

J U D G M E N T
IN THE NAME OF THE REPUBLIC OF LATVIA

Riga, January 10, 2003

in case No.2002-17-0103

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session A.Endziņš, justices A.Lepse, R.Apsītis, I.Čepāne, J.Jelāgins, I. Skultāne and A.Ušacka, with the Court secretary Egija Freimane, in the presence of Līga Biksiniece – the authorized representative of the applicant i.e. the State Human Rights Bureau and the Head of the Saeima Legal Affairs Bureau Gunārs Kusiņš and the sworn advocate Valentīna Elksne – the representatives of the institutions, which have passed the challenged acts, i.e. – the Saeima and the Cabinet of Ministers under Article 85 of the Republic of Latvia Satversme (Constitution), Article 16 (Items 1 and 3) as well as Article 17 (Item 8 of the first part) of the Constitutional Court Law on December 10, 2002 in a public hearing reviewed the case

"On the Compliance of Article 12 (Items 1 and 3 of the Second Part) of the Law "On Land Privatization in Rural Regions" and Sub-items 3.1, 3.2.2 and 3.3 of the Cabinet of Ministers 20 May, 1997 Regulations No.187 "The Procedure for the Compensation Repayment in Cash to Persons who Were Granted Compensation Certificates for the Former Landed Property in Rural Regions" with Articles 1, 91 and 105 of the Republic of Latvia Satversme (Constitution)".

The establishing part

1. On November 21, 1990 the Republic of Latvia Supreme Council (henceforth – the Supreme Council) adopted the Law "On the Land Reform in the Republic of Latvia Rural Regions". Article 4 of the Law determines that "the land reform shall be implemented in two periods: the first – from 1990 till 1996, the second – in the period of 10 – 15 years, beginning with January 1, 1993. During the first period the former land owners or their heirs, the actual users of the land and the other claimants of land up to June 20, 1991 shall submit land requests".

On July 9, 1992 the Supreme Council passed the Law "On Land Privatization in Rural Regions". Article 1, Item 2 of the Law establishes that one of the main objectives of land privatization is "to renew land ownership rights to the former landowners who owned them on July 21, 1940 or their heirs." Article 12 of the Law "On the Rights to Receive Compensation" envisages that "former landowners or their heirs are entitled to receive compensation for the land, which was previously in their ownership and which they had completely paid off, or a part of the land if they so desire and if they have not received the actual land or an equivalent plot of land at another location". The third part of Article 14 of the Law determines that "compensation is to be granted in state compensation certificates, which are covered by real property". The fourth part of this Article establishes that "the procedure for compensation payment is determined by a specific law".

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 establishes that the following "persons shall be granted the right to receive compensation for their land-related property certificates in cash – in the sum of 28 lats for a certificate – 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 20, 1991, but who did not receive it back because of the restrictions of the law (and whose names have been entered into the Register of Unsatisfied 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 October 5, 1995 the Saeima adopted the Law "Amendments to the Law "On Land Privatization in Rural Regions", which enlarged the range of persons mentioned in the second part of Article 12, anticipating that "the right to receive compensation for the land-related property certificates in cash – 28 lats for a certificate – shall be granted to:

- 1) the former land owners, who up to December 31, 1992 had submitted a request to receive the compensation or land but did not receive the land because of the restrictions of the law;
- 2) heirs of the first degree of the former land owners, who up to June 20, 1991 had submitted a request to receive land, but did not receive it because of the restrictions of the law (and whose names have been entered into the Register of Unsatisfied Claimants);
- 3) heirs of the first degree of the former land-owners – politically repressed persons, if they themselves are politically repressed persons and up to December 31, 1992 have submitted a request to receive compensation".

On December 5, 1996 the Saeima adopted Amendments to the Law "On Land Privatization in Rural Regions", that enlarged the range of persons, mentioned in Article 12 once again. It determined that the spouses of the former politically repressed land owners who had outlived them had the right to receive 28 lats as the compensation for every land-related privatization certificate if they had submitted a request to receive it up to December 31, 1992.

On May 20, 1997 the Cabinet of Ministers passed Regulations No.187 "The Procedure for the Repayment in Cash to Persons who Were Granted Compensation Certificates for the Former Landed Property in Rural Regions" (henceforth – Regulations No.187). Item 3 of Regulations No.187 determined that "the right to receive 28 lats as the compensation for every certificate shall be granted to:

- 3.1. the former land owners, who up to December 31, 1992 have submitted a request to receive compensation for land or the land and are the unsatisfied claimants;
- 3.2. heirs of the first degree of the former land owners who:
 - 3.2.1. up to June 20, 1991 have submitted a request to receive the land and are the unsatisfied claimants;
 - 3.2.2. up to December 31, 1992 have submitted a request to receive compensation for land, if they are politically repressed persons and have inherited the land from the former land owner – a politically repressed person;
 - 3.2.3. up to December 31, 1992 have submitted a request to receive compensation for land, if they are politically repressed persons and have inherited the land from the former land owner, who is not a politically repressed person;
- 3.3. the spouses of the former land owners, who have outlived them, are politically repressed persons and have up to December 31, 1992 submitted a request to receive compensation for land".

Regulations No.220 lost validity as of the date Regulations No.187 taking effect.

To further completion of the land reform, on October 30, 1997 the Saeima adopted the Law "On Completion of the Land Reform in the Rural Regions", giving the possibility of restituting their rights to a land related property to persons, who had exceeded the time limit of submitting requests. Inter alia Article 16 of the Law determined that in case "if the time limit of submitting documents, certifying the right to the land related property or heritage rights, has been exceeded the right to a land related property may be re-established by the Central Land Committee". The legislator granted the right of receiving compensation certificates to one more group of persons. Namely, the third part of Article 2 of the Law envisaged: "If the land survey (allotment) of a plot on which the property rights are restituted has not been commenced, then the former land owner or his/her heirs may relinquish their right of receiving land and request to receive compensation certificates in the term, determined by the law".

On April 15, 1999 the Saeima by amending the Law "On Completion of the Land Reform in the Rural Regions" specified the first sentence of Article 16 of the Law: "If the time limit, up to which the request to grant land or compensation certificates or the documents, certifying the right to the land had to be submitted, is exceeded, then the Central Land Commission may grant the compensation, satisfying those requests, which are submitted not later than three months before the term of validity of the privatization certificates ends and to the completion of the land reform may reconstitute land related property rights to the former land owners or their heirs on the free land, granted for utilization".

2. The submitter of the application – the State Human Rights Bureau (henceforth – the submitter) in its claim requested the Constitutional Court to declare the text of Article 12 (Items 1 and 3 of the second part) "up to December 31, 1992 have submitted a request to receive compensation" (henceforth – the challenged legal norms) and the same text, incorporated into Items 3.1, 3.2.2, 3.2.3 and 3.3 (henceforth – the challenged norms of Regulations) as unconfornable with Articles 1, 91 and 105 of the Republic of Latvia Satversme (henceforth – the Satversme).

On October 25, 2002 the Human Rights Bureau submitted the specification of its claim, limiting the initial claim and requesting the Court not to review the compliance of the above legal norms with Article 1 of the Satversme.

2.1. The submitter holds that the challenged legal norms are unconformable with Article 91 of the Satversme, which determines that all human beings in Latvia shall be equal before the law and the courts.

To the viewpoint of the submitter the challenged legal norms are discriminating because they create a differentiated attitude to persons, who experience the right of receiving compensations. Part of the above persons experience the right of receiving compensation for their compensation certificates in cash on the condition if up to December 31, 1992 they have submitted the request to receive the compensation. In their turn the others, who do have the right of receiving compensation cannot experience the right just because they have not expressed their request up to the fixed date. Of importance is the argument that up to December 31, 1992 the Law did not envisage the right to receive compensation in cash. Therefore many persons did not submit their requests as they were of the opinion that the land was more valuable than the compensation. The differentiated attitude, incorporated into the challenged norms, for many persons denies the possibility of realizing their rights and to the mind of the submitter it has no objective justification. Both the persons, who requested compensation up to December 31, 1992 and those, who did it after the fixed term, should be regarded as equal when evaluating the right to compensation. As there is a differentiated and objectively unjustified attitude to a particular group of persons, the challenged norms to the mind of the representative are at variance with Article 91 of the Satversme.

2.2 In the claim the submitter points out that the challenged norms are also unconformable with Article 105 of the Satversme.

In compliance with the wording of the challenged norms in effect, all the former land owners and their heirs – if they want it – may receive compensation certificates, but only those, who have submitted their requests up to December 31, 1992 may receive compensation in cash. Even though the possibility of alienation of compensation certificates exists, their market price is much lower than that envisaged for compensation in cash. Thus the rights guaranteed in Article 105 of the Satversme – if they are interpreted in the context of the Convention for the Protection of Human Rights and Fundamental Freedoms – are restricted because – with the Saeima interfering in implementation of the rights, the economic value of the property decreases.

To limit the property rights the limitation has to be justified, i.e. it has to be determined by law, comply with the legitimate objective and be proportionate. Even though the limitation has been determined by the law, it does not have a legitimate aim and is disproportionate.

At the Court session the representative of the submitter pointed out – it was understandable that the state could not guarantee compensation of property certificates in cash for all persons, who experienced the right to it and had expressed their wish to receive it. At the same time the representative stressed that the persons, named in the challenged legal norms were in similar circumstances and grouping them just on the basis of the time of their submitted requests was not in conformity with the principles of the law-based state, e.g., Article 105, which determines the right to own property, and envisaged fair compensation for it.

3. The Saeima in its written reply points out that ungrounded is the statement of the submitter about the challenged norm being unconformable with Article 91 of the Satversme.

Article 91 of the Satversme determines that all human beings in Latvia shall be equal before the law and the courts, which means that human rights shall be equal. However, it does not mean that they have to be identical. Equality allows a differentiated attitude, if it is justifiable in a democratic society. Therefore the Saeima holds that a differentiated attitude to persons, who have carried out certain activities in the terms, determined by normative acts and persons, who have exceeded the time limit because of reasons not depending on the state, is well grounded and objective. And only the persons itself, by not observing the determined terms, has put themselves in an unfavorable situation. Therefore in the above case the legislator envisages a differentiated attitude, namely, the persons, who have submitted applications in due time and meet the requirements of the other criteria, experience the right of receiving compensations in cash, but those – who have exceeded the time limit – do not.

The Saeima disagrees with the viewpoint of the submitter that the challenged norms are at variance with Article 105 of the Satversme. The Saeima holds – Article 105 inter alia determines that property rights may be restricted in accordance with the law. The challenged norms are incorporated into the law. Besides, one should take into consideration that in the above case the rights of a person to the property have been restricted because of the land reform.

The second part of Article 12 of the Law "On Land Privatization in Rural Regions", determining additional privileges to certain strictly limited categories of land owners or their heirs, even the politically repressed persons, shall be admissible and evaluated as being in compliance with the public interests.

At the Court session the Saeima representative remarked that in order to observe the principles of legal clarity and legitimate trust one and the same term for submission of requests was determined to all the persons. The Saeima representative pointed out that initially the term was connected with the right of the person to choose requesting land or compensation but not compensation in cash. Thus to his mind the statement that persons, mentioned in the challenged legal norms, are "grouped or classified" is ungrounded as in fact there are two groups of persons, i.e. – one which applied for compensation on the determined term and another one – which did not apply in the term.

4. The Cabinet of Ministers in its written reply points out that the challenged norms are in compliance with Articles 91 and 105.

4.1. The Cabinet of Ministers does not agree with the viewpoint of the submitter that both – the persons, who applied for compensation up to December 31, 1992 and those, who did it after the above term, shall be regarded as equal when evaluating their right to receiving compensation in cash. Thus to the mind of the representative of the Cabinet of Ministers the differentiated attitude to persons, who applied for compensation in the determined term and those, who exceeded the time limit, is objective and well-grounded. To her mind it is in compliance with the principle of equality as equality in the understanding of Article 91 of the Satversme does not mean leveling. It requires equal attitude to persons who are in equal and comparable circumstances.

4.2. The Cabinet of Ministers rejects the statement, voiced by the submitter that the challenged norms are uncomformable with Article 105 of the Satversme. In accordance with the first part of Article 12 of the Law "On Land Privatization in Rural Regions" the state has not violated or interfered with the property rights of persons, but – when restituting the property right to land – has given them the option of choosing either the land or compensation certificates. In compliance with the second part of Article 12 of the Law a certain range of persons were granted an additional right to receive compensation in cash. Thus the state by granting the above right has not restricted the property rights of persons but – vice versa – because of objective reasons granted a certain range of persons with an additional possibility of using their property.

At the Court session the representative of the Cabinet of Ministers pointed out that initially December 31, 1992 had been determined as the term for submitting requests for restitution of property rights. The legislator had given the possibility to every former land owner (heir) to choose either receiving land or compensation. Besides – compensation has always been understood as compensation in securities as "up to a certain time the state had not promised to grant compensations in cash". The representative of the Cabinet of Ministers stressed that by granting compensations in cash the state has given support to a certain range of persons. As the land market and certificate market at that time was only in the process of development, prices for land in the rural regions were extremely low.

The concluding part

1. The fundamental principles of the land reform implemented in Latvia require observation of the property rights of both – rights of the former land owners or their heirs, who had land in their ownership on July 21, 1940 and the interests of the existing owners of houses and buildings, users of the land and those of the state and local authorities. To implement the principles, mentioned in the Law, the land reform was determined as a terminated process, as it was connected with observation of certain time limits and the process of the land reform itself (its commencement, completion, stages) as regarded submission of the requests for granting compensation or land and review of the requests. In compliance with the normative acts, regulating the land reform, the former land owners or their heirs were given the right of freely choosing whether they wanted to receive land (with an exception of cases, when it was impossible because of restrictions determined by laws) or compensation for the land. The time limit for submission of requests to receive compensation was determined already by the Supreme Council May 15, 1991 Decision "On the Right of Receiving Compensation for the Land Expropriated in the Rural Regions of Latvia on July 22, 1940". Item 2 of the Decision anticipated, that the requests for receiving compensation shall be submitted to the local authorities of pagasts (parish) up to June 20, 1992. However on June 10, 1992, when passing the amendments to the above decision the time limit was prolonged to December 31, 1992.

Article 12 of the Law "On Land Privatization in the Rural Regions" initially established only the right to receiving of compensation but not the procedure of receiving it. At the time of adoption of this law the above time limit was well-known and binding on all persons, who wanted to receive compensation for the previously expropriated land. At the beginning of the land reform the legislator had not envisaged the right of receiving compensation in cash. Later Article 12 was supplemented with the second part, establishing the right of certain categories of persons to receive compensation for the compensation certificates in cash. As one of the criteria for receiving compensation in cash was the

requirement, established in Items 1 and 3, that the request for receiving compensation should be submitted to a certain time – December 31, 1992.

The right of receiving compensation in cash was granted to certain persons, who – among other things – had observed the time limit for submitting request, which was determined by the legislator. The range of persons, who were granted the right of receiving compensation certificates, was much greater than the range of persons to whom the legislator had granted additional privileges to receive compensation in cash.

Taking into consideration the economical and social situation in the state, the legislator granted additional rights to receive compensation in cash in the amount of 28 lats for a compensation certificate to separate categories of the former land owners and their legitimate heirs. Persons, to whom the legislator granted the right to receive compensation in cash, had suffered most of all during the time of land expropriation and during the period of communist and nazi occupation. Because of objective reasons it was not possible to grant compensation in cash for compensation certificates to all the former land owners and their heirs. In this case the interests of the former land owners and their heirs would not be proportionate to public interests of other groups, who – as the result of exceedingly great expenses – would have to suffer. Granting the additional privilege to certain groups of persons was based on the principle of fairness.

The Central Land Commission and the State Land Service established that compensation for about 1 million hectares of land had been required. At the Saeima session, when the legislator tried to reach the decision on granting compensation in cash, it was mentioned that then the state should pay 28 lats per a compensation certificate to all the persons, who had required it. It would mean spending about 150 million lats from the State budget. At that time the State budget was approximately 90 million lats.

Taking into consideration the limited possibilities of the state, such a process would be a lengthy one, but that was inadmissible at the stage of alignment of the market of the state and land related property relations. In its turn, when anticipating that the persons, mentioned in the challenged norms, shall have the right of receiving compensation for compensation certificates in cash, the needed amount of money would be about 8 million lats (*see the Verbatim report of the 5th Saeima December 1, 1994 session*).

2. Article 105 of the Satversme determines: "Everyone has the right to own property. Property shall not be used contrary to the interests of the public. Property rights may be restricted only in accordance with law. Expropriation of property for public purposes shall be allowed only in exceptional cases on the basis of a specific law and in return for fair compensation."

One cannot agree to the viewpoint of the submitter that by granting additional rights to use the property to a certain range of persons, the state has restricted property rights of other persons.

During the land reform certain persons could gain and/or gained property rights either on land or on state securities – compensation certificates. Thus in this case the right on property does not include only the right on land.

The former land owners or their heirs, who chose compensation certificates instead of land, initially had no reason to think that they would ever have the possibility of receiving compensation in cash for their compensation certificates. The challenged norms, which envisaged granting a certain range of persons with the possibility of receiving compensation in cash, envisaged also the time limit for submitting of requests.

Two mutually connected fundamental provisions are to be observed to receive compensation in cash for the compensation certificates. First of all the above right has been granted to a certain range of persons. Secondly, the right may be made use of only if up to December 31, 1992 the particular person has claimed it.

Well-grounded is the viewpoint of the Cabinet of Ministers that in compliance with Article 12 (the first part) of the Law "On Land Privatization in Rural Regions" the state did not restrict and violate the rights of the persons to landed property and did not interfere. Quite to the contrary, by recognizing the right of persons to the once expropriated land, the state gave them the possibility of choosing either land or compensation certificates.

Thus the challenged legal norms do not restrict the property rights to those persons, who after December 31, 1992 have claimed compensation.

3. Ungrounded is the viewpoint of the submitter that the challenged legal norms are unbecomable with the European Convention for the Protection of Human Rights and Fundamental Freedoms (henceforth – the Convention). The historical situation was the reason for the state of Latvia making a reservation, when ratifying the Convention by the June 4, 1997 Law "On November 4, 1950 European Convention for Human Rights and Fundamental Freedoms and its Protocols No.1, 2, 4, 7 and 11". In Article 1 of the Law the Saeima determined that the demands of Article 1, Protocol 1 shall not be attributed to the property reform regulating restitution of property or compensating former owners or

their heirs, whose property has been nationalized, confiscated, collectivized or otherwise unlawfully expropriated during the period of annexation by the USSR. The Constitutional Court stressed that the above reservation means that, when implementing the property reform, limitation of the rights of the former owners or the rights of other subjects in the public interest is admissible [*see the Constitutional Court april 30, 1998 Judgment in case No.09-02(98)*].

Thus the privileges for certain, strictly limited categories of the former owners and their heirs, also politically repressed persons determined in the second part of Article 12 of the Law "On Land Privatization in Rural Regions", are admissible and shall be evaluated as being in compliance with public interests.

4. Article 91 of the Satversme determines that all human beings in Latvia shall be equal before the law and the courts. Human rights shall be realized without discrimination of any kind.

The principle of equality, which follows from the first sentence of Article 91 of the Satversme, forbids the state institutions to pass legal norms, which without a reasonable justification allow differentiated attitude to persons, who are in equal and comparable circumstances. The principle of equality allows and even demands a differentiated attitude to persons, who are in different circumstances and even to persons, who are in equal circumstances if there is an objective and reasonable justification (*see the Constitutional Court December 5, 2001 Judgment in case No.2001-07-0103*).

Persons, mentioned in Article 12, Items 1 and 3 of the second part of the Law "On Land Privatization in Rural Regions", to whom compensation certificates have been granted do not find themselves in the same and comparable circumstances, as some of them have claimed compensation up to December 31, 1992 but the others – only after the above date.

Thus the persons are not in equal and comparable circumstances and the challenged norms do not violate the principle of equality.

5. By taking into consideration the request of the submitter to limit the initial claim, the Constitutional Court shall not review the compliance of the challenged legal norms and challenged Regulations' norms with Article 1 of the Satversme.

6. The Cabinet of Ministers has passed the challenged legal norms on the basis of authorization determined in Articles 12 and 14 of the Law "On Land Privatization in Rural Regions". As the challenged norms of Regulations are analogous with the challenged legal norms, there is no necessity of evaluating their conformity with the Satversme.

The substantive part

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

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to declare Article 12, Items 1 and 2 of the second part of the Law "On Land Privatization in Rural Regions" and the text of Sub-items 3.1, 3.2.2, 3.2.3 and 3.3, namely, – "up to December 31, 1992 have claimed compensation for land" of the Cabinet of Ministers May 20, 1997 Regulations No.187 "The Procedure for the Compensation Repayment in Cash to Persons who were Granted Compensation Certificates for the Former Landed Property in Rural Regions" as being in conformity with Articles 91 and 105 of the Republic of Latvia Satversme.

The Judgment is final and allowing of no appeal.

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

The Judgment was announced in Riga, on January 10, 2003.

The Chairman of the Court session

A.Endziņš