



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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Riga, March 25, 2003

## JUDGMENT

in the name of the Republic of Latvia

**in case No. 2002-12-01**

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session Aivars Endziņš, justices Romāns Apsītis, Ilma Čepāne, Juris Jelāgins, Andrejs Lepse, Ilze Skultāne and Anita Ušacka,

in the presence of the sworn advocate Vairis Reinholds – the authorized representative of the submitters of the constitutional claim Dzintars Abuls and Velta Lazda

and the Head of the Saeima Legal Bureau Gunārs Kusiņš, the authorized representative of the institution, which has passed the challenged act – the Saeima

under Article 85 of the Republic of Latvia Satversme (Constitution), Articles 16 (Item 1), 17 (Item 11 of the first part) and 19<sup>2</sup> of the Constitutional Court Law

on February 25, 2003 in a public hearing reviewed the case

**” On the Compliance of Article 12 (Item 3 of the first part) of the Law ”On Land Reform in the Republic of Latvia Cities” with Articles 1 and 105 of the Republic of Latvia Satversme””.**

## **The establishing part**

**1.1** Initially the first part of Article 12 of the Law "On Land Reform in the Republic of Latvia Cities", passed by the Republic of Latvia Supreme Council determined that the land ownership rights to the plots of land previously belonging to the former land owners or their heirs would be renewed to them, with an exception of cases envisaged in Items 1 and 2 of this Article. The second part of the above Article established:

In all other cases, if the land of the former land owners has been built upon or if, in accordance with the city planning and construction projects, the land is designated for the construction of facilities necessary for the satisfaction of the needs of society, then the former owners or their heirs have the right to choose between the following:

/1/ – to request the renewal of ownership rights and receive from the building's owner (in event of planned construction- the city's local government) a lease payment for which the maximum amount is determined by the Republic of Latvia Council of Ministers;

/2/– to request that the owners or their heirs be granted ownership or utilization of a plot of land of equal value, within the same city's administrative boundaries, in accordance with the anticipated form of land use;

/3/– to receive compensation in accordance with the procedure set by law.

Besides the last part of the Article determined that in renewing land ownership rights to former land owners or their heirs, the city local governments must request the compensation of the capital investments of the heretofore land users, which have increased the value of the specific plot of land.

**1.2** On March 31, 1994 the Saeima adopted the Law, in which the first part of Article 12 was expressed in a new wording and supplemented with Item 3, determining that in addition to Items 1 and 2 another case when the ownership rights to the former owner or their heirs would not be renewed was anticipated.

"3) If national protected objects of nature (or parts thereof), which are registered with the Republic of Latvia Environmental Protection Committee, are located on the land of former land owners as well as objects of engineering, technical and transportation infrastructure of the state or city significance – streets, bridges, tunnels, roads junctions, railway lines and ports, then the land ownership rights shall be registered to the state or to local governments. Former land owners or their heirs have the right to choose between the following: to request granting in their ownership of equal plot of land within

the same city administrative boundaries or to receive compensation in the procedure stipulated by law.”

In its turn the second part of the Article anticipated:

”It can be determined by the decision of the city local government that in lieu of the equal plot of land the compensation shall be granted, if there are no sufficient land areas within administrative boundaries of the city, in order to comply with all requesters. This local government decision can be appealed to the court.”

**1.3.** On November 24, 1994 the Saeima passed the Law, expressing Article 12 (Item 3 of the first part) in the following wording:

”3) if the specially protected by the state objects of nature (or parts thereof) registered with the Environmental Protection Committee are located on the land of former land owners or objects of education, culture and science, national sport centers of state significance determined by law, as well as objects of engineering, technical and transportation infrastructure of the state and city significance – streets, bridges, tunnels, road junctions, railway lines and ports. Then the land ownership rights shall be registered to the state or to local governments after that, when former land owners or their heirs corresponding to the choice and in the procedure stipulated by law had received the equal plot of land of other location from those land areas, which were owned by state or local government up to July 21, 1949, as well as from those land areas cognizable to the state or compensation. If an agreement on granting the equal plot of land or compensation is not reached with the former land owner or his/her heir, then the land shall be alienated for those objects in the procedure established by the Law ” On Coercive Expropriation of Real Estate for State or Public Needs”.

**1.4.** On October 12, 1995 the Saeima passed the Law , expressing Article 12 (Item 3 of part 1) in the following wording:

”3) if the specially protected by the state objects of nature (or parts thereof) registered with the Environmental Protection Committee are located on the land of former land owners or objects of education, culture and science, national sport centers of the state significance, determined by law, as well as objects of engineering, technical and transportation infrastructure of the state or city significance – streets, bridges, tunnels, road junctions, railway lines and ports. Then the land ownership rights shall be registered to the state or corresponding local government after that, when former land owners or their heirs in accordance with their choice and in the procedure stipulated by law had received the equal plot of land of other location from the land areas, retained in the local government disposal and shall be used for completing the land reform

in accordance with the Law "On the State and Local Governments Land Ownership Rights and Their Recording with Land Books".

**1.5.** On May 8, 1997 the Saeima adopted the Law, inter alia supplementing the last sentence of Item 3 of the above Article and anticipating for the former land owners the right of receiving an equal plot of land or compensation for the plot on which the property rights are not restituted.

**2.** On October 26, 1995 the Saeima passed the Law "On Objects of Education, Culture and Science of State Significance and National Sport Centres" (henceforth – the Law on Objects of State Significance). Article 4, Item 26 of this Law determines that the Riga Film Studio is the object of state significance. The Law indicates No. 3 Šmerļa Street as the juridical address of the Riga Film Studio. Article 7 of the Law established that "after receiving the application from the corresponding ministry the Minister of Finance shall determine the status of objects of education, culture and science of state significance and within two months as of the day of this law taking effect, submits the list of the above objects to the Cabinet of Ministers for affirmation".

**3.** On November 19, 1997 the Cabinet of Ministers, when reviewing the draft Decree on the Objects of Education, Culture and Science of State Significance (Protocol No.64, paragraph 13), did not adopt the draft Decree but decided to regard the objects, enumerated in the draft supplement, as the basis for corresponding ministries, the Board of the State Archives, the University of Latvia, the Riga Dome, the National Board of Radio and Television and other state institutions to request the State Land Service to elaborate land utilization projects on the above objects in the procedure stipulated by law. The Protocol Decree charged the corresponding state institutions (after coordination of the projects) with the task of elaborating and submitting to the Cabinet of Ministers draft projects on confirmation of the respective objects and their registration with the Land Books.

**4.** On February 6, 1997 the Riga City Land Commission adopted Decision No. 5/57 restoring the property rights of Dzintars Abuls and Velta Lazda to a 213 486 m<sup>2</sup> land plot at No. 382/384 Brīvības Gatve. On February 27, 1998 their property rights to the above plot were registered with the Land Book.

On March 23, 1999 in the interests of the Ministry of Culture the Department of Personal and State Rights of the Prosecutor General's Office addressed the Riga Regional court with the claim to declare null and void the above Decision of the Riga City Land Commission in the part on restoring property rights to a 61 475 m<sup>2</sup> land plot, because the Riga Film Studio was located there. Besides the Prosecutor General's

Office requested the court to delete the corresponding entry in the Land Book and declare the land plot to be the state property.

The court satisfied the claim, basing its decision on Article 12 (part 1, Item 3) of the Law "On Land Reform in the Republic of Latvia Cities" and Article 4 (Item 26) of the Law on Objects of State Significance.

5. **Dzintars Abuls and Velta Lazda** (henceforth – the applicants) hold that their rights, determined in Article 105 of the Republic of Latvia Satversme (henceforth – the Satversme) have been infringed, to their mind also Article 1 of the Satversme has been violated. In their constitutional claim, submitted to the Constitutional Court, they request to declare Item 3 of the first part of Article 12 (henceforth – the challenged norm) of the Law "On Land Reform in the Republic of Latvia Cities" as unconfirmable with the above Satversme Articles and null and void as of the day of adoption of the norm.

In the application it is pointed out that the July 22, 1940 Declaration on proclaiming the land being the property of the people, passed by the occupational government, shall be qualified as an illegal act which resulted in illegal expropriation of property of Latvian citizens and other inhabitants. The Law "On the Land Reform in the Republic of Latvia Cities" determines that when this Law takes effect, all acts, which were adopted since July 21, 1940 concerning the nationalization and expropriation and all land within the administrative boundaries of the city is transferred under the jurisdiction (but not in property) of the city local government. One may conclude that as the July 22, 1940 Declaration loses validity the local governments will renew land ownership rights to the former land owners or their legal successors. The applicants refer to Article 999 of the Civil Law, expressing the viewpoint that prescription could not serve as the ground for the government to acquire ownership of the property because the owners have not been able to exercise their right to the property.

The applicants note that the Saeima has incorporated reservation into Article 2 of the Law "On the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and its Protocols No.1, 2, 4, 7 and 11", establishing that requirements of Article 1 of Protocol 1 will not be applied to the property reform regulating the restitution of the nationalized, confiscated, collectivized or otherwise illegally expropriated property or payment of compensation to former owners or their heirs. The applicants stress that when adopting Chapter VIII of the Satversme the above reservation has not been incorporated into it.

The applicants express the viewpoint that in compliance with general legal principles, which follow from Article 1 of the Satversme – the principle of a law-based state, principles of legitimate trust and rule of law – persons from whom the occupational government had unlawfully expropriated real estate or their legal heirs have the right of trusting that the property, which has survived during the occupational regime and the restitution of which does not violate human rights of other persons shall be restituted.

The applicants point out that the claim of the Prosecutor General's Office in the interests of the Ministry of Culture on land property rights, requesting declaration of the Riga Land Commission Decision as null and void, means the claim on alienation of property of the applicants.

At the Court session the representative of the applicants upheld the view expressed in their claim. He stressed that the regulation, anticipated in the challenged norm has been legally incorrect and erroneous. All the land property shall have been restituted to the former land owners or their heirs and – if necessary – to alienate it in the procedure, envisaged by law.

At the same time the representative of the applicants pointed out that the objects, mentioned in the Law on Objects of State Significance, were not such objects because of which the rights of the land owners should be violated in a democratic state.

The representative of the applicants stressed that at the moment when the property rights of the applicants of the claim were restituted, the status of the particular culture object of the state significance - the Riga Film Studio- had not been established in the procedure envisaged in Article 7 of the Law on Objects of State Significance and the Land Commission had no duty of waiting to the time when it would take place. Therefore the property rights on the land plot on which the Riga Film Studio is located, have been lawfully restituted.

- 6. The institution, which has passed the challenged act – the Saeima** in its written reply expresses the viewpoint that the challenged norm is in conformity with Articles 1 and 115 of the Satversme.

The Saeima stresses that restitution of nationalized land property in Latvia takes place under the provisions of the land reform. The land reform is a process which is continuous and embraces all the sectors of national economy. The necessity of the reform was determined by historical circumstances. The aim of the land reform, during the gradual process of State property denationalization, conversion, privatization and the return of unlawfully expropriated land, is to reorganize the

legal, social and economic relations in order to promote the city's construction, land protection and its rational utilization, in accordance with the interests of society.

Referring to the Constitutional Court Judgment in case No. 09-02(98), the Saeima in its written reply stresses that during the land reform the right of a person to property shall be dealt with by taking into consideration both - the permissible limitations of the property right and the entire property reform in Latvia. Because of objective circumstances it is not always possible to renew the pre-nationalization situation.

In the written reply it is stated that the challenged legal norm is one of the exceptional cases, when the rights of the former owners or their heirs to the land plots they have owned are not restituted. It complies with the aim of the land reform. The right of the persons has been restricted in the interests of the society. The benefit, gained by the society – to the mind of the Saeima – is greater than the limitation inflicted on the person.

The Saeima reminds that in accordance with Article 105 of the Satversme use of the property is connected with observation of public interests. Besides- the right to property is not absolute and may be restricted in accordance with law. The restriction, envisaged in the challenged norm is determined in law, it has a legitimate aim and it is proportionate to the aim. When limiting the right of the person to property, fair balance between the interests of an individual on the one hand and the public interests on the other hand has been observed.

In its written reply the Saeima points out that October 12, 1995 Law "Amendments to the Law "On Land Reform in the Republic of Latvia Cities" do not amend but only specify the former wording of the challenged norm. To the mind of the Saeima the applicants interpret the principle of trust in law in an ungrounded and extensive way. Specific limitations for reclaiming nationalized land plots have been anticipated already at the beginning of the land reform. There were no grounds for holding that the former land owners or their heirs in all cases would regain the whole land property once expropriated in the former area, without taking into consideration social – economical changes, which have taken place during the last decades.

The Saeima stresses that in accordance with Articles 5-8 of the Law "On Land Reform in the Republic of Latvia Cities" and the Law "On the Land Commissions", the land property rights are considered as restituted only after the city Land Commission has adopted the decision on it. Therefore ungrounded is the viewpoint of the applicants that the

land property rights have been restituted just after repealing of the nationalization act.

In the same way the Saeima does not agree with the viewpoint of the applicants that the fourth sentence of the Satversme Article 105 shall be applied and their land property rights shall be alienated only by a specific law. The Saeima points out that the court in its judgment has established unlawfulness in the decision of the Land Commission in the part on regaining of property rights to the land plot on which the object of state significance – the Riga Film Studio is located. In this case the land plot, which in compliance with the law belongs to the State, has been regained.

At the Court session the Saeima representative upheld the view expressed in the written reply.

Referring to the European Court of Human Rights Judgment in case *Zwierzynski v. Poland*, he points out that the notion "property" in the understanding of Article 1, Protocol 1 of the European Convention for Human Rights and Fundamental Freedoms (henceforth – the Convention) has an autonomous meaning. The term "property", incorporated into Article 105 of the Satversme, shall be equivalently interpreted.

He stressed that the term "property" in the meaning of Article 105 of the Satversme refers only to a legally attained property. But the property rights of the applicants have been restituted contrary to law.

The Saeima representative marks that only one of the objects, enumerated in the challenged norm has been mentioned. Conformity or unconformity of this (one) object with the status of culture object of state importance shall not be connected with conformity or unconformity of the whole challenged norm with the Satversme. In its turn the corresponding norm of the Law on Objects of State Significance has not been challenged.

He admitted that the Cabinet of Ministers has not realized the requirements of Article 7 of the Law on Objects of State Significance in due time, however just because of the above fact one shall not consider the challenged norm as unconfomable with the Satversme.

- 7. The Cabinet of Ministers** , when answering to the question of the Constitutional Court on the realization of Article 7 of the Law on Objects of State Significance, explained that the requirements concerning the Riga Film Studio were realized by the Cabinet of

Ministers November 19, 1997 Decision (*see Protocol No. 64, paragraph 13*).

At the Court session the sworn advocate Milda Zelmene – the representative of the Cabinet of Ministers - stated that the Cabinet of Ministers had not realized the requirements of Article 7 of the above law in due time because it was not possible to summarize the information on all the objects, enumerated in the Law. When reviewing the issues on November 19, 1997, the Cabinet of Ministers concluded that the list of all the objects had not been specified.

She explained that after taking the above Protocol Decision the Cabinet of Ministers had twice resolved the issue on the Riga Film Studio. By February 21, 1996 Decree No. 58 "On Privatization of the Objects of State Property" the Riga Film Studio was put up for privatization. Later – by October 21, 1998 decree No. 507 the plots of land on which there were property objects, put up for privatization in accordance with February 21, 1996 Decree were put over for privatization.

8. **The representative of the Ministry of Culture** – the sworn advocate Viktors Skudra at the Court session stresses that the fact about the status of the object not having been precisely defined does not mean that the particular object is not the culture object of state significance.
9. **The Chairman of the Riga Land Commission** Egils Vīgants at the Court session pointed out that at the moment when the land property rights of the applicants were renewed, the status of the culture object of state significance – the Riga Film Studio – had not been established. Besides, the Riga Film studio as a legal entity did not make use of the rights established in Article 6 of the Law "On Land Reform in the Republic of Latvia Cities" and had not submitted the claim for land to the local authority in the procedure, determined by law. Therefore the renewal of the property right to the applicants by the Land Commission had been legitimate. In Riga many other objects of culture, education and science are in a similar situation.

He expressed the viewpoint that the legislator has not taken into consideration the fact that the land reform was accomplished in two stages. During the first stage the property rights are renewed. After that the land plot survey is carried out. The average price the former owner pays for it is 900 – 1000 lats. If the law is being amended and the property rights cannot be renewed then it is not clear who will compensate these and other expenses of the former owner.

## The concluding part

1. During the occupation of Latvia the USSR purposefully realized genocide against the Latvian nation. At the same time the occupation government illegally and without remuneration alienated property of the Latvian people (*see the Saeima August 22, 1996 Declaration on Occupation of Latvia*).

On May 4, 1990 the Republic of Latvia Supreme Council adopted Declaration "On the Renewal of the Independence of the Republic of Latvia" declaring null and void from the moment of adoption the Decision of July 21, 1940 of the Saeima of Latvia "On the Republic of Latvia's Joining the USSR". At the same time the authority of the Satversme of the Republic of Latvia, adopted by the Constituent Assembly on February 15, 1922, was renewed in the entire territory of Latvia. Until the adoption of the new wording of the Satversme, the Satversme of the Republic of Latvia – with an exception of Articles, expressing the constitutional and legal foundation of the State of Latvia, namely, Articles 1, 2, 3 and 6- was suspended. The State independence *de facto* was renewed on August 21, 1991.

Therefore the State of Latvia is not responsible for violation of human rights, including nationalization of property, which was realized by the occupational government. The Republic of Latvia has no possibility and no duty to completely compensate all the losses, inflicted on persons by the occupational government.

Similar situation can be found in other Eastern European States as well. For example, the Republic of Lithuania Constitutional Court has concluded that neither the Supreme Council of the Republic of Lithuania, elected by the people in 1990 nor the executive authorities, formed by it, were responsible for the consequences of occupation of Lithuania, which took place half a century ago. The Republic of Lithuania Supreme Council had an unquestionable right to choose a variant of the solution and it had chosen a limited restitution (*see June 20, 1995 Judgment of the Republic of Lithuania Constitutional Court in case No. 25/94*).

Article 1 of the Satversme determines that Latvia is an independent democratic republic. The Republic of Latvia Constitutional Court in a number of judgments has concluded that several principles of the law-based state, namely – the principle of fairness and legitimate trust as well as rule of law- follow from the above Article.

Restitution of the nationalized land property in Latvia is accomplished in accordance with the land reform. Historical circumstances determine that the land reform shall be a complex, continuous and embracing the whole national economy process. A considerable period of time has passed since nationalization of land was begun. In the course of development the nationalized land was used for different objectives, also for locating of objects of public significance. The aim of land reform is to reorganize the legal, social and economic relations between city land owners and users in order to promote the city's construction and rational utilization of land.

Even though the Law "On Land Reform in the Republic of Latvia Cities" advanced restitution of the land, illegally expropriated by the occupational regime to the former owners or their heirs, as one of the main means of renewal of social fairness, just because of objective circumstances it was not possible to renew the pre-nationalization situation in all the cases. Therefore the Law did not envisage denationalization of the whole land.

When renewing the legal system of independent Latvia, the legislator had the duty of undertaking measures to renew fairness and redress the losses inflicted by the previous regime by observing the principles of a law-based state. At the same time the legislator, when choosing the means for the land reform, had to reach a fair balance between the contradictory interests of various members of the society.

As the consequences of the occupation are a burden for the whole society, it is not possible to fully eliminate them. The principle of fairness requires taking into consideration not only the interests of the former land owners and their heirs but also those of other society members and the public interests on the whole. In accordance with Article 3, Item 1 of the Law "On Land Reform in the Republic of Latvia Cities" one of the most important tasks of the land reform is protection of the rights of land owners and users. Therefore well-grounded is the viewpoint, expressed by the Saeima that fairness does not mean wholly satisfying the interests of only one party. It is necessary to achieve fairness both with regard to every individual and to the whole society.

The Constitutional Court of the Czech Republic has also concluded that the objective of restitution of property rights is not to remove all injustices but of mitigating them. Restitution of property rights shall not do further injustices (*see September 22, 1998 Judgment of the Czech Republic Constitutional Court in case Pl. US 1/98*).

**Thus the principle of fairness, which follows from Article 1 of the Satversme and the principle of proportionality does not require that during the land reform Latvia shall reconstitute land property rights to all the former owners or their heirs or compensate its full value.**

2. Ungrounded is the viewpoint of the applicants that persons, whose real estate had been illegitimately expropriated by the occupational government or their legal heirs, could trust that the whole property, which survived during the occupation and restitution of which would not violate the rights of other persons would be given back.

Taking into consideration social-economic changes of the last decades, limitations in regaining of nationalized land were determined already from the beginning of the land reform. Therefore the applicants had no legal basis for trusting that the former land owners or their heirs shall receive back the whole nationalized land property. Already in the wording of the Law, adopted on March 31, 1994 the challenged norm anticipated certain limitations of regaining the former land property in cases, if the objects, mentioned in the challenged norm, were located on the land.

Neither Article 1 nor Article 105 of the Satversme anticipates prohibition of incorporating such amendments into legal regulation, which comply with the Satversme. However, in a democratic state the principle of trust in law requires envisaging a considerate transition to a new regulation when adopting the above amendments. Reasonable terms shall be established or due compensation for the incurred losses shall be envisaged, i.e. – if the former land owners or their heirs have started the process of regaining the property before the challenged norm taking effect and if they have invested certain resources in it.

When passing the challenged norm the legislator has not envisaged such a regulation. However that does not forbid the court of general jurisdiction, when reviewing concrete cases, to apply the legal principles, following from the Satversme.

3. Ungrounded is the viewpoint of the applicants that property rights to the former owners or their heirs are automatically reconstituted at the moment when all acts, which were adopted since July 21, 1940 lose validity. Quite to the contrary – the land property rights are reconstituted by the decision of competent institutions, after examining each individual application.

The Republic of Lithuania Constitutional Court has concluded that "the law may not be applied for the protection of subjective rights of

ownership of a certain property which have not been restored to a certain person yet, but are the subject of restoration. In this situation the decision by the institution authorized by the state on restoration of the property or granting compensation for it is of legal importance. The former owner gains the property rights of the property only from the moment of adoption of the decision.” (*see the Republic of Lithuania Constitutional Court Judgment in case No.25/94*).

4. On June 4, 1997 the Saeima adopted the Law ”On the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and its Protocols No. 1, 2, 4, 7 and 11”. The Convention and its Protocols No 1, 2, 4, 7 and 11 took effect in the Republic of Latvia on June 27, 1997.

Taking into consideration the situation established by historical circumstances, the State of Latvia, when ratifying the Convention, made use of the right of incorporating a reservation, envisaged in Article 64 of the Convention. Thus it included into Article 2 of the Law ”On the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and its Protocols No.1, 2, 4, 7 and 11” the following reservation:

”Requirements of Article 1 of Protocol No.1 to the Convention will not be applied to the property reform regulating the restitution of the nationalized, confiscated, collectivized or otherwise illegally expropriated property or payment of compensation to former owners or their heirs, as well as to privatization of agricultural enterprises, collective fisheries and state and local government property”.

The Constitutional Court has already concluded that the concept ”property reform” includes also the notion ”the land reform”. The above reservation indicates that at the time of implementation of the land reform, limitation of the rights of the former land owners is admissible in the public interests” (*see the Constitutional Court April 30, 1998 Judgment in case No. 09-02/98/*).

A similar reservation has been included in the Law by the Republic of Estonia, when accessing to the convention. In its turn the German Federative Republic, when reuniting, supplemented the GFR Fundamental Law with a new Article – Article 143.

On November 6, 1998 Chapter VIII of the Satversme ”Fundamental Human Rights” took effect. Article 105 of the Satversme took effect without any provisions or reservations. However, when interpreting the content of Article 105 of the Satversme, the practice of the European Court of Human Rights shall be made use of (*see the Constitutional*

*Court August 30, 2000 Judgment in case No. 2000-03-01*), at the same time taking into consideration the above reservation incorporated into the Law "On the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols No. 1, 2, 4, 7 and 11".

The Constitutional Court has concluded that Article 1 of the First Protocol to the Convention includes three separate norms: first of all, the first sentence of Article 1 envisages the right to peaceful enjoyment of possessions, secondly, the second sentence determines prohibition and provisions for alienation of property and, thirdly, the second part of the Article establishes that the state experiences the right of controlling the use of property in accordance with general interests. The three separate norms are closely connected. Article 105 of the Satversme has similar contents (*see the Constitutional Court May 20, 2002 Judgment in case No. 2002-01-03*).

However the challenged norm does not regulate action with "existing property". The challenged norm refers to the process of the land reform and determines cases, when the property rights shall not be restituted to the former land owners or their heirs.

**Thus ungrounded is the viewpoint of the applicants that the challenged norm is unconformable with the fourth sentence of Article 105 of the Satversme.**

5. The challenged norm envisages one of the exceptions, determined in Article 12 of the Law "On Land Reform in the Republic of Latvia Cities" – the property rights of a land plot to the former owners or their heirs are not renewed if public objects are located on the land of former land owners.

The challenged norm, first of all, determines types of objects. They are: objects of nature (or parts thereof), specially protected by the state, and registered with the Environmental Protection Committee; objects of education, culture and science of state significance determined by law; national sport centers as well as objects of engineering, technical and transportation infrastructure of the state or city significance- streets, bridges, tunnels, roads junctions, railway lines and ports. Secondly, the challenged norm envisages that the former owners or their heirs experience the right of either receiving compensation or acquiring a plot of land of equal value.

When realizing the land reform the limitations for regaining the former land property, determined by the legislator, had to correspond to a legitimate aim and be proportionate to that aim.

In this case the aim of not restituting the land property is the establishment of a compromise, conformable with public interests by balancing the rights and interests of the former owners and the rights and interests of the society and its members. The challenged norm is directed towards insurance of functioning of objects, significant to the society, inter alia functioning of such objects, which are necessary for realization of the rights, fixed in the Satversme – i.e. the fundamental human rights to education as well as the freedom of scientific and artistic creative work. Thus the aim shall be considered as legitimate.

On the one hand, benefit, obtained by the society from undisturbed functioning of objects of engineering, technical and transportation infrastructure of the state or city significance - streets, bridges, tunnels, roads junctions, railway lines and ports as well as from objects of nature, specially protected by the state and objects of education, culture and science of state significance and national sport centers, is much greater than the limitations determined to the former owners and their heirs.

Besides, the challenged norm does not attribute the limitation to restitution of the land property rights to any object of education, science or culture, but only to those objects, which are of the state significance.

However, on the other hand, to establish whether determination of limitation is proportionate to the legitimate aim, one shall also assess whether the challenged norm makes it possible to achieve a fair balance between the former land owner or his/her heirs and the society.

The balance may be achieved only in cases if the above object (specific buildings and constructions), the territory occupied by it, as well as the land, which is needed for maintenance of the object, are clearly and precisely known. Otherwise, when applying the challenged norm, arbitrary action is a possibility. And that will be at variance with the principle of the law-based state.

As concerns the challenged norm in the part on objects of education, culture, science and sport centers, it can be applied only in compliance with the law, which specifies the above objects. In these cases the challenged norm alone shall not serve as the reason for non-renewal of property rights. The Saeima confirmed the list of the above objects by the Law on Objects of State Significance, enumerating the objects of education, culture, science and sport centers, which had acquired the status of state significance. The Law indicated the juridical addresses of the above objects, but did not estimate the concrete buildings and/or constructions or the land area (or borders) necessary for maintenance of the object.

During the debate on objects of state significance at the Saeima session the deputy Jānis Vaivods, speaking in the name of the Education, Culture and Science Commission, said: " We have found the solution, which allows us to put in order and understand the validity of the Law... we may determine the status of every building of the object of education, culture and science by the Law, or we may determine only the juridical status, pointing out the juridical address of the object in the law and then the State Property Foundation shall list every object, specify its "composition" after that submitting the completed list (on every object) to the Cabinet of Ministers for confirmation. Thus the system of all the objects of culture, education and science (up to every single building) will be drawn up. It is one of the fundamental principles. The Law could be elaborated only in this way..." (see *Volume I, p. 136 of the case*).

Thus in accordance with Article 7 of the Law on Objects of State Significance the assignment of specifying education, culture and science objects was delegated to the executive power, envisaging that within two months as of the day of the above Law taking effect, i.e. – till January 4, 1996, the list of the above objects shall be submitted to the Cabinet of Ministers.

Neither the challenged norm nor the Law on Objects of State Significance specifies the composition of the objects and the land area, which is necessary for maintaining the objects. Therefore legal basis for applying of the challenged norm could arise only when the executive power had carried out the duty assigned by the legislator.

**Thus the limitation to restitution of property rights, connected with objects of education, culture and science, determined in the challenged norm, shall be considered as proportionate only if the executive power has realized all the activities with regard to objects of state signification envisaged in the Law.**

6. In this case the Riga Land Commission with its February 6, 1997 Decision renewed property rights to the once nationalized land of the applicants, even though an object of culture of state significance – the Riga Film Studio was located there.

Paragraph 13 of November 19, 1997 Cabinet of Ministers session protocol states that the government tried to elaborate the list of objects of education, culture and science only at the end of 1997. Besides the list of objects, attached to the Draft Decree, was considered "as the basis for the corresponding ministries and other state institutions for

commissioning land utilization projects to the State Land Service in the procedure, established by laws and other normative acts”.

However, before that - on February 21, 1996 the Cabinet of Ministers passed Decree No. 58 "On Putting up Objects of State Significance for Privatization", in accordance with which several state companies, among them also the culture object of state significance - the Riga Film Studio were put up for privatization. In its turn by October 21, 1998 Decree No. 507 "On Putting up Land Plots for Privatization" the Cabinet of Ministers put up for privatization also the land plot on which the reorganized Riga Film Studio was located. Official information on the boundaries of the land plot at No.3 Šmerļa street, Riga to be put up for privatization (the juridical address of the Riga Film Studio, mentioned in the Law) was published in the newspaper "Latvijas Vēstnesis" on September 15, 1999.

Taking into consideration the fact that the area of the land plot to be privatized is only 5911 m<sup>2</sup>, but – following the claim of the Prosecutor General's Office – by the court decision the land plot for the Riga Film Studio i.e. 61475 m<sup>2</sup> was alienated from the applicants, the Constitutional Court holds that in this case the executive power has not fulfilled the task, assigned to it by Article 7 of the Law on Objects of State Significance.

Principle of good government, which follows from Article 1 of the Satversme, incorporates also fair implementation of procedures in a reasonable time and other provisions, the objective of which is to achieve observation of human rights by the state administration. By not executing the duty, assigned by the legislator, in due time, the executive power has not observed the above principle.

Thus, when applying the challenged norm in the part on objects of education, culture and science of state significance, the former land owners or their heirs are not guaranteed adequate protection against arbitrary interference in their rights and limitations of restitution of property rights become disproportionate with the legitimate aim and unbecomable with Articles 1 and 105 of the Satversme.

Besides, even though in compliance with Article 8 of the Law on Objects of State Significance, in case of reorganization ( also in case of privatization) the institutions of culture retain their status of the object of state significance and the new owner undertakes the rights and obligations of the institution. Haste with which the Riga Film Studio was put up for privatization makes the Constitutional Court doubt whether the object has state significance.

## **The substantive part**

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

**decided:**

- 1. To declare that Article 12 (Part 1, Item 3) of the Law "On Land Reform in the Republic of Latvia Cities" in the part on objects of education, culture and science is in compliance with Articles 1 and 105 of the Republic of Latvia Satversme, if the government in accordance with Article 7 of the Law "On Objects of Education, Culture, Science and Sport Centers" has determined the land area occupied by the objects and necessary for maintaining up to May 1, 2003.**
- 2. To declare that the other part of Article 12 (Part 1, Item 3) of the Law "On Land Reform in the Republic of Latvia Cities" complies with Articles 1 and 105 of the Republic of Latvia Satversme.**
- 3. To declare that - as concerns the applicants Dzintars Abuls and Velta Lazda- the limitations for restitution of property rights envisaged in Article 12, part 1, Item 3 of the Law "On Land Reform in the Republic of Latvia Cities", as read together with Article 4, Item 26 of the Law "On Objects of Education, Culture, Science and Sport Centers of State Significance" are unconformable with Articles 1 and 105 of the Satversme and null and void as of January 4, 1996.**

The Judgment takes force as of the moment of its announcement. The Judgment is final and allowing of no appeal.

The Judgment was announced in Riga on March 25, 2003.

The Chairman of the Constitutional Court

A.Endziņš