likumā" anotāciju, lietas materiālu 1. sēj. 2003. un 204. lpp. // see the annotation to the Draft Law "Amendments to the Protection Zone Law", which has been submitted to the Saeima on May 10, 2001; Vol.I of the materials in the matter, pp. 203 and 204).*

Raising the ground level of flood lands with an intention of constructing buildings on it cannot help in reaching the above aim, mentioned in the annotation – restoration and management of flood lands, and lessening of pollution of the water bodies. In its turn, when using such an interpretation of the norm, in accordance with which raising ground level of the potential flood zones before building of structures on it, construction of buildings on such territories will be encouraged, as the risk of flooding would be averted. Such an interpretation will protect the newly erected buildings – structures for short-term utilization and small buildings.

Legal definition of structures for short-term utilization and small buildings is incorporated into Items 15 and 16 of the Cabinet of Ministers April 1, 1997 Regulations No. 112 "General Construction Provisions". In accordance with the Regulations "a building for short-term utilization" is a structure the exploitation time of which is not longer than five years and which shall be pulled down to the end of the above term, but a "small building" is a one-storey house, the structure area of which is smaller than 25 square meters.

Thus, the sense of Section 37, Paragraph 1, Item 4 of the Protection Zone Law, in accordance with which raising the ground level of the flood zones with the purpose of constructing buildings and structures on it, is at variance with the objective, which was advanced when passing the norm.

The significance of the aim included in the annotation to the Draft Law – to protect flood lands of the water bodies and watercourses has been confirmed by the Plan of the National Environment Policy for 2004 – 2008 and by the viewpoints of the experts. (*sk. Ministru kabineta 2004. gada 4. februāra rīkojumu Nr. 81 "Par Nacionālo vides politikas plānu 2004. –2008. gadam". Latvijas Vēstnesis, 2004. gada 6. februāris, Nr. 20; Ministru kabineta 2006. gada rīkojumu Nr. 996 "Grozījumi Nacionālajā vides politikas plānā 2004. –2008. gadam,". Latvijas Vēstnesis, 2006. gada 28. decembris, Nr. 206, un lietas materiālu 2. sēj. 114. – 120. lpp. // see: the Cabinet of Ministers February 4, 2004 Decree No. 81 "On the National Environment Policy Plan for 2004 – 2008", Latvijas Vēstnesis, February 6, 2004, No. 20; the Cabinet of Ministers*

December 22, 2006 Decree No. 996 "Amendments to the National Environment Policy Plan for 2004 –2008". Latvijas Vēstnesis, December 28, 2006, No. 206 and Vol. II of the materials in the matter pp. 114 –120).

In the reference on situation included in the National Plan of the Environmental Policy it is established that the comparatively shallow confluence basins of the big rivers as well as the significant areas of the lakes, marshes and wetlands, which act like accumulation reservoirs and slow down influx to rivers, have saved Latvia from such catastrophic deluge, which hit the Central Europe in the last decade. 1998 –2000 researches on the biological quality of the water bodies testify that approximately 90 percent of the lakes are subjected to anthropocentric eutrophication, namely, to the process in which water bodies are satiated with plant nutrients and which stimulates excessive reproduction of water organisms and overgrow of water bodies.

For improvement of the present situation several aims have been included in the plan: first of all, to stimulate sustainable and rational utilization of water, paying special attention to preservation of ground water resources, to lakes endangered by eutrophication; secondly, to protect water ecosystems, wetlands, as well as the land ecosystems, depending on water (*sk.: Precizētais Nacionālās vides politikas plāns 2004. – 2008. gadam, 14. – 18. lpp.; see: The Specified Plan of the National Environmental Policy for 2004 2008, pp. 14 – 18 // <http://www.vidm.gov.lv>*).

To ensure the environment protection one has to take into consideration that the main feature of flood land meadows in the ecosystem of a lake is as follows: these meadows serve as a protection barrier against the harmful impact of external effects and against the stimulator of the lake degradation. Especially important such a barrier is in places of development of settlements or in places where urbanized areas have already been developed (*sk.: Melluma A., Leinerte M. Ainava un cilvēks. Rīga, Avots, 1992, 73. lpp. // see: Melluma A., Leinerte M. The Landscape and a Man. Rīga, Avots, 1992, p. 73*).

Environment experts L. Eņģele and V. Znotiņa acknowledge that the protection of the Big Baltezers Lake coast flood lands have vital importance in preserving of

biodiversity and the landscape, as well as in the protection of the lake. From the ecological viewpoint the construction of living houses in the flood lands shall not be permitted, as it will completely and irreversibly destroy the natural biotopes existing there and – by changing the hydrological regime of the lake – will create extra pollution of the lake. The vegetation zone between the construction area and the Big Baltezers Lake serves as a buffer zone because the plants ”use up” nutrients and purify the polluted ground waters (*sk. lietas materiālu 1. sēj. 114. – 118. lpp. // see Vol. I, pp. 114 – 118 of the materials in the matter*). In her turn, the environment expert A. Melluma, when assessing the permissibility of operating activities in the flood zones, points out that the greatest precaution shall be observed as the consequences of such operating activities cannot be prognosticated (*sk. lietas materiālu 1. sēj. 119. –120. lpp. // see Vol. I, pp. 119 – 120 of the materials in the matter*).

The necessity of the protection of the flood zones has become topical also in the context of the European Union Law. Namely, at the present moment in Section 4, Paragraph 2, Sub-item ”c” of the Directive on the Assessment and Management of the Flood Risks, elaborated by the European Community Commission, flood lands are recognized as a natural buffer zone of flood detaining [*sk.: KOM (2006) 15 galīgais; see KOM (2006), final 15 // [http: eur-lex.europa.eu/](http://eur-lex.europa.eu/)*].

Flood land meadows ”carry out” the function of averting the negative consequences of floods. If the raising the ground level of the flood land meadows takes place, it creates additional flood risks in places where earlier no flood threats existed or have been insignificant (*sk. Vides ministrijas 2006. gada 10. oktobra vēstuli Satversmes tiesai materiālu 2. sēj. 122.lpp. // see the Ministry for the Environment October 10, 2006 letter to the Constitutional Court, Vol. II, p. 122 of the materials in the matter*).

The interpretation of Section 37, Paragraph 1, Item 4 shall comply with the objective, incorporated into the Protection Zone Law and other normative acts on the environment.

For the interpretation of the norm to comply with the above requirement, the norm shall be understood in the following way – it prohibits constructing of buildings and structures in the territories with probability of flooding at least once in a hundred years, except structures for short-term utilization and small buildings in rural areas. Simultaneously this norm prohibits construction of protection structures especially provided for this purpose or the raising the ground level, inter alia also the construction of structures for short-term utilization and small buildings.

In cities and villages, where the width of the surface water body protection zone in accordance with Section 7, Paragraph 2, Item 2 shall be determined in the spatial plan, the local authority has to be guided by the consideration that to carry out the raising the ground level of the flood zone with the purpose of constructing structures on it is prohibited. A different interpretation of the norm will be at variance with the purpose of determination of the above protection zone.

The norm does not prohibit the raising of the ground level of the flood zone or construction of protection structures with an aim of protecting from floods buildings and structures, which were located in the territory before of this norm taking effect. In this case permits for the raising the ground level or building protection structures shall be granted in such a way that the above actions change the flood zones as little as possible.

14. In Volume I, Chapter VIII of the Garkalne Pagasts Spatial Plan it is explained that a 200 meter wide flood zone has been determined around the Big Baltezers Lake.

In Volume III – in the map "The Garkalne Pagasts Spatial Plan for 2004 – 2016; The Planned Utilization of the Garkalne Pagasts Territory" a 300 meter wide water body protection zone around the Big Baltezers Lake has been marked. The potential flood zone is marked in the width of about 100 and not 200 meters, as has been determined in Volume I of the Spatial Plan.

Volume II, Chapter IV Item 30.1 a, Sub-item 4 of the Plan "The Provisions for Construction in the Garkalne Pagasts" envisages that any construction is forbidden in a 50-meter wide zone around the Big Baltezers Lake, with an exception of the permitted structures in the tow belt. In their turn it is permitted to build structures, which are connected with utilization of water bodies and watercourses (boat landings, bath-houses) nearer to the coast but not nearer than 30 meters from the coastline.

In Volume III of the Plan – in the map "Garkalne Pagasts Spatial Plan for 2004 – 2016. The Planned Utilization of the Garkalne Pagasts Territory" 50 meters from the coastline - in accordance with the provisions on the

In the graphic part of the plan it is clearly seen that the prohibition of constructing houses does not refer to the whole potential flood zone but only to approximately half of it.

It can be seen from the draft land use plan for the plot at No. 1B Dzilnas street (Cadastre No. 8060-003-0011), which is attached to the materials in the matter, that it is planned to build private houses in such a way that their walls will be at the distance of just 50 meters from the coastline (*sk. Detalplānojuma projekta Garkalnes pagastam Dzilnas ielai 1B, kadastra Nr. 8060-003-0011, 44. lpp. // see the Draft Land Use Plan for Dzilnas Street 1B, Cadastre No. 8060-003-0011, p. 44*).

In accordance with Section 37, Paragraph 1, Item 4 of the Protection Zone Law, prohibition of building of new structures shall be determined for the whole width of the potential flood zone (flood land).

Thus the Garkalne Pagasts Spatial Planning, which envisages building of structures in the potential flood zone, is unconfirmable with Section 37, Paragraph 1, Item 4 of the Protection Zone Law and Section 115 of the Satversme.

15. As that part of the Garkalne Pagasts Council Plan, which envisages building structures on the Big Baltezers Lake flood zone, does not comply with Section 115 of

the Satversme, there is no necessity to additionally assess its conformity with Section 1 of the Satversme.

16. In accordance with Section 31, Item 11 of the Constitutional Court Law the Court shall determine the moment as of which the impugned norm (act) loses its effect.

The submitters of the claim have requested to declare the impugned act as null and void from January 5, 2005, i.e., from the moment of it taking effect.

If the part of Garkalne Pagasts Spatial Plan for 2004 – 2016, which envisages constructing buildings on the flood zones of the Big Baltezers Lake, is not declared as null and void from the moment of the norm taking effect, then the activities of the local authority Council, which have been carried out as the result of incorrect interpretation of Section 37, Paragraph 1, Item 4 of the Protection Zone Law up to the time of the announcement of the Judgment – would be legalized. To reach the aim of the above norm – to protect the flood zones from operative actions as much as possible – the impugned act on the construction of buildings on the flood zones shall be declared as null and void as of the moment of it taking effect.

The operative part

On the basis of Sections 30 – 32 of the Constitutional Court Law the Constitutional Court

hereby rules:

to declare the part of the Garkalne Pagasts Spatial Plan for 2004 – 2016, which envisages construction of buildings on the flood zone of the Big Baltezers Lake as unconfirmable with Section 115 of the Republic of Latvia Satversme and null and void from January 5, 2005.

The Judgment is final and allowing of no appeal.

The Judgment takes effect on the day of its publishing.

The Chairman of the Court session

Gunārs Kūtris