



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

VERDICT IN THE NAME OF THE REPUBLIC OF LATVIA

Riga, April 20, 1999

on case No. 04-01(99)

The Constitutional Court of the Republic of Latvia in the body of the Chairman of the Court session Aivars Endziņš, the judges Anita Ušacka, Romāns Apsītis, Ilma Čepāne, Andrejs Lepse, Ilze Skultāne and the secretary of the Court session Linda Vīnkalna,

in the presence of the sworn advocate J.Rozenfelds - the representative of the applicant i.e. the State Human Rights Bureau,

and the head of the Privatization Department of the Ministry of Economy A.Bernāns and the sworn advocate V.Naumovs, who represented the institution that issued the normative act, which is disputed

under Article 85 set by the Satversme (Constitution) as well as Article 16, paragraph 4 and Article 17 (its second part, paragraph 8) of the Constitutional Court Law,

in a public hearing on April 6, 1999 reviewed the case

”On Conformity of Paragraph 29 of the Cabinet of Ministers 20 May, 1997 Regulations No.187 ”The Procedure for the Repayment in Cash to Persons who were Granted Compensation Certificates (Vouchers) for the Former Landed Property in Rural Areas ” with Articles 105 and 91 of the Satversme (Constitution) of the Republic of Latvia, as well as with Article 1 (the second part), Article 12 (the second part, paragraph 3) of the Law ”On Land Privatization in Rural Regions” and Article 9 of the Law ”On the Determination of the Status of Politically Repressed Persons Suffered during the Communist and Nazi Regimes””.

The Constitutional Court established:

On July 9, 1992, the Supreme Council passed the Law ”On Land Privatization in Rural Regions”. The second paragraph of Article 1 of the above law determined that one of the main objectives of the land privatization was to restitute the land ownership rights to the former land owners, who had the rights on July 21, 1940 or to their heirs.

On December 8, 1994, the Saeima adopted the Law ”Amendments to the Law ”On Land Privatization in Rural Regions””. The second part of Article 12 of the Law ”On Land Privatization in Rural Regions” established that the following persons shall be granted the right to receive compensation for their land-related property certificates (vouchers) in cash - in the sum of 28 lats for a certificate (voucher) under the procedure anticipated by the law:

- 1) the former land owners, who up to December 31, 1992 had submitted a request to receive the compensation;

- 2) the former land owners or their heirs of the first degree, who had required restitution of their land property up to June 29, 1991, but who did not receive it back because of restrictions of the law (and whose names have been entered into the Register of not satisfied claimants).

In its turn, the third part of Article 14 of the Law "On Land Privatization in Rural Regions" determines, that the compensation shall be paid in cash or in securities on fixed dates and in the amount established by the Cabinet of Ministers.

On April 12, 1995 the Saeima passed the Law "On the Determination of the Status of Politically Repressed Persons Suffered during the Communist and Nazi Regimes". Article 9 of Chapter 4 "Moral and Legal Guarantees by the State for Politically Repressed Persons" of the Law determines that the state shall ensure restoration of politically repressed persons' rights in the area of civil, economic and social rights according to the law.

On July 18, 1995 the Cabinet of Ministers - in accordance with Articles 12 and 14 of the Law "On Land Privatization in Rural Regions"- passed Regulations No.220 "Regulations on the Procedure for the Repayment in Cash to Persons who were Granted Privatization Certificates (Vouchers) for the Former Landed Property in Rural Regions, on the Dates of Payment and the Amount of Compensation". Paragraph 12 for the first time established a fixed date – December 31, 1995 - of submitting or mailing the request to receive compensation in cash for the land- related compensation certificates (vouchers).

On October 5, 1995 the Saeima adopted the Law "Amendments to the Law "On Land Privatization in Rural Regions"", enlarging the range

of persons mentioned in Article 12 of the Law. It determined that heirs of the first degree of the former land owners - politically repressed persons - if they themselves were politically repressed persons and if they had submitted request for the receipt of compensation up to December 31, 1992, had the right to receive 28 lats for a land-related compensation certificate (voucher).

On April 2, 1996 in compliance with the above Amendments, the Cabinet of Ministers passed Regulations No.84 "Amendments to the Cabinet of Ministers 18. July, 1995 Regulations "Regulations on the Procedure for the Repayment in Cash to Persons who were Granted Privatization Certificates (Vouchers) for the Former Land Property in Rural Regions, on Fixed Dates and Amount of the Payment"". According to the Law the Amendments enlarged the range of persons, who had the right to receive money for compensation certificates (vouchers) and prolonged the term of submitting requests to June 30, 1996.

On December 5, 1996, the Saeima adopted the Law "Amendments to the Law "On Land Privatization in Rural Regions", that enlarged the range of persons, mentioned in Article 12 of the Law "On Land Privatization in Rural Regions" once again. It determined that also spouses of the former politically repressed land owners who had outlived them and politically repressed heirs of the first degree had the right to receive 28 lats as compensation for every land-related privatization certificate (voucher).

On May 20, 1997 in order to implement the Law, the Cabinet of Ministers passed Regulations No.187 "The Procedure for the Repayment in Cash to Persons who were Granted Compensation Certificates (Vouchers) for the Former Landed Property in Rural Areas" and

paragraph 29 established the date of submitting requests for the third time – up to September 30, 1997.

The applicant questions paragraph 29 of the Regulations No.187 "The Procedure for the Repayment in Cash to Persons who were Granted Compensation Certificates (Vouchers) for the Former Landed Property in Rural Areas" (henceforth- the disputable legal norm) and considers it as not being in compliance with Articles 105 and 91 of the Satversme (Constitution), the second part of Article 1 (obviously, paragraph 2 was meant) and paragraph 3, part 2 of Article 12, as well as with Article 9 of the Law "On the Determination of the Status of Politically Repressed Persons Suffered during the Communist and Nazi Regimes".

The applicant stresses the fact that the Law "On the Determination of the Status of Politically Repressed Persons Suffered During the Communist and Nazi Regimes", establishes the criteria of determining the status of politically repressed persons but does not fix the time limit of granting the above status. Thus, even at the present moment it is possible to grant a person the status of a politically repressed person. Besides, the legal norm of Article 9 of the above Law establishes, that the state shall ensure restoration of politically repressed persons' rights in the area of civil, economic and social rights according to the law, not limiting the validity of the right on the time of granting the status of a politically repressed person.

Besides, the applicant is of the opinion that property rights of the politically repressed persons who have been granted the status after September 30, 1997 are ungroundedly limited thus discriminating them as to the socially-legal status, because:

- 1) in comparison with the persons, mentioned in items 3.1 and 3.2 of the Cabinet of Ministers Regulations No.187 "The Procedure for

the Repayment in Cash to Persons who were Granted Compensation Certificates (Vouchers) for the Former Landed Property in Rural Areas”, the politically repressed persons who were granted the status after September 30, 1997, could not exercise equal possibilities to attach all the necessary papers to the request. Even if these persons knew about the fixed date of submitting the requests as well as about the necessary documents, and wanted to submit the request, at the time they were not able to submit the documents envisaged in paragraph 7 of the Cabinet of Ministers Regulations;

- 2) when compared with the politically repressed persons who had been granted the status of politically repressed persons before September 30, 1997, those, who were granted it after September 30, 1997 did not receive an equal possibility to reconstitute their property rights envisaged by the legislation, because restitution of the right had become dependent on the time of being granted the status of a politically repressed person.

At the Court session the authorized representative of the applicant, the sworn advocate J.Rozenbergs backed the application and stressed that the disputable legal norm had violated the rights of a remarkable number of persons. It is inadmissible not only because of the general legal principles, but also because the disputable legal norm amends the existing valid laws and thus is at variance with quite a number of normative acts.

The Cabinet of Ministers in its written reply has pointed out that it does not agree with the petition and is of the opinion that the disputable legal norm is neither at variance with Articles 105 and 91 of the Satversme of the Republic of Latvia - as the given paragraph does not either permit any discrimination or limit property rights – nor with the second paragraph of Article 1 of the Law ”On Land Privatization in Rural

Regions". To their mind this Article establishes general regulations and refers only to the process of granting compensation certificates (vouchers) and not to the procedure of compensating the vouchers in money. As to paragraph 3 of the second part of Article 12, they are of the opinion that the above paragraph just names the range of persons who have the right of receiving compensation for land-related privatization certificates (vouchers) in cash, and has nothing to do with the fixed date of submission of requests determined by the Cabinet of Ministers. In the same way, to their mind, the disputable legal norm is not at variance with Article 9 of the Law "On the Determination of the Status of Politically Repressed Persons Suffered During the Communist and Nazi Regimes", which establishes that the state shall ensure restoration of property rights of politically repressed persons in accordance with the law. The representative expressed the viewpoint that restoration of property rights had been ensured by granting compensation certificates (vouchers) in accordance with the first part of Article 12 and the third part of Article 14 of the law "On Land Privatization in Rural Regions".

Besides, the Cabinet of Ministers in its written reply reminds that by Article 14 of the Law "On Land Privatization in Rural Regions" the Cabinet of Ministers has been vested with the right to determining the fixed date of repaying the compensation.

The Cabinet of Ministers explains that determining of the fixed date of compensating land-related privatization vouchers in money has been necessary because, in accordance with Article 18, part 11 and Article 19, part 2 of the March 16, 1995 Law "On Privatization Certificates" the state shall guarantee the rights of all holders of certificates (vouchers) to use their certificates (vouchers) according to their nominal value in the privatization of state and local government property until December 31, 1999 i.e. to the last day of the certificates

(vouchers) being valid. The norms of the above law can be completed only if the state and the certificate holders have the information about compensation for land-related privatization certificates (vouchers) in cash in due time and the normative acts determine a fixed date of submitting applications before December 31, 1999.

At the Court session the representatives of the Cabinet of Ministers did not agree with the claim and expressed the opinion that the petition should not be satisfied in the extent it had been submitted to the Constitutional Court. The representative of the Cabinet of Ministers, the sworn advocate V.Naumovs pointed out that the disputable legal norm determined the fixed date up to which requests on receiving compensation for land-related privatization certificates (vouchers) in cash should be submitted not only by politically repressed persons but by all the persons, mentioned in paragraph 3 of the Cabinet of Ministers Regulations No.187 "The Procedure for the Repayment in Cash to Persons who were Granted Compensation Certificates (Vouchers) for the Former Landed Property in Rural Areas". Among them were also the former landowners and their heirs of the first degree. But the motivation of the application has been given only with regard to politically repressed persons. Besides V.Naumovs stressed that in Article 12 of the Law "On Land Privatization in Rural Regions" the legislator has determined that the procedure for receiving monetary compensation shall be determined by the Republic of Latvia Cabinet of Ministers. And fixed dates on submitting requests, decision on documents that shall be added to the request etc.- all the above is included in the notion "Procedure"... Another question is that when speaking about politically repressed persons, a longer time limit could have been chosen. Therefore at the beginning of the Court session the representatives of the Cabinet of Ministers submitted an application requesting to postpone reviewing of the case for a month, because the Ministry of Economy had started elaborating Amendments to paragraph

29 of the Cabinet of Ministers Regulations No.187 "The Procedure for the Repayment in Cash to Persons who were Granted Compensation Certificates (Vouchers) for the Former Landed Property in Rural Areas", to prolong the term of submitting requests for the receipt of compensation for land-related certificates (vouchers) in cash to politically repressed persons.

At the Court session the head of the Privatization Department of the Ministry of Economy A.Bernāns, who is the authorized representative of the Cabinet of Ministers, pointed out that the legislator has determined the validity date of the certificates (vouchers) – namely, December 31, 1999. All the persons who would not manage to receive compensation for their certificates (vouchers) up to that date would automatically lose their right to receive it.

At the Court session the expert – the member of the Central Land Committee and the Secretary of the Committee O.Leščinskis – explained that the Central Land Committee had also been involved in the process of solving the above problem. More than 1200 written replies to complaints have been mailed, about 400 callers a month have been received and the members of the Committee answered about 100 phone calls every day. About one half of the above complaints have been on the issue of compensation and especially on receiving compensation in cash. O.Leščinskis pointed out that it would not be reasonable to fix a certain date up to which requests for the receipt of compensation in money were to be submitted. It would be better to determine that the above requests were to be submitted, say, one, two or three months before the expiry date of the certificates (vouchers).

The Constitutional Court, evaluating conformity of the disputable norm with Articles 105 and 91 of the Satversme (Constitution), the

second part of Article 1 and Article 12 (the second part, paragraph 3) of the Law "On Land Privatization in Rural Regions" as well as with Article 9 of the Law "On the Determination of the Status of Politically Repressed Persons Suffered During the Communist and Nazi Regimes"

concluded:

1. in conformity with the submitted application to initiate a case, the issue of receiving compensation for land-related certificates (vouchers) in cash in this case refers to a certain group of persons- the politically repressed persons. Therefore, when evaluating the conformity of the disputable legal norm with the legal norms of higher force, the Constitutional Court – to clarify the real notion and contents of the legal norm- interpreted the legal norm included in Article 9 of the Law "On the Determination of the Status of Politically Repressed Persons Suffered During the Communist and Nazi Regimes" – "The state shall ensure restoration of politically repressed persons' rights in the area of civil, economic and social rights according to the law".

1.1. Interpreting the issue historically, the Constitutional Court has taken into consideration the conditions, that served as grounds for elaborating the legal norm included in Article 9, i.e. the fact that made the legislator determine the obligation of the state to ensure restoration of politically repressed persons' rights according to the law.

Already in the May 4, 1990 Declaration of the Supreme Soviet "On the Renewal of the Independence of the Republic of Latvia" it was pointed out that developments in 1940, namely, the ultimatum of June 16 from the Stalinist Government of the USSR to the Latvian Government,

asking for its resignation, and the following military aggression of the USSR on June 17 should be classified as international crimes which resulted in the occupation of Latvia and the liquidation of its statehood.

The Saeima August 22, 1996 "Declaration on Occupation of Latvia" stressed once again that "...during the whole period of occupation the USSR purposefully realized genocide against the Latvian nation... The occupation regime annihilated innocent people, repeatedly organized mass deportations, inflicted cruel penalties to those who participated in armed struggle or otherwise struggled for restoration of independence of Latvia, illegally and without compensation expropriated property ". And "... in summer of 1941 when the Second World War started, the territory of Latvia was occupied by nationally-socialistic Germany, that established its regime, deported and repressed people, as well as used the territory of Latvia to annihilate inhabitants of other occupied countries."

On May 13, 1992 the Supreme Council passed the Law "On the Determination of the Status of a Politically Repressed Person", that determined what persons were to be considered politically repressed. A new Chapter No.4 "Moral and Legal Guarantees by the State for politically Repressed Persons" was included in the Law passed by the 5.th Saeima "On the Determination of the Status of Politically Repressed Persons Suffered During the Communist and Nazi Regimes. The Chapter was elaborated to replace the May 13, 1992 Law of the Supreme Council. It was done to determine that the state should undertake responsibility of guaranteeing politically repressed persons' rights. The legislator had taken into consideration the moral and property detriment, committed by the communist and nazi regimes.

The fact that the legislator- in accordance with the law - had especially wanted to maintain and guarantee the rights of the group of

politically repressed persons was affirmed by the speeches of the Saeima deputies at the time of debate about the draft law. Thus, at the Saeima plenary session on June 2, 1994, when discussing the draft of the Law "On the Determination of the Status of Politically Repressed Persons Suffered During the Communist and Nazi Regimes" in its first reading, the deputy G. Resnais had said: " Today in this hall the question on the part of the Latvian nation, whom we call the politically repressed, has to be raised again. It is not just the pain of the politically repressed. It is the wound of the Latvian nation, a deep wound, a festering wound that has remained after interaction of two totalitarian regimes just because our small country happened to be situated between these two regimes. The fate of the state."

1.2. When interpreting the legal norm of Article 9 included in the Law "On the Determination of the Status of Politically Repressed Persons Suffered During the Communist and Nazi Regimes" systematically, the Constitutional Court analyzed it , connecting it with:

1.2.1. Article 1 of the Satversme (Constitution) of the Republic of Latvia, which determines, that Latvia is an independent, democratic Republic. And the following general legal principles: the principle of a law-based state, the principle of justice and trust in law result from the Article. In compliance with the general legal principles, the politically repressed persons believed in stability of the Law "On the Determination of the Status of Politically Repressed Persons Suffered During the Communist and Nazi Regimes", especially in stability of the legal norm envisaged by Article 9 of the law. They trusted that no special date for being granted the status of a politically repressed person should be fixed. They trusted that

offence and injustice will be compensated in accordance with the law;

1.2.2. The second part of Article 12 of the Law "On Land Privatization in Rural Regions" which establishes that the former landowners- who up to December 31, 1992 had requested compensation or land and have not been able to receive the land because of restrictions envisaged by law-, heirs of the first degree of the former landowners, who up to June 20, 1991 have claimed the land and have not been able to receive it because of restrictions envisaged by law (and whose names have been entered into the Register of the dissatisfied claimants) as well as the spouses of the politically repressed landowners who have outlived them and heirs of the first degree who were politically repressed persons as well and who have submitted request for the receipt of compensation up to December 31,1992; all of the above have the right to receive compensation in cash, namely 28 lats for every certificate (voucher) under the procedure established by the Cabinet of Ministers. The Article did not envisage a fixed term (date) to implement the above right as regards the persons who have been granted the status of a politically repressed person;

1.2.3. Paragraph 5 of the Cabinet of Ministers February 16, 1999 Regulations No. 51 "Procedure for the Payment of Compensation for the Vouchers Granted to the Participants of the National Resistance Movement for the Former Landed Property in Rural Districts", which determines that participants of the national resistance movement shall submit requests for receipt of compensation for land-related certificates (vouchers) up to June 30, 1999, in difference from the politically repressed persons who according to the disputable norm had to do it up to September 30, 1997.

1.3. When completing the teleological interpretation of the Law "On the Determination of the Status of Politically Repressed Persons Suffered During the Communist and Nazi Regimes" and paying a special attention to Article 9, the Constitutional Court has ascertained, that the objectives the legislator had tried to reach when passing the legal norm, can be considered as the up-to-date equitable objectives included in the legal norm of Article 9.

The primary and the main objective of the law of any law-based and democratic state, consequently also of the Law "On the Determination of the Status of Politically Repressed Persons Suffered During the Communist and Nazi Regimes" is justice and ensuring of it. In the above case, the initial objective of the legislator – restitution of equitable rights in accordance with the law to the persons, who have suffered repression during the communist and nazi regimes – has remained unchanged.

In the same way, the objective of the Law "On Determination of the Status of Politically Repressed Persons Suffered During the Communist and Nazi Regimes" has never been to limit the time of granting the status, determining a fixed date. Thus - there are still persons who are going to be granted the status of a politically repressed person and all the guarantees mentioned in Chapter 4 refer and shall refer to them.

2. As the result of the completed interpretation the Constitutional Court considers that the notion of the Law "On the Determination of the Status of Politically Repressed Persons Suffered During the Communist and Nazi Regimes" has never been directed to limitation of use of rights of politically repressed persons. Thus the disputable norm is at variance with Article 9 of the Law "On the Determination of the

Status of Politically Repressed Persons Suffered During the Communist and Nazi Regimes”.

3. Ungrounded is the statement of the applicant that the disputable norm is at variance with Articles 105 and 91 of the Satversme (Constitution) and the second paragraph of Article 1 of the Law "On Land Privatization in Rural Regions". The Constitutional Court is of the opinion that in cases envisaged in the first part of Article 12 of the Law "On Land Privatization in Rural Regions", when acknowledging the property rights to land, the former landowners or their heirs have the right to receive property compensation certificates (vouchers). As to the second part of Article 12, only some categories of the former landowners or their heirs, among them politically repressed persons, have been granted the additional advantage of receiving compensation for land-related certificates (vouchers) in cash.

4. The Cabinet of Ministers, when passing the disputable legal norm had to take into consideration the whole system of rights- both the Satversme (Constitution), other normative acts and the legal principles that refer to the rights of politically repressed persons, especially the objective and sense of Article 9 of the Law "On the Determination of the Status of Politically Repressed Persons Suffered During the Communist and Nazi Regimes". Determination by the Cabinet of Ministers of a fixed date of submitting requests for the receipt of compensation for land-related certificates (vouchers) to politically repressed persons, could be justified during the transition period to the new economic routine. However, the date had to be reasonable and just. The fact, that in accordance with part 11 of Article 18 of the Law "On Privatization Certificates", certificates (vouchers) as negotiable instruments shall be used up to December 31, 1999 cannot serve as the basis to consider that September 30, 1997 is a reasonable and just term

to stop accepting requests from the politically repressed persons who - in compliance with the Law "On the Determination of the Status of Politically Repressed Persons Suffered During the Communist and Nazi Regimes" - have been granted the status and can be granted the status after October 1, 1997 to the end of the term of use of the certificates (vouchers) to receive compensation for their land-related certificates (vouchers) in cash.

The fact, that up to September 30, 1997 part of the politically repressed persons did not have the necessary documents which would certify their affiliation to the above group, does not change the real status of a politically repressed person and cannot serve as the reason of limiting the rights that are due to the politically repressed persons.

Under Articles 30-32 set by the Constitutional Court Law

the Constitutional Court

DECIDED:

to declare paragraph 29 – as regards persons, mentioned in the second part of Article 12 of the July 9, 1992 Law "On the Land Privatization in Rural Regions", if they have the status of politically repressed persons - of the May 20, 1997 Regulations No. 187 by the Cabinet of Ministers "The Procedure for the Repayment in Cash to Persons who were Granted Compensation Certificates (Vouchers) for the Former Landed Property in Rural Areas" **as unconfirmable** with Article 9 of the April 12, 1995 Law "On the Determination of the Status of Politically Repressed Persons Suffered During the Communist and Nazi Regimes" **and null and void from the moment of its adoption.**

The Verdict takes effect from the moment of its announcement. The Verdict is final and allowing of no appeal.

The Verdict was announced in Riga on April 20, 1999.

The Chairman of the session of the
Constitutional Court

A.Endziņš

Judge of the Constitutional Court

A.Ušacka

Judge of the Constitutional Court

R.Apsītis

Judge of the Constitutional Court

I.Čepāne

Judge of the Constitutional Court

A.Lepse

Judge of the Constitutional Court

I.Skultāne