



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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Riga, March 9, 2004

## JUDGMENT

in the name of the Republic of Latvia

**in case No. 2003-16-05**

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session Aivars Endziņš, justices Ilma Čepāne, Romāns Apsītis, Juris Jelāgins, Gunārs Kūtris and Andrejs Lepse with the secretary of the Court session Oskars Garkājs in the presence of Valentīna Elksne and the sworn advocate Viktors Tihonovs – the authorized representatives of the submitter of the claim – the Jūrmala City Dome (Council) as well as Artis Stucka – the authorized representative of the official who has passed the challenged act – the Minister of Regional Development and Municipal Affairs under Article 85 of the Republic of Latvia Satversme (Constitution), Articles 16 (Item 5), 17 (Item 7 of the first part) and 19 of the Constitutional Court Law on February 10 and 11, 2004 in a public hearing in Riga reviewed the case

**”On the Compliance of the Minister of Regional Development and Municipal Affairs May 27, 2003 Order No. 2-02/57 on Suspension of the Enforcement of the Jūrmala City Dome October 24, 2001 Binding Regulations No. 17 ”On the Jūrmala Detailed Land Use Plan for the Territory between the Bulduri Prospect, Rotas Street and 23-25 Avenues”; the Minister of Regional Development and Municipal Affairs June 2, 2003 Order No. 2-02/60 on Suspension of the Enforcement of the Jūrmala City Dome October 9, 2002 Binding Regulations No. 10 ” On the Confirmation of the Detailed Land Use Plan for the Public Centre ”Vaivari” as well as the Minister of Regional Development and Municipal Affairs Order No. 2-02/62 on Suspension of the Enforcement of the Jūrmala City Dome November 7, 2001 Binding Regulations No. 18 ”On the Confirmation of the Detailed Land Use Plan for the Plot Bulduri 1001, Jūrmala” with Article 1 of the Republic of Latvia Satversme””.**

## **The establishing part**

On October 24, 2001 the Jūrmala City Dome (Council) adopted binding Regulations No. 17 "On the Detailed Land Use Plan in Jūrmala, for the Territory between the Bulduri Prospect, Rotas street and 23-25 Avenues" (henceforth – the Dome Regulations No.17); on November 7 2001 – the binding Regulations No.18 "On the Confirmation of the Detailed Land Use Plan for the Plot Bulduri 1001, Jūrmala" (henceforth – the Dome Regulations No. 18) and on October 9, 2002 – the binding Regulations No. 10 "On the Confirmation of the Detailed Land Use Plan for the Public Centre "Vaivari" (henceforth – the Dome Regulations No.10).

In February of 2003 several deputies of the Saeima, including also Leopolds Ozoliņš, Jānis Strazdiņš, Pēteris Kalniņš, Indulis Emsis, Andris Bērziņš and Augusts Brigmanis addressed an appeal to the Procurator General's Office, requesting it to assess the legitimacy of alienation and renting of particular land plots in Jūrmala. Inter alia the deputies pointed out that the Jūrmala City Dome has not taken into consideration the requirements of Article 36 of the Law on the Protected Belt, namely, it has allowed alienation of the state owned plots in the protected coastal zone of the Baltic sea, without requesting the Cabinet of Ministers (henceforth – CM) to pass the Decision on it. The deputies stated that at the time of elaboration of the land use plan of the territory the public viewpoint has not been taken into consideration either (*see Latvijas Vēstnesis February 13, 2003, No. 24*).

When verifying the above the Procurator of the Procurator General's Office Department of Protection of the Rights of Persons and the State Guntis Akmeņkalns established that several land use plans not only were at variance with the Development Plan (henceforth –the Master Plan) of the City of Jūrmala but also had not been elaborated in compliance with the Cabinet of Ministers December 5, 2000 Regulations No. 423 "Regulations on Territorial Planning" (henceforth – Regulations No.423).

On April 24, 2003 G.Akmeņkalns –under the procedure envisaged by law-submitted application to the Jūrmala City Dome. He required to suspend as unlawful the enforcement of Dome Regulations No. 18 and No. 10. On the same day he forwarded the letter to the Minister of Regional Development and Municipal Affairs, requesting to suspend the enforcement of the above binding Regulations under Article 49 of the Law "On Local Governments".

In its April 20, 2003 written reply to G.Akmeņkalns the Jūrmala City Dome pointed out that the facts mentioned in the application were untrue, namely, that the Jūrmala City Dome had not violated Regulations No. 423 and requested the Procurator to repeatedly assess the requirements, mentioned in the application of April 24, 2003.

On May 27, 2003 the Minister of Regional Development and Municipal Affairs passed Order No. 2-02/57 "On Suspension of the Enforcement of the Jūrmala City Dome October 24, 2001 Binding Regulations No.17 "On the Jūrmala Detailed Land Use Plan in the Territory between the Bulduri prospect, Rotas Street and 23-25 Avenues"" (henceforth – Order No. 2-02/57). It is pointed out in the Order that the Jūrmala City Dome February 3, 2000 Decision No. 85 "On Amendments to the Jūrmala City Development Plan (Master Plan)" (hereinafter – Decision No. 85) has not been adopted in the form of binding Regulations and thus the Master Plan, confirmed in 1995 was still in effect. Besides, the public dispute about the detailed land use plan lasted for three weeks; but Regulations No.423 establishes that public disputes in such cases shall be at least four weeks long. The Jūrmala City Dome has also not taken into consideration the negative conclusion on the above detailed land use plan, expressed by the State Inspection for the Protection of Cultural Monuments on October 15, 2001.

On June 2, 2003 the Minister of Regional Development and Municipal Affairs passed Order No. 2-02/60 "On Suspension of the Enforcement of the Jūrmala City Dome October 9, 2002 Binding Regulations No.10 "On the Confirmation of the Detailed Land Use Plan for the Public Centre in Vaivari"" (hereinafter – Order No. 2-02/60) and another Order No. 2-02/62 "On Suspension of the Enforcement of the Jūrmala City Dome November 7, 2001 Binding Regulations No.18 "On the Confirmation of the Detailed Land Plan for the Plot Bulduri 1001"".

In the motivation of the Order the Minister points out that "with the above detailed land use plan the Jūrmala City Dome changes the planned (permitted) use of the territory included in the Jūrmala City Development Plan (Master Plan). When establishing the above fact, the Jūrmala City Dome had to take the Decision on commencement of elaborating the amendment to the plan of the territory or the detailed land use plan had to be elaborated as the basis for amending the planning of the territory of the municipality". Thus the Minister expresses the viewpoint that the Jūrmala City Dome has violated the requirements of Regulations No.423.

**The submitter of the claim** holds that Orders No.2-02/57; No.2-02/60 and No. 2-02/62 do not comply with the principles of a law-based state, among them principles of legitimate trust, proportionality and legal stability, following from Article 1 of the Republic of Latvia Satversme (hereinafter – the Satversme).

The principle of proportionality to the mind of the submitter limits freedom of performance and arbitrariness of the executive power and is based on certain criteria. As concerns this principle to submitter's mind the Minister has not sufficiently assessed the influence of his Orders on the rights of private

persons, which had lawfully arisen on the basis of the suspended binding Regulations by the municipality.

The principle of legal stability in its turn secures planned for certain terms execution of the activities of the executive power. As the Minister did not pass his Orders in due time – after the adoption of the municipality binding Regulations, to the mind of the submitter the principle of legal stability has been violated.

In its answers to the questions of the Constitutional Court the submitter specifies that the principle of legitimate trust shall be observed as regards private persons and not as regards the Jūrmala local authority, however, to his mind the principle shall be respected also by the state when organizing the administration process, like when examining the legitimacy of the detailed land use planning. Several administrative acts, based on the above binding Regulations, have been passed. The addressees had trusted the legitimacy of the activities performed by the state and thus- they had planned their personal activities. Taking into consideration the fact that the addressees of the administrative act believed in trust in law, their legitimate trust shall be protected. If the State violates the above principle, the addressees of the administrative act shall receive remuneration from the state (the municipality).

**The Institution, which has passed the challenged act** – the Minister of Regional Development and Municipal Affairs (henceforth – the Minister) does not agree with the viewpoint of the submitter.

In his written replies the Minister expresses the viewpoint that the detailed land use plans, confirmed by the suspended binding Regulations of the municipality, have not been elaborated in conformity with Item 52 of Regulations No. 423, which regulates the procedure of elaboration of the plans. The submitter, when realizing that the detailed plans change the Master Plan, should have taken the Decision of amending it. The nature of the detailed plans certifies that with the help of the plans the Master Plan is being altered and in this case the procedure of their adoption, confirming and taking effect shall be in compliance with the procedure, which is applied when making amendments to the territorial planning. Besides, as the result of the unlawful activities of the submitter "two different territorial plans are in effect" in the above territories.

The Minister holds that the principle of legal stability has not been violated as no normative act concerning the sector of territorial planning establishes the time limit for the Minister to make use of his/her right, determined in Article 49 of the Law "On Local Governments".

**The invited person** – the Saeima deputy **Leopolds Ozoliņš** in his explanations to the Constitutional Court points out that the Jūrmala City Dome Regulations No.17, No.18 and No.10 envisage substantial amendments in the

utilization of the coastal forest belt. The forests, growing on the above belt, are acknowledged to be internationally protected. The only possibility to avert coastal erosion is to preclude annihilation of the forest. Besides, before the confirmation of the detailed land use plan for the public centre "Vaivari", the Construction Board of the Jūrmala City has furnished falsified information to the deputies on two Protocols of the Committee of Environmental Protection and on Protocol of the Committee of the Development Affairs, which as if permit building of cottages in the forested land plot *Vaivari 1307*.

The invited person expresses doubt on the impartiality of the expertise on the natural resources in the territory of the public centre "Vaivari", namely, the biological expertise was performed in winter, when because of the snow it had not been possible to establish the existence of vegetation (flora) which shall be protected. He points out that the Agency of the State Real Estate (henceforth – the Agency) has insufficiently controlled the realization of the agreements on the rented plots. Besides, several plots of this territory have been privatized for disproportionably low prices, possibly the detailed land use plan has been used as the means for circumventing the requirements of Article 36 of the Law "On the Protected Belt".

The invited person concludes that the submitter by not taking into consideration possibilities of sustainable development of Jūrmala is destroying unique natural resources in favour of short-term economic interests, besides only some persons benefit from it. The invited person requests the Constitutional Court to leave the Orders by the Minister No. 2-02/57; No. 2-02/60 and No. 2-02/62 valid.

The Court took into consideration the explanations of the invited persons and required information about the biological expertise on the natural resources in plots *Vaivari 1307* and *Vaivari 1310* from the Regional Environmental Department of Greater Riga.

From December 18, 2002 conclusion of the above Department it can be seen that expertise was performed at the time when the ground in places was covered with snow. The aim of the expertise has been to draw up an inventory of natural resources of particular territories – biotopes, rare and to be protected vegetation, flora and fauna. The conclusion states that no species of animals and vegetation to be protected have been found in the territories. Therefore the experts permitted reconstruction of the buildings and construction of new buildings and improvement of the territory, as well as felling old pine trees at the main building of the public centre "Vaivari", but only if the recommendations incorporated in the conclusion of the expertise, e.g. prohibition of construction work in the territory of the tertiary dunes, covered with forests, are observed.

In the conclusion prepared by **the invited person – the lecturer of the Latvian University Biology Faculty Brigita Laime** and the Expert Kristaps Vilks "On the Detailed Land Use Plan for the Territories in the Jūrmala City" it is pointed out that in the territory, included in the Dome Regulations No. 10, have been established biotopes, which are protected in the European Union, namely – "coastal dunes covered by forest"– 2180 and "boreal forests" – 9010 (the European Council 1992 Directive "On the Protection of Natural Biotopes, Wild Plants and Animal Species", Supplement No.1). In Europe such forests are considered as prior protected biotopes.

In several territories of the above forest are found almost virgin forest biotopes, which shall be equaled to especially protected biotopes therefore to protect the above forests, decisions on micro restricted areas shall be taken.

It is recommended not to allow transformation of the forests for laying out riding tracks. Construction shall be allowed only within the boundaries of the existing building, thus all the forest biotopes, which create one of the most outstanding nature territories in Jūrmala, will be preserved.

It is also recommended to preserve the forest, to which the Dome Regulations No.17 are attributed, thus creating the buffer zone of the nature area "Ragakāpa". It is allowed only to renew the already existing sport courts or fields by conserving the forest to the maximum, laying out forest trails, putting benches and garbage bins in the territory.

In its turn the territory, mentioned in the Dome Regulations No. 18, is covered by one of the most sensitive types of forests – coniferous forest, which within the largest part of the territory is more than 200 years old. Such forests can be very rarely found in Latvia. The conclusion stresses that transformation, alteration of the terrain or destroying of the ground (soil) of the above plot shall not be admissible.

**At the Court session the representative of the submitter Valentīna Elksne** repeatedly stressed the viewpoint, expressed in the application, namely that the Dome Regulations No.17, No.18 and No.10 had been forwarded to the Minister and he had not made any objections during the next four weeks. After the end of the above term the Minister loses the right of suspending the Dome Regulations. Besides, Orders No. 2-02/57, No.2-02/60 and No. 2-02/62 - as they were not substantiated – were unconfirmable with either requirements of Article 49 of the Law "On Local Governments" or the principles of legal stability and proportionality. She stated that the Minister had not taken into consideration the fact that the City of Jūrmala is developing as the tourist centre and the Dome Regulations have an important role for the advancement of tourism and economic development.

**The sworn advocate Viktors Tihonovs** pointed out that in the interests of correct reviewing of the case it is necessary to separate issues, concerning the rent, alienation or potential privatization of the plots included in the detailed plans (local Master Plans) from the issues, which directly refer to the lawfulness or illegality of the procedure of adoption of the Orders No. 2-02/57; No.2-02/60 and No. 2-02/62 as well as the Dome Regulations No. 17; No.18 and No.10. legal relations, which refer to the rent, alienation and potential privatization of the plots included in detailed plans are settled only between the private persons and separate state institutions, therefore the submitter of the claim could not influence them.

V.Tihonovs asked the Court to take into consideration the circumstance that territorial planning was a hard and technically complicated process. The submitter of the claim was one of the very first to elaborate and adopt the local Master Plan in its administrative territory. At that time the practice of territorial planning was not extensive and it had been very hard to approximate and interpret the requirements of the normative acts.

To his mind a lot of requirements, regulating the procedure of planning were formal and bureaucratic, e.g., the requirement of publications in the newspaper "Latvijas Vēstnesis". Even though all the requirements, concerning the number of publications in the newspaper have not been observed, the great public interest for example on the adoption of the detailed land use plan on the plot Bulduri 1001 testifies that it has received sufficient information.

V.Tihonovs also pointed out that not long before the suspension of the Regulations the representatives of the Ministry of Regional Development and Municipality Affairs had met with the submitter of the claim and no essential objections against the adopted or envisaged detailed land use plans were expressed. Thus the behavior of the Minister, namely, the sudden suspension of the enforcement of the Dome Regulations No. 17; No.18 and No.10 is not understandable. Such unreasonable and ungrounded behavior violates the public interests more than the formal violations of the submitter of the claim in the sector of territorial planning.

**The representative of the Ministry of Regional Development and Municipality Affairs Artis Stucka** pointed out that the Minister when passing the Regulations had taken into consideration both – the principle of proportionality and the principle of trust in law, whereas the submitter of the claim when adopting Dome Regulations Nos. 17, 18 and 10 has essentially violated the procedure determined by normative acts. The Regulations should have been adopted as amendments to the General Plan but not as specification of them. Besides during the process the public viewpoint, considering which shall be regarded as an essential and integral element of the procedure of land use planning, has been ignored.

The representative of the Ministry also pointed out that neither the Law "On the Local Authorities" nor Regulations No. 423 determine the time limit for termination of unlawful municipal binding regulations by the Minister. The Ministry has always been "open" for talks and discussions, but the submitter of the claim has not wanted to cooperate in the sector of land use planning, moreover in several cases it has ignored the lawful demands of the Ministry and other state administrative institutions.

The representative of the Ministry remarks that the activity of the submitter is mainly carried out in the sector of public rights; therefore the competence vested to it has been clearly defined by law. If the competence is exceeded then the activity, which has been carried out, becomes unlawful.

**The invited person – the Saeima deputy Leopolds Ozoliņš** pointed out that public discussion about the land use planning for the territory *Bulduri 1001* has been imitated. Namely, in the above case the persons, who backed the project of the planning, had been taken from Kauguri to the above place by buses, but the public opinion had not been heard out. The submitter had even taken the decision on felling the forest in the territory, however – following the pressure of the public opinion – the decision was cancelled.

Dome Regulations No. 10 envisage building more than ten cottages in the territory where there is a very valuable forest and the Agency rented the State owned land for a miserable payment – 3 centimes for a square meter. However, after the potential privatization the value of the land might increase hundred times.

The invited persons also pointed to the possibility of falsification of the Committee of Development Affairs Protocols.

**The invited person – the Latvia University lecturer Brigita Laime** confirmed the viewpoint expressed in her conclusion that the territories, included in Dome Regulations Nos. 10 and 18 **are** covered by 180-200 years old pine forests and the pines have to be specially protected. If any economic or commercial activity is being planned in such territories, then the issue shall be solved as sparingly as possible, e.g., by envisaging creation of micro restricted areas. The invited person concludes that the land use plan, confirmed in Dome Regulations Nos. 17, 18 and 10 shall be revised by taking into consideration not only the development interests of the Jurmala city but also the necessity of complex protection of the coastal zone in the whole territory of the Riga Gulf and the Baltic Sea.

**The expert, Advisor on the Issues of Regional Development to the Head of the Union of Municipalities, Jānis Piešiņš** points out that in the General Plan planning issues are solved only in general, but indistinct issues are specified in land use plans. In its turn, at the initial stage of land use planning it cannot be

anticipated whether the General Plan will be amended or only specified. To his mind public discussion of the land use planning shall not be placed on the same level as referendum. He states that the Dome experiences the right of not backing the viewpoints expressed by the public and taking a quite another decision. The expert points out that the land plots, included in Dome Regulations Nos. 17, 18 and 10 shall not be regarded as the land in the protected coastal zone but as the land in a protected forest zone.

**The witness, the former Chairman of the Jūrmala city Dome Leonīds Alksnis** stresses that Jūrmala has been one of the first cities of Latvia, which has adopted its Master Plan. When being the Dome Chairman he has tried to assess the city development issues as a whole. The witness expresses the viewpoint that particular agreements, which the Agency had concluded on the rent of land plots, included in the territory of the land use plan *Bulduri 1001*, might turn out to be unlawful because the Agency had not received the Cabinet of Ministers Decision under the procedure determined in Article 36 of the Law on the Protected Zones.

**The witness, the former Director General of the Agency Kalvis Bricis** holds that the Agency has rented State owned land plots, situated in the protected coastal zone, in conformity with the normative acts in effect, including determination of the payment. The main aim of the Agency, when handling the State property, is to receive maximum benefit. Even though several agreements anticipated the right of privatizing the land plots, the Agency has not promised " anybody the guarantee that the Agency or any other institution might privatize the above plots". The leaseholders, when concluding rent agreements, always request the right to privatize the particular object.

However the witness stressed that in case if the government adopted the decision on privatization of any land plot, the leaseholder would experience the right of privatizing it. Namely, the legislature anticipates that "...principally at least at the moment..., well, also just at this moment... the application or a suggestion on privatization of any object may be submitted, including privatization of the Freedom Monument".

When answering to the question why a very big territory of the forest land has been rented for keeping in order a small terrace in the land plot *Vaivari 1307* the witness answered that the area of the above land plots was determined by the Jūrmala Dome Land Commission.

**The witness – the former Chairman of the Jūrmala City Dome Dainis Urbanovičs** - acknowledged that the Dome, when taking the decision on the particular issue of land use planning may ignore the public opinion. Increase in the income tax in the municipality budget may serve as one of the criteria for the adoption of a different from the public opinion decision. The witness expressed the viewpoint that public discussion of the issues of territorial land

use planning is only generally regulated and "no procedure has been determined as concerns the results of the public discussion".

The witness rejected as ungrounded the statement of Leopolds Ozoliņš about the potential possibility of falsifying the Development Committee Protocols.

**The witness, the Main Planner of the Jūrmala City Dome Māra Kalvāne** explained that only several people had attended the public discussions, held on June 18, 1000 and September 10, 1999. However, to her mind the society has been informed about the process of the land use planning. When answering to the Court question on the public discussion of the land use plan for the public centre "Vaivari" and the fact that 91% of the respondents backed the alteration of the nature zone in the above territory, the witness acknowledged that the filled in inquiry forms have mostly been anonymous. To her mind the aim of the submission of anonymous forms has been to protect the participants from unnecessary publicity, as the persons, protesting against something want to remain unknown.

The witness pointed out that in particular cases necessity of amending the initial General Plan at the time of elaboration of land use planning arises and the normative acts do not anticipate that in the above cases the process of planning shall be started once again.

When answering to the Court question on the necessity of requesting the Cabinet of Ministers' permit for transformation of the forest land, M.Kalvāne states that no transformation of the forest land has taken place in the territories, mentioned in the Dome Regulations Nos. 17, 18 and 10, therefore there has been no need for requesting the accept of the Cabinet of Ministers.

### **The concluding part**

Article 1 of the Satversme determines that Latvia is an independent democratic republic. Several fundamental principles of a law based state, including the principles of proportionality and trust in law follow from the concept of the democratic republic, which is enshrined in the Article (*see the concluding part of the Constitutional Court June 10, 1998 Judgment in case No. 04-03(98) and Item 3 of the concluding part of March 24, 2000 Judgment in case No. 04-07(99)*).

However the main function of the above principles is to protect a private person from ungrounded use of public power and they shall be applied only as far as the specifics of public law subjects permit it. The submitter reasonably points out that the principle of trust in law as concerns the legal relations of the above dispute protects the individuals, who – trusting in the lawfulness of the terminated Dome Regulations – have performed certain activities. Therefore

the Constitutional Court, when taking the decision of the conformity of the orders with the Satversme, shall ascertain the following issues;

- 1) whether Orders Nos. 2-02/57; 2-02/60 and 2-02/62 comply with the provisions of Article 49 of the Law "On Local Authorities";
- 2) whether the procedure of adoption of the Decision No.85, including the public right to participate in the process, has complied with the requirements of the normative acts;
- 3) whether the procedure of elaboration and adoption of Dome Regulations Nos. 17, 18 and 10, has complied with the requirements of normative acts;
- 4) whether during the process of elaboration and adoption of Dome Regulations Nos. 17, 18 and 10 the specific status of the coastal zone of the Baltic Sea and the Riga Gulf has been taken into consideration.

1. The first part of Article 49 of the Law "On Local Governments" determines that " an illegal binding regulation or other normative act issued by the city dome (rural district council), except a decision passed pursuant to the procedure determined in Article 47 of this Law, or the effectiveness of its separate parts is suspended by the minister authorized by the Cabinet of Ministers by a substantiated decree". In its turn Item 71 of Regulations No. 423 endows the minister with the right of terminating binding municipality regulations by which land use planning is confirmed, if the regulations do not comply with the provisions of the normative acts or if the procedure of elaboration and certification of land use planning, established by the normative acts has not been observed.

In difference from the decisions, passed by the public law subject and addressed to private persons, the legal argumentation of which shall be exhaustive, in relations with legal persons of public rights one shall be guided by the principle of procedural economy, therefore direct or indirect reference to the previous implications might be permissible.

One cannot completely agree with the statement of the submitter that Orders Nos. 2-02/57; 2-02/60 and 2-02/62 are not legally substantiated. Even though the Orders *expressis verbis* do not exhaustibly name all the reasons which have served as the basis for their adoption, the letters sent by the Minister, Procurator General's Office and other State institutions, which include the requirement to avert or preclude violations committed by the Dome at the time of elaboration and adoption of Orders Nos. 2-02/57; 2-02/60 and 2-02/62 shall be regarded as an integral substantiation of them. When analyzing legal motivation included in Orders Nos. 2-02/57; 2-02/60 and 2-02/62, one shall assess the correspondence of the Ministry with the Municipality in completeness,

besides, it shall be evaluated whether the municipality had access to legal argumentation of the Orders, even if it is not incorporated into the particular Order. Resources and competence of the municipality are much greater than the possibilities of an individual; therefore the requirements as concerns Orders Nos. 2-02/57; 2-02/60 and 2-02/62 may be of lesser degree in comparison with the requirements addressed to the individual as regards the decision of the public power subject.

Thus, for example, the submitter of the claim had received the April 24, 2003 notice of the Procurator of the Procurator General's Office G.Akmenkalns, requiring revocation of Dome Regulations Nos.10 and 18 as illegal. On the basis of Article 20 of the Public Procurator's Office Law the notice like this shall be regarded as the reaction of the procurator to violation of the law.

During the process of elaboration of the land use plans objections to the submitter of the claim were expressed both in July 2, 2001 letter by the Minister of Environmental Protection and Regional Development and in July 19, 2001 letter by the Greater Riga Regional Environment Department, in which enclosure of the land plot *Bulduri 1001* was not sustained and the requirement to have the Council of Ministers decision on it (in compliance with Article 36 of Law on the Protected Belt) was voiced. The November 3, 2001 and November 15, 2001 letters by the Inspection for the Protection of State Cultural Monuments also contained particular objections to the land use plans.

The requirements, advanced in the documents of the State institutions, were well-known to the submitter of the claim, and such orders, passed in the above aspect, shall be regarded as the final means, which are used only if all the other attempts to avert permitting of violations, had not given results.

**2.** The competence of the municipality – the derived public person- includes both – the self-dependent and the assigned functions. In accordance with Article 14 (Item 1 of the second part) of the Law "On Local Governments" in performing their functions local governments in compliance with the procedures stipulated by law have the obligation to work out the Master Plans of the territory and land use plans, to secure realization of the above plan and administrative supervision of the process. In its turn Article 5 of the Law envisages that the institution determined by the Cabinet of Ministers shall supervise the activities of local governments within the frame of this Law.

In compliance with the fifth part of Article 7 of the State Administration Structure Law, supervision means the rights of higher institutions or officials to examine the lawfulness of decisions taken by lower institutions and to revoke unlawful decisions, as well as to issue an order to take a decision in case of

unlawful failure to act". Thus in the sector of control of autonomous functions, the institution determined by the Cabinet of Ministers experiences the right of controlling the legality of the Decisions (Regulations) issued by the Dome.

Even though Regulations (Item 4, Sub-item 4) does not mention the time limit for the minister to terminate the binding municipality regulations and Article 49 of the Law "On Local Governments" as well as Item 73 of Regulations 423 do not set the time limit for assessment of the relevant territorial planning, the Court agrees with the submitter of the claim, that the principle of legal stability and principle of good administration require that the minister shall use his/her authority in a reasonable period of time. However, the institution of the State Administration, when establishing essential violation of public interests experiences not only the right but also the duty to act. For elimination of violation of essential public interests priority - in comparison with the principle of legal stability - shall be given to the above.

**3.** The submitter of the claim confirmed the Jūrmala Development Plan (the General Plan) by July 27, 1995 Resolution No. 893. On December 10, 1998 Decision No.1244 "On the Amendments to the Jūrmala City Development Plan and Supplement to the Regulations on Construction" (henceforth – Decision No. 1244 was adopted. With the above Decision (on the request of land owners and real estate market) the submitter of the claim commenced the procedure of amending the General Plan.

**3.1.** On February 3, 2000 the submitter of the claim adopted the Decision No.85 "On Alterations in the Jūrmala City Development Plan (General Plan)". It completed the procedure of the amendment of the General Plan and envisaged to introduce alterations to several territories, mainly in the protected coastal belt, changing their zoning –*from the territory of nature zone to the territory of public institution or the territory "of the pine forest" to the construction site.* Thus with the help of the Decision No. 85 zoning of several territories, which are included in the land use plan mentioned in Regulations Nos. 17 and 18, was changed.

However, during the processes of adopting both – Decision No. 1244 and Decision No. 85 several requirements, envisaged in Regulations No.62, were violated. In conformity with Regulations No.62 (Item 42, Sub-item1) within two weeks Decision No. 1244 had to be published in the local newspaper and the newspaper "Latvijas Vēstnesis". Besides, Item 42 of Regulations No.62 establishes that with an aim of informing the society, the announcement on the commencement of the amendment procedure, published in the newspapers, has to comply with certain (mandatory) criteria. The name of the responsible official, the aims and assignments of the planning, reception hours and place as well as the main provisions for submission of proposals shall be pointed out in the announcement. However, the submitter of the claim did not realize the requirements, included in Regulations No.62 in this sphere.

The requirement to obligatory publish such announcements shall not be regarded as formal, as it first of all assigns the local government with the duty of informing the interested party – the society about the procedure of amendment of the territorial planning and, secondly, it ensures that the right of the society to actively participate in the process (e.g. submit proposals or recommendations) is realized. As such announcements were not published; the submitter of the claim denied the society the possibility of using the right, granted to it by normative acts and which should have been regarded as an important part of the process of territorial planning.

Besides Item 45 of Regulations No.62 envisages that a week before the public debate the announcement, naming the period for public discussion, its place and time as well as the time of the meeting in which the decision shall be taken as well as the requirements for drawing up the proposals, should be published.

However, as the submitter of the claim admits in its letter to the Constitutional Court, announcements on the prospective public discussion were published only on May 14, 1999 in the newspaper "Latvijas Vēstnesis" and in May 19, 1999 in the paper "Jūrmala News" (*see p. 157 of the First Volume of the case*). Thus the requirements of Item 42 of Regulations No. 62 were violated and the interested party – the society was denied the right of submitting proposals and expressing its viewpoint on the initial aims of the confirmed territorial planning. It is possible that just because of the above only six persons (among them three were the employees of the Construction Board) participated in the public dispute, which was held before the adoption of Decision No.85 on May 18, 1999.

On the one hand the individuals have just the right but not the obligation to participate in adoption of important for the society decisions. However, on the other hand, realization of the above to a great extent depends on the will of the subjects of public power to rouse public interest. Subjects of public power have no right of presuming that the society is inert and thus justify its own inactivity in cases when one has to do everything to inform the society about the envisaged activity [*see the Constitutional Court February 14, 2003 Judgment (Item 3 of the Concluding part) in case No. 2002-14-04*].

Even though initially Item 49 of Regulations No.62 envisaged the possibility of adopting the territorial plan or amendments to it by the Dome decision, this regulation was effective only till November 13, 1998 when the Law on the Territorial Planning Development took effect. Since that time, as well as at the time of adoption of Decision No.85, a new procedure is established for confirmation of Territorial Plans. Namely, Article 5 (Item 3 of the third part) determines that **binding regulations** of the particular local government on the level of districts, cities, regions and pagasts shall regulate binding provisions of territorial development. Article 14 (the second part) of the Law "On Local Governments" also determines that "to perform their functions local

governments in compliance with the law issue binding regulations”.. When the Law on the Territorial Development Planning took effect, **the procedure of challenging the confirmed territorial plans was substantially changed.** Interested persons could not challenge the plans under the procedure initially established in Item 50, Sub-item 2 of Regulations No.62, when the Dome decision, by which it confirmed the territorial plans or made amendments to it, could be challenged by submitting an application to the responsible minister and later – to the court. Namely, at that time the Decision by which territorial plan was confirmed was equaled to an administrative act.

However, after adoption of the Decision No.85 the submitter of the claim in its April 6, 2000 announcement to the newspaper ”Latvijas Vēstnesis” states that ”any physical person or legal entity, who/which during the period of public debate on territorial planning has handed in a written proposal or a substantiated objection on the territorial planning and whose legitimate rights are not observed may submit substantiated written objections (an application)to the Minister of Environmental Protection and Regional Development within eight weeks as from the moment of publication. If the Minister’s reply does not satisfy the applicant, he/she in the procedure set by the law may submit a claim to the court”. Thus the submitter of the claim has voiced a erroneous information – has pointed to such public rights, which were not any more provided for by legal regulation – territorial plans or amendments to them were to be confirmed by the binding regulations (a normative act) and the persons could not appeal against it.

**Thus, the viewpoint of the submitter of the claim, that at the time the normative acts, regulating territorial planning, permitted adoption of amendments to the territorial planning just by local government decision is ungrounded. Decision No.85 by which the municipality expressed the decision to make amendments to the city Master Plan, had to be issued in the form of binding regulations.**

**3.2.** In accordance with Article 45 (the second part) of the Law ”On Local Governments” the binding regulations issued by republic city Domes and District Councils not later than two weeks after their adoption shall be published in the official newspaper. The binding regulations take effect only after their publishing. Article 3 (the third part) of the Law ”The Procedure by which Laws and Other Acts, adopted by the Saeima, State President and the Cabinet are Promulgated, Published, Take Effect and being Valid” determines that ”only publications in ”Latvijas Vēstnesis” and the Bulletin of the Republic of Latvia Saeima and Cabinet of Ministers shall be regarded as official”.

From the materials in case (*see p.213 of the First Volume of the case*) it can be seen that on April 6, 2000 the submitter published in ”Latvijas Vēstnesis” only the announcement about the adoption of Decision No.85. The announcement includes the excerpt from the Jūrmala City Dome meeting Protocol, but the text

of the decision was not incorporated in it. **Thus the Decision does not comply with the requirements of Article 45 (the second part) of the Law "On Local Governments", it has not taken effect and cannot be applied.**

Taking into consideration the fact that the procedure of adoption and publishing of Decision No.85 has been violated and in the result has not obtained the force of a normative act, Dome Regulations Nos. 17 and 18 could not have been adopted as specifications of the 1995 Jūrmala City Development Plan (General Plan), they had to be adopted as **amendments** to the development plan.

**4.** For a territorial planning to be lawful, it has, first of all, to comply with normative acts and secondly it has to be elaborated and confirmed under a certain procedure. In conformity with the regulated procedure, included in Regulations No.423, elaboration of the land use plan may serve two aims, firstly for specification and particularization of the General Plan, secondly – for amending of the General Plan, at the same time, specifying it. The procedure of elaboration of the land use plan depends on the aim of it (*see Item 8 of the Concluding part of the Constitutional Court January 30, 2004 Judgment in case No.2003-20-01*). If the land use plan envisages amendments to the General Plan then it concerns the policy of the whole municipal territorial development. Therefore the same procedure shall be observed as when elaborating the General Plan. Observation of this procedure on the one hand takes more time, however, on the other hand it envisages more extensive possibilities for ascertaining and assessment of different interests as well as the possibility of discussions, when revising the development proposals not only locally but in the context of the continuous development of the municipality. Thus the situation, when it is possible to amend the development policy, established in the General Plan, envisaging local solutions in an uncontrollable way, could be averted.

**4.1.** As the submitter of the claim, when elaborating and adopting Dome Regulations Nos. 17 and 18 groundlessly used the procedure, which in Regulations No.423 is envisaged only for specification and not amending of the territorial planning, the Constitutional Court holds that **the procedure of elaboration and adoption of Dome Regulations Nos. 17 and 18 was essentially violated and therefore there is no necessity to separately assess them.**

**4.2.** Ungrounded is the statement of the submitter of the claim that by Dome Regulations No.10 (on land use plans) the General Plan has been only specified.

The General Plan is the territorial plan of the municipality, which refers to the whole administrative territory of the municipality, includes also its zoning and determines the territories of natural areas. The land use of each zone

characterizes and distinguishes it. In its turn regulations on construction include requirements, which – taking into consideration the permissible utilization of the zone- determine land plots for construction, for improvement of the territory and for other kinds of management.

In conformity with the General Plan in the *nature zone (the nature frame of the city)*, the importance of several of its territories, especially ten territories of the "nature heritage", among them *the protected coastal zone of the Riga Gulf - the belt without construction* (hereinafter – *the belt without construction*) has been determined. This belt has been established with an aim of securing the vegetation of the coastal dunes and the pine forest, as well as the protection and management of the territory.

The proposal on the creation of the Vaivari public centre refers to the territory, which – in compliance with the General Plan – includes *mixed recreation and dwelling house territories in the Riga Gulf coastal zone* (zone with different buildings on it), *mixed recreation, business and dwelling house territories as well as the natural areas, mainly the belt without construction*.

In accordance with the conclusion of the Ecological Commission (which was formed by the Decree of the Head of Greater Riga Environment Board) March 22, 2002 conclusion "it is permissible to make paths for walkers as well as establish emergency stations (if it is not at variance with the aims of protection of the environment) with the objective of improving the territory of the forest. Placement of garbage bins and temporary toilets is also allowed".

However the land use plan envisages a quite different zoning. First of all, it envisages using a great part of the territory of the *belt without construction* for *public institutions*. Thus the territory for construction works has been noticeably increased and the permissible maintenance of the territory was substantially changed. Besides, the land use plan allows building of constructions for care of the vacationers, quite a number of arbors, cloak rooms with showers and toilets, gardener's cottage, playgrounds, bike renting stations and even a café just on the *belt without construction*. The above is at variance with the objective of establishing *the belt without construction*, thus the land use plan does not specify but amend the General Plan in a hidden way. Secondly, even the zoning of the already existing territories for construction is altered to the *territories for business undertaking institutions and public institutions*.

The Department for the Environmental Protection, the Riga Forest Guard Office have with good reason pointed out in their conclusions that the permissible utilization of the territory is not only specified but also amended with the help of land use planning; the same idea has been expressed in the September 4, 2002 conclusion on the conformity of the land use plan with the General Plan by the Construction Board.

Item 31 of Regulations No. 423 determines that the procedure of amending the General Plan shall be commenced after taking the corresponding decision. Thus, the above decision shall inform that it is envisaged to amend the territorial planning of the municipality. However, January 16, 2002 Decision envisages elaboration of the land use plan to specify the General Plan. The requirements for confirming the planning objective, included in the Decision also demand observation of the General Plan.

In accordance with Item 34 of Regulations No.423 the local government shall organize the first phase of public debate, besides it shall publish the announcement on elaboration of the plan in the local newspaper and newspaper "Latvijas Vēstnesis" not later than two weeks after the adoption of the Decision. Public debate (discussion) shall continue at least for six weeks as of the day of publishing the announcement. After the first stage and receiving from the institutions the requirements for the process of planning, the municipality may specify and repeatedly confirm the assignment of the work (Item 35). It shows that during the first phase the society is given the possibility of expressing the viewpoint on the intention to amend and specify the territorial planning (the General Plan).

When implementing the first phase of public discussion the Dome has belatedly realized the requirement of Item 34 of Regulations No.423 on publishing the announcement. The first phase was definitely shorter than "at least six weeks".

In accordance with Item 38 of Regulations No.423 the second phase for public debate shall be organized by the municipality to discuss the first wording of the land use plan. The announcement in the local newspaper was duly published, but the requirement to publish it also in the newspaper "Latvijas Vēstnesis" was not observed. The second phase also was shorter than the established "at least six weeks". The above violations of the procedure shall not be regarded as unimportant because of the following reasons.

Firstly, from the announcements and the information furnished during the first and the second phases it did not clearly follow that the land use plan envisages amending the General Plan. Therefore the information furnished for public discussion and concerning the amendments to the General Plan shall be regarded as misleading. As the public was not appropriately informed, there was no public discussion on the issue of amending (and substantiation of the necessity of it) the General Plan. It could not take place. Thus the society was not given a real possibility of expressing its viewpoint and be heard out.

Secondly, in accordance with Regulations 423 (Item 39, Sub-item 2 and Item 40), the first wording of the land use plan – if the institutions express objections to it – may be altered and the final wording of it elaborated. In such a case the local government has the duty of acquainting the particular institutions and the public with the final version of the land use plan, publishing

in the above newspapers the information on the place and time (at least three weeks) when persons may read the final wording of the plan and repeatedly hand in conclusions and opinions. The municipality has to ensure the possibility of receiving explanations on the final version of the planning for the representatives of institutions and other interested persons. From the materials attached to the land use plan it can be seen that the first wording of it was amended however the society was not informed about it.

Thus the submitter of the claim, by not elaborating the land use plan under the envisaged procedure, misleading the society and not securing transparency of the process of adoption of the Decision has essentially and not only formally violated one of the basic principles of territorial planning – the principle of publicity.

Amending the General Plan on its merit by Regulations No. 10 and not taking into consideration the procedure, Dome has not only violated the letter of Regulations No. 423 (Item 52) but also the spirit (sense and concept) of it. Such violation of the procedure shall be regarded as essential.

Therefore, when establishing the fact that the development of the land use plan envisages also amendments to the General Plan the Dome should have taken into account Item 47 or Item 52 of Regulations No. 423 and return to the initial phase of elaboration of the land use plan.

**5.** One may agree with the viewpoint of the submitter of the claim that normative acts envisage freedom of action (*discretionary power*) for the municipality as concerns the sector of territorial planning. The freedom of action follows from the fundamental principles of territorial planning. However it is not unlimited. General legal principles, principles for state management as well as principles of territorial planning shall serve as the guiding lines for accurate and adequate use in the sector of territorial planning.

The conformity of the procedure of territorial planning with its main objective – complex concerting of the interests of individuals with sustainable development possibilities of the appropriate territory shall be regarded as the main criterion for examining the use of freedom of action. When anticipating or implementing other objective of the territorial planning, e.g., advancing only the economic growth of the city (profit gain), not taking into consideration the specific natural and cultural values or violating the limit of the freedom of action, the result of the above is unlawful.

However, the hardest and at the same time the most important duty in the process of territorial planning is correct (accurate) use the freedom of action. One may agree with the statement of the representative of the submitter that the official, who takes the decision on the planning process shall not always take into consideration the proposals or objections, voiced by persons. However,

one shall not forget that **the public proposals have to be thoroughly evaluated**, taking into consideration their suitability. Suitability, necessity and conformity with the aim of the concrete planning of the proposals shall be considered.

Thus, on the one hand, the local government experiences the right of rejecting the viewpoint of an institution or the interested society, envisaging another more suitable result, which complies with the initial objective of the planning. However, on the other hand the **rejection shall be substantiated** – when rejecting the public viewpoint the municipality shall present substantiation of it. However, in this respect the submitter of the claim has confined itself to just finding out the objections, voiced by the interested society and responsible institutions, it has not thoroughly evaluated it by reading it together with the aim of elaboration of planning.

**5.1.** Territorial planning based on Dome Regulations Nos. 17; 18 and 10 refers to the land **in the protected coastal zone (the dunes)**. The beach and the dunes is a sensitive and dynamic complex of the ecosystem, which in Latvia is located in a small territory of the coastal zone and which has an essential importance for preservation of the natural diversity. At the moment the territory is subject to comparatively great anthropogenic pressure. On the one hand the dunes are used for recreation and tourism. However, as the needed infrastructure does not exist, unorganized flow of vacationers may in several places disarrange the structure and stability of the dunes, further erosion, destroy vegetation and biotopes, thus endangering the existence of separate species. On the other hand the dunes and biotopes on them are destroyed because of construction work. Therefore, when discussing issues of utilization of even small territories, it should be viewed in the context of the protection of the whole coastal zone (*see: 2004-2008 Plan of the National Environmental Policy, Item 1.7; Item 2 of the National Programme of Biological Diversity; The Plan for the Protection of the Beach and Primary Dunes. Influencing Factors, pp.1-5; <http://www.varam.gov.lv>, February 19, 2004*).

Territorial planning is one of the most important instruments not only for usage of a certain territory but also for the protection of it. Elaboration of territorial plans is not only a formal procedure. It is regulated so that it is possible to identify and evaluate different interests and establish, which should be given the priority to. Balance of the interests of all the parties, protection of the "weakest" participants and ensurance of implementation of public interests, realized by the government, shall be achieved (*see: Ir Steef C.Buijs, Drs. Karolijn van den Heuvel. Netherlands. Spatial Planning on the National Level; Rotterdam, June 8, 2000, p.8 – unpublished material*).

Therefore to ascertain the conformity of the Regulations with the principles following from Article 1 of the Satversme, one shall investigate not only the compliance of the procedure of their adoption with the normative acts in effect,

which are regulating territorial planning. One shall take into consideration also the issue whether the legal norms, -which, based on the principle of long-standing development and concerted interests as well as the formulations on the development and protection of the Baltic Coastal zone, recognized by European states, which are reflected in many international instruments to protect the natural and cultural values of the coastal belt dunes – have been observed.

One cannot agree with the viewpoint of the submitter of the claim that the belt of dunes shall not be regarded as the territory to be particularly protected. Even though the belt of dunes is not included in the categories, mentioned in the Law "On Nature Zones to be Particularly Protected", however, restrictions to the rights of utilization or alienation of property are stricter than in several restricted natural areas or districts of protected areas, which are included in the above Law.

**5.2.** Several international agreements on the protection of the Baltic Sea coastal belt are also binding on Latvia. For example, by signing March 3, 1994 Law "On Helsinki 1974 and 1992 Convention on the Protection of the Maritime Environment of the Baltic Sea Region" Latvia acceded to 1974 Convention on the Protection of the Marital Environment of the Baltic Sea Region (hereinafter –Helsinki Convention). The first part of its Article 3 (fundamental principles and liabilities) determines that "the Contracting Parties either individually or together undertake all the needed legislative, administrative or other activities to preclude or eliminate environmental pollution as well as to protect the Maritime Environment of the Baltic Sea and improve it". Article 12 (the first part) of Helsinki Convention establishes that "the Commission for the Protection of the Maritime Environment of the Baltic Sea shall be formed to realize the aims of the Convention". In its turn part "b" of Article 13 specifies that "among other duties the Commission shall elaborate recommendations on activities referring to the aims of the Convention". On the basis of it the Commission has adopted several recommendations (suggestions), including March 8, 1994 Recommendation No. 15/1 and March 15, 1995 Recommendation No.16/3. As the Commission was concerned about the situation in the coastal zones, especially in the states in which economic reforms are under way, it recommended precluding activities, which could create constant changes in nature and landscape (*see pp. 241-262 of the IV Volume of the case*).

In its turn the document "Joint Recommendations for the Planning of the Baltic Sea Coastal Zone", adopted at the 4<sup>th</sup>. Conference for the Ministers responsible for area planning and development of the Baltic Sea Region (Stockholm, October 22, 1996) stresses that "the potential expansion of the cities, tourism, transport and technical constructions, especially on the Southern and Eastern Baltic coasts shall be regulated by regionally balanced sustainable development and the coastal zone shall be planned by careful balancing of the protection

and development.” However, attention is paid also to the fact that ”economic and social development shall be simultaneously realized, besides the protection of natural, landscape and biological diversity as well as the protection of the cultural and historical heritage is to be secured and free access of people to the coast and freedom of movement along it shall also be ensured”. The above Recommendations inter alia advance several aims in the sector of territorial planning for the Baltic States. For example, the aim that ”the coastal zone, especially the zone out of cities and densely populated areas shall be maintained free of construction and infrastructure, which might endanger natural and cultural resources and recreational interests; the influence of the land reform on the landscape values in the coastal zone shall be decreased to the minimum, free access to the coast and free movement along it shall be secured”.

After joining the European Union the Council Directive 92/43/EEC (May 21, 1992) on the protection of natural biotopes as well as protection of the flora and fauna, including the Baltic coastal dunes as a biotope to be protected will be binding on Latvia.

**5.3.** When evaluating the conformity of Latvian normative acts with the international requirements one has to conclude that the requirements, included in laws and Cabinet of Ministers Regulations referring to the protection of the dunes all in all comply with the international requirements, but in certain cases envisage even stricter provisions. As the Report of the European Regional Development Foundation testifies, Latvia has certified that it takes international liabilities into consideration when elaborating the normative acts (*see: Procoast Final Report. Schlesvig-Holstein State Ministry of Rural Areas, State Regional Planning, Agriculture and Tourism and Heil Institute of World Economics, 2001, pp. 17, 23,24*).

In accordance with Article 6 (the first part) of the Law on the Protected Belts, the coastal dune belt of the Baltic Sea and the Riga Gulf has been created to diminish the influence of pollution on the Baltic Sea, thus preserving the coastal landscape and protected forest zones, averting development of erosion processes as well as ensure maintenance and protection of the coastal natural resources as well as other important public territories, furthering balanced and lasting utilization. This protected territory is divided into several belts and one of the belts to be especially protected is the belt of dunes, the width of which depends on the width of the whole dunes. At the time of adoption of the Dome Regulations it could not be less than 300 meters in the direction to the overland, counting from the place where the natural vegetation is found.

**5.4.** In its turn Article 36 of the Law envisages very substantial restrictions of the utilization of the property, especially in the field of **construction**. At the period of elaboration and adoption of the Dome Regulations Nos. 17 and 18 as well as at the elaboration of Regulations No.10, erection of new dwelling-houses,

outhouses or buildings for production or vacationer care was forbidden. It was forbidden also to enlarge the already existing constructions. In exceptional cases the above was allowed after receiving a positive conclusion of the ecological expertise, if the particular activities were foreseen in the general plans for territorial development [*see Article 36 (Item 1 of the first part and Item 1 of the third part), which were in effect up to March 25, 2000*]. Thus any case of construction was to be especially substantiated.

Since March 26, 2002 when the Amendments to Article 36 of the Law on the Protected Zones took effect, the possibilities were enlarged. Namely, it was forbidden to erect dwelling houses and outhouses in places where no buildings had been, as well as building new outhouses or buildings for producing activities. However, the above activities were allowed in cases if a positive conclusion by the State Bureau for Assessment of the Influence on the Environment was received or technical requirements in conformity with the Law "On the Influence on the Environment" were issued and if the corresponding activities were envisaged in territorial plans [*see Article 36 (Items 1 and 2 of the second part and the seventh part) of the Law on the Protected Zones*].

**Thus the restrictions on construction, determined in Article 36 of the Law on the Protected Zones shall be interpreted only if read together with Article 6 of the Law.** With a view to reach the aim, mentioned in Article 6, Article 36 in total forbids building new constructions on the coastal zone. Even though the norms, incorporated in the Article envisage the right for the municipality to take a different decision, its freedom of activities is restricted by the aim of determination of the protected coastal zone of the Baltic Sea and the Riga Gulf. For the municipality – within the established norms of freedom of activity, not violating the above aim and taking into consideration the specifics of local circumstances – the right to take a different decision means such an activity, which in the best way coordinates the interests of preservation of natural values and interests of development.

**5.5. Activities with state or municipality owned land** in the territory of the protected coastal zone was and is strictly regulated. Namely, both – the initial wording of the Law on the Protective Zones and the further amendments to the Law determine that in cases of renting state or municipality owned land, if the changes in the utilization of the land, which is not foreseen in the territorial plan, is being planned the Decision (Order) of the Cabinet of Ministers is needed. In its turn, in cases of alienation of the state owned forest land, the Decision of the Cabinet of Ministers or even of the Saeima is needed [*see Article 36 (Items 2 and 3 of the first part) of the Law on the Protected Zones, which were in effect till March 25, 2002, Article 7(part 2) of the Law "On Utilization of Forests", which was valid till March 16, 2000 and Article 17 of the Law "On the Utilization and Management of Forests", which was in effect till March 16, 2000*]. When on March 17, 2002 the Law on Forests took effect,

activities with the forested land were even more restricted. In accordance with Article 44 (the fourth and fifth parts) of the Law, sale or other types of alienation of the state forest land shall be permitted by an order of the Cabinet or of the Saeima. Besides, the competence of the Saeima in the above sector has been essentially enlarged.

Besides Article 72 (the fourth part) of the Law "On the Privatization of State and Local Government Objects" determines that vacant land plots of the State forest fund, which on their status as of July 21, 1940 were the land of the Ministry of Agriculture Forest Department shall not be privatized under the procedure set by the above law.

6. The fact whether the submitter of the claim has taken into consideration the specific status of the protected zone of the dunes shall be evaluated in each particular case.

### **6.1. Dome Regulations No.18**

Documents attached to the Cabinet of Ministers January 12, 2000 Decree No. 16 "On Retaining of State Property on Jūrmala Land Plots" testify that at that time the vacant land plot in the area of 146 373 square metres is located "within the forest zone of the dunes to be especially protected in the city of Jūrmala". As once (before 1940) it has not been registered in the Land Book but was rented (as a patrimonial land plot) to the Jūrmala city municipality, the Land Commission has taken the decision to register it as the State property and rent only 197 m<sup>2</sup> or 0,0013 parts of the whole for keeping in order the neighboring house, located out of the boundaries of the above plot.

The above Decree envisages retaining the land plot in the state possession, and, passing it over for the Agency tenure, to register it in the Land Book as the state possession represented in person of the Agency.

In its turn, when analyzing the materials included in Volume V of the case, one may conclude that after fixing the land ownership rights in the Land Book, the Agency, **already before confirmation of the Dome Regulations No. 18**, had rented the land plot to several persons, usually for ten years, for example, for "tidying up the territory", for "putting in order the zone of the dunes", for "putting the yard into shape and its improvement", for "formation, management and improvement of the infrastructure of a hotel", for "management" and "organization of the recreation zone" etc. of the villa, which is located outside of the *Bulduri 1001* land plot etc. Besides, the contracts envisage either "the right to obtain property of the rented land plot in accordance with the Republic of Latvia legislative acts" or the possibility to make use of the right of first refusal, determined in the Republic of Latvia legislative acts". In several cases it has been envisaged that "the contract is terminated, if the leaseholder

concludes the purchase agreement on the land plot” or ”if the leaseholder obtains property rights on the land plot”.

**After confirmation of the Dome Regulations No.18** and the division of this territory into separate land plots in accordance with the requests of the Agency (*see the Dome March 27, 2002 Decision No. 214, pp. 49-53 and 123 of the fifth Volume of the case*), the concluders of the agreement change the subject and aim of the agreement, envisaging construction on some parts of the rented space, besides anticipating that a noteworthy part of the land will be used for construction of business offices and commercial buildings.

For example, in February 1, 2001 Rental Agreement No. 11/463z on the rent of a part (21076 m<sup>2</sup>) of the land plot *Bulduri 1001* as the initial aim for the rent of 1172 square metres big area was envisaged ”creation, management and improvement of the hotel infrastructure” but the rest 19905 square metres - ”tidying up and utilization of the territory”. In its turn on December 19, 2002 – after adoption of the Dome Regulations No. 18, the additional agreement of the above contracts anticipate quite a different objective and 3580 square metres are rented for ”building of business and commercial constructions”.

There are documents in the case, which testify that several state institutions before the adoption of the Dome Regulations No. 18 had been of the opinion that if the objective of the utilization of the rented state land were changed, the accept of the Cabinet of Ministers would be necessary. For example, in his July 19, 2001 letter No. 1-4/1802 to the submitter of the claim, the Director of the Regional Environment Department of Greater Riga objects to diminishing of the territory of the *nature zone* and division of the *Bulduri 1001* territory into separate land plots as it ”would create fragmentation of the dune biotopes”, asking the Dome to pay attention to the fact that ”the decisions of the Cabinet of Ministers on renting part of the land plot have not been attached to the case in conformity with Article 36 of the Law on the Protected Belt”. In his August 16, 2001 letter No.11-1179 to the Director General of the Agency K.Bricis, the Dome Construction Board Head requests him to additionally ” in accordance with the Republic of Latvia Law on the Protected Belt submit Cabinet of Ministers Decisions on the rent of part of the land plot”. However, appropriate Decrees (Regulations) of the Cabinet of Ministers have not been received before the confirmation of the Dome Regulations No.18. Besides, the Agency in its practice in similar cases (*see p.53 of the third Volume of the case*) has never elaborated projects of the Cabinet of Ministers Decrees for utilization of the land. There are no materials in the case, testifying that the leaseholders have requested the Cabinet of Ministers accept either.

However, the submitter of the claim, regardless of the fact that it had the information at its disposal – the Dome Construction Board November 2, 2001 viewpoint ”On the Elaborated Land Use Plan for the Land Plot in Jūrmala, ”Bulduri 1001”, from which it can be seen that several state institutions and

officials - the Minister of the Environment Protection and Regional Development, the Dune Forestry of the Riga Head Forestry, the Regional Environment Department of Greater Riga, the Inspection for the Protection of State Cultural Monuments do not back the project – after some days, namely, on November 7, confirmed the land use plan.

## **6.2. Dome Regulations No.17**

When assessing these regulations, it can be seen that the vacant land plot in Jūrmala, at No. 119 Bulduri prospect (4955 m<sup>2</sup>), which is located in the protected belt of dunes, created as the park with paths for walkers and benches for rest, has on March 4, 1998 been rented by the Agency to the owner of the neighbouring 5156 square metres big land plot at No.117 Bulduri prospect. On the basis of the Decree No. 85 already on April 5, 2000 the leaseholder of the land plot has submitted an application to the submitter of the claim, requesting "to confirm the elaborated land use plan for the land plot at No. 119 Bulduri prospect, as well as to issue architecture and planning assignment for building an individual dwelling house" (*p.74 of the first Volume of the case*). Later, on October 25, 2000 the Agency also requests the Dome to adopt the decision on commencement of elaboration of land use plan for the land plot at No. 119 Bulduri prospect (*see p.166 of the second Volume of the case*).

In connection with the fact that the submitter of the claim has included the above territory in the list of "the most needed land use plans", it takes the decision to back the commencement of planning as well as confirming the planning assignment on April 25, 2000. The applications by the leaseholder and the Agency are mentioned as the reasons for the commencement of the land use planning, but its objective is - to elaborate the land use plan, determining the location of the projected construction, its function and index – intensity, density and height of the construction on the basis of the Jūrmala Construction Rules and the Republic of Latvia building standards (*see p.7 of the third Volume of the case*).

Essential objections to the project of rules of the submitter of the claim were received from the State Inspection for the Protection of Cultural Monuments on October 15, 2002. In its conclusion the Inspection points out that the land use plan includes the territory of the cultural monument of state importance – Dubulti –Majori – Dzintari – Bulduri zone of summer cottages (No. 6083 of the State protection), therefore a special attention should be paid to its retaining and protection. As concerns No. 119 of the Bulduri prospect the Inspection advises the submitter of the claim "after expiration of the existing rental relations not to prolong it or conclude new agreements, leaving the territory as a vacant nature reserve, as the elaborated planning envisages construction, connected with felling of trees". Besides attention is paid in the document to the fact that before adoption of the land use plan " a more thorough study of the historical city planning, assessment of the environment of the pine forest as

well as public involvement in the discussion of the issue are needed” (p.19 of the third Volume of the case).

### **6.3. The Dome Regulations No.10.**

Deliberating on the territorial technical indices, incorporated in the explanations on the land use planning, the plan contains a comparatively big territory – 379 219 square metres of the protected dune belt. The land in this territory belongs to the State in the person of the Ministry of Finance – the land has been passed to the tenure of the Agency, which – in its turn has rented it to ELL (Enterprise with a Limited Liability) ”Vaivari” – and to the ELL ”Vaivari” itself but part of it has been classified as ”the land cognizable” to the submitter of the claim. Several places of the territory included in the land use plan are covered with buildings, but the biggest part (34,8 ha) is covered by the forest, which in compliance with the General Plan is located in the vacant protected belt of dunes of the Riga Gulf coastal zone and at some time, namely before July 21, 1940 was the property of the Forest Department of the Agriculture Ministry.

In the above explanations the territory has been recognized as suitable for construction as it can ”ensure good living, employment and recreation conditions”. The land use plan envisages both – reconstruction of the former constructions and an extensive construction, including objects for sport and recreation with an adequate infrastructure. For example, erection of new buildings for a six storey high four star hotel, shops, restaurants, cafes, bars, an object for social services, a tennis hall(with 3200 places for spectators), several open tennis courts, a complex with the riding sport school (with 200 places for spectators) and stables as well as new ”guest houses”. Thus it is envisaged to use a noteworthy part of the territory, included in the land use plan, for other needs, not those, determined in the General Plan (*see Item 4.2 of the Judgment*). Besides transformation of the forest land is envisaged for arrangement of territories for public institutions.

As remarkable amendments to the General Plan are envisaged in the land use plan, essential objections have been expressed by the Department of Environmental Protection, which – *inter alia* – held that in the above case the accept by the Cabinet of Ministers was needed. As has been pointed out in the Department of Environmental Protection May 17 and June 10, 2002 conclusions (*see p. 168 of the fifth Volume of the case*) in the above case ”deviation from the determined fundamental approach to the policy of environmental protection in the city takes place... the project envisages essential influence on the surrounding environment and decrease of biological diversity in the territory, which shall be regarded as especially valuable anti-erosion forest on the dunes, in which pines of remarkable age are found”.

Biological expertise and conclusions besides the above conclusions by B.Laime and K.Vilks (*see pp.128 -133 of the third Volume of the case*) on the natural values being found in this territory are contradictory. For example, in May of 2002 the biologist I.Kabucis concludes that especially protected biotopes are not found in the above territory, however, one may find especially protected species of plants - like the pine forest meadow marigold (*see pp. 165 and 166 of the fifth Volume of the case*). Besides one has to take into consideration that December 18, 2002 expertise (*see pp. 91-99 of the third Volume of the case*), which on the one hand supports the land use planning but on the other hand – advances relevant objections to realization of it, has been carried out and forwarded to the submitter of the claim only **after** the adoption of the Dome Regulations No. 10, namely, when the above land use plan had been confirmed.

The Court holds that attention should be paid to the most valuable forest land plots *Vaivari 1307 (31 684 m<sup>2</sup>)*, which are included in the territory of the land use plan, against the cognizance and privatization as well as its potential utilization of which have objected the deputies of the Saeima (*see the Establishing part of the Judgment*), the inhabitants of the Jūrmala city as well as the State Forest Service. Judging from the answers of the Agency of the State Real Estate and Privatization Agency to the Court and the attached to the answers documents, this land plot, once possessed by the former Forest Department of the Agriculture Ministry on which there is a small terrace, initially by the Cabinet of Ministers decree was fixed on the name of the State in the person of the Ministry of Finance. As the land plot was passed over to the tenure of the Agency of the State Real Estate, on October 15, 1998 it was rented for ten years for the activities of the ELL "Vaivari" tourism enterprise, determining that the particular territory shall be used as a "forest park". However, after a short period of time – on October 21, 1998 by the Cabinet of Ministers Decree "On Passing the Land Plot for Privatization" the above land plot was passed for privatization and already on December 21 the Privatization Agency assigns the State Real Estate Agency with the task of preparing the above land plot for privatization.

On the basis of the request by the Privatization Agency on June 22, 1999 the submitter of the claim informs that "in accordance with the development plan the land plot is located in the territory of forests, forest parks and park forests (M). When utilizing the land plot after privatization, the provisions for management of the forest parks shall be observed. Construction, which complies with the requirements of the development plan and connected with recreation and maintenance of the forest park, is possible" (*see p.103 of the third Volume of the case*). However, in the graphic description of the existing utilization of the territory, prepared on May 22, 2002 by The Jūrmala city Construction Board (*before the confirmation of the land use plan – see pp.10 and 11 of the sixth Volume of the case*) this land plot is included in the protected coastal dune belt of the Riga Gulf without construction on it. In its

turn after confirmation of the Dome Regulations No. 10 it has been mainly planned as the territory of business institutions.

Thus the doubt arises to the Court whether the submitter of the claim before the privatization has indicated the real aim of utilization of the land plot.

7. In all the above cases land in the protected coastal dune territory is the state property. In its turn, in compliance with the General Plan it is the territory of the nature zone, preservation and renovation of which is one of the most important tasks of a balanced development of the Jūrmala city.

Taking into consideration the fact that both – the Agency and the submitter of the claim are able to use their authority only in conformity with the sense and objective of their authorization, the above institutions, when concluding rent agreements or taking decisions on proposals of persons concerning land use planning, should have been guided by public interests.

On the one hand the process of territorial planning has to be opened to necessary and well-grounded changes. However, on the other hand, territorial planning shall create reasonable stability. It shall ensure that the development of the municipal territory takes place by strictly observing those interests and values, to which prior importance has been attached when elaborating and confirming the General Plan. As any amendments of the territorial planning cause certain instability, they may be permitted only if the principles of continuity and succession are observed. It means that the effective territorial planning may be altered only in case if its substantiation has changed.

From the conclusions of experts follows the deduction that in the territories included in the land use plans there are important natural values: natural forest biotopes, a well-preserved forest in which old pines, in several places even 200 to 260 years old, grow. Besides, such forests have become a rarity in the whole territory of Latvia. In separate places species of plants, which have to be especially protected, have been found. Besides the territory mentioned in the Dome Regulations No.17 is included in the list of cultural monuments of state importance. Thus, these territories are significant both from the viewpoint of nature and cultural heritage and from the viewpoint of preservation of the landscape and biological diversity; and the General Plan has attached prior importance to preservation and protection of nature and the cultural heritage. When resolving the above territorial construction one has to take into consideration not only economical reasons but also the principles of protection of the environment. As the natural forest biotopes and the other nature heritage may be destroyed by the prospective construction, then after taking into account the principle of assessment, construction may be permissible only in case if the positive result obtained from it not only by the initiator but also by society is more important than the negative influence of the construction or building on the quality of the environment.

Thus only existence of other especially vital public interests may serve as the basis for amending requirements of utilization and extending the possibility of construction; besides, it can be done only in case if there is no alternative.

However, when analyzing activities with the state owned land in the protected belt of the dunes, it can be seen that the contracting parties (the Agency and leaseholders) in such cases, especially in connection with the Dome Regulations Nos. 17 and 18, have concluded fictitious lease contracts, as their real objective has not been "tidying" or "managing" of the vacant territories but partial alteration of utilization, including construction, of the territory, which is located in the nature base.

In accordance with the Statutes of the Agency, the aim of its activity is "realization of state interests in the administration and efficient management of the state real estate. The Agency has been created by the will of the State as an institution, to which the function of the subject of public law has been entrusted, i.e., management of the state real estate. Even though it is within the competence of the Agency to also accomplish activities of civil character and it has been established as an enterprise, it does not mean that it is merely and solely the subject of private rights" [*the Constitutional Court July 9, 1999 Judgment in case No. 04 – 03(99), Item 2 of the concluding part*]. Thus one cannot agree with the viewpoint of K.Bricis that the main objective of the Agency is to receive the highest profit from the land under its management.

Besides, the determined rental does not testify that the Agency has received the highest possible profit. Namely, the rental for utilization of the land, included in the contracts "for building business and commercial institutions" after agreement on alteration of the agreement subject was established by not surpassing five percent of the cadastral value of the land, even though in Item 11 of the Cabinet of Ministers October 3, 1995 Regulations No. 292 "Regulations on Leasing of the State Land" this percentage has been established as the lowest the State institutions may envisage, when concluding lease agreements on the land under their management. Thus the Agency, contrary to Article 3 (Item 2 of the first part) of the Law "On Prevention of Squandering of the Financial Resources and Property of the State and Local Governments", has not leased these – from the viewpoint of the land market - undeniably valuable land plots "at the highest price possible".

When analyzing Dome Regulations Nos. 10, 17 and 18 as taken together with the land transactions one can deduce that regardless of the objections of different state institutions and the institutions of the submitter of the claim as well as the resistance of a noticeable part of the society, they have been elaborated without taking into consideration the interests of preservation of the nature heritage, without looking for alternative solutions as concerns the choice of implementation of development proposals and being mainly guided by the interests of individuals (initiators).

Thus concluding of lease agreements, elaboration of the land use plan, later – concluded additional agreements or privatization have been the successive steps to avoid limitations to construction in the protected zone of the dunes, which are in effect. Elaboration of the Dome Regulations Nos. 10, 17 and 18 has mainly been functional means for including the unlawful contents and aim in a seemingly legitimate form.

**Thus on their merit the Dome Regulations Nos. 10, 17 and 18 do not comply with the specific legal status of the protected zone of the dunes as well as with the principles of territorial principles, environmental protection and state administration.**

8. Besides, taking into consideration the fact that there is no territorial plan for the greatest part of the Latvian municipal territories, as well as that in conformity with the Cabinet of Ministers January 13, 2004 Regulations "Provisions for Territorial Planning of Local Governments" the process of evaluation and control of territorial planning is very complicated, the Court draws the attention of the Cabinet of Ministers to the necessity of evaluating the feasibilities and funds of the Ministry of Regional Development and Local Affairs for ensuring control over territorial planning.

### **The substantive part**

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

**hereby rules:**

- 2. To declare the Minister of Regional Development and Municipal Affairs May 27, 2003 Order No. 2-02/57 "On Suspension of the Enforcement of the Jūrmala City Dome October 24, 2001 Binding Regulations No.17 "On the Land Use Plan in Jūrmala, in the territory between the Bulduri Prospect, Rotas Street and 23-25 Avenues"" as conformable with Article 1 of the Republic of Latvia Satversme;**
- 3. To declare the Minister of Regional Development and Municipal Affairs June 2, 2004 Order No. 2-02/60 "On Suspension of the Enforcement of the Jūrmala City Dome October 9, 2002 Binding Regulations No.10 "On the Confirmation of the Land Use Plan for the Public Centre "Vaivari"" as conformable with Article 1 of the Republic of Latvia Satversme;**
- 4. To declare the Minister of Regional Development and Municipal Affairs June 2, 2003 Order No. 2-02/62 "On Suspension of the Enforcement of the Jūrmala City Dome November 7, 2001 Binding Regulations No.18 " On the**

**Confirmation of the Land Use Plan for the Land Plot Bulduri  
1001, Jūrmala”” as conformable with Article 1 of the  
Republic of Latvia Satversme.**

The Judgment is final and allowing of no appeal.

The Judgment was announced in Riga, on March 9, 2004.

The Chairman of the Court session

Aivars Endziņš