THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, December 14, 2005

JUDGMENT
in the name of the Republic of Latvia

in case No. 2005-10-03

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

under Article 85 of the Republic of Latvia Satversme (Constitution), Articles 16 (Item 3), 17 (Item 11 of the first Part) and 281

on the basis of the constitutional claim by Ilmārs Zandbergs

in written proceedings at November 15, 2005 Court session reviewed the matter

"On the Compliance of the Kuldīga District Council December 15, 1999 Kuldīga District Spatial Plan (Item 8.3.1. of the Second Part) on the Spīķi HES and the Kuldīga District Vārme *Pagasts* (Small Rural District) Council February 20, 2003 Vārme *Pagasts* Spatial Plan on the Inclusion of the Lands of "Baloži" Farmstead into the Territory of Spīķi HES with Article 105 of the Satversme".

The establishing part

1. In the constitutional claim is contested the compliance of the Kuldīga District Spatial Plan (Item 8.3.1. of the second Part) on the Spīķu hydro-electric station (henceforth – Spīķi HES) and the Kuldīga district Vārme *Pagasts* Spatial Plan on the inclusion of "Baloži" farmstead lands into the territory of the Spīķi HES with Article 105 of the Republic of Latvia Satversme (henceforth – the Satversme). The Kuldīga District Council adopted the Spatial Plan on December 15, 1999 as binding Regulations

(Decision No. 26). The Vārme *Pagasts* Council adopted the Spatial Plan on February 20, 2003 with the Decision No.3 (repeatedly – on June 17, 2004 with the Decision No.12).
In Item 8.3.1 of the second Part of the Kuldīga District Spatial Plan ”Planned and Permitted Utilization of the Territory” it is pointed out that there are four functioning small hydro-electric stations in the district. Among them is also the above Spīķi HES in Vārme *pagasts*.

In the textual part of the Vārme *Pagasts* Spatial Plan Spīķi HES is not mentioned. Spīķi HES and its water body are included in the graphic part of the Spatial Plan, inter alia also in the maps ”Present Utilization of the Vārme *pagasts* Territory” and ”Planned and Permitted Utilization of the Territory of Vārme *pagasts*”.

2. Ilmārs Zandbergs (henceforth – the submitter) in his constitutional claim points out that the land – 32,6 hectares - of the ”Baloži” farmstead was allotted to him on February 28, 1995 and on March 17, 1995 property rights to the above land were fixed in the Land Register. At the end of 1997, when Spīķu HES water body was shaped, 4,6 hectares of his land were flooded against his will. The submitter has addressed his complaints to the Vārme *Pagasts* Council, the Kuldīga Department of the Liepāja Regional Environment Board; Kuldīga Region Prosecutor’s Office and other institutions.

To prevent violation of the property rights the submitter addressed the court of general jurisdiction on June 15, 2000. On October 23, 2001 the Kuldīga District Court rejected the claim of the submitter. On June 19, 2002 Kuldīga Regional Court left the Judgment of the court of the first instance in effect. On October 9, 2002 the Supreme Court Senate abrogated the Judgment of the Kurzeme Regional Court and forwarded the matter to the court of appellate instance for a repeated review. On April 2, 2004 the Kurzeme District Court satisfied the claim of the submitter and charged the owner of the Spīķi HES Eduards Zabarovskis (henceforth – the owner of the Spīķi HES) with the duty of cessation of flooding of the land belonging to the submitter. After reviewing the cassation complaint of the owner of the Spīķi HES, on September 8, 2004 the Supreme Court Senate ruled that the Kurzeme District Court Judgment shall be annulled, because the court had not paid attention to the fact that Spīķi HES and its water body were included in the Spatial Plans of Kuldīga district and Vārme *pagasts*. Thus by this Judgment the matter has been forwarded for a repeated review at the court of the first instance – Kuldīga District Court.

The submitter holds that the Kuldīga District Council and the Vārme *pagasts* Council, when including in its Spatial Plans the Spīķi HES has legalized the arbitrary flooding of his land and including of it in the

territory of the Spīķi HES. He is of the opinion that it runs contrary to Article 105 of the Satversme, which guarantees everyone's right to own a property.

The submitter points out that neither the Spatial Planning Law nor the Law "On Local Governments" give the local government the right to constantly flood the land against the will of the owner.

After getting acquainted with the materials in case the submitter explained that Article 105 of the Satversme as well as the Civil Law permit restriction of property rights, however, the rights of utilization of his land plot have not been restricted in the understanding of the Civil Law. The land plot was not flooded in the sense of Section 963 of the Civil Law but has been illegally flooded; therefore referring of the Vārme *Pagasts* Council to this norm is ungrounded. The submitter points out that the local authorities justify themselves with the fact that at the time of elaboration of special plans one is not able to ignore objects, existing in nature. However, he holds that no normative act anticipates that just by including an object in the spatial plan its ungrounded and illegal creation may be legalized.

3. **The Kuldīga District Council** in the written reply points out that the water body of the Spīķi HES was put into shape at the end of 1997, that is, before the elaboration of the Spatial Plan of the District was completed. As the scale of the plan in accordance with the normative acts is M 1: 50 000 and M 1: 100 000, then in the map of the Plan Spīķi HES has been marked only as an object and not a territory. The interests of the submitter regarding the land he owns have been violated before the Kuldīga District Council had adopted the District Spatial Plan. Thus in the Spatial Plan of the Kuldīga District the existing situation had been fixed and by the Spatial Plan neither permitted or forbade the reconstruction of the Spīķi HES. The Council holds that when elaborating the spatial plan of a district one cannot ignore territories and objects, existing in nature.

   The Kuldīga District Council requests to take into consideration the fact that Article 105 of the Satversme determines that property shall not be used contrary to the interests of the public. The water body of the Spīķi HES has turned into a scenic territory, which serves the interests of the public and with which are satisfied the owners of the neighbouring lands. It is stressed in the written reply that it is impossible to drain the land of the submitter without liquidating the whole water body of the Spīķi HES. When assessing whether the benefit of the submitter in case if the water were drained from the land would be adequate to the loss of the other land owners and the scenic environment, the principle of proportionality shall be observed.

When answering to the questions asked by the Constitutional Court, the Kuldīga District Council points out that the Cabinet of Ministers February 24, 1998 Regulations No. 62 ”Regulations on Spatial Planning” (henceforth – the Cabinet of Ministers Regulations No. 62), which were in effect at the moment of certifying the District Spatial Plan, did not envisage that confirming the status of the objects existing in nature shall be required when elaborating the documents for the plan. Therefore with the help of specialists of the local governments and in accordance with Item 21 of the above Regulations objects, existing in the territory of the local government, inter alia, also the engineering communication objects were documented and marked in the District Spatial Plan. When assessing the permitted and planned utilization of the territory of Vārme *pagasts*, it has been recognized that the territory in which Spīķi HES has been built is appropriate for building small hydro-electric stations; however, the Spatial Plan does not solve issues regarding construction and legal utilization of lands.

4. **The Vārme *Pagasts* Council** in the written reply points out that Spīķu HES functions since 1961 and water from the water body has been drained only at the beginning of the eighties. At the end of 1997 the water level of it was raised to reach the former boundaries. 3,877 hectares of the lands of the ”Baloži” farmstead were flooded.

   The Vārme *Pagasts* Council explains that the owner of the Spīķi HES has coordinated the issue on partial flooding of the lands with the users and owners of them. Igors Konošonoks, who then used the land now belonging to the submitter, also gave his consent to flood the land. The owner of the Spīķi HES both – before and after flooding of the land - has tried to reach an agreement with the submitter by offering to buy or rent the flooded land or compensate the losses. The Vārme *Pagasts* Council offered to the submitter land in another place and is ready to do it even now. The submitter declined all proposals.

   The Vārme *Pagasts* Council stresses that the flooded land had been a bogged up meadow, which was overgrown with trees and bushes. Besides, in the water body of the Spīķi HES flora and fauna characteristic to water environment has formed. Liquidation of the water body would incur substantial losses to bio-resources of the water and it in its turn would run contrary to public interests.

   The Vārme *Pagasts* Council holds that it did not have the right of not including the Spīķi HES in the Spatial Plan of the Vārme *Pagasts;* as Section 6 (the seventh Part) of the Spatial Planning Law determines that – when developing a lower level spatial plan the higher level spatial plan, which is in effect, shall be observed. As the second Part of the Kuldīga District Spatial Plan was already adopted, Spīķi HES had to be

included in the Spatial Plan of the Vārme *Pagasts,* even if the *Pagasts* Council would not have wanted to do it.

It is pointed out in the written reply that when working out the Spatial Plan, the Vārme *Pagasts* Council received from the State Land Service cartographic material and plans in which the water body was marked. Also as concerns natural environment economic activities and organization of recreation are unthinkable without the Spīķi HES water body, therefore in the Spatial Plan this territory is planned as the territory meant for water management. During the time of public discussion of the Spatial Plan the local government received neither objections nor proposals. The Vārme *Pagasts* Council expresses the viewpoint that the Spatial Plan envisages division of the local government territory on the basis of the type of its use, not determining the size or boundaries of any property.

The Vārme *Pagasts* Council stresses that the Spatial Plan does not deprive the submitter of his property rights and the fact that the submitter has appealed at the court of general jurisdiction with the claim to avert violation of the property rights, but not with the claim to get back the property also testifies the above. Section 963 of the Civil Law also determines that flooding does not alter ownership rights and after the water has abated, the land that was beneath it shall be retained by the former owner.

It is pointed out in the written reply that the claim of the submitter to declare the Spatial Plan regarding the impugned part as null and void and thus to destroy the Spīķi HES water body run contrary to public interests. The above is confirmed by the Kuldīga District Council Local Authority Agency "Agency for the Development of Kurzeme" April 16, 2004 conclusion No.7 and the Ministry of Environment Liepāja District Environment Department May 31, 2004 conclusion No. 3 – 11/821. The public benefit from the restrictions of property rights of the submitter is greater than the restriction of his rights, therefore the Vārme *Pagasts* Council requests to reject the constitutional claim.

Answering to the questions of the Constitutional Court the Vārme *Pagasts* Council points out that the local government when assigning the land to the submitter did not determine limitation, as at that time Regulations on Exploitation of Water Bodies were not in effect. Regulations on Exploitation (Management) of Water Body were confirmed on August 28, 1997 and coordinated with the local authority. On June 16, 2003 the Vārme *Pagasts* Council adopted Decision No.6 " On Imposing Limitations to the Lands, Flooded by the Spīķi Water body" and submitted a respective claim to the Kuldīga District Court; however, the court refused to accept it.

After getting acquainted with the materials in the matter the Vārme *Pagasts* Council points out that on April 12, 2005 the Ministry of Regional Development and Local Authority Affairs requested the Vārme *Pagasts* Council to furnish explanation on the Spatial Plan of the *pagasts*, that is to explain how the Council will act when taking into consideration Item 77 of the Cabinet of Ministers October 19, 2004 Regulations No. 833 ”Regulations on the Spatial Planning of Local Governments”, namely, that within three months after the elections of the local government the newly elected Council of the Local Government shall assess the local Spatial Plan and take the decision on its remaining valid, on making amendments to it or on elaboration of a new Spatial Plan for the territory of the local government. The new Council of the Vārme *pagasts* took the decision to leave the already existing Spatial Plan in effect.

Besides, the Vārme *Pagasts* Council points out that the right to property, established in Article 105 of the Satversme is not absolute and may be restricted. Otherwise the above right may run contrary to fundamental rights of other persons, guaranteed in the Satversme, for example, to the fundamental right to live in a benevolent environment, determined in Article 115 of the Satversme. The Vārme *Pagasts* Council holds that the restriction, determined to the fundamental rights of the submitter, has a legitimate aim and the restriction is proportionate to that aim. Satisfying of the constitutional claim of the submitter will lead to liquidation of the Spīķi HES water body, which might cause an ecological accident.

5. **The owner of the Spīķi HES,** when answering to the questions of the Constitutional Court, points out that he has acquired Spīķi HES in 1993. It was in a good condition; therefore no construction work has been needed. He coordinated the issue on flooding the land with the then users and land owners. As concerns the submitter the owner of the Spīķi HES offered to buy the flooded land from him or to pay compensation for it, but the proposals were rejected.

6. **The Southkurzeme District Department of the State Land Service** points out that the boundary plan of the Vārme *pagasts* farmstead ”Baloži” was drawn up on February 16, 1995. On March 29, 1999 on the basis of the application of the submitter a new boundary plan of the land was handed out, because the second land unit was separated. Other amendments to the land boundary plan of the real estate ”Baloži” have not been made. The owner of the Spīķi HES required making of the land survey of the flooded territory after the situation on September 15, 2000, but no amendments to the ”Baloži” land boundary plan have been made.

7. **The Ministry of Regional Development and Local Authority Affairs** informs that the Spatial Plan of the Kuldīga district is in effect since

December 15, 1999 but the Spatial Plan of the Vārme *pagasts* – since June 17, 2004. On April 12, the Ministry mailed a letter to the Vārme *Pagasts* Council in which it asked to inform the Ministry about further activities of the Council, regarding the Spatial Plan of the *pagasts.*

The concluding part

8. Article 105 of the Satversme establishes: " 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."

As the Constitutional Court has concluded, Article 105 of the Satversme, just as Protocol 1, Article 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, envisages both – peaceful enjoyment of property rights and the rights of the State to restrict utilization of the property in the public interest. Property rights may be restricted, if the restrictions can be justified, that is, if they are determined by the law, have a legitimate aim and are proportionate (*sk. Satversmes tiesas 2002.gada 20. maija spriedumu lietā No. 2002-01-03; see the Constitutional Court May 20, 2002 Judgment in case No. 2002-01-03).*

One of the ways how to restrict property rights in the public interests is spatial planning.

In compliance with Section 1 of the Spatial Planning Law "a spatial plan is a long-term spatial planning document or a set of planning documents, which has been developed and has come into effect in accordance with procedures set out in regulatory enactments and which in conformity with the planning level and the type of plan reflects the present and planned (permitted) utilization of the territory and the restrictions on the utilization of such territory both in writing and graphically".

The Law "On Local Governments" (Section 14, the second Part, Item 1) determines the duty of local governments to prepare a development programme for the territory of the relevant local government, in accordance with procedures prescribed by law.

In the district and territorial local government spatial plan the development possibilities, directions and restrictions are determined as well as the present and planned (permitted) utilization of the local

government territory is graphically represented (Section 5, Items 3 and 4 of the Spatial Planning Law).

A district local government and a territorial local government: 1) manages, supervises and ensures the development and implementation of the spatial plan of the relevant district local government and amendments thereto; 2) approves the district spatial plan and its amendments as local government binding regulations (Section 7, Part 5, Items 1 and 2 and Part 6, items 1 and 2 of the Spatial Planning Law).

Spatial plans of the district and territorial local governments are adopted as local government binding regulations. Therefore the spatial plans in effect are mandatory to for all natural persons and legal persons in the relevant administrative territory (the first part of Section 45 of the Law ”On Local Governments”). Spatial plan as the decision of territorial local government shall comply with the Constitution, the laws as well as with Cabinet regulations (the Law ”On Local Governments” (the second Part of Section 41).

In the spatial plan the local government anticipates the regulations on the utilization of the territory and – as has been already mentioned – restrictions to property rights may be determined to certain real estates. On the one hand the plan by itself does not endow somebody with the right of starting construction on the land plot; however by it dispositions for adopting certain decisions in concrete cases in future are determined. On the other hand, the land owner has no right of carrying out operating activities on his/her land, no right to erect buildings on it or change the aim of utilization of the land, determined in the spatial plan (*sk. Meiere S. teritorijas plānošana kā vides aizsardzību nodrošinošs līdzeklis: tiesiskais regulējums un ar to saistītās problēmas// latvijas Universitātes Raksti, 2003, 657.sēj., 21.lpp.; see: Meiere S. Spatial Planning as the Measure for Protecting the Environment: Legal Regulation and Problems, Connected with it// Works of the Latvian University, 2003, Vol. 657, p.21).*

Thus the spatial plan is a document by which the local government, in accordance with the procedure determined in normative acts, may provide for restrictions of the utilization of the territory and also for restrictions of property rights.

9. The Constitutional Court will first of all assess whether Spatial Plans of the Kuldīga district and the Vārme *pagasts* have been developed and taken effect under the procedure, established in normative acts.

9.1. The Kuldīga District Council in its written reply points out that spatial planning of the Kuldīga district was commenced on the basis

of the Cabinet of Ministers September 6, 1994 Regulations No. 194 ”Regulations on the Spatial Planning”. On November 14, 1997 the decision to confirm the wording of the first reading of the Kuldīga District Spatial Plan and elaborate the second wording of it was taken. Elaboration of the District Spatial Plan was continued on the basis of the Spatial Planning Law and the Cabinet of Ministers Regulations No. 62. On December 15, 1999 the Kuldīga District Council adopted the second Part of the Spatial Plan as binding regulations.

Ungrounded is the viewpoint of the Ministry of Regional Development and Local Government Affairs that the Kuldīga District Spatial Plan is in effect since the day of its adoption – December 15, 1999. The general procedure of taking effect of the normative acts – binding regulations by the local government is anticipated in the Law on Local Governments; however spatial plans take effect under the procedure, determined by the normative acts, regulating spatial planning. In accordance with Item 26 of the Cabinet of Ministers Regulations No. 62 district spatial plan takes effect on the next day after the decision on its adoption has been published in the newspaper ”Latvijas Vēstnesis”. The decision on the adoption of the Kuldīga District Spatial Plan has not been published in the newspaper ”Latvijas Vēstnesis”. Thus the criterion on the validity of the Spatial Plan has not been accomplished and the impugned Item 8.3.1.of the second Part of the above Spatial Plan cannot create violation of the property rights of the submitter.

Thus the Constitutional Court has no legal basis for the assessment of the second Part, Item 8.3.1. of the Kuldīga District Spatial Plan and the matter on this claim shall be terminated.

9.2. The Spatial Plan of the Vārme *Pagasts* has been elaborated on the basis of the Cabinet of Ministers December 5, 2000 Regulations No.423 ”Regulations on Territorial Planning” (henceforth – the Cabinet of Ministers Regulations No. 423).

The Vārme *Pagasts* Council confirmed the second (final) wording of the Spatial Plan on February 20, 2003, however, the information about confirmation of the Plan was not published in the newspaper ”Latvijas Vēstnesis” as it is required by the Cabinet of Ministers Regulations No.423, Item 43. Therefore on June 17, 2004 the Spatial Plan was repeatedly confirmed. Information about the Spatial Plan was published in the newspaper ”Latvijas Vēstnesis” on July 20, 2004.

Thus, even though the matter is initiated about the Vārme *Pagasts* February 20, 2003 Spatial Plan, as regards the claim the Spatial Plan, confirmed on June 17, 2004 will be assessed.

10. In the Vārme *Pagasts* Spatial Plan the Spīķu HES and its water body are marked in the graphical part, in the maps " Present Utilization of the Vārme *Pagasts* Territory" and "The Planned and Permitted Utilization of the Vārme *Pagasts* Territory". The boundaries of the real estates (with their cadastre numbers) are shown in the maps and it can be seen that the Spīķi HES water body covers also a part of the "Baloži" land, which belongs to the submitter.

The "Baloži" land was flooded without the agreement of the submitter already before the confirmation of the Vārme *Pagasts* Spatial Plan. In accordance with Section 963 of the Civil Law the flooded land still belongs to the submitter. This norm – contrary to the viewpoint of the submitter – refers also to artificial flooding, regardless of the fact whether flooding is constant or temporary; however, the owner of the flooded land plot has the right of demanding that the person, who has violated his rights, averts the illegally created flooding (*sk.: Grūtups A., Kalniņš E. Civillikuma komentāri. Trešā daļa. Lietu tiesības. Īpašums. Otrais papildinātais izdevums.- Rīga: Tiesunamu aģentūra, 2002, 64.lpp.; see: Grūtups A., Kalniņš E. Comment on the Civil Law. The Third Part. Case Law. Property. The second supplemented issue. – Riga: The Court House Agency, 2002, p. 64).* Thus ungrounded is the viewpoint of the submitter that by the Vārme *Pagasts* Spatial Plan the land, belonging to him "has been included in the territory of the Spīķi HES water body".

Already since 2000 the civil case about averting of the violation of the property rights of the "Baloži" farmstead is being reviewed at the court of general jurisdiction. Taking into consideration the legal force of the Spatial Plan, the Spīķi HES owner in his cassation claim to the Supreme Court Senate referred to the Vārme *Pagasts* Spatial Plan and pointed out that liquidation of the Spīķi HES and its water body runs contrary to the Plan. Spatial Plan is binding on the courts of general jurisdiction, also in cases when solving the dispute on the restrictions of property rights. Therefore the Supreme Court Senate concluded that the court of appellate instance, when reaching the Judgment, has groundlessly disregarded the above Spatial Plan.

Thus, the Vārme *Pagasts* Spatial Plan, by marking the flooding of the land of the "Baloži" farmstead in the above maps, determines restrictions to the property rights of the owner. To have basis for the assessment of the conformity of the restrictions with Article 105 of the Satversme one has to establish whether the Pagasts Council

has had the right of determining them at the time, when the dispute on prevention of violation of property rights was being reviewed at the court of general jurisdiction.

11. The Constitutional Court has pointed out that normative acts envisage extensive freedom of action (discretionary power) for the local government. However it is not unlimited. Freedom of action, envisaged for the local government, legally may be used only within the framework of its outer limits. The principles of spatial planning and general legal principles shall serve as the guiding lines for freedom of action in the sector of spatial planning. During the process of spatial planning interests of individuals shall be concerted in complex with sustainable development possibilities. When anticipating or implementing another objective of spatial planning, for example, advancing only the economic growth of the territory (profit gain), not taking into consideration the specific natural and cultural values or violating the outer limits of freedom of action, illegitimate final result is reached. The procedure of spatial planning is regulated in order to identify and assess different interests and to establish which shall be considered as prior in the plan. Balancing of the interests of all the parties shall be achieved in this process as well as the protection of the weakest participants and ensurance of public interests (*sk. Satversmes tiesas 2004. gada 9. marta sprieduma lietā No. 2003-16-05 5. punktu; see the Constitutional Court March 9, 2004 in case No. 2003-16-05, Item 5).*

The Spatial Planning Law vests to the local government the competence of determining territories, also the restrictions of utilization of real estates within the territory; however, the restrictions shall be related only to future.

As has been already mentioned, the land of the "Baloži" farmstead, belonging to the submitter, was flooded in 1997, but proceedings on the violation of property rights continue since 2000. Regardless of the above in 2004 the Vārme *Pagasts* Council adopted the Spatial Plan, in which Spīķi HES and the flooded "Baloži" farmstead water body are marked . The situation in which the restriction of utilization of the "Baloži" farmstead land , that was initiated earlier and as the result of private activity, was fixed in the Spatial Plan. The Spatial Planning Law does not envisage such rights for the local government.

Besides from the universal legal principles follows the conclusion that interference in the court performance is inadmissible. Prohibition on interference with the work of a court, fixed in Section 11 of the Law "On Judicial Power" includes the duty of other institutions of public power to abstain from taking decisions on issues, regarding which a

matter is being reviewed in the court. If a dispute is reviewed in the court, then other institutions may take decisions on the issue of the dispute only after the court judgment has taken effect. To avoid exceeding of its competence the local government in the spatial plan shall not determine utilization of the territory, on which there is a civil dispute about the restrictions of property rights, to the time till the court takes the decision on it. The Vārme *Pagasts* Council, when marking the Spīķi HES water body and the flooded "Baloži" farmstead land in the Spatial Plan has taken the decision on the matter, which is being adjudicated at the court of general jurisdiction. Thus the local government has exceeded the outer limits of its freedom of activity and undertaken the competence of the court.

All the objects and territories existing in nature shall not be included in the spatial plan. At the time of elaboration and confirmation of the Vārme *Pagasts* Spatial Plan Item 21.16 of the Cabinet of Ministers Regulations No.423 ,which were in effect, envisaged in case of necessity to include in the spatial plan of the local government information on unfinished or not adopted (to be completed in future) parts of the local authority spatial plans. In its turn, Item 41 determined: if the local authority adopts a spatial plan, in which several parts are not confirmed, it shall not mark the boundaries of the not confirmed parts of the plan or the boundaries of the planned territories, on which the plan has not been confirmed and refer to them as the parts to be completed. The parts of the spatial plan, which are not confirmed, are elaborated in the subsequent process of planning as the amendments to the spatial plan.

The Vārme *Pagasts* Council, when determining in the *Pagasts* Spatial Plan the permitted utilization of the "Baloži" farmstead flooded lands has acted *ultra vires*, that is, by exceeding the limits of its competence. Thus the *Pagasts* Spatial Plan in this part is unconformable with the requirements of Section 41 (the second Part) of the Law "On Local Governments".

12. The Constitutional Court would have to assess the compliance of the restriction of the submitter's property rights if the local government had determined the restrictions in the Spatial Plan in accordance with the requirements of normative acts and had recognized that the importance of Spīķi HES in the sectors of national economy and recreation of the residents were greater than the determined restrictions to the submitter's property rights.

As in the concrete situation the Vārme *Pagasts* Council did not have the right to determine restrictions to the property rights of the submitter, then – within the framework of this matter the

Constitutional Court has no legal ground for assessing the conformity of the restrictions to the property rights of the submitter with Article 105 of the Satversme.

The operative part

On the basis of Article 29 (Item 6 of the first Part) as well as Articles 30-32 of the Constitutional Court Law the Constitutional Court

hereby rules:

1) **to terminate the matter on the compliance of the Kuldīga District Council December 15, 1999 Spatial Plan (Part 2, Item 8.3.1.) on Spīķi HES with Article 105 of the Republic of Latvia Satversme;**
2) **to declare Kuldīga District Vārme *Pagasts* Council June 17, 2004 Vārme *Pagasts* Spatial Plan on the permitted utilization of the flooded "Baloži" farmstead as unconformable with Section 41, Part 2 of the Law "On Local Governments" and null and void from the moment of its acceptance.**

The Judgment is final and allowing of no appeal.

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

The Chairman of the Court session J.Jelāgins