THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, December 16, 2005

JUDGMENT
in the name of the Republic of Latvia

in case No. 2005-12-0103

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session Romāns Apsītis as well as the justices Ilma Čepāne, Aija Branta, Juris Jelāgins, Gunārs Kūtris and Andrejs Lepse

with the Court secretary Arnis Žugans

in presence of the submitter of the constitutional claim Juris Jaunzems and the sworn advocate Iveta Stuberovska – the representative of the submitters of the constitutional claim (Juris Jaunzems, Tatjana Čerkovska, Olga Vitkovska, Inguna Rumjanceva, Valentīna Leitēna, Gints Gailītis, Ārija Ziemele, Inna Vasiļjeva, Iveta Prazdnicane and Klaudija Abramova) as well as Mihails Pietkevičs and the sworn advocate Jānis Rozenfelds - the representatives of the institutions, which have passed the impugned acts, namely, the Saeima and the Cabinet of Ministers, under Article 85 of the Republic of Latvia Satversme (Constitution), Articles 16 (Items 1 and 3), 17 (Item 11 of the first Part) and 19^2 of the Constitutional Court Law on November 15 and 16, 2005 in a public hearing in Riga reviewed the matter

"On the Compliance of the Cabinet of Ministers November 11, 2005 Regulations No. 17 "Amendments to the Law "On Coercive Expropriation of Real Estate for State or Public Needs"" and June 9, 2005 Law "Amendments to the Law "On Coercive Expropriation of Real Estate for State or Public Needs"" with Articles 1 and 105 of the Republic of Latvia Satversme"".

The establishing part

1. On May 24, 1923 the Republic of Latvia Saeima (henceforth – the Saeima) adopted the Law "On Coercive Expropriation of Immovable

Property for State or Public Needs". On May 28, 1936 and August 30, 1937 Amendments were made to the Law. By the August 30, 1937 Amendments, it was inter alia determined that the words "immovable property" used in the Law shall be substituted by the words "real estate".

On September 15, 1992 the Supreme Council of the Republic of Latvia, when making separate amendments, renewed the validity of the May 24, 1923 Law "On Coercive Expropriation of Immovable Property for State or Public Needs" and established that the title of the renewed Law shall be "On Coercive Expropriation of Real Estate for State or Public Needs" (henceforth – 1992 Expropriation Law).

On September 15, 1992 the Republic of Latvia Supreme Council took also the Decision "On the Procedure of the Republic of Latvia Law "On Coercive Expropriation of Real Estate for State or Public Needs" Taking Effect"". In Item 1 of the Decision it was determined that the Expropriation Law shall take effect on October 1, 1992.

On July 30, 1996 the Cabinet of Ministers passed Regulations No. 283 "Amendments to Supreme Council September 15, 1992 Decision "On the Procedure of the Republic of Latvia Law "On Coercive Expropriation of Real Estate for State or Public Needs" Taking Effect"" under the procedure, established in Article 81 of the Republic of Latvia Satversme (henceforth – the Satversme). By the above Regulations was supplemented Item 2 of the Law "On the Procedure of the Republic of Latvia Law "On Coercive Expropriation of Real Estate for State or Public Needs" Taking Effect".

On December 19, 1996 the Saeima passed the Law "Amendments to Supreme Council September 15, 1992 Decision "On the Procedure of the Republic of Latvia Law "On Coercive Expropriation of Real Estate for State or Public Needs" Taking Effect"". By the above Amendments Item 2 of the Decision "On the Procedure of the Republic of Latvia Law "On Coercive Expropriation of Real Estate for State or Public Needs" Taking Effect"" was supplemented with the third, the fourth and the fifth Paragraphs; in the Transitional Provisions it was recognized that the Cabinet of Ministers Regulations No. 283 passed under Article 81 of the Satversme "Amendments to Supreme Council September 15, 1992 Decision "On the Republic of Latvia Law "On Coercive Expropriation of Real Estate for State or Public Needs" Taking Effect"" lose effect.

On January 11, 2005 the Cabinet of Ministers under Article 81 of the Satversme passed Regulations No. 17 "Amendments to the Law "On Coercive Expropriation of Real Estate for State or Public Needs""

(henceforth – Regulations No. 17). The Regulations took effect on January 14, 2005.

1.1. Regulations No 17 made several Amendments to 1992 Expropriation Law.

Sections 4 and 5 were expressed in the following wording:

”Section 4. When the respective law on expropriation of real estate for State and public needs takes effect, the State or local government obtains property rights to the respective real estate and experiences the right of demanding to fix the estate in the Land Book in accordance with the procedure envisaged in the normative acts.

Section 5. After the particular Law taking effect the institution, on whose account proposal for the expropriation is executed, suggests to the former owner of the real estate to one’s point of view a fair compensation or equivalent property”.

Sections 7,8,9 and 10 were expressed in the following wording:

”Section 7. Fixing the property rights in the Land Book, it transfers into the State or local government ownership void of any encumbrance, if the area of the expropriated land plot does not exceed 20 percent of the owner’s entire land.

Section 8. The interested persons, in whose favour certain rights on the expropriated land are registered into the Land Book, upon their request, may obtain in the order of preference their due sums but not more than the sum of compensation.

Section 9. If an agreement is not concluded, dispute on the amount of compensation or the way of compensation shall be reviewed by court. In this case the institution or the former owner is acquitted from the payment of court expenses into the State revenue. Initiation of dispute on the amount of remuneration or its kind does not suspend the process of transfer of the real estate into the ownership of the institution for whose needs it is expropriated.

Having received the statement, the court assigns a bailiff to seize and estimate the real estate in accordance with Latvian Civil Code laws bringing in a representative of that institution for whose needs the real estate is expropriated and the former owner as well as three experts, chosen on the basis of the agreement of the parties. If within the time term specified by the court, no agreement has been reached, the court invites the experts.

Rejection of an expert is permissible if there are conditions that may produce grounded doubts on his/her impartiality.

If the former owner's or his/her authorized person's place of residence is not known, he/she should be summoned by a notice in an official newspaper, requesting his/her appearance within a month. If during the aforementioned time neither the former owner nor his/her authorized person appears, a trustee should be appointed for the protection of the former owner's interests in the procedure stipulated by law.

If the respective institution estimates the real estate, which is to be expropriated, at a lower value than its mortgage debts, those mortgage creditors, whose addresses are known, should be invited for the evaluations.

Section 10. The institution, whose proposal is the reason for expropriation should submit a statement to the court, indicating the price, which is fixed for the real estate to be expropriated, and its substantiation. Copies of this statement should be issued to the real estate former owner and his/her mortgage creditors, if their addresses are known and if they are summoned to be present at the seizure and estimation."

Section 12 was expressed in the following wording:

"Section 12. After seizure the real property passes into the ownership of the establishment for whose needs it is expropriated. Ownership takeover takes place even in case if the acquirer has not yet fixed the ownership rights in the Land Book. If the real estate is not vacated of one's free will, then the court – after receiving the request from the institution for whose needs the estate is expropriated – takes the decision of transferring it in the possession thereof.

When a dwelling house is expropriated, where its owner or his/her members of family reside, the respective institution must provide another premise for them. The right to ensurance of premise shall be retained for the period of one year after receiving of the compensation".

In Section 13 the word "the owner" was substituted by the words "the former owner".

The first Paragraph of Section 16 was expressed in the following wording:
"When reviewing the case the court summons the former owner, a representative of the institution for whose needs the real estate is expropriated and the mortgage creditors."

In the second Paragraph of Section 16 the word "the owner" was substituted by the words "the former owner".

The first Paragraph of Section 17 was expressed in the following wording: ”When the court decision on the amount of compensation has come into force, its former owner should be paid the compensation fixed by the court and the interest rate, fixed by the court, but no less than six percent per year from the day of the takeover of the real estate till the day of the payment.”

Section 18 was deleted.

On June 9, 2005 the Saeima adopted the Law ” Amendments to the Law ”On Coercive Expropriation of Real Estate for State or Public Needs”” (henceforth – the Impugned Law). In the Transitional Provisions of this Law it is determined that the Law shall take effect as of the next day after its announcement and by the Law becoming valid, Regulations No.17 lose validity. On June 28, 2005 the Chairperson of the Saeima Ingrīda Ūdre (who at the time substituted the State President) promulgated the Law.

1.2. The Impugned Law made several Amendments to the 1992 Expropriation Law.

Sections 4 and 5 were expressed in the following wording:

”Section 4. When a resolution on real estate expropriation for the State or public needs is adopted, the State or local government obtains ownership rights to the respective real estate and experiences the right of demanding that the above rights be fixed in the Land Book in the procedure stipulated by law.

Section 5. The institution, on whose account proposal for the expropriation is executed, within five days after the respective law becomes valid offers to the former owner of the expropriated real estate a fair to his/her point of view compensation or proposes to exchange it against an equivalent property”.

The first Paragraph of Section 9 was supplemented with a sentence in the following wording:

”Application shall be submitted to the court not later than within five days after the day when the former owner has in a written form rejected the amount of the offered compensation or has not given an answer to the offering in the time term, established by the institution”.

In its turn the second Paragraph of this section after the words ”the court assigns a bailiff” was supplemented with words: ”within five days”.

In the second Paragraph of Section 9 the word ”the owner” was substituted by the words ”the former owner” and Section 9 was supplemented with a new third Paragraph in the following wording:

”Cases on establishing the amount of the compensation of the real estate to be expropriated shall be adjudicated out of schedule”.

In the initial third Paragraph of Section 9 the word ”the owner” was substituted by words ”the former owner” and the words ”within a month” with the words ”within fifteen days”.

The third Paragraph of Section 9 the words ”in the procedure stipulated by law” were supplemented with the words ”without delay”.

It was established that the initial third and fourth Paragraphs of Section 9 should be regarded as the fourth and the fifth Paragraphs.

In Section 10 the word ”the owner” was substituted by the words ”the former owner”.

Section 12 was expressed in the following wording:

”After seizure the real property passes into the ownership of the establishment of the institution for whose needs it is expropriated. Ownership takeover takes place even if the acquirer has not yet fixed the ownership right in the Land Book. If the real estate is not vacated at free will, then the court – after receiving the request from the institution for whose needs the real estate is expropriated – takes the decision on the transfer of it in the possession thereof.

When a dwelling house (apartment) is expropriated where its owner or his/her members of family reside, the respective institution must provide another premise for them. The right to ensurance of the premise shall be retained for the period of one year after receiving of the compensation.

In Section 13 the word ”the owner” shall be substituted by the words ”the former owner”.

The first Paragraph of Section 16 was expressed in the following wording;

”When adjudicating the case the court summons the former owner, a representative of the institution for whose needs the real estate was expropriated and the mortgage creditors”.

In the second Paragraph of Section 16 the word ”the owner” was substituted by the words ”the former owner” and the second Paragraph was supplemented with a sentence in the following wording:

”When expropriating a dwelling house (an apartment) in which the former owner or his/her family members reside, the court increases the amount of compensation, including the moving expenses into it”.

The first Paragraph of Section 17 was expressed in the following wording:

” When the court decision on the expropriation of the real estate has come into force, its former owner should be paid the fixed by the court compensation and the interest rate, which is fixed by the court but no less than six per cent a year from the day of the Law on Coercive Expropriation Taking Effect till the day of the payment”.

In the second Paragraph, Items 1 and 2 of Section 17 the word ”owner” was substituted by the words ”the former owner”.

Section 18 was deleted.

2. **J.Jaunzems, T.Čerkovska, O.Vitkovska, I.Rumjanceva, V.Leitēns, G.Gailītis, Ā. Ziemele, I.Vasiļjeva, I. Prazdnicane, K. Abramova (henceforth – the submitters of the claim)** in their claim point out that Regulations No. 17 are at variance with Articles 1 and 105 of the Satversme. Namely, they hold that the principles of legitimate trust and legal certainty, following from Article 1 of the Satversme have been violated, because the Ministry of Culture and the Cabinet of Ministers, when offering to the submitters of the claim expropriation of the apartments, owned by them, in the initial correspondence created their legitimate trust that expropriation of the real estate will be carried out under the procedure, established in 1992 Expropriation Law. In its turn, when the submitters of the claim did not agree to the compensation, offered by the representative of the Ministry of Culture, the procedure for expropriation of the real estate had been essentially amended. When making amendments, a new legal regulation had been established that is much more unfavourable for the submitters of the claim than the previous procedure. They hold that they are denied several procedural rights and guarantees, which were envisaged in 1992 Expropriation Law. Several submitters of the claim had obtained the right to the apartments, expropriated by the State, as the result of permanent renting relations, thus the viewpoint on acquiring of the above property in speculative interests is ungrounded.

They express the viewpoint that Article 105 of the Satversme has also been violated, as the term ”the law”, used in the fourth sentence of the Article, can be understood only as the law passed by the Saeima, not as the law, passed by the Cabinet of Ministers under Article 81 of the Satversme. Exceptional case in the above conditions cannot be established either. They hold that one has to take into consideration the fact that the very first normative act, which regulates the issues of building the Latvian National Library (henceforth – LNL) was adopted in 1995, that is almost ten years before issuance of Regulations No.17. Therefore such an exceptional case cannot be established and the Cabinet of Ministers, when issuing Regulations No. 17 has violated both- requirements included in Article 81 of the Satversme, and those included in Article 105.

The submitters of the claim do not contest the right of the state power to pass laws, which regulate the issues of expropriation of real property, however, they simultaneously point out that such a regulation shall be proportionate. Namely, they stress that the public benefit shall be greater than the burden, imposed on the owners of real estate.

They hold that the requirement to pay a fair compensation, incorporated in Article 105 of the Satversme, has also been violated. The submitters of the claim point out that the fair compensation, mentioned in the context of the Article, shall be understood also as an expropriation process, which, first of all, does not cause material and moral loss and, secondly, does not cause other kind of inconvenience or suffering. The procedure, under which the compensation to the owner of the real estate shall be paid in a not to be foreseen future and in an indeterminable period of time to their mind does not comply with the guarantees of a fair compensation, fixed in the Satversme.

At the Court session the representative of the submitters of the claim additionally pointed out that reference to the 1930-ties practice of the Latvian Senate by the Cabinet of Ministers is ungrounded. To her mind it shall be taken into consideration that the Senate decision, mentioned in the written reply, couldn’t be assessed if the legal realities, which existed in Latvia sixty years ago, are not assessed. In the above decision the issue of the land reform – namely estate family lease– has been reviewed. Thus, she holds that the conclusions, expressed in the Senate decision, cannot be used when interpreting the norms of the 1992 Expropriation Law.

Besides, it should be taken into consideration that in accordance with December 5, 2000 Cabinet of Ministers Regulations No.423 ”Regulations on the Territorial Planning”, without a land use plan, confirmed under the certain procedure, neither the Ministry of Culture

nor any other State administrative institution had the legal right to adopt the decision on usage of the territory at No.2 Uzvaras Boulevard and at No 8/10 Kuģu street for LNL needs.

The submitters of the claim, holding that Regulations No. 17 is at variance with Articles 1 and 105 of the Satversme, request the Constitutional Court to declare it invalid as of the moment of their promulgation.

3. **The Cabinet of Ministers** in its written reply points out that the viewpoint of the submitters of the claim is ungrounded. When applying the norms of 1992 Expropriation Law, the interpretation, which has been applied in the twenties and thirties of the last century – at the time, when the above law has been passed, should be taken into consideration. Namely, Senate judicature of that time shall be taken into consideration. When referring to April 10, 1934 Decision in case No. 1934/52, the Cabinet of Ministers concludes that the words ”only against compensation” shall not be interpreted as expropriation of the property, at the same time paying compensation, but as expropriation of the property simultaneously with the expropriation Law taking effect, moreover, determining the compensation only after reaching an agreement or in the court.

   The Cabinet of Ministers rejects as ungrounded also the argument on the submitters of the claim on violation of the principle of legitimate trust. The Cabinet of Ministers holds that from the above principle follows that the state acts shall not be ex post facto. The aim of the principle of legitimate trust is not to protect the notion on the content of a certain normative regulation in itself, namely – to protect the notion on its constancy. Such a notion will exclude the possibility of making any changes in the normative acts. The Cabinet of Ministers stresses that the submitters of the claim have not explained, which future plans the impugned forms have deranged. When analysing observation of the principle of proportionality in the process of issuance of Regulations No.17, the Cabinet of Ministers indicates that the restriction has a legitimate aim – building of LNL. LNL shall be recognized as the national wealth of the Republic of Latvia. To their mind the chosen means are also appropriate, as expropriation of the above properties is the only way in which the State can acquire the real property it needs. It is especially stressed that such a procedure of expropriation of real property is only the utmost means, when all the other means, including a long-lasting process of talks, have been exhausted. It should be taken into consideration that already after initiation of the matter at the Constitutional Court – on May 18, 2005 – agreement with several submitters of the claim, namely, Ā. Ziemelis, I.Vasiļjevs, I. Prazdnicāne and K.Abramovs, was concluded. Besides, as concerns the former

owners, regulation included in Regulations No.17, has been really favourable, as - when appealing to the court for determination of a fair compensation – they do not have to pay the State duty.

When answering to the written question of the Constitutional Court on the immediate need of issuing Regulations No.17, the Cabinet of Ministers stresses that the Regulations, during the period of elaboration of them, has been repeatedly defined more precisely and "the final reasons for the necessity of the Regulations have been indicated in January 6, 2005 Summary" (*sk.lietas 3.sēj. 204.lpp.; see Vol.III, p.204 of the case).* The Cabinet of Ministers also points out that public discussion on building of LNL has not taken place as well as the land use planning of the adjacent territory has not been elaborated either.

At the Court session the representative of the Cabinet of Ministers pointed out that the submitters of the claim had not correctly understood from which moment the norms of 1992 Expropriation Law might be applied. It is possible only from the moment, when a specified law is passed. To the mind of the Cabinet the rightness of the above statement by the representative of the Cabinet of Ministers is confirmed by the conclusions of the Senate April 10, 1934 Decision. The representative of the Cabinet of Ministers draws the attention to the second Paragraph of Section 1477 of the Civil Law, from which follows that property rights, established by law, shall be in effect even if they are not entered in the Land Register. 1992 Expropriation Law has envisaged that the property rights are transferred into the State or local government ownership only after passing of a specific law; thus Regulations No.17 had not anticipated another procedure than the one, established in 1992 Expropriation Law.

It should be also taken into consideration that the submitted constitutional claim protects hypothetical public interests; therefore it is not possible to establish what particular interests of the submitters of the claim are violated.

When answering to the question of the Constitutional Court whether by Regulations No. 17, which amend the legal norms, incorporated in Sections 9 and 12 of the 1992 Expropriation Law, regulate the procedure under which such cases shall be reviewed in the court, the representative of the Cabinet of Ministers gave a positive reply.

Thus the Cabinet of Ministers holds that Regulations No.17 is not at variance with Articles 1 and 105 of the Satversme and requests the Constitutional Court to declare the constitutional claim as ungrounded.

4. The legal substantiation included in the constitutional claim **by the submitters of the claim (J.Jaunzems, T.Čerkovka,. V. Leitēns and G.Gailītis)** on unconformity of the impugned law with Articles 1 and 105 of the Satversme to a great extent is based on the argumentation of the claim on unconformity of Regulations No.17 with Articles 1 and 105 of the Satversme. With other submitters of the claim, who contested Regulations No. 17, agreement on a fair compensation was reached.

   It is additionally pointed out that on June 15, 2005 the submitters of the claim addressed the State President with a request not to promulgate the impugned law and return it to the Saeima for a revision. However, this request was not taken into consideration.

   The submitters of the claim draw the attention of the Constitutional Court to the fact that almost for half a year since they do not own the expropriated real estate, the fair compensation has not been paid and cases on the amount of a fair compensation have not been reviewed at a court of general jurisdiction. Thus the requirement for fair compensation, included in the fourth sentence of Article 105 of the Satversme, is essentially violated.

   At the Court session the representative of the submitters of the claim additionally pointed out that the regulation, included in the Impugned Norm, which envisages reviewing of such matters without regard for schedule, is ineffective. It is impossible to adjudicate so complicated an issue, which is connected with determination of fair compensation just within the process of one court session. The uncertain legal status, when the property of persons is expropriated but a fair compensation is not paid may continue for several years.

   There is a great possibility that the expropriated real estate is partially valued, as the term ”local prices”, included in the Impugned Law, is not explained in a detailed way.

   The submitters of the claim conclude that the Impugned Law is at variance of Articles 1 and 105 of the Satversme and request the Constitutional Court to declare it as invalid from the moment of it taking effect, i.e., from June 29, 2005.

5. **The Saeima** in its written reply does not agree with the statement, expressed in the constitutional claim. The Saeima stresses that the fourth sentence of the Satversme Article 105 shall not be narrowly and grammatically interpreted. The words ”for fair compensation” envisage a certain period of time, in which the compensation shall be paid. It does not deny the state the right of determining terms on which in accordance with the Law on the expropriation of the respective real estate the fair

compensation shall be paid. The rightness of such a conclusion is confirmed by the Senate April 10, 1934 Decision in case No. 1934/52.

To the mind of the Saeima the principle of proportionality is not violated either, as coercive expropriation of real estate is only a legal process, under which the former owner is granted several procedural guarantees. This process is applied only in exceptional cases and only on the basis of a specific law. Besides, when no agreement between the former owner and the State can be concluded, then the amount of the compensation shall be determined in a court process, and the former owners do not have to pay the state duty.

The Saeima stresses that the Impugned Law was not passed just for this concrete case. They stress that one has to take into consideration that the former regulation in effect was applied only three times within the period of 12 years and it could not operatively solve complicated legal relations, which arise in cases of expropriation of real estate. Necessity for amending 1992 Expropriation Law arose quite some time before, in their turn the plans for building LNL only hastened the process of the adoption of such a law. It should be taken into consideration that the Impugned Law was adopted in circumstances when all the possibilities to reach a reasonable agreement with the former owners had been exhausted. Besides the Ministry of Culture even after the matter was initiated in the Constitutional Court has unceasingly continued the process of reaching the agreement and as the result several more agreements with the owners on the payment of a fair compensation were concluded.

To the mind of the Saeima ungrounded is also the argument of the submitters of the claim that the impugned law violates the principle of legitimate trust. The Saeima points out that the submitters in their constitutional claim have precisely indicated the place where the LNL will be built as well as the time, when it will take place. Therefore the Saeima is of the viewpoint that the submitters of the claim have known about expropriation of their real estate and in such circumstances reference to the principle of legitimate trust shall not be admissible.

The Saeima concludes that the Impugned Law ensures a fair balance between the public interests and the interests of the former owners. In this case the interests of the former owners shall not be assessed as being higher than the public interests; and the Amendments, introduced by the Impugned Law on their essence have been adopted in the interests of the former owners, among them also in the interests of the submitters of the claim.

At the Court session the Saeima representative in addition to the statements, mentioned in the written reply, pointed out that Impugned Law ”shall be regarded as a general or roof law”. He stressed that it did not change and did not lessen the volume of the rights of the submitters, only ”the procedures are more strictly and much more precisely regulated” and ”the Saeima by the amendments to the Law has if fact made the Law much more elucidatory and for the lawyers – better and more easily applicable”. He stressed that in cases of coercive expropriation of real property relevant norms of the Civil Law on state property rights coming into existence and Senate decisions, taken in 1930-ties, shall be taken into consideration. The submitters of the claim have been listened to both – at the time when the Saeima discussed the impugned law and after the law was forwarded to the State President. Therefore he holds that the viewpoint of the submitters of the claim, who state that they have not been heard out, is ungrounded.

The Saeima representative stressed that mechanism of coercive expropriation, determined in 1992 Expropriation Law was very inefficient. The agreement process in most cases was not transparent and the society remained ignorant about the fact how expensive and ineffective were the concluded agreements. The aim of the Impugned Law is to allow the State and the whole society to implement significant projects, not only the LNL project. To such projects one might add, for example, the construction of the Southern bridge and the Northern tunnel.

To his mind significant is also the fact that only four owners of the apartments have submitted the constitutional claim to the Constitutional Court, contesting the compliance of the Impugned Law with the Satversme. It testifies that during the agreement process and before the adoption of the Law they have not been able to clearly formulate their wishes about the amount of the compensation or have stated incommensurably high requirements.

The fact that during the time, while the process of expropriation of real estate was still going on, Amendments to 1992 Expropriation Law were adopted, cannot serve as an argument that the principle of legitimate trust has been violated, as the State experiences the right of amending passed normative acts.

Holding that the Impugned Law is well-considered and deeply weighed out, the representative of the Saeima requests the Constitutional Court to declare the constitutional claim as ungrounded, but the Impugned Law as conformable with Articles 1 and 105 of the Satversme.

6. **The invited person – the Saeima deputy, Minister of Culture from November 7, 2002 till March 9, 2004 Inguna Rībena** – at the Court session explained that at the time when she undertook the duties of the Minister of Culture, even the draft project of LNL had not been elaborated and for a long period the process of expropriation of the land in the place, where it was planned to build the LNL, had not begun. To promote the construction of it, she had ensured realization of several significant activities. First of all the finances (expenses) spent on the project had been calculated. Secondly, the circumstances hindering the implementation of the project had been established. After consultations with some of her advisors she had concluded that amending of the Law with an aim of ensuring acquisition of the needed real property was the worst possible variant. Therefore it was decided not to do it.

   In its turn, when Regulations No.17 had been forwarded to the Saeima, the Education, Culture and Science Committee was not acquainted with the above Regulations. From the words of some of her colleagues I.Rībena had understood that the Regulations were meant just for expropriation of the real estate, needed for the construction of LNL. Besides, she – the Saeima deputy – had not known the criteria for determining fair compensation.

   When giving an answer to the question of the Court on the necessity of the land use plan, I.Rībena pointed out: ”everything starts with the land use plan, and only after that we may place in an object”.

7. **The invited person – the Minister of Culture Helēna Demakova** at the Court session pointed out that necessity of a new LNL had been stressed in the declarations of all the governments of the renewed Republic of Latvia. Besides, already in 1968 City of Riga General Plan the place for constructing the library had been indicated. In its turn in 1988 the decision on the concrete place for building LNL had been taken.

   H.Demakova stressed that in 1999 UNESCO passed the Resolution supporting construction of LNL on the project of the outstanding architect Gunārs Birkerts. On the basis of this Resolution and taking into consideration the viewpoint of the architect, the Law “On the Construction of the National Library” determined the potential place for LNL.

   When speaking about the necessity of a new LNL H.Demakova pointed out that 67 percent of residents supported building of the LNL. Besides, hindering of the construction process essentially affects construction costs of LNL. She stresses that delay shall not be permissible; the State shall have the right to act as it chooses on the site– to arrange the

construction site, accomplish demounting and begin building. Hindering this process by protracted court proceedings may materially harm the State interests; therefore the State shall experience a certain freedom of action.

When answering to the question of the Court about the necessity of issuing Regulations No. 17, H.Demakova stressed that in 2003 research (conclusion), elaborated by a lawyers' office "for a great amount of tax-payers money", only the situation was analysed; it had not complied with either – State or public interests, as it did not include a specific solution of the issue how the state should act to acquire the needed real estate. However, the above properties became more expensive, therefore the Ministry of Culture had been obliged to buy another "external service", which would advise a concrete solution. The Ministry had acted on the above advice. The process of LNL construction had been delayed; there had been no guarantees that the Saeima would quickly adopt the needed regulation.

H.Demakova holds that land use plan for the territory in which the construction of LNL is envisaged is necessary and expresses conviction that it shall be elaborated till the time construction of the building starts.

8. **The invited person – the Saeima deputy, Head of the Saeima Legal Affairs Committee Mareks Segliņš** pointed out that the statement about the draft Law "Amendments to the Law "On Coercive Expropriation of Real Estate for State or Public Needs"" being adopted in haste and without due listening to interested persons, was ungrounded. Quite to the contrary – the copies of the letter, written by the representative of the submitters, have been distributed to the deputies.

   M.Segliņš stresses that he was the person who had proposed to the Saeima Legal Affairs Committee to make Amendments to the Civil Law. The aim of the Amendments has been to achieve that matters, in which the issue on determination of a fair compensation in cases of expropriation of real estate are reviewed at the courts of general jurisdiction as quickly as possible. Such Amendments have been necessary as the judgment of Regional Court can be reached even two years after submission of the appellate claim. He points out that the aim of the above regulation is to take care about the former owners of the real property in cases, when the State has not been able to reach understanding on the amount of fair compensation.

   At the same time - when recognising the necessity of adoption of the Impugned Law - M.Segliņš stresses that "the State experiences the right of becoming a little bit more aggressive" […], "the State lacks the above

power and lacks the possibility of taking more aggressive decisions on significant issues", e.g., when solving legal problems connected with the construction of new roads, important for the State.

When giving an answer to the question, voiced by the Constitutional Court, namely, why the Impugned Law, just like Regulations No. 17 did not envisage the possibility of discharging the former owners from the payment of court expenses, M.Segliņš pointed out that this issue had not been discussed at the Committee meeting. However, he considers that it should be considered in future. He holds that the regulation of the Civil Procedure Law shall be amended to ensure that matters on determination of fair compensation are adjudicated sooner.

9. The invited person – the Minister of Finances, the Head of the Supervisory Board for the Implementation of the Project of the National Library (hereinafter - the Supervisory Board) Oskars Spurdziņš expressed the viewpoint that by taking into consideration the assessment of the real property envisaged for alienation by the Ministry of Culture, it was fair to offer compensation, which corresponded to the market value of the real estate market.

At the Court session he pointed out that at the June 16, 2004 meeting of the Supervisory Board it had passed a decision to make the control assessment of the real estates, connected with the implementation of the LNL project. At the above meeting the Ministry of Culture had been assigned with the task of confirming the lowest price for negotiations about alienation of the real estate.

In its turn it has been decided at the February 23, 2005 meeting of the Supervisory Board that the amount of the fair compensation to be offered to the former owners of the real estates shall be calculated as the average arithmetic value of all the assessments of the real estates at the disposal of the Ministry of Culture. At the above meeting the concrete amounts of compensation have been formulated and the Ministry of Culture was allowed to change the compensation sums within the range of 10 percent.

However, at April 20, 2005 meeting the Supervisory Board decided to allow the Ministry of Culture to offer a differentiated compensation for concrete real estates, for some of them even increasing the initially offered amount of compensation.

In its turn at its April 27, 2005 meeting the Supervisory Board decided to allow the Ministry of Culture to address the court against the persons, with whom no agreement was reached about the amount of the

compensation; it was also decided to continue talks with several former owners on the determination of the compensation.

O.Spurdziņš points out that the Supervisory Board does not implement the project but only supervises the process. Therefore, the Supervisory Board cannot be the institution, which co-ordinates viewpoints. Besides, the Cabinet of Ministers has not delegated the above task to the Supervisory Board. It only accepts several principles, offered to it; and on their basis the Ministry of Culture is given the right to act within the framework of a concrete project. He reminded that the Ministry of Culture had offered methods for determination of a fair amount of compensation and the Supervisory Board had accepted it. O.Spurdziņš stressed that the Supervisory Board had only supervised, supported and accepted the activities of the Ministry of Culture.

10.The witness – the State Secretary of the Ministry of Culture Daniels Pavļuts explained that in compliance with the Law on Implementation of the Latvian National Library Project the Ministry of Culture was the customer of the project. He - the administrative head of the Ministry - has participated in the realisation of the above project. One of the legitimate objectives of the Impugned Law has been implementation of the LNL project; however, to his mind, it cannot be considered as the only legitimate aim of the Impugned Law.

He points out that it should be taken into consideration that LNL project was commenced already in 1968 and for realisation of it a concrete place had been envisaged in the then city of Riga General Plan. In its turn the Ministry of Culture, when assessing the legal situation has concluded that many legal acts are mutually inconsistent. There was a really significant collision between the norms of the Construction Law and those of 1992 Expropriation Law. Namely, the Construction Law does allow realisation of the construction project if the consumer does not own the real estate envisaged for construction. Thus there has been a necessity to avert the existing inconsistency with the Construction Law in the Impugned Law; otherwise realisation of the LNL project would have been delayed.

During the elaboration of the Impugned Law there have been discussions with the representatives of other Ministries, who have also indicated that 1992 Expropriation Law does not allow realisation of significant for the State interests in a clear period of time. For example, in 2005 was commenced absorption of the EU Structural Funds and financing of these Funds are often channelled to significant for the State improvements of infrastructure; when it is necessary to take a decision on expropriation of real estate. The new situation quite differently defines the balance between the interests of private owners and public interests; therefore the Ministry of Culture elaborated the above amendments.

A competent non-governmental organisation – the Association of Latvia Property Assessment – advised how to determine the amount of fair compensation. The Ministry of Culture cannot undertake responsibility on the differences of different assessments of real estates, as independent persons, assessing real estate have worked out the assessments and the particular assessment of real estates is the issue of their ethics.

The concluding part

11. Taking into consideration the fact that as concerns this matter the Constitutional Court is requested to declare as null and void two normative acts, first of all conformity of Regulations No.17 with the Satversme and then conformity of the Impugned Law with the Satversme shall be assessed.

The Cabinet of Ministers passed the above Regulations under Article 81 of the Satversme. Observation of the procedure of passing a legal norm is the precondition of the validity of the legal norm. Therefore it shall be first of all assessed whether the above procedures have been observed (*sk. Satversmes tiesas 2005. gada 21. novembra sprieduma lietā No. 2005-03-0306 10. punkta 4. apakšpunktu; see the Constitutional Court November 21, 2005 Judgment in matter No. 2005-03-0306; Item10, Sub-item 4).* Namely, it is necessary to assess whether the Cabinet of Ministers was authorised to pass Regulations No. 17 under Article 81 of the Satversme; as well as whether the procedure of passing such Regulations has been observed.

12. The principle of the separation of power, incorporated in Article 1 of the Satversme, and Article 64 of the Satversme, determine that the right to legislate, namely, the right to regulate some issue by law, belongs to the Saeima and the people (*sk.Satversmes tiesas 2005. gada 21. novembra sprieduma lietā No. 2005-03-0306 6.punktu; see the Constitutional Court November 21, 2005 Judgment in matter No. 2005-03-0306; Item 6).* The right to legislate shall be implemented by taking into consideration the principle of separation of power, which expresses itself in division of the State power into legislative, executive and judicial power and which is implemented by autonomous State institutions.

The Satversme, when authorizing the Saeima and the citizens of Latvia with the right to legislate, permits also an exception of the above principle. Namely, Article 81 of the Satversme endows the executive power – the Cabinet of Ministers – with an extraordinary right to issue regulations, which have the force of law, inter alia also amending of the valid laws. However, the above right, granted to the Cabinet of Ministers is an exception as concerns the division of the legislative power, determined in Article 64 of the Satversme; and the above right shall be interpreted and made use of to the maximum narrowly.

In the practice of Constitutional Courts it has been recognised that the delegation of legislative rights shall be legitimate, namely, it shall be based on the provisions of the Constitution of the respective State. If the Constitution allows such a delegation, it usually determines also the restrictions to use of the above right (*sk. Lietuvas Republikas Konstitucionālās tiesas 1995. gada 26. oktobra sprieduma lietā No. 16/98 konstatējošās daļas 1. punktu; see the Republic of Lithuania Constitutional Court October 26, 1995 Judgment in case No.16/98; Item 1 of the establishing part).*

The objective of Article 81 of the Satversme is not to create an independent institution, which realises the legislative right side by side with the subjects, determined in Article 64 of the Satversme, but to determine a substitute of the legislator, which is able to operatively and efficiently react in extraordinary situations. It will ensure adoption of necessary decisions in a legislative way also under conditions, when the possibilities of the Saeima and citizens of Latvia to implement the legislative right are prevented or essentially burdened. On the one hand the above competence, granted to the Cabinet of Ministers, allows the executive power to implement its functions under extraordinary circumstances, however, on the other hand there exists a serious risk of unsettling the balance of powers for the sake of the executive power.

Already on November 9, 1921 at the meeting of the Constitutional Assembly, the member of the Commission for the elaboration of the Satversme Arveds Bergs stressed that the main task of such legislative rights of the government during the post-war period would be to elaborate laws, which " in any case would be more suited to our life than the laws of Russia" (*sk. Latvijas Republikas Satversmes sapulces stenogrammas 20. burtnīca, 1869.lpp; see the Verbatim Reports of the Republic of Latvia Constitutional Assembly meetings.// Riga, 1921, part 20, p. 1869).* Marģers Skujiņš – the Head of the Commission for Elaboration of the Satversme – when speaking about the necessity of Article 81 of the Satversme also stressed that " our State is new and it needs "accelerated" legislature. Everybody understands quite clearly that a team of 10 members is able to work more quickly than the Assembly, consisting of 100 people (*sk. Latvijas Republikas Satversmes sapulces stenogrammas 20. burtnīcas 1874.lpp.; see the Verbatim Reports of the Republic of Latvia Constitutional Assembly meetings.// Riga, 1921, part 20, p. 1874).* Thus the Cabinet of Ministers, which passes Regulations under Article 81 of the Satversme, shall be regarded only as a substitute of the legislator (the Saeima and the aggregate of the Latvian citizens) and receives the above right only under specific circumstances.

13. The Constitutional Court has recognised that " competence to pass a particular legal norm is the precondition for the particular act to be lawful

and applicable " *[Satversmes tiesas 1999. gada 9.jūlija sprieduma lietā No. 04-03 (99) secinājumu dalās 3. punkts; the Constitutional Court July 9, 1999 Judgment in case No.04-03(99); Item 3 of the concluding part]*. When assessing the conformity of Regulations No.17 with Articles 1 and 105 of the Satversme one shall take into consideration that the Basic Law of the State – the Satversme - is a cohesive whole and the legal norms, incorporated into it, are mutually closely connected. To establish the contents of the above norms more completely and more impartially, the norms shall be interpreted as read together with other norms of the Satversme (*sk. Satversmes tiesas 202. gada 22. oktobra sprieduma lietā No. 2002-04-03 secinājumu daļas 2. punktu; see the Constitutional Court October 22, 2002 Judgment in case No.2002-04-03; Item 2 of the concluding part).*

Satversme as a cohesive whole determines also several restrictions to the Cabinet of Ministers, which shall be observed when passing Regulations with a force of the law under Article 81 of the Satversme.

13.1. One of such restrictions is the definite period of time, when the Cabinet of Ministers is authorised to pass Regulations under Article 81 of the Satversme. Namely, they shall be passed only during the time between the sessions of the Saeima. Besides, the above Regulations shall cease to be in force unless submitted to the Saeima not later than three days after the next session of the Saeima has been convened.

13.2. The **range of issues,** which the Cabinet of Ministers is not allowed to take the decision on, is also one of the restrictions of competence. Such Regulations may not amend the law regarding elections of the Saeima, laws governing the court system and court proceedings, the Budget and rights pertaining to the Budget, as well as laws adopted during the term of the current Saeima and they may not pertain to amnesty, state taxes, customs duties, and loans.

Besides Article 81 of the Satversme does not mention all the issues, which the Cabinet of Ministers is not authorised to take the decisions on; as the Satversme restricts the legislative right of the Cabinet of Ministers in several cases. For example, Article 67 of the Satversme establishes only the right of the Saeima to determine the size of the armed forces of the State during peacetime. Article 68 authorises only the Saeima to take the decision on all international agreements, which settle matters that may be decided by the legislative process. Also those laws, the adoption of which the Saeima and the people have been authorised by he Satversme, shall not be amended under Article 81 of the Satversme. For example only the legislator has been authorised to take the decision, set out in a specific law, on the extent of and procedures for the President to grant clemency to criminals (Article 45 of the Satversme), " to provide for by a specific law" – about the competence

of the State Control (Article 88 of the Satversme) and ”also on the basis of a specific law – determine expropriation of property for public purposes” (Article 105 of the Satversme).

13.3. The Cabinet of Ministers is authorised to issue Regulations under Article 81 of the Saeima only if an **immediate need** demands it.

14. If one of the restrictions has been violated, the Cabinet of Ministers Regulations shall be regarded as anti-constitutional and null and void [*sk. Satversmes tiesas 1997. gada 7.maija spriedumu lietā No. 04-01(97) 1. punktu; see the Constitutional Court May 7, 1997 Judgment in case No. 04-01(97); Item 1]*. It should be taken into consideration that the restrictions of competence, mentioned in Item 13, Sub-items 2 and 3, are equally significant and violation of them leads to invalidity of the above Regulations from the moment of their issuance. ” If they (the Cabinet of Ministers Regulations, passed under Article 81 of the Satversme) are issued without the immediate need or by violating the above material restrictions (which can be established by the Saeima just after the Cabinet of Ministers Regulations have been submitted to it), then they - as anti-constitutional shall be regarded as non-existent from the moment of their issuance” *(Dišlers K. Latvijas valsts varas orgāni un viņu funkcijas. Rīga, Tieslietu Ministrijas Vēstneša izdevums; Dišlers K. Institutions of State Power and their Functions. Riga, Vēstnesis of the Ministry of Justice,// 1925, p.120).*

15. To state whether Regulations No. 17 are legitimate, it is necessary to establish whether the Cabinet of Ministers has acted within the framework of its competence, namely, if it has observed all the restrictions of the right, envisaged in Article 81 of the Satversme.

It shall be taken into consideration that Regulations No.17 was issued on January 11, 2005. The Saeima Fall session was closed on December 22; the Saeima came together to its next session on January 14, 2005 and on the same day the above Regulations were submitted to the Saeima. There is no doubt about the fact that the procedure of issuing Regulations No.17 complies with the criterion, mentioned in Item 13, Sub-item 1; namely – the Cabinet of Ministers has issued Regulations No.17 during the time between sessions of the Saeima and they have been submitted to the Saeima not later than three days after the next session of the Saeima has been convened.

When assessing the compliance of the legal norms, included in Regulations No.17 with the criterion, mentioned in Item 13, Sub-item 2 of this matter, it is necessary to establish whether the subject of Regulations does not refer to a sector, which – in conformity with Article 81 of the Satversme - is excluded from the competence of the Cabinet of Ministers. It has to be taken into consideration that ” **such Regulations may not amend laws governing the court system and court proceedings”.**

In several conclusions of the Legal Affairs Department of the State Chancellery (*sk., piemēram,lietas 2. sēj. 174. un 175. lpp., 178.lpp. un 188.lpp.; see e.g. Vol.II, pp. 174, 175, 178 and 188 of the matter)* the viewpoint has been expressed that Regulations No. 17 include norms, which regulate the procedure under which disputes on determination of the amount of fair compensation shall be reviewed in a court; as well as the procedure under which the institutions or the former owners shall be exempt from paying court expenses. The Regulations also determine the duty of the court to invite experts for the assessment of the alienated real estate as well as to invite persons, whom the court has the duty to invite. Regulations No.17 also determines the procedure under which the court decision on transferring in the possession thereof is taken. Thus, the Regulations amend the procedure, determined in 1992 Alienation Law, regarding review by the court in case if no agreement on the amount of compensation has been reached.

Thus the Cabinet of Ministers, when issuing Regulations No.17 has incorporated in them norms, regulating several civil procedural issues. "The law, which determines the procedure of litigation (*ordo judicii)* is almost the only source of these procedural rights. Article 81 of the Republic of Latvia Satversme, when authorising the Cabinet of Ministers with the right of issuing Regulations with the force of law during the time between the sessions of the Saeima and if an immediate need demands it, at the same time categorically forbids issuing or amending the laws of the court procedure" (*Bukovskis V. Civilprocesas mācības grāmata. Rīga. Autora izdevums; Bukovskis. Civil Procedure Textbook. Riga. Edition of the author, // 1933,pp. 111-112).*

16. Even though the Cabinet of Ministers has not directly amended the Civil Procedure Law, however, it is necessary to take into consideration the fact that all the norms of civil procedure are not summarised only in the Civil Procedure Law. The civil procedural regulation includes all the valid civil procedural norms, regardless of the legal source, in which they can be found. In its turn the Civil Procedure Law incorporates the greatest part of civil procedural norms, however, not all these norms.

The Constitutional Court has already recognised, that, for example, also the Administrative Procedure Law is not complete and it does not include all the legal norms, regulating the administrative process in a court (*see the Constitutional Court January 4, 2005 Judgment in matter No. 2005-16-01; Item 14).* Thus it can be concluded that " the laws governing the court system and court proceedings", mentioned in Article 81 of the Satversme shall not be understood in a narrow, grammatical way, like, for example, the Criminal Procedure Law, the Civil Procedure Law or the Administrative Procedure Law. By " the laws governing the court system and court proceedings" shall be understood all the norms, which determine the procedure of particular proceedings or which may serve as the basis for the activities of the subjects of

legal relations, when they implement their procedural rights or carry out procedural duties. For example, separate procedural norms are included both in Civil Law and Labour Law, as well as in the Prosecutors' Law and the Republic of Latvia Law "On the Advokatūra" (*sk.: Civilprocesa likuma komentāri. Papildinātais izdevums. Prof. Torgāna un M.Dudeļas vispārīgā zinātniskā redakcijā; see The Comment on the Civil Procedure Law. Supplemented edition under the general scientific editorship of Professor K.Torgāns and M.Dudelis.// Riga, 2001, p.11).*

Thus it can be concluded that contrary to Article 81 of the Satversme, Regulations No.17 amend "the laws governing the court system and court proceedings".

17. When assessing the conformity of Regulations No.17 with "the immediate need", the Constitutional Court does not agree with the viewpoint, expressed at the Court session, by the representative of the Cabinet of Ministers, who stated that the Constitutional Court is not competent to verify the compliance of Regulations No.17 with the above criterion, as to his mind only the Cabinet of Ministers itself is able to politically assess the "immediate need".

First of all it is necessary to take into consideration that it is possible to assess to a certain extent the contents of the Satversme norms also from the legal viewpoint. There is no doubt about the fact that the law and politics in the basic law are closely connected notions, because in a law-governed state politics may not be free from law and the legislative power and the executive power are also connected with the provisions of the Satversme. In a law-governed state the main duty of the Satversme is to ensure that the state power authorised to democratically created institutions becomes mandatory only then, when a law expresses it. Thus the Satversme protects the rights of persons, because it ensures both – the fact that the requirement for the legality of the actions to be carried out is mandatory to all the sectors of the state power and that the state power shall not be misused.

Secondly, it has to be taken into consideration that the Satversme is a short, laconic but at the same time a complicated document. Namely, no norm of the Satversme or its part may be regarded as excessive, because such an understanding shall destroy the inner logical structure of the Satversme. The Head of the Commission for Elaboration of the Satversme Marģers Skujenieks, when speaking about the draft of the Republic of Latvia Satversme in its first reading stressed: " […] any abstract definition and any extended meaningless formula may create misunderstanding. It may be regarded as incomplete, one may object to separate theses. To avoid such misunderstanding, to avoid listening to objections, the Satversme Commission agreed that in separate Articles of the Satversme certain thoughts should be expressed in a definite and certain way […]. The matter-of-fact way of expression to my mind is the positive trait of this project" (*sk. Latvijas Republikas Satversmes sapulces*

stenogrammas, 14. burtnīca, 1309.lpp.; see the Verbatim Report of the Republic of Latvia Constitutional Assembly.// Riga, 1921, part 14, p.1309). Article 81 of the Satversme uses the wording " if there is an immediate need", thus the Constitutional Assembly has attributed a certain meaning to the wording, which shall be taken into consideration when assessing whether the Cabinet of Ministers has been authorised to issue Regulations with the force of law.

Thereby the Constitutional Court is authorised to take the decision whether – when issuing Regulations No.17 – the precondition- "if an immediate need requires it", included in Article 81 of the Satversme, has been observed.

18. In the materials in case there are several diverse annotations on the necessity of issuing Regulations No. 17. It can be seen that within the period of nine days the grounds for immediate need have repeatedly been changed. Several reasons for it are expressed. For example, in December 29, 2004 Annotation (*sk. lietas 2. sēj. 160.-164.lpp.; see Vol.II, pp.160-164 of the matter)* the length of proceedings and the possibility of delaying the construction project as well as the fact that the law does not determine the procedure under which the responsible institution takes over the alienated real estate are mentioned as the main reasons. In its turn in January 6, 2005 Annotation (*sk. lietas 2. sēj. 190.-195.lpp.; see Vol.II, pp. 190-195 of the matter)* speculative interests of several individuals, rational use of the budget, obscurity of the legal regulation in effect, which determines forced expropriation for the state or public needs; as well as the issues, which are not regulated by the law, thus do not allow implementation of the third Part of Section 1 of the Latvian National Library Project Implementation Law and scarce use of the Law in effect are mentioned. It is indicated in the annotation that the law in effect does not determine the moment from which the former owners and their family members lose their right to use the real estate. Later, when specifying the issue on real reasons of issuance of Regulations No. 17, the Cabinet of Ministers explained that " the final reasons of the immediate need" have been pointed out in January 6, 2005 Annotation (*sk. lietas 3. sēj. 204.lpp.; see Vol.III, p. 204 of the matter)* and they served as the grounds for issuing Regulations No. 17.

19. When assessing whether to consider the circumstances under which Regulations No.17 were passed as " an immediate need", the Constitutional Court first of all takes into account Item 3 of the Cabinet of Ministers July 27, 1995 Decree No.416 (*see Latvijas Vēstnesis, August 2, 1995; No. 114)*. The above Item delegates the Ministry of Culture together with the State Property Foundation and the Riga Dome to carry out the necessary activities for takeover of the land plot needed for the construction of the LNL (blocks between Kuģu, Mūkusalas, Akmeņu and Valguma streets and the Uzvaras boulevard) in the State ownership. Even though a concrete place for building of

the LNL has been determined already many years before the issuance of the Impugned Law, even now the process of land use planning for the particular territory has not been commenced. Just the land use plan shall be regarded as one of the main instruments, which ensures that - as concerns the use of the particular territory in public and state interests, they are co-ordinated under a certain procedure with the interests of the concrete owner of the real estate, also with the interests of the submitters of the claim.

More than 9 years before the issuance of Regulations No.17, the Ministry of Culture and several other State institutions were delegated to ensure takeover in the State ownership of the properties needed for the construction of LNL. However – as the documents in the matter testify –quite to the contrary to the land plot, on which the construction of the LNL was envisaged, property rights were renewed but the apartment houses at No.2 Uzvaras boulevard and at No. 8/10 Kuģu street were passed for privatisation.

Even though Section 4 (the second Part) of the Latvian National Library Project Implementation Law, passed on June 13, 2002 and Section 4 (the second Part) of the same Law, adopted on May 8, 2003 envisaged that the expropriation of the land plot, needed for the constructions of the LNL as well as the expropriation of the buildings on it shall be carried out under the procedure, established in the Law ”On Coercive Expropriation of Real Estate for State and Public Needs (i.e. in 1992 Expropriation Law); before the issuance of Regulations No. 17 the possibility of amending the procedure of coercive expropriation was not discussed. The above procedure, when issuing Regulations No. 17 was amended only after the submitters of the claim by exchanging letters with the Ministry of Culture had announced that they were not satisfied with the amount of the price for the property to be expropriated.

20. Taking the above circumstances into consideration, it can be concluded that immediate need had not required issuing of Regulations No.17; the Cabinet of Ministers had not observed the restrictions to competence, determined in Article 81 of the Satversme and had acted *ultra vires,* i.e. by violating the limits of their competence.

As unconformity of Regulations No. 17 with Article 81 of the Satversme, has been established, there is no need to additionally assess its compliance with Articles 1 and 105 of the Satversme.

21. Article 105 of the Satversme determines:

” 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.”

This Article on the one hand envisages the duty of the State to promote and support property rights, namely, to issue such laws, which would ensure the protection of these rights; however, on the other hand the State experiences the right to a certain extent and under a certain procedure to interfere in the use of property rights.

21.1. When assessing conformity of the Impugned Law with Article 105 of the Satversme one has first of all to take into consideration, that the above Satversme Article shall not be analysed separately, without analysing Article 1 of the Satversme. The Satversme is a cohesive whole and the legal norms, incorporated in it, are mutually closely connected. To completely and more impartially understand the contents of the above norms, they shall be interpreted as read together with other norms of the Satversme (*sk. šā sprieduma 13. punktu; see Item 13 of this Judgment).*

21.2. In accordance with Article 89 of the Satversme " The State shall recognise and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding upon Latvia". From this Article follows that the aim of the legislator has been to achieve mutual harmony of the norms included in the Satversme and the international human rights norms (*sk. , piemēram, Satversmes tiesas 2003. gada 27. jūnija sprieduma lietā no. 2003-04-01 secinājumu daļas 1. punktu un 2005. gada 17. janvāra spriedumu lietā No. 2004-10-01 7. punkta 1. apakšpunktu; see, for example, the Constitutional Court June 27, 2003 Judgment in cases No. 2003-04-01; Item 1 of the concluding part and January 17, 2005 Judgment in case No. 2004-10-01;Item 7, Sub-item1).* When interpreting the Satversme and international agreements binding on Latvia, one shall look for the solution, which ensures harmony, but not confrontation (*sk. Satversmes tiesas 2005. gada 13. maija sprieduma lietā No. 2004-18-0106 5. punktu; see the Constitutional Court May 13, 2005 Judgment in matter No. 2004-18-0106; Item 5).*

21.3. The First Protocol, Article 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – EHRC) establishes:

" Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his/her possessions, except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The above provisions shall in no way limit the state to pass such laws, which it regards as necessary for controlling the use of the property in accordance with general interests or to ensure receiving tax or other payments or fines".

When interpreting the above Article, the European Court of Human Rights (henceforth – ECHR) has concluded that it incorporates three different provisions:

first of all, the first sentence of the Article envisages the right to enjoy the property rights in serenity;

secondly, the second sentence of the Article prohibits arbitrary expropriation of the property and envisages provisions for it, and

thirdly, the second part of the Article recognises that the state experiences the right of controlling use of the property in accordance with general interests [*see, for example: Sporrong and Lönroth v. Sweden, Judgment of 23 September 1982, Series A No.52, p.24, para.61; Iatridis v. Greece (GC), No. 31107/96, para.55, ECHR 1999-II; Beyeler v. Italy (GC), No. 33202/96, para. 100, ECHR 2000-I]*.

The Constitutional Court has recognised that the contents of Article 105 of the Satversme is similar to the contents of Protocol 1, Article 1 of EHRC (*sk. Satversmes tiesas 2002. gada 20. maija sprieduma lietā No. 2002-01-03 secinājumu daļu; see the Constitutional Court May 20, 2002 Judgment in case No. 2002-01-03; the concluding part).*

21.4. The specific significance of property rights has also been recognised by the European Court of Justice of the first instance, which – in its practice - has attributed to prohibition of arbitrary expropriation of property rights the status of *ius cogens* norm; holding, that arbitrary expropriation of property rights is at variance with the *ius cogens* norms (*see: T- 306/01 Ahmed Ali Yusuf and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities [2005]*. http://europa.eu.int.eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:62001A0306:EN:HTML, *para.293).*

22. Just like the First Protocol, Article 1 of the EHRC, Article 105 of the Satversme not only envisages the right of the State to regulate and control the use of the property, but also in certain cases to expropriate the property rights *de jure*. However, such expropriation of property may not be arbitrary. The fourth sentence of Article 105 of the Satversme includes at least three provisions, existence of which justifies expropriation of property: 1) coercive expropriation of property may be allowed only for public purposes; 2) it may be permissible only on the basis of a specific law; 3) property is expropriated in return for fair compensation.

22.1. The legislator has not *expressis verbis* specified the notion ”state or public interests or given at least a general explanation of it either in 1923 Law ”On Coercive Expropriation of Real Estate for State or Public

Needs" and 1992 Expropriation Law or in the Impugned Law. Taking into consideration the fact that the historical circumstances of creation of any legal norm are specific, it is necessary to establish the will of the legislator, namely to establish what content it has wanted to include in the notion "state or public needs".

It can be mainly seen from the Verbatim Reports of 1923 Saeima sessions that the deputies have expressed concern about the possibility that after passing of the Law the contents of the above notion may be understood too extensively. It would inevitably lead to ungrounded violation of the property rights. The deputy Egons Knops has pointed out: " The provision that real estates may be expropriated for state or public needs because of its vagueness may lead to foul use of the Law. The notion "public" may be attributed to general needs as well as to the needs of separate organisations and societies." However, the above deputy also remarked: "If disputes between the private property rights and immediate interests of the state arise, then the private ones shall retreat before the state interests" (*sk. Saeimas II sesijas 6. sēdes 1923. gada 27. aprīlī stenogrammu, 218.lpp.; see the Verbatim Report of the Saeima April 27, 1923 II session sixth meeting).*

In 1992 at the session of the Supreme Council, when reviewing the draft Law "On Coercive Expropriation of Real Estate for State or Public Needs", the deputies had diverse viewpoints on the meaning of the notion "state or public needs". For example the deputy Pēteris Laķis stressed that it was necessary to give an explanation to the above notion: "If we do not try to explain the above notion, then the empirical list will be […] useless. […] If it has not been explained what public significance means, then – in principle – we cannot compile any list " (*sk. Augstākās padomes 1992. gada 19. augusta sēdes stenogrammu. 18.lpp.; lietas 4.sēj. 90.lpp.;see the Verbatim Report of the Supreme Council August 19, 1992 session; p. 20; Vol.4 of the matter, p. 92).*

In his turn the deputy Leonīds Alksnis had a different viewpoint on the issue of the necessity to explain the notion "state or public needs", stressing that "[…] one cannot envisage all the possible cases in a law. […] There should definitely be the object group, which we use to call "public objects". Thus, for example, we shall have to build the State object – the State Library. Let us suppose that we shall have to expropriate 10 land plots. One of the owners […] does not agree to expropriation of his/her property. Of course we shall have to issue a law on coercive expropriation" (*sk. Augstākās padomes 1992. gada 19. augusta sēdes stenogrammu, 18. lpp.; lietas 4. sēj. 90. lpp.; see the Verbatim Report of the Supreme Council August 19, 1992 session, p.18; Vol. 4 of the matter, p.90).*

In his turn the deputy Andris Grūtups, when discussing the wording of 1992 Expropriation Law (the second Part of Section 3), has pointed out ”Doubtless, we cannot give a thorough enumeration of all the objects, but we can try to do it, so as to turn the thought of the legislator to homogeneous interpretation. Otherwise, if it is a very general formulation (I know it from practice), then interpretation will be extended, allowing application of the law to God knows what” (*sk. augstākās padomes 1992. gada 19. augusta sēdes stenogrammu, 17.lpp.; lietas 4. sēj. 89. lpp.; see the Verbatim Report of the Supreme Council August 19, 1992 session, p.17; Vol.4. of the matter, p.89).*

It can be seen that – as the result of the above discussions - the Supreme Council has chosen a certain golden mean, i.e., in Section 3 (the second part) of the 1992 Expropriation Law it has just determined what shall be regarded as ” a public need” if the respective local authority proposes expropriation of a real estate. Namely, specific administrative areas needed for cultural, educational, sports, health care or social provision needs of the residents, as well as for the development of public transport, environmental protection or for the construction of civil engineering objects. In its turn no extended interpretation of the ”state needs” has been given in the law.

ECHR in its practice, when assessing the contents of the notion ” in public interests”, incorporated in EHRC Protocol 1, Article 1 of the first Part has concluded that the state has an extensive freedom of action to determine what shall be recognised as public interests. Just the state itself knows best of all what are its public needs and therefore it has the right to express the initial assessment of the notion ” in the public interests” (*see James and Others v. the United Kingdom, Judgment of 21 February, 1986. Series A No. 98, p.32, para.46).* Interpretation of the notion ” in public interests” will always be extensive enough. When considering the problem on issuance of a particular expropriation law, political, economical as well as social issues shall always be touched. It is self-evident that in such a case the freedom of action of the legislator is really extensive and the interpretation of the notion ” in public interests”, expressed by it will be correct, provided it does not evidently lack a reasonable substantiation (*see: Pressos Compania Naviera S.A. and Others v. Belgium, Judgment of 20 November 1995, Series A No.332, p.23, para.37).*

Article 105 of the Satversme also endows the legislator with extensive freedom of action in determining what the immediate needs, which shall be met to reach specific public aims, are. The understanding of the notion ”state needs”, used in 1992 Expropriation Law and adopted in the Impugned Law is similar to the understanding, which was used when explaining the contents, included in the notion ”public needs”, as it

would not be admissible to contrast public interests with those of the state. However, one has to take into consideration that enumeration of public needs in the law has been attributed only to local governments. Thus also other needs, which in the above enumeration of public needs have not been directly mentioned, may be recognised as the needs of the whole state (state needs).

Thus the Impugned Law complies with the provision on public needs, included in the fourth sentence of Article 105 of the Satversme.

22.2. The fourth sentence of Article 105 of the Satversme determines that coercive expropriation of property shall be allowed only in exceptional cases on the basis of a specific law.

Expropriation of a property not only in accordance with the law but also ” on the basis of a specific law” is to a certain extent the peculiarity of the Republic of Latvia Satversme. The greatest number of Constitutions of European states envisages that expropriation shall take place on the basis of a law or under the procedure established by law.

Provision of Article 105 of the Satversme about expropriation of property on the basis of a specific law serves as the aim of protecting fundamental rights of a person from the potential arbitrariness of the institutions of the State administration. The word ”specific” in this case shall not be interpreted formally – grammatically, but on its essence. When passing such a ”specific” law, the legislator shall pay special attention to all the circumstances of the case; establish whether expropriation of the property really takes place in exceptional cases and in the State or public interests; as well as to make certain that expropriation is in return for fair compensation.

1992 Expropriation Law established that the specific law on the expropriation of property is passed if the State or the local authority cannot get the property by concluding an agreement with the owner. This provision is included also in the Impugned Law.

Thus the Impugned Law complies with the provision on expropriation of property only in exceptional cases and on the basis of a specific law, which is incorporated in Article 105 (the fourth sentence) of the Satversme.

22.3. In cases of coercive expropriation the institute of fair compensation shall create a fair balance between the public interests on the one hand and the necessity of protecting the rights of an owner, guaranteed in the Satversme on the other hand. In this case the amount of the

reimbursement (compensation) is an important proportionality criterion (*see: Papachelas v. Greece [GC], No. 31423/96, para. 48, ECHR 1999 – II).* As the ECHR has recognised, the state experiences an extensive freedom of action in determining how the fair balance shall be reached in concrete circumstances and by taking into consideration the aim of expropriation and the interests of an individual, including also the amount of the fair compensation (*see: Pressos Compania Naviera SA and Others v. Belgium, November 20, 1995, Series A, No.332, para 37, EHRR 301).*

One may agree to the viewpoint of both – the representative of the Cabinet of Ministers and the Saeima, expressed at the Court session that the term ”fair compensation”, used in Article 105 of the Satversme shall not always be understood as the market price of the real estate to be expropriated. Validity of this conclusion is confirmed also by the ECHR practice, which recognises that when expropriating property under the procedure established by EHRC First Protocol (the first part of Article 1), the compensation shall be **reasonably connected** with the market price of the property, however these norms do not guarantee full compensation in all the cases (*see: for example, James and Others v. the United Kingdom, Judgment of 21 February 1986, Series A. No. 98, para.54; Lithgow and Others v. the United Kingdom, Judgment of 8 July 1986, Series A No. 102, p.50, para. 121; Papachelas v. Greece [GC], No. 31423/96, para. 48, ECHR 1999-II).*

Thus it can be concluded that there are cases, when the state, expropriating a property, belonging to a person with an aim of reaching greater social justice, does not have the duty to pay the market price, for example, during the process of property reform.

Real protection of the property of a person is not guaranteed only by a fair compensation (its amount), but also by the process of coercive expropriation itself. ECHR has recognised that the state is not able to take its decision without hearing out the viewpoint of the other party or by not letting it to express its opinion on the price offered. The provisions for property expropriation shall be easily accessible, provided for and exact (*see, for example: Lithgow and Others v. the United Kingdom, Judgment of 8 July 1986, Series A No.102, p.47, para. 110; Hentrich v. France, Judgment of 22 September 1994, Series A No. 296-A, pp. 19-20, para. 42).*

Thus the fourth sentence of Article 105 of the Satversme charges the State with the duty of creating a fair balance (proportionality) between the public interests and those of the particular owner with the help of fair compensation, determined by a clear and prospective process.

23. To establish whether the procedure of coercive expropriation of real estate, envisaged in the Impugned Law ensures a fair balance between the public interests and the necessity to protect the fundamental rights of the owner, the Constitutional Court has to find answers to the following questions:

1) Whether the Senate practice of 20-30-ties of the past century shall be used when interpreting legal norms, which determine coercive expropriation of property, namely, when taking the decision on the moment from which the owner loses his/her property rights, as well as on the moment, when he/she shall be paid fair compensation?
2) Whether the procedure of coercive expropriation, determined in the Impugned Law differs from the provisions of the 1992 Expropriation Law, and - if it differs – whether the above difference essentially influences the legal status of the submitters of the claim?
3) Whether the criteria for determination of "fair compensation" and the fixed terms of payment, incorporated in the Impugned Law are provided for and clear enough?

23.1. Incorrect is the viewpoint of the Saeima that – when interpreting legal norms, which determine the procedure for expropriation of real estate for state or public needs - the Senate practice of 20- 30-ties of the 20th century shall be taken into consideration.

First of all in such cases – as has been already mentioned – one has to be guided by Article 105 of the Satversme, which at the present moment includes property rights in the constitutional rank.

Secondly, both in the Saeima written reply and the above Senate April 10, 1934 Judgment, referred to by the Saeima representative at the Court session [*sk.: Latvijas Senāta spriedumi (1918-1940) 4. sēj. Faksimilizdevums, 1545.-1546.lpp; see: Judgments by the Senate of Latvia (1918-1940), Vol.4. Facsimile edition.// Riga, 1997,pp. 1545-1546)* the idea – if Article 9 of the March 22, 1928 Urban Lands Law is taken into consideration (*see Valdības Vēstnesis, March 22, 1928, No. 67)* – is to turn to such an archaic and – looking from an up-to-date viewpoint- out-of-date legal institute as the provisions and procedure for coercive expropriation of the right to estate family lease.

Article 9 of the above Law determined:

" […] if within the administrative borders of a city the lessee has built or obtained the buildings on the land rented for building by the city municipality or a private person – both legal and physical entities- transfer of which within the property of the lessor was not envisaged in the lease agreement and if the object of the lease is still in the use of the

lessee or his/her successor, then within the period of one year from the day of this Law taking effect the lessee or his/her successor has the right of addressing the Ministry of Agriculture with the proposal to obtain the rented land plot on the same rights, which the lessor experiences. The Ministry of Agriculture on the basis of 1923 Law (Collection of Laws 59) expropriates the land for the state and immediately sells it to the submitter of the proposal on the grounds of the same provisions, on which the land plot has been obtained".

To avoid existence of a divided real property, namely, the situation when the land plot belongs to one person, but the buildings and structures on it to another person, by Article 2 (Item 1) of the June 11, 1931 Law on Expropriation of Immovable Property in the cities of Jēkabpils, Kārsava, Liepāja, Ludza, Madona, Rēzekne, Salacgrīva, Valka, Viesīte and Riga (*see Valdības Vēstnesis, June 11, 1931, No. 127)* and on the basis of Article 9 of the Urban Lands Law the right to estate family rent was alienated also to the person, mentioned in the Senate Judgment (Anna – Margarete Bērens – Rautenfelds, born Karlile). In its turn the Senate in its Judgment has recognised that when applying provisions of the "above" Law to a particular case, the former rights of the lessor to the immovable property end as of the day of the Expropriation Law taking effect; i.e. with June 11, 1931 and were transferred into the ownership of the Ministry of Agriculture. Besides, "on the very moment the right of the former lessor to compensation has been created".

Thirdly, 1992 Expropriation Law essentially differs from 1923 Law "On Coercive Expropriation of Real Estate for State or Public Needs". Neither the initial wording of 1923 Law "On Coercive Expropriation of Real Estate for State or Public Needs" (*see: Valdības Vēstnesis, May 24, 1923, No.107)* nor the following Amendments, which were made on May 28, 1936 (*see: Valdības Vēstnesis, May 29, 1936, No.120)* and on August 30, 1937 (*see: Valdības Vēstnesis, August 31, 1937, No.195)* envisaged coercive expropriation of a separate house or apartment, as it is determined in 1992 Expropriation Law. Provision of premises of equal worth for the owner of the house (apartment) and the family members, who reside in it if they do not want to leave the house (apartment) on free will was not envisaged either.

Consequently the above Senate Judgment estimates quite different legal relations and therefore it cannot be used in this case.

23.2. Ungrounded is the Saeima statement that when compared to 1992 Expropriation Law the Impugned Law does not materially worsen the legal status of the submitters of the claim.

23.2.1. 1992 Expropriation Law (Sections 4, 12 and 18) – as compared with Article 4 of the Impugned Law – did not envisage *expressis verbis* the moment from which the property right to real estate passes from the former owner to the new acquirer (the State or the local government). On the basis of 1992 Expropriation Law the process of coercive expropriation conditionally may be divided into several stages:

1) First of all was envisaged the so-called stage of agreement (the first Part of Section 3). Namely, the government was able to submit the proposal of coercive expropriation of the real estate to the Saeima, only if the respective State or local government institution could not obtain it upon an agreement with the owner;
2) If an agreement with the owner of the real estate was not reached, the proposal was submitted to the Saeima and then followed the review of the draft law, namely, the deputies had to duly assess whether the real estate was needed for reaching specific public aims and whether the public benefit was greater than the loss, which could be incurred to the owner of the real estate;
3) In accordance with Section 4 of the 1992 Expropriation Law, after passing of the ”specific law”, a note about the prohibition to expropriate or encumber the real estate was entered into the Land Register. Such a note forbade the owner to handle (deal with) the property; i.e. the possibility of concluding any agreements on it was averted. Upon the adoption of the specific law the institution, on whose account proposal for the expropriation was executed, repeatedly offered to the owner to one’s point of view a fair compensation or proposed to exchange it against an equivalent property;
4) If compensation was fixed on account of free will or exchanging of the expropriated property against another property compensated the expropriated real estate value, a respective agreement had to be concluded. And only then, when this agreement was fixed in the Land Register, the expropriated property without any encumbrances passed into the State or local authority ownership (Section 6).
5) If an agreement on fair compensation was not concluded, then the court tried the case on determination of compensation (Section 9). During the proceedings the real estate was seized and in accordance with Section 12 of the Law after seizure the real property passed into the ownership of the establishment for whose needs it was expropriated. Besides, in accordance with the second part of Section 12 provision of another premise was envisaged only if the owner or his/her members of the family resided in it;
6) When the court decision on the expropriation of real estate had come into force, its owner had to be paid the fixed compensation and the interest rate, which was fixed by the court, but no less than six

percent per year from the day of the take over of the real estate till the day of the payment (Section 17).

7) And only after the payment of installment of compensation into the State budget entering of the property in the Land Register on the name of the State or local government could take place.

23.2.2. The Impugned Law has maintained the possibility of reaching agreement about expropriation of the property on free will before submitting the respective proposal to the Saeima. However, the further procedure of coercive expropriation essentially differs from the previous legal regulation. Namely, Section 4 determines that the State or local; government receives property rights on the respective real estate already after the ”specific law” takes effect and it experiences the right to fix it in the Land Register, even though the owner has not yet received the fair compensation.

Thereby the Impugned Law envisages essential amendments in the procedure of coercive expropriation of property determined in 1992 Expropriation Law, because the owner loses his/her title not after but before receiving of the compensation.

23.2.3. One cannot agree to the viewpoints of either the representative of the Cabinet of Ministers, or of the representative of the Saeima, that 1992 Expropriation Law has been amended only for the sake of clarity, because to their mind it, interpreted as read together with the norms of the Civil Law establishes, that property rights in case of coercive expropriation of the real estate pass to the new obtainer (State or local authority) with the day of the ” specific law” taking effect. The new obtainer may handle the expropriated property like an owner, but – to their viewpoint – recording in the Land Register has only a declarative force.

Article 1033 (Sub-item 6) of the Civil Law establishes that the ownership rights are terminated without the intentional act of the owner under the procedures envisaged by the law for State or public needs. In its turn Article 1477 (the first Part) of the Civil Law determines that corroboration i.e. entering in the Land Register shall be required in those cases when the transaction grants property rights to immovable property.

In legal literature, when analysing Article 1477 (the second Part) of the Civil Law ”property rights established by law shall be in effect even if they are not entered in the Land Register”, the viewpoint has been expressed that to such rights belong also a part of common property of spouses and the property obtained by extended duration. (*sk. Rozenfelds J. Lietu tiesības, 134. lpp.; see: Rozenfelds J. Case Law.// Riga, 2004, p.134)* or, for example, lawful inheritance (*sk.: Sinaiskis V. Latvijas civiltiesību apskats. Lietu tiesības, LU Studentu padomes grāmatbīcas izdevums, 24.lpp.; see: Sinaiskis V. Survey of*

Civil Law of Latvia. Case Law. Edition of the Latvian University Student Council Bookshop, p.24// Riga 1940).

"[…] obtaining of property right on the basis of the law, as a matter of fact is a complicated legal composition (cohesive whole of facts), when the property right is created in accordance with developments and activities envisaged by law" (*Rozenfelds J. Lietu tiesības, 134. lpp.; Rozenfelds J. Case Law p. 134// Riga, 2004).*

Legal norms of the 1992 Expropriation Law, when compared with the norms of the Civil Law shall be assessed as specific legal norms. Interpreting Article 1033 (Item 6) of the Civil Law by reading it together with the sense and aim of Article 105 of the Satversme and 1992 Expropriation Law, one has to conclude that property rights are not completed at the moment of the "specific law" taking effect but only after the institutions of the State administration have carried out all the activities, established by law.

Thus, first of all ungrounded is the viewpoint that in accordance with 1992 Expropriation Law at the moment of the "specific law" taking effect, regardless of fixing a respective recording in the Land Book, person's property rights cease to exist and the rights to the expropriated properties are wholly acquired by the State or the local government. Secondly, the Impugned Law, as compared with 1992 Expropriation Law, has limited the right range of the submitters of the claim.

23.3. As the materials in case (*sk. lietas 2. sēj. 140-144. lpp.; see: Vol.II of the matter; pp.140-144)* as well as the viewpoints expressed at the Court session by the invited person O.Spurdziņš and the witness D.Pavļuts testify, there are no unified criteria for the interpretation of the term "fair compensation", used in both – 1992 Expropriation Law and the Impugned Law, including the case of expropriation of real estates for the construction of LNL.

23.3.1. For example, when getting acquainted with the excerpts of the Supervisory Board meeting minutes, which are connected with determination of fair compensation for the properties to be expropriated in this case, then it can be seen that the Board at its June 16, 2004 meeting has taken the decision "that the Ministry of Culture shall confirm the lowest price, which has been established in the assessments on real estates, for talks about the expropriation of the real estates". On February 23, 2005 it has allowed the Ministry of Culture to be guided by "the arithmetical mean value" of the real estates to be expropriated, determined by respective estimates. Even though on February 23 the Supervisory Board inter alia has allowed the Ministry of Culture in the process of further agreement to change the established sums of fair compensation only within the range of 10 percent; at the April 27 meeting compensation, which essentially differs from the previously offered compensation and even from the highest estimate by the persons, assessing the

real estate, was determined. Namely, as the Cabinet of Ministers points out, at the above meeting, when taking the decision on certain sums, argumentation, included in the applications, submitted by the former owners, and the price of one expropriated square metre has been assessed (*sk. lietas 3. sēj. 205.lpp.; see Vol.III of the matter, p.205).*

As has been ascertained at the Court session (*sk. šā sprieduma 9. un 10.punktu; see Items 9 and 10 of this matter)*, normative acts do not envisage criteria for determining fair compensation. When assessing the properties, expropriated for the construction of LNL both – the Ministry of Culture and the Supervisory Board have taken into consideration suggestions (recommendations) of the Latvian Association of Property Assessors.

For example, it was initially decided to offer 10 800 lats (*sk. lietas 2. sēj. 169.lpp; see Vol.II, p. 169 of this matter)* to one of the submitters of the claim, later – 11 500 lats *(sk. lietas 2. sēj. 141.lpp.; see Vol.II, p.141 of this matter),* but the agreement, regardless of the fact that the highest assessment of the experts was 12 200 lats (*sk. lietas 1.sēj. 59.lpp.; see Vol.I, p.59 of this matter),* was concluded for double amount of the sum – 25 329 lats (*sk. lietas 3. sēj. 213. lpp.; see Vol.III, p. 213 of the matter).*

Another person was also initially offered 51 200 lats (*sk. lietas 2.sēj. 170.lpp.; see Vol. II, p.170 of the matter)*, however, regardless of the highest amount established by the experts, namely – 56 100 lats (*sk. lietas 2. sēj. 90.lpp.; see Vol.II, p.90 of the matter)*, agreement, reached in May of 2005 was for the compensation of 90 863, 35 lats (*sk. lietas 3. sēj. 216.-217. lpp.; see Vol.III, pp. 216-217 of the matter).*

In its turn J.Jaunzems, regardless of the highest amount of compensation determined by experts i.e. 84 100 lats *(sk. lietas 1. sēj. 137.lpp.; see Vol.I, p.137 of the matter)* was initially offered compensation in the amount of 73 000 lats, but later the sum was increased to 79 466 lats (*sk lietas 3. sēj. 205.lpp.; see Vol.III, p.205 of the matter).*

In its turn in the letter by the Latvian Association of Property Assessors, submitted by I.Stuberovska and attached to the case it is mentioned ”in case of coercive expropriation of real estate, calculation of the amount of the compensation to be paid to its owner (former owner) may be done on the basis of the market price of the respective real estate; however, it should not be limited only by the amount of the market price. Taking into consideration the fact that coercive expropriation of real estate is connected with exchange of it against an equivalent property; then in the calculation of fair compensation shall be included also other expenses, connected with coercive expropriation of real estate: acquisition of a new property (for example, notarial expenses connected with acquisition of a new real estate instead of the expropriated one, State duty, office duty, expenses for the services of a consultant or real estate

broker, expenses for legal assistance; expenses connected with moving to the new place of residence etc.)" *(sk. lietas 5. sēj. 227.lpp.; see Vol.V, p. 227 of the matter).*

23.3.2. The submitters of the claim both in their constitutional claim and at the Court session pointed out that the Ministry of Culture has illegally denied them access to information, which has been included in the assessments of the experts as regards real estates (apartments) to be expropriated. The submitters of the claim have been acquainted only with the assessment in which the lowest possible price was mentioned. Witness D.Pavļuts at the Court session stressed that the refusal to furnish the above information has been founded by the State Secretary of the Ministry of Culture September 21, 2004 Decree No. 122 "On Attaching the Status of Information of Limited Access". In accordance with the recommendations of the above Association the decree has been issued to avert the possibility, that the submitters of the claim would inform the other owners, whose properties it was planned to expropriate also about the assessments in which a greater apartment price was established.

The Law on Access to Information mainly regulates the procedure under which private persons obtain information from the institutions of State administration. It follows from Section 6 (the third Part) of this Law that the State Secretary was authorised to determine status of information of limited access only to the moment, when the Ministry of Culture or its representative has expressed offering on a concrete sum of fair compensation to any of the owners of real estates. For example, on September 15, 2004 i.e. six days before the above Decree was issued, the letter by the authorised representative of the Ministry of Culture – sworn advocate Selvis Selga, which included a concrete offering, was mailed to I.Prazdnicane.

Thus it is doubtful whether at the moment of issuance of the Decree No. 122 "On Attaching the Status of Information of Limited Access" by the State Secretary of the Ministry of Culture – namely on September 21, 2004- there was a legal basis for issuing limitation of access to information. Besides, at variance with the provision of Section 5 (the first Part) of the Law on Access to Information, no substantiation has been mentioned about the fact in what a way furnishing of information might influence the activities of the institution or harm legitimate interests of persons.

23.3.3. Besides, when offering to ones point of view fair compensation, the institution of State administration (the Ministry of Culture) does not have to act just like a purchaser of real property in the market of real estate, where the purchaser is interested to buy the property for the lowest possible price. The duty of the State or local authority institution to choose economically the most profitable offering or the offering with the lowest possible price under circumstances of free competition appears when purchases are made in accordance with the Law "On Purchases for State or Local Government

Needs". However, activities, which are carried out in cases of coercive expropriation, are usually directed just to the concrete real estate. The State, when implementing public interests and offering compensation for the real estate to the owners, is not authorised to make use of, for example, non-information or defencelessness of separate owners. In such a case it shall not be regarded as an offering of fair compensation; quite to the contrary – only an unjust result may be reached in this way.

When determining the amount of fair compensation, it is inadmissible to be abstracted from the specific features and the way of usage of the property to be expropriated. For example, the amount of compensation, which can be regarded as fair, may depend on the fact whether a vacant land plot or an apartment house (an apartment) is being expropriated. It is inadmissible that as the result of expropriation the owner, especially in case if the apartment house (apartment), resided by him/her and his/her family, is being expropriated he/she gets reduced to a worse financial situation.

If the submitters of the claim in this case would not receive fair compensation, near to the market price, the risk might arise that their mode of life would worsen. When receiving compensation, which is noticeably lower than the value of the apartment market, there is a probability that the submitters of the claim will not be able to acquire an apartment, which -–as concerns the amenities and the locality – is equivalent to the expropriated apartment. The fact that the inflation in the State is big enough and the rapid growth of the prices for real estate increase the possibility of worsening of social conditions. If there are no specific circumstances (for example, natural disaster, threat to public security), then, when expropriating an apartment, where its owner or his/her family resides, the State has the duty of paying the price, which conforms to the market price or is near it. However, the owner - as the result of expropriation - shall not receive an ungrounded (undeserved) benefit (*sk. lietas 22.3. punktu; see Item 22.3 of the matter).*

Taking into consideration the principle of good administration, following from Article 1 of the Satversme and Article 10 of the State Administration Law, as well as to reach a fair balance between the interests of those owners, whose real estate is coercively expropriated, and the public interests, the Law " On Coercive Expropriation of Real Estate for State or Public Needs" or the Cabinet of Ministers Regulations, issued on the basis of this Law, shall incorporate prospective, clear and general criteria for determination of " fair compensation", by which respective institutions might be guided when offering concrete sums of money or an equivalent property to the owner at the time of talks about coercive expropriation of real estate. At the present moment uncertainty on the one hand may encourage corruption, but on the other hand – allow the owners to impose disproportionate demands as to determination of compensation.

One cannot agree with the following viewpoint of the Saeima:

”It follows from the already cited Supreme Court Senate Judgment that the part of the norm ”only against compensation”, not taking into consideration the sense and aim of the Law on Coercive Expropriation, shall be interpreted not as expropriation of the property, simultaneously paying compensation, but as expropriation of property at the time of the Law of Expropriation taking effect and by determining the amount of compensation either by reaching agreement or trying the case at the court” (*sk. Saeimas atbildes rakstu lietas 4. sēj. 173.lpp.; see the Saeima Written Replies, Vol.4, p.173).*

The Constitutional Court stresses that, quite to the contrary, when interpreting any legal norm, its sense and aim shall be taken into consideration.

The Saeima, by the Impugned Law essentially amending the procedure of coercive expropriation of real estate and determining that the State or the local government acquires property rights immediately after the ”specific law” takes effect, has not considered the possibility of ensuring that the former owners receive concrete sums of money or exchange the property against equivalent property already **before the commencement of proceedings.** Otherwise, being guided by Sections 9, 12 and 17 of the Impugned Law as well as by taking into consideration that the process of proceedings is comparatively long, heavy burden may be imposed on the owner of the real estate. Namely, if an apartment house (an apartment) is being expropriated, then handling of the real estate by the owner and his/her family members is limited; and in circumstances when inflation in the State is higher than 6 percent, mentioned in section 17 of the Impugned Law, then for an indefinite time, possibly even for several years, they will have to live in the dwellings, ensured by the respective institution.

The Constitutional Court agrees with the viewpoint of the Head of the Saeima Legal Affairs Committee Gunārs Kusiņš that ”only a promise of fair compensation some day in future cannot be equalled to the payment of fair compensation. [...] Property rights may be transferred only then, when there is fair compensation. The State is not a different legal subject, which may afford to pay less and say that State interests are over everything” (*sk. lietas 4. sēj. 147. un 165. lpp.; see Vol.IV, pp. 147 and 165 of the matter).*

If the legislator has determined that property rights pass over to the state or local government right after the adoption of the Law and voluntary agreement with the owner about the amount of compensation has not been reached, then the payment of ”fair compensation” might be divided into two parts. The first part might be the sum of money, which would be calculated on the basis of clear and reasonable criteria as well as paid to the owner of the real estate within reasonable time and under a certain procedure **before the beginning of proceedings.** The second part, in its turn, could be determined by the court of

general jurisdiction, in case if the owner is not satisfied with the offered amount of compensation. And the owner would receive this part in a certain time **after the court judgment taking effect.**

Necessity of the above procedure has been substantiated both – by the viewpoints, expressed in Latvian legal literature and the conclusion of the Ministry of Justice as well as the legal regulation, existing in other states. For example A.Grūtups, as the deputy of the Supreme Council, when analysing separate legal problems connected with the passing of 1992 Expropriation Law, has stressed that for owners, whose properties shall be expropriated for State or public needs, not only real compensations shall be envisaged but also " a precise and balanced procedure for review of the above issues shall be established. It shall be complicated and respectable enough, so that we are not tempted to use it too often and inappropriately. […] First of all the amount of compensation shall be precisely determined, only after that the process of expropriation may be commenced" *(Grūtups A. Vai iesim pa īpašuma rekvizīcijas ceļu?; Grūtups A. Shall we go along the road of requisition? // Diena, April 4, 1992).*

In the conclusion on draft Regulations No. 17 by the Ministry of Justice it has been pointed out to the Ministry of Culture:

" […] pretext that the amount of fair compensation or equivalent property shall be determined on the basis of the viewpoint of the institution, upon whose suggestion expropriation takes place, is unilateral and does not ensure realisation of the right to fair compensation, determined in Article 105 of the Republic of Latvia Satversme. Wording of the proposed section does not ensure the possibility for a person to object to the opinion of the institution and substantiate one's viewpoint on the amount of fair compensation."

The Ministry has proposed to establish such a procedure for determination of the amount of compensation or equal property, which complies with the right of the person to fair compensation (*sk. lietas 2.sēj. 177. lpp.; see Vol II, p. 177 of the matter).*

Constitutions of other states determine even the moment of payment of compensation. For example, Article 16 of the Kingdom of Belgium Constitution establishes that such a compensation shall "be paid beforehand"; Article 13 (the second part) of the Republic of Hungary Constitution determines that the payment of compensation shall be immediate; in its turn Article 14 (the first part) of the Kingdom of Netherlands Constitution stresses that the compensation shall be "guaranteed in advance".

Thus, when assessing the moment of transfer of the property rights, envisaged in the Impugned Law in the connection with the moment of payment of fair compensation, it can be concluded that fair balance

between the public interests and the necessity to protect the rights of the owner has not been achieved.

24. The submitters of the claim both in their constitutional claim and at the Court session pointed out that the Cabinet of Ministers and the Saeima, when adopting Regulations No.17, had violated the principle of legitimate trust.

The duty of the principles following from Article 1 of the Satversme – which shall be regarded as one of the cornerstones of the Republic of Latvia as a democratic and law-governed state – is to ensure that other legal norms, also those, incorporated in the Satversme, shall be correctly applied and that their application, as well as the result of their application complies with the requirements of a law-governed state. For example, neither Article 1 of the Satversme, nor Article 105 denies the right of the legislator to make amendments to the existing legal regulation, which complies with the Satversme. However, in a democratic and law-governed state the principle of legitimate trust requires to envisage considerate transition to the new regulation, when introducing amendments.

When assessing whether the principle of legitimate trust has been violated, one shall ascertain:
1) whether the submitters of the claim had the right to trust that the legal regulation would not be changed;
2) whether such a trust was reasonable and well-grounded;
3) whether the legislator, when deviating from the previous legal regulation, had envisaged a considerate transition to the new regulation.

As can be seen from the materials attached to the matter, on April 2, 2004, the representative of the Ministry of Culture S.Selga, had offered to one of the submitters to conclude an agreement on expropriation of real estate, needed for the construction of LNL (*sk. lietas 1. sēj. 32.lpp.; see Vol.I, p. 32 of the matter).* It was pointed out in the letter that in case of refusal the process of expropriation shall be carried out under the procedure, established in Section 9 of 1992 Expropriation Law. As can be understood from the facts, established at the Court session, during the spring and summer of 2004 letters with similar contents have been sent also to other submitters of the claim.

The above representative of the Ministry of Culture with his activities has created to the submitters of the claim trust that no other – different – procedure shall be used for expropriation of the real property, belonging to them. Besides, the invited person – H.Demakova has not substantiated

her viewpoint that the representative of the Ministry of Culture has exceeded his authority.

Section 4 (the first sentence of the second part) of May 8, 2003 Law on Implementation of the Latvian National Library Project, namely, " the land plot needed for the Latvian National Library as well as buildings on it shall be expropriated for the State needs under the procedure determined in the Law "On Coercive Expropriation or Real Estate for State or Public Needs" still more strengthened the trust of the submitters of the claim. Under such circumstances the submitters of the claim had the right to trust that the Ministry of Culture - after not reaching the agreement about expropriation of real estate belonging to them – shall apply the procedure, envisaged in 1992 Expropriation Law.

The norms of the Impugned Law violate the principle of legitimate trust, as it – in case when a new legal regulation is being introduced, inter alia envisages also determination of as considerate a transition as possible. However, as can be understood from the viewpoint, expressed by the invited person M.Segliņš, the legislator has acted quite differently. Namely, when solving issues on expropriation of real properties for the needs of LNL and simultaneously coming into contact with obstinacy of the owners, it has decided to protect State interests in a "more aggressive way".

As can be seen from the minutes of the Saeima Legal Affairs Committee meetings, several deputies had pointed out that the state shall not overestimate its interests, and not take into consideration the fundamental rights determined for private persons in the Satversme. For example, at the March 23, 2005 meeting of the Saeima Legal Affairs Committee, the member of the Committee Edgars Jaunups expressed the viewpoint that for ten years the state had done nothing to put this legal regulation in order, but at the moment the Saeima chose the simplest way and tried to solve the problem at the expense of the owners of the real estates to be expropriated (*sk. saeimas Juridiskās komisijas 2005. gada 23. marta sēdes protokolu No. 284 lietas 4. sēj. 148.lpp.; see Minutes No. 284 of the Saeima Legal Affairs Committee March 23, 2005 meeting; Vol.IV, p.148 of the matter).* Deputies Juris Dobelis, Leopolds Ozoliņš and Juris Sokolovskis sharply expressed their viewpoints on the unconformity of the Impugned Law with the fundamental rights of a person, determined by the Satversme (*sk. lietas 4. sēj. 122., 123., 126. un 132.lppp.; see Vol.IV, pp. 122, 123, 126 and 132 of the matter).*

The requirement, following from the principle of legitimate trust to ensure the most possible considerate transition to the new legal regulation is especially significant; as the persons – to whom the new regulation will be applied- shall be given the possibility to prepare for it.

It is possible to ensure such a more considerate transition, for example, by postponing the moment of the new regulation taking effect or envisaging that it shall not be applied to persons, whose legal status will be worsened.

However, as concerns the submitters of the claim, the Saeima, when adopting the Impugned Law, has not done it and thus has violated the principle of legitimate trust.

25. When taking the decision on the moment, at which Regulations No.17 and the Impugned Law shall lose validity, the Constitutional Court takes into consideration that its duty is to avert violation of the fundamental rights of the submitters of the claim, which has arisen by applying the impugned norms. It is possible only by declaring these norms null and void as of the moment of their issuance.

Besides, the Constitutional Court shall see to it that the situation, which might develop from the moment the impugned norms lose validity, to the moment while the Saeima passes new norms, violates neither the fundamental rights of the submitters of the claim, guaranteed by the Satversme, nor creates relevant harm to state or public interests.

Constitutions and laws, regulating constitutional proceedings of several states, envisage for the Constitutional Courts, if they establish unconformity of a legal act with the Constitution, extensive authority to determine both – the moment by which the impugned norms lose effect and the fact whether legal norms, amended by the impugned norms, regain their legal force. Besides, quite often the Constitutional Courts themselves determine the way of execution and procedure of their Judgments.

Thus, for example, Article 140 (the first sentence of the sixth Part) of the Austrian Federative Constitutional Law determines:

" If a law is declared as null and void by the Constitutional Court Judgment, because it is unconformable with the Satversme and if the Judgment does not rule it otherwise, then beginning with the day of the above law losing effect, then the provisions of the law, which have been repealed by the law, which the Constitutional Court declared as unconformable with the Constitution, take effect".

The Constitutional Court of Austria in any particular case takes the decision on the fact whether the previous legal regulation – in compliance with the above norm of the Constitution – takes effect again (*sk., piemēram, Austrijas Konstitucionālās tiesas 2004. gada 28. septembra spriedumu lietā No. G98/04; 2001. gada 16. marta*

spriedumu lietā No. G150/00; 2002. gada 5. decembra spriedumu lietā No. G296/02; see for example, Austria Constitutional Court September 28, 2004 Judgment in case No. G98/04; March 16, 2001 Judgment in case No. G150/00; December 5, 2002 Judgment in case G296/02// http://ris.bka.gv.at) or does not take effect (*sk., piemēram, Austrijas Konstitucionālās tiesas 1981. gada 22. oktobra spriedumu lietā No. G48/81, V20/81; 1984. gada 26. jūnija spriedumu lietā No. G73/84, G74/84; 2001. gada 16. marta spriedumu lietā No. G152/00; see, for example, Austria Constitutional Court October 22, 1981 Judgment in case No. G48/81,V20/81; June 26, 1984 Judgment in case No.G73/84, G74/84; March 16, 2001 Judgment in case No. G152/00// **http://ris.bka.gv.at)**.

In its turn Paragraph 35 of the German Federal Constitutional Court Law establishes that the Federal Constitutional Court in its Judgment may determine the executor of the Judgment and the manner of execution. It has been marked in literature that from the above Paragraph follows authorisation to the Court to determine legal consequences of its Judgments (*sk.; see: Bundesverfassungsgerichtsgesetz. Mitarbeiterkommentar und Handbuch. C.F. Müller Juristischer Verlag Heidelberg, 1992, S. 695*). Federal Constitutional Court, if it is necessary, determines the regulation to be applied till the next activities of the legislator; or the regulation, which shall be in effect, if the legislator does not execute provisions of the Federal Constitutional Court Judgment (*sk., piemēram,; see, for example: BVerfGE 39, 1[68], BverfGE 48, 130 [184], BverfGE 99, 216 [219], BverfGE, 1 Bvl 4/97 vom 6.7.2004, Absatz 71, http://www.bundesverfassungsgericht.de*). Constitutional Courts of other states are used of acting similarly (*sk., piemēram,Slovēnijas Konstitucionālās tiesas 1994. gada 31. marta spriedumu lietā No. U-1-25/92; see, for example, the Constitutional Court of Slovenia March 31, 1994 Judgment in case No. U-I-25/92 // http://odlocitve.us-rs.si/*).

The Constitutional Court Law does not *expressis verbis* envisage similar authorisation. However, Item 12 of Article 31 of this Law determines that, "rulings of other courts" may be included in the Constitutional Court Judgment. In accordance with the above Item, the Constitutional Court is authorised to regulate issues, which are vital so that new violations of the fundamental rights do not appear after declaring of the impugned act null and void and "withdrawing of particular norms from circulation" does not cause disturbance in the legal regulation.

If it is possible and necessary, the Constitutional Court in the substantiating part of the Judgment may declare that legal norms, which have been amended by the impugned act, which the Constitutional Court

has recognised as unconformable with the legal norms of higher legal force, recover their legal force.

The operative part

On the basis of Articles 30-32 of the Constitutional Court Law the Constitutional Court

hereby rules:

1. To declare the Cabinet of Ministers January 11, 2005 Regulations No. 17 " Amendments to the Law "On Coercive Expropriation of Real Estate for State or Public Needs"" as unconformable with Article 81 of the Satversme and null and void as of the moment of its issuance.
2. To declare the Law "Amendments to the Law "On Coercive Expropriation of Real Estate for State or Public Needs"" as unconformable with Articles 1 and 105 of the Republic of Latvia Satversme and null and void as of the moment of its adoption.
3. As concerns the submitters of the constitutional claim – Juris Jaunzems, Tatjana Čerkovska, Valentīna Leitēna and Gints Gailītis to declare the Law "Amendments to the Law "On Coercive Expropriation of Real Estate for State or Public Needs" as null and void as of the moment of its adoption.
4. To declare that September 15, 1992 Law "On Coercive Expropriation of Real Estate for State or Public Needs" shall be in effect in the wording, which was valid till January 11, 2005 when the Cabinet of Ministers issued Regulations No. 17 "Amendments to the Law " On Coercive Expropriation of Real Estate for State or Public Needs".

The Judgment is final and allowing of no appeal.

The Judgment was announced in Riga on December 16, 2005.

The Chairman of the Court session Romāns Apsītis