THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, May 21, 2004

JUDGMENT
in the name of the Republic of Latvia

in case No. 2003 -23-01

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session Aivars Endziņš, justices Romāns Apsītis, Aija Branta, Ilma Čepāne, Juris Jelāgins, Gunārs Kūtris and Andrejs Lepse under Article 85 of the Republic of Latvia Satversme as well as Articles 16 (Item 1), 17 (Item 11 of the first part) and 28^1 on the basis of the constitutional claim by Jānis Knostenbergs and Stefans Misevičs holding the proceedings in writing on April 23, 2004 at the Court session reviewed the case

"On the Compliance of Section 43 (Item 6 of the First Part) of the Law on Local Governments" with Articles 91, 106 and 107 of the Republic of Latvia Satversme (Constitution)"".

The establishing part

1. On May 19, 1994 the Saeima (the Parliament) adopted the Law "On Local Governments". Its objective was to regulate the general provisions and economic basis for the activities of the local governments of Latvia, the competence of local governments, the rights and responsibilities of the Domes (Councils) and their institutions as well as of the chairpersons of the Domes (Councils), the relations of local governments with the Cabinet of Ministers and ministries, as well as the general provisions for relations among local governments.

The third part of Section 14 of the Law "On Local Governments" establishes that to ensure the performance of their functions, local governments in cases prescribed by law shall issue binding regulations. In its turn in the first part of Section 43 of the Law "On Local Governments" those cases, when the local governments (Councils) are entitled to issue binding regulations that provide administrative liability for violating them, if such is not provided for by law, are enumerated.

Initially Item 6 of the first part of Section 43 determined that the local government (Council) is entitled to issue binding regulations ”regarding maintaining sanitary cleanliness”. On June 26, 2003 the Saeima adopted Amendments to the Law ”On Local Governments” by which Item 6 of the above Section was expressed in a new wording. Namely, the local government (Council) is entitled to issue binding regulations ”regarding maintaining sanitary cleanliness and maintenance of the territory, which lies at the property (pavements, with an exception of public transport stops, ditches, flows or grassland up to the drive or road)” (hereinafter – the challenged norm). The Amendments took effect on July 11, 2003.

In addition, on July 5, 1993 the Ministry of Architecture and Building passed Order No. 76 ”On Confirmation of Building Normatives”. With the Order was confirmed the Latvia building normative LBN-403 ”Regulations on Maintenance of Sanitary Cleanliness of Houses” (hereinafter – LBN-403), Item 2.1. of which reads as follows: ”Pavements and the drives (roads) in the width of 1 meter shall be maintained in the whole length of the land and house property but – as concerns properties at the parks, gardens, squares, boulevards, embankments –to the boundaries of the park, garden or square or to the railing of the embankment.” This norm was in effect till June 5, 2002.

2. The submitters of the constitutional claim J.Knostenbergs and S.Misevičs (henceforth – the submitters) request to assess whether the norm, incorporated in Section 43 (Item 6 of the first part) of the Law ”On Local Governments”, which endows the local governments with the right of issuing binding regulations on maintenance of the territory for public use lying at the property and envisages administrative liability complies with Articles 91, 106 and 107 of the Republic of Latvia Satversme (henceforth- the Satversme).

The submitters hold that the challenged norm violates their rights, enshrined in the Satversme, because of several circumstances. The submitters point out that the Saeima, when adopting the challenged norm, has allowed the local governments with the help of binding regulations to assign to the owners of real estate the duty of doing forced labour in the territory not belonging to the owner but to the local authority. They stress that both Article 106 of the Satversme and Article 4 of the European Convention for the Protection of Fundamental Human Rights and Freedoms establish what shall not be regarded as forced labour. Systematic care about territory, not belonging to the owner, is not included in the above, thus it shall be regarded as forced labour.

The submitters point out that the challenged norm is at variance also with the principle of non-discrimination, fixed in Article 91 of the Satversme. The challenged norm creates a differentiated attitude to persons, who own a property, as the owners are assigned with new, obligatory duties. In their turn the persons, who live in apartment buildings and who do not own a property,

do not have such obligations. Besides, the submitters stress that the local government experiences the right of administratively inflicting a penalty to the person, who violates the above regulations, thus ”one legal subject of property rights – the local government - has the right of inflicting a penalty to the other legal subject of property rights – the private owner – for not keeping in order the property of the local government”. To their mind it is the duty of the local government itself to maintain the cleanliness in its own territory. Therefore to their mind shifting of the functions of the local governments has no logical substantiation, it is not based on any legal principle.

Besides, work, which in accordance with the binding regulations has been charged to the submitters, is not paid for. The submitters point out that the Jēkabpils local government has refused to employ one of the submitters – Jānis Knostenbergs, stressing that the binding regulations do not envisage the possibility of concluding agreements with the owners of real estate for the maintenance of the territory lying at their property. Thus the challenged norm makes the owners do the work of the janitor without paying for it. Besides, the owners are not guaranteed the fundamental rights, fixed in Article 107 of the Satversme – neither the right to holidays, nor to a paid annual vacation.

3. The Saeima – the institution, which has passed the challenged act- in its written reply points out that the challenged norm, which endows the local city Dome (Council) with the right of issuing binding regulations on maintenance of sanitary cleanliness and maintenance of the territory for public use lying at the property, envisaging administrative liability for violating the regulations, is not at variance with Articles 91, 106 and 107 of the Satversme because of the following reasons.

The challenged norm does not assign the owner with the duty of doing forced labor, as the objective of the norm is to endow the local authority with the right of determining (choosing) the person who is responsible for maintaining the territory for public use, which lies at the property. The challenged norm to the mind of the Saeima gives the local government the possibility of determining who shall be responsible for administration of the territory – the municipality itself or the owner. In its turn, if the local government determines that the owner is responsible for maintenance of the territory for public use, the owner has the right to choose how to ensure accomplishment of the duty. The Saeima stresses that no features of forced labor may be recognized in the legal norm as it does not include the personal duty of the owner to maintain these territories.

The Saeima points out that the challenged norm does not place persons, who live in private houses in different situation with those, who reside in apartment buildings. Both – the tenants and the owners have the obligation to maintain the territories for public use lying near the property. Only the way of doing it differs, namely, maintenance of the territory is included in the rent of the tenants, but the owners have the possibility to choose how to ensure

implementation of the above obligation. Apartment owners, living in apartment buildings, may, for example, create associations of apartment owners and then the person, whom the apartment owners have authorized to manage the house, shall be responsible for maintenance of the territory. Thus, the Saeima holds that the differentiated attitude is not established.

The Saeima points out that the challenged norm complies with Article 107 of the Satversme, as the duty of ensuring implementation of certain activities, does not create legal labor relations. Even in cases when the municipality in its binding regulations envisages that the owner is responsible for ensuring maintenance of the territory, it does not concern and create legal labor relations between the municipality and the owner. The duty is connected with a particular territory but not with a particular person.

Last of all the Saeima points out that the challenged norm does not oblige the local governments to do the task of issuing binding regulations on maintenance of sanitary cleanliness of the territory for public use; it allows the local governments to choose – to issue or not to issue the regulations. Besides, the local governments, when issuing the binding regulations, shall ensure their conformity with the Satversme and the principles, following from it, with the international standards of human rights as well as with other normative acts.

Requirements alike to the challenged norm existed in Latvia already in the twenties of the XX century; therefore in Latvia they may be regarded as an old tradition. Besides, LBN-403 also anticipated the requirement on the duty of maintenance of the street and its drive lying at the property. Thus one may conclude that requirements, like those included in the challenged norm, have lasted in Latvia for a long time and ”have acquired the features of a tradition”.

5. The State Human Rights Bureau, when answering to the questions asked by the Constitutional Court, points out that the challenged norm, even though it does not envisage concrete instructions and sanctions, gives to the local governments a legal possibility to impose disproportionate encumbrance in maintenance of the territory for public use and up-keeping of order in it. The challenged norm to the mind of the Bureau has not been formulated in such a way that its objective can be clearly seen, namely, maintenance of the territory for public use, lying at the property, but not maintenance of all the territories for public use, in which the municipality or other persons participate. The State Human Rights Bureau stresses that it has already expressed the viewpoint that imposing of the above encumbrance to all the owners, regardless of their age, practicability and the form of the property, is not proportionate. Therefore the local governments, when elaborating the binding regulations in accordance with the challenged norm, shall assess every individual case, taking into consideration everything: the form of the property, physical and material practicability of the owner as well as other substantiated reasons, why the implementation is not possible.

5. The Union of the Local Governments of Latvia, when answering to the questions asked by the Constitutional Court, points out that the local governments shall have the right of issuing binding regulations on the maintenance of the territory for public use, lying at their property. In Latvia the above routine has already existed before, besides, e.g. in Sweden, Germany and Finland analogical duties are imposed on the owners of real estate. The Union of Local Governments stresses that already now several municipalities, when issuing binding regulations on this issue, have found out information about their house owners and envisage a specific procedure for several groups of persons (indigent persons, pensioners, disabled persons etc.).

6. The Ministry of Regional Development and Local Government Affairs, when answering to the questions asked by the Constitutional Court, also points out that the duty of the owners of the houses to maintain the territory for public use, lying at the property, has been envisaged already in Item 2.1 of LBN-403. The Minister of Environmental Protection and Regional Development had repealed the Item, not taking into consideration its influence on the municipality budget. In accordance with the information collected by the Union of Local Governments of Latvia, to ensure maintenance of the above territories the local governments would need serious additional assets. Besides, the Ministry stresses that the challenged legal norm does not restrict the fundamental rights of the individual, as it only authorizes the local governments with the right to issue binding regulations, but does not determine the procedure under which the maintenance of the above territories shall be carried out.

7. The Ventspils City Dome, when answering to the questions of the Constitutional Court, points out that maintenance of the territory for public use, lying at the property is a traditional duty in Latvia, moreover, the same procedure exists also in several Member States of the European Union. The above duty to the mind of the Dome might be compared with the duty of the owner to clean from the roof of his/her house ice and heaps of snow, which are hanging over the roof and are over the pavement used by people. Ventspils Dome also stresses the financial aspect of this issue, namely, the inhabitants have to cope with the task themselves so that a new municipality tax shall not be imposed. Besides, the Dome points out, that easement for several categories of inhabitants is envisaged, in such a way ensuring centralized maintenance of the territories at the houses.

The Jēkabpils City Dome points out, that amendments have been made to their binding regulations, and it is anticipated that administrative penalty shall not be inflicted on persons of several categories, who are not able to maintain order in the territory lying at their property because of objective reasons. Besides, the owner or the manager of the property in public interests has to maintain order not only in the property but also the territory around.

The Liepāja City Dome also points out that maintenance of the territory lying at the property is connected with maintenance and management of the property. Besides, if the local authorities were to undertake maintenance of the above territories, the real estate tax might be increased, so the balance between income and expenses of the local authority budget was ensured.

In its turn **the Daugavpils City Dome** stresses that the sense of duty of the inhabitants is not so high as to ensure sanitary cleanliness in the territories for public use, lying at the property. Besides, any person is able to choose whether to do it itself, conclude an agreement with relevant services or hire a workman.

The concluding part

8. To ensure carrying out their function, the local governments in conformity with the third part of Section 14 of the Law ”On Local Governments” experience the right of issuing binding regulations. In its turn the cases, when the local government Dome (Council) is entitled to issue binding regulations and envisage administrative liability for violating them, is determined by Section 43 of the Law ”On Local Governments”. The local government may issue binding relations with respect to such issues as building in the administrative territory, trading in public places, keeping of domestic animals, use of public transport etc. One of the issues has been included also in the challenged norm, namely, ”maintaining sanitary cleanliness in the territory for public use, lying at the property (pavements, with an exclusion of public transport stops, ditches, flows or grassland as far as the drive). The duty of the local government is to take care of improvement and sanitary cleanliness of its administrative territory follows from Section 15 (the second part) of the Law ”On Local Governments”.

However, Section 43 of the Law ”On Local Governments” does not assign the local governments with the duty of issuing binding regulations. The law authorizes local governments to issue binding regulations to ensure the performance of their functions and in the particular case – to take care of maintenance of sanitary cleanliness and maintaining order in the territories for public use.

The challenged norm itself does not determine the procedure of maintaining sanitary cleanliness in the administrative territory of the local government. Every particular local government has to establish it in its binding regulations. The challenged norm does not determine persons, who have to maintain sanitary cleanliness in the administrative territory either and does not assign the person with the duty of maintenance of the territory for public use, lying at the property.

Thus the challenged norm includes only delegating the right of issuing binding regulations on maintenance of sanitary cleanliness and maintaining of order of the territory for public use, lying at the property to the local government but does not determine the procedure of doing it.

9. Article 106 of the Satversme determines that ”everyone has the right to freely choose their employment and workplace according to their abilities and qualifications. Forced labour is prohibited. Participation in the relief of disasters and their effects and work pursuant to a court order shall not be deemed forced labour”.

Prohibition of forced labour, which is incorporated in Article 106 of the Satversme refers to both – the sector of public rights and the private rights. Besides, the Satversme envisages several exceptional cases, when labour shall not be considered forced labour. Exceptional cases, even though they are determined in the interests of public welfare and safety, are only extraordinary cases. The above labour is of the publicly legal nature, their accomplishment is charged by the subjects of public law and for refusal to do it administrative or criminal liability may set in.

Article 106 of the Satversme does not include the definition of the forced labour. However, the Constitutional Court has already interpreted the contents of the notion ”forced labour”. It has concluded that forced labour means any work or service, which the persons is compelled to do because of the threat of punishment and which the person has not volunteered to do as it is unjust or oppressive (*see the Constitutional Court November 27, 2003 Judgment in case No. 2003-13-0106, Item 1.2 of the concluding part).* To assess whether the challenged norm determines force labour, one has to clarify whether the challenged norm complies with the definition of forced labour.

The notion ”forced labour” in this case shall be systemically interpreted by analyzing it together with other fundamental rights of persons, enshrined in the Satversme, namely, together with Article 105 of the Satversme. Inter alia it determines that ”everyone has the right to own property. Property shall not be used contrary to the interests of the public”.

Article 105 of the Satversme envisages the right of everyone to property, but it does not reveal the content of the notion ”property”. However, on the one hand property includes rights, but on the other hand assigns duties as well. For example, Article 14 of the German Federative Republic Fundamental Law *expressis verbis* determines that ” right to property[…] is guaranteed. The contents and boundaries of it are determined by law. Property charges one with duties. Use of the property shall simultaneously serve public benefit.”
Besides, the German Federal Administrative Court in one of its Judgments has pointed out that ” legal regulation of the land or the populated place, which envisages or permits assigning the duty of maintenance of the street to the

owners of the properties, lying at it is in conformity with Article 14 of the Fundamental Law and does not violate the prohibition of forced labour, which follows from Article 12 either" (*The German Federal Administrative Court April 7, 1989 Judgment in case No. 8 C 90/87, BverwGE 81, 371-376).*

Thus, even though the challenged norm gives the right of issuing binding regulations on the maintenance of the territory for public use, which is lying at the property and envisaging liability for violation of the regulations, there is no reason to hold that it anticipates forced labour. From the above one may conclude that maintenance of the territory for public use, lying at the property, shall not be regarded as forced labour but as a duty, imposed by the property.

Thus the challenged norm is not at variance with Article 106 of the Satversme.

10. Article 107 of the Satversme determines "every employed person has the right to receive, for work done, commensurate remuneration which shall not be less than the minimum wage established by the state, and has the right to weekly holidays and a paid annual vacation."

Article 107 of the Satversme refers to legal labour relations, i.e. relations, which have been created between the employee and the employer on the basis of labour contract. Legal labour relations are engagements of personal nature and they are regulated mainly by Labour Law.

The challenged norm is of publicly legal nature. Besides, as has been concluded before, it does not concern concrete persons. One may agree with the viewpoint, expressed in the written reply by the Saeima. Namely, that even in cases when the binding regulations establish that the owner is responsible for ensuring maintenance of the territory, they do not create legal labour relations between the local government and the owner. The particular duty is connected with a certain territory and not a certain person and the owner has the right of choosing in which way to maintain order in the territory and who will do it. Thus the challenged norm cannot create legal labour relations.

Thereby the challenged norm is not at variance with Article 107 of the Satversme.

11. Article 91 of the Satversme determines that "all human beings in Latvia shall be equal before the law and the courts. Human rights shall be realized without discrimination of any kind." The Constitutional Court, when interpreting Article 91 of the Satversme has acknowledged that the principle of equality prohibits state institutions to pass such norms, which- without a reasonable ground- allow a differentiated attitude to persons, who are in similar and comparable under certain criteria circumstances. The principle of equality allows and even demands a differentiated attitude to persons who are in

different circumstances, as well as allows different attitude to persons, who are in equal circumstances, if there is an objective and reasonable ground (*see the Constitutional Court April 3, 2001 Judgment in case No. 2000-07-0409, Item 1 of the concluding part).*

To assess whether the challenged norm complies with Article 91 of the Satversme, one has to ascertain:

- whether and which persons or groups of persons are in equal and comparable conditions;
- whether the challenged norm envisages a differentiated attitude and whether the challenged norm has a legitimate aim;
- whether the differentiated attitude has an objective and reasonable ground.

12. To make out whether and what persons or groups of persons are in equal and comparable under certain criteria circumstances, it is necessary to find the uniting feature of this group.

The submitters mention that ownership of immovable property is the uniting feature of the group of persons but hold that the differentiating attitude lies in the fact that persons, who own an immovable property (a house and/or land) side by side with which is the territory for public use, have to maintain order in the territory, but persons, who own property without the above territory as well as the persons, who own a property in an apartment building do not have the obligation to do it. In its turn the Saeima in its written reply points out that the challenged norm does not place persons, who live in private houses and those, who live in apartment buildings in different situations.

The challenged norm envisages that the local government is entitled to issue binding regulations on ”maintenance of the territory for public use, which lies at the property”. Thus - the duty (obligation) of maintaining order in the territory for public use, lying at the property concerns all the owners, who have property in the particular administrative territory, if there is a territory for public use at the property.

The Constitutional Court holds that the viewpoint of the submitters has no objective ground. The challenged norm does not determine that the duty of maintaining order in the territory for public use, lying at the property concerns only the owners of private houses. Real estate is an extensive concept, besides the forms (types) of real estate may be different – an apartment in the apartment building, land property, a private house etc. Real estate may belong to both – the physical or the legal entity.

Thereby persons, who own a real estate, are in equal and comparable circumstances, regardless of the form of the property.

13. If persons, who own an immovable property, are in equal and comparable circumstances, then one has to make out whether the challenged norm anticipates a differentiated attitude depending on the form of the immovable property.

As has been already concluded, the obligation of maintenance of the territory for public use, lying at the property, concerns all the owners, if side by side with their property there is the territory for public use. This obligation in an equal way concerns the owners of private houses, apartment owners of apartment buildings and the owners of land property. Thus, for example, Article 8 of the Law "On the Apartment Property" envisages the duty of all the apartment owners to participate in administration and management of the joint estate part of the apartment building. In its turn management of the building includes also maintenance of the territory for public use, lying at the property.

Thereby one has to agree with the viewpoint of the Saeima that the above duty concerns not only the owners of immovable property but also the tenants. As concerns tenants Article 11 of the Law " On the Rent of Apartments" determines what expenses create the rent. It envisages that expenses, connected with the management of the apartment building, which in its turn includes expenses for maintenance of the territory at the building, shall be included in the rent.

Thus the challenged norm and the binding regulations, issued by the local governments on the basis of it, equally concern the apartment owners of apartment buildings and the owners of private houses and a differentiated attitude to the owners of properties of different types is not established. The ways, in which the particular duty is carried out, may differ. For example, the apartment owners of an apartment building may found association of apartment owners, which ensures management of the apartment buildings under their authority. The owner of a private house or owners individually or by agreement may choose in what way to do their duty, e.g., by hiring a janitor.

Thus, the challenged legal norm does not envisage a differentiated attitude and does not violate the principle of legal equality, which is determined in Article 91 of the Satversme.

14. As has been stated earlier, the challenged norm does not impose the duty on local governments; it just includes delegation of issuing binding regulations on maintenance of sanitary cleanliness and maintenance of the territory for public use, lying at the property. As the challenged norm does not envisage the procedure of ensuring sanitary cleanliness and maintaining order in the territory for public use at their property in the particular administrative territory, the local government shall anticipate it in its binding regulations.

The Constitutional Court does not deny that the procedure of maintenance of the territory in the administrative territories of different local governments may vary. It can be explained both with the possibilities of the particular local government, its funds and the placement of the territory. However, one may agree with the viewpoint, expressed in the Saeima written reply, that in all cases, when the municipality issues binding regulations, also about the maintenance of the territory, they – in accordance with Section 41 (the second Part) of the Law ”On Local Governments” shall comply with the legal norms of higher legal force- the Satversme, the laws as well as the Cabinet of Ministers Regulations.

Thus, for example, on the basis of the challenged norm, several amendments were made to the binding regulations by the Jēkabpils city. At the moment Item 6.7 of the above regulations establish: ”On non-maintenance of the territories for public use, lying at the real estate (pavements, with an exception of transport stops, ditches, flows or grassland up to the drives) a fine up to 25 LVL is inflicted on the owner of the real estate (with an exception of the persons under municipality social care as well as the disabled persons of the first and second group, in whose property do not reside , or have not declared it as their place of residence, one or several persons, capable to work), its user or janitor”.

Thus, the local governments in their binding regulations, when determining the procedure of maintenance of the territories for public use, shall assess how to ensure proportionality between the duties, imposed on a person and the aim to be reached – a tidied city environment. Thus every local government within the limits of possibility shall envisage a special procedure as regards such groups of persons as the disabled, the pensioners, indigent persons, juveniles etc.

The substantive part

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

hereby rules:

to declare Section 43 (Item 6 of the first part) of the Law ”On Local Governments” as CONFORMABLE with Articles 91, 106 and 107 of the Republic of Latvia Satversme.

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 A.Endziņš