

THE CONSTITUTIONAL COURT OF
THE REPUBLIC OF LITHUANIA

R U L I N G

On the compliance of the parts of item 3 of the Law of the Republic of Lithuania "On Appending and Amending the Law of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" ", adopted 15 July 1993, by which Parts 5 and 6 of Article 4 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" of 18 June 1991 have been amended, as well as items 14, 15, 16, 17, 18 and 19, by which Article 12 of said Law has been appended by items 10, 11, 12, 13, 14 and 15, with the Constitution of the Republic of Lithuania

27 May 1994, Vilnius

The Constitutional Court of the Republic of Lithuania, composed from the Justices of the Constitutional Court Algirdas Gailiūnas, Kęstutis Lapinskas, Zigmantas Levickis, Pranas Vytautas Rasimavičius, Stasys Stačiokas, Teodora Staugaitienė, Stasys Šedbaras and Juozas Žilys,

the secretary of the hearing Sigutė Brusovienė,

the petitioner - Andrius Kubilius and Zenonas Juknevičius, representatives of a group of the Seimas members,

the party concerned - Seimas member Mykolas Pronckus and Algirdas Taminskas, representatives of the Seimas,

pursuant to Part 1, Article 102 of the Constitution of the Republic of Lithuania and Part 1, Article 1 of the Law on the Constitutional Court of the Republic of Lithuania, in its public hearing of 27 April - 3 May 1994 conducted the investigation of Case No 12/93 subsequent to the petition submitted to the Court by a group of the Seimas of the Republic of Lithuania members requesting to investigate the compliance of the parts of item 3 of the Law of the Republic of Lithuania "On Appending and Amending the Law of the Republic of Lithuania "On the Procedure and Conditions of the restoration of the Rights of Ownership to the Existing Real Property" ", adopted 15 July 1993, by which Parts 5 and 6 of Article 4 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" of 18 June 1991 have been amended, as well as items 14, 15, 16, 17, 18 and 19, by which Article 12 of said Law has been appended by items 10, 11, 12, 13, 14 and 15, with the Constitution of the Republic of Lithuania.

The Constitutional Court
has established:

The petitioner - a group of the Seimas members - requests the Constitutional Court to investigate if the parts of item 3 of the Law of the Republic of Lithuania "On Appending and Amending the Law of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" " (hereinafter this law shall be referred to as "the Law in dispute"), adopted 15 July 1993, by which Parts 5 and 6 of Article 4 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" of 18 June 1991 have been amended,

as well as items 14, 15, 16, 17, 18 and 19, by which Article 12 of said Law has been appended by items 10, 11, 12, 13, 14 and 15 (Official Gazette "Valstybės žinios", 1993, No 32-275), do not contradict the Constitution of the Republic of Lithuania.

In the request, the petitioner specifies that, all the conditions established in parts 5 and 6 of Article 4 which has been amended by the Law in dispute, may be applied only upon the restoration of land so that it would not remain uncultivated. Besides, in this Article claimants to land are categorized according to the type of activities (whether they are members of agricultural company or not), and this is related to the right to the restoration of property, even though, under Article 29 of the Constitution, all people shall be equal before the law. The petitioner maintains that the Seimas by supplements to Article 12, which were made by the Law in dispute, "expanded the scope of the land not to be returned, basing agriculture on collective property, even though in Article 46 of the Constitution it is established that Lithuania's economy shall be based on the right to private ownership".

The petitioner's representatives have explained that by the Act of 11 March 1990 the Independent State of Lithuania has been restored. In this Act it is declared that the territory of Lithuania is integral and indivisible, and the constitution of any other State has no jurisdiction within it.

In the Law "On the Reinstatement of the 12 May 1938 Constitution of Lithuania", the Supreme Council of the Republic of Lithuania stated, that the May 12, 1938 Constitution of Lithuania had been suspended illegally when on June 15, 1940 the Soviet Union committed aggression against the independent state of Lithuania and, thereby, terminated the validity of the 20 April 1978 Constitution of the Lithuanian SSR (Basic Law), the 7 October 1977 Constitution of the USSR (Basic Law), as well as the fundamentals of the legislation of the USSR and Union Republics, also other USSR legislation on the territory of the Republic of Lithuania. The laws which had been adopted on their basis lost their validity, Article 4 of the Land Code of the Lithuanian SSR among them, in which it is declared that: "In compliance with the Constitution of the USSR and the Constitution of the Lithuanian SSR, land is state property - common property of all the Soviet people".

In the Law "On the Reinstatement of the 12 May 1938 Constitution of Lithuania" it was determined that the reinstatement of the 12 May 1938 Constitution of Lithuania does not in itself re-establish other laws in effect in the Republic of Lithuania prior to 15 June 1940. This provision is significant because it has taken into consideration the changes that took place, and the necessity on the basis of these laws to regulate property relations by laws. Former property relations are not denied.

Their undeniability was established in the provision of the Supreme Council adopted on 15 November 1990: "To determine that citizens of Lithuania are entitled to the right to restore their existing property in kind in the scope and procedure prescribed by laws, and in case when there is no such possibility, to receive compensation".

Afterwards, in the first part of Article 1 of the 18 June 1991 Law "On the Procedure and Conditions of the Rights of Ownership to the Existing Real Property" nationalization of property was compared to its unlawful socialization, and it was specified that property was not the ownership of State, public

or other organizations, but it was only at their disposal. Therefore, the essence of the contents of the first part of Article 45 of the Provisional Basic Law was the establishment of sovereign powers of Independent State of Lithuania on the whole territory of the State and not the acceptance of the 21 June 1940 Declaration of the People's Seimas on the Nationalization of Land.

In the opinion of the petitioner's representatives, persons enumerated in the first part of Article 1 of the 18 June 1991 Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" are still the owners, only their right of property ownership has been infringed upon, i. e. they have been deprived of the opportunity to use and manage the property. Therefore, their property may be seized only in conformity with the requirements set forth in Article 23 of the Constitution.

In the opinion of the representatives of the petitioner, Parts 5 and 6 of Article 4 of the Law in dispute contradict Article 23 of the Constitution, as they provide for the seizure of property i. e. factual irretrievability in case when there is no public interest. The legislator established formal obstacles which can be overcome only by persons who have been given permission by district Board or had had an exclusive social position in the past.

The representatives of the petitioner have also explained, that the obligatory land lease restricts the owner's rights. This amendment to the Law in dispute also fails to comply with the provision of Article 46 of the Constitution that Lithuania's economy shall be based on the right to private ownership, freedom of individual economic activity, and initiative. Lease of land grants privileges to the persons specified in the fifth part of Article 4 of the Law in dispute on the basis of their social position, and this contradicts Article 23 and 29 of the Constitution.

The petitioner's representatives maintain that the supplements to Article 12 - items 10, 11, 12, 13, 14, and 15 - adopted by the Law in dispute contradict the first and fourth parts of Article 46 of the Constitution, because they establish monopoly in agriculture (support state farms) and fail to protect freedom of fair competition.

The representatives of the petitioner have submitted the following explanations concerning Article 12:

1. The provision of item 10, Article 12 is not in compliance with Article 46 of the Constitution, as it gives preference to companies, i. e. collective economic activity and makes the owner, to whom the rights of ownership to land have not been restored yet, lease it for agricultural enterprises without setting any terms. The needs of the company are identified with the needs of society, therefore, in this sense, the provision of item 10, Article 12 of the Law in dispute fails to comply with Article 23 of the Constitution as well.

2. By item 11 of Article 12, an attempt is made to base Lithuania's economy on the right to collective (state) ownership, as land areas specified in it are used for the needs of companies and forest districts but not for the interests of the whole state. By said item, the preference is given to horses, and not to the needs of society.

3. According to item 12 of Article 12, the priority goes not to the society, but to a specific enterprise. The profit gained by a man or a specific enterprise is not the need of society in the context of Article 23 of the Constitution.

4. The provision of item 13, Article 12 that the land shall be bought out for the usage of rural residents, means common, collective and not private economic activity. In rural settlements, land for the construction of residential houses is bought out even without having construction projects, the procedure of their confirmation and the client.

5. Item 14 of Article 12 itself does not need any motivation, because rivers and lakes may be, without any criteria, ascribed by the Government to water bodies not subject to privatization. Besides, it is not the restoration of the rights of ownership which is regulated by this item, but privatization.

Generally, rivers and lakes must be state property, however, it is not the Government who should resolve this issue.

6. By item 15 of Article 12, at the expense of the owner, the boundaries of the land not liable to be returned are extended, and it is going to be granted for farmers-tenants, and not to satisfy the needs of the society. This fact contradicts Article 23 of the Constitution, because the land is bought out not for the public benefit but for the advantage of a specific person.

The representatives of the party concerned have denied the validity of the petitioner's request. They have explained that from the very restoration of the Independent State of Lithuania, i. e. after the Act of 11 March 1990, all[AG1] laws and resolutions adopted by the Supreme Council of Lithuania have been declaring that the entire land is state property. For instance, in Article 4 of the 11 March 1990 Law "On the Reinstatement of the 12 May 1938 Constitution of Lithuania" it is established that the reinstatement of said Constitution did not in itself re-establish other laws in effect in the Republic of Lithuania prior to 15 June 1940".

The representative of the party concerned has stated that by the 11 March 1990 Law of the Republic of Lithuania "On the Provisional Basic Law of the Republic of Lithuania" the validity of the 12 May 1938 Constitution of Lithuania was suspended, the Provisional Basic Law of the Republic of Lithuania was ratified, and it was established that, on the territory of the Republic of Lithuania, previous laws and other legal acts of Lithuania would be further in effect, providing they did not contradict the Provisional Basic Law of the Republic of Lithuania.

In the first part of Article 45 of the Provisional Basic Law it is determined that the land, its mineral resources, inland and territorial waters, flora and fauna, and other natural resources shall be the national wealth and exclusive property of the Republic of Lithuania, whereas in the first part of Article 46 it is specified that property of the Republic of Lithuania that is state property may, with or without compensation, become private property of citizens or their groups according to the procedures established by law.

In the opinion of the representatives of the party concerned, provisions of the Provisional Basic Law in respect of the competence of the Supreme Council to regulate property relations in the Republic by legislative means, set forth in item 4 of the second part of Article 78 of said Law, establishes the state's right of ownership to land. However, it may not be stated categorically that the owner of the nationalized property is state. If property were its ownership, it would have been sufficient to adopt a law concerning its

transferral to persons. However, the act of unconditional restitution has not been adopted either, therefore, it would not be proper to state that the rights of former owners have been violated. On 18 June 1991, upon the adoption of the Law "On the Procedure and Conditions of the Rights of Ownership to the Existing Real Property", restrictions were imposed. Besides, there are two groups of such persons: (1) former property owners that are still alive, (2) legitimate successors of former owners - their children and grandchildren - although, not all of them can be considered the owners whose rights have been violated. The legislator by this Law has provided possibilities to restore rights of ownership also for those persons whose documents confirming their property rights have not survived to these days. If there were no for such Law, the right of ownership should be proved pursuant to Article 143 of the Civil Code. The representatives of the party concerned maintain that persons specified in Article 2 of the 18 June 1991 Law "On the Procedure and Conditions of the Rights of Ownership to the Existing Real Property" are not the owners whose rights have been violated, therefore, Article 23 of the Constitution, which protects the rights of ownership, is not applicable to them.

While evaluating the restoration of land in property aspect, it was said that: 1) former land owners restore land areas which are not debt-laden, though some of them were debt-laden in the past, 2) recover considerably improved land areas without paying to anybody for this improvement, 3) restoration is done at the expense of all the citizens of Lithuania, 4) part of the former owners, having restored land areas, destroyed the property which had been created by common public efforts (watering equipment, etc.). Such restoration of land contradicts Article 23 of the Constitution.

The representative of the party concerned has also specified that in Parts 5 and 6, Article 4 of the Law in dispute "On Appending and Amending the Law of the Republic of Lithuania "On the Procedure and Conditions of the Rights of Ownership to the Existing Real Property" " the norm concerning the land lease is established which ensures the possibility to restore land for 160. 000 non-rural citizens. The statement that land must be used for agricultural purposes is based on the provision of the third part of Article 46 of the Constitution that the State shall regulate economic activity so that it serves the general welfare of the people. If there were no for such restrictions, it would not be possible to carry out the land reform. In International Law not only the protection of property rights is established, but also the right of the State to control, for public interests, the use of property by laws.

While evaluating supplements to Article 12 of the 18 June 1991 Law "On the Procedure and Conditions of the Rights of Ownership to the Existing Real Property", representatives of the party concerned reasoned, that the public interest for land to be used for orchards and berry-fields (item 10 of Article 12) as well as pig-breeding complexes of specialized companies (item 11 of Article 12) is due to their economic effectiveness, and the amount of State funds used. Items 10, 11, 12, 13, 14 and 15 have been formulated in accordance with the provisions of Constitution that the State shall regulate economic activity so that it serves the general welfare of the people.

The Constitutional Court

holds that:

On March 11, 1990, the Supreme Council of the Republic of Lithuania adopted the Act on the Restoration of Independent State of Lithuania and declared thereby that the execution of sovereign powers of the Lithuanian State, heretofore constrained by alien forces in 1940, was restored, and Lithuania was once again an Independent State. It was also declared that the Constitution of any other State had no jurisdiction within it.

The Supreme Council, by the 11 March 1990 Law "On the Reinstatement of the 12 May 1938 Constitution" annulled the 20 April 1978 Constitution of the Lithuanian SSR (Basic Law), also the fundamentals of legislation of the USSR and Union Republics, as well as other USSR legislation in the Republic of Lithuania". The Supreme Council by the same Law reinstated "the 12 May 1938 Constitution of Lithuania throughout the Republic of Lithuania, suspending those paragraphs and articles governing the status and powers of the President, the Seimas of the Republic, the Assembly, the State Council and the State Supervisory body". The validity of Chapter 8 of the 12 May 1938 Constitution entitled "National Economy", by norms of which property relations are regulated, was not terminated, and this meant the restitution of the institute of the right of private ownership.

The Supreme Council by 11 March 1990 Law "On the Provisional Basic Law of the Republic of Lithuania terminated the validity of the 12 May 1938 Constitution of Lithuania and ratified the Provisional Basic Law of the Republic of Lithuania. In the first part of Article 44 of this Law it was established that : "The economy of Lithuania shall be based on the property of the Republic of Lithuania, which shall consist of the private property of its citizens, the property of groups of citizens, and State property" .The provision is significant primarily because of the fact that the restitution of the institute of the right to private ownership was established again, i. e. its continuity with the constitutions of Lithuanian State was actually recognized. Secondly, three forms of property that existed and were recognized at that time in our State, were enumerated in said Law. Thirdly, all three legalized forms of property were joined under one concept: "Property of the Republic of Lithuania". Therefore, the arguments on the basis of which notions "property of the Republic of Lithuania" and "state property" are identified, are groundless, because it is the relation of the whole to its part. Thus, the norm of the first part of Article 45 of the Provisional Basic Law that "the land, its mineral resources, inland and territorial waters, forests, flora and fauna, and other natural resources shall be the national wealth of Lithuania and the exclusive property of the Republic of Lithuania", did not mean that these objects of property were exclusive property of the State. It should be noted, that in the Provisional Basic Law only mineral resources of the land were declared to be the exclusive property of the Republic of Lithuania.

Taking the fact that on 15 June 1940 to 11 March 1990 Lithuania was occupied, annexed and incorporated into another state - the USSR - into consideration, on 11 March 1990 for the Supreme Council of primary importance was not the precise establishment of the subjects, objects and forms of property, but the constitutional dissociation from the occupation state

and its legal system, and detachment of the State of Lithuania and its citizens from the unlawful governing of the USSR. This was expressed by the wording of Article 45 of the Provisional Basic Law that all the wealth of Lithuania shall be its national wealth and the exclusive property of the Republic of Lithuania, therefore, jurisdiction of any other state shall not be applied to it. Principles of independence that had been set forth in the Act of the Restoration of Independent State of Lithuania, were once again constitutionally established by his norm. That meant return to economic system based on the right to private ownership, from which Lithuania had been expelled by force against its will.

The right to possess property is one of the most significant human natural rights, and a person may not be arbitrarily deprived of it. It may only be seized for the needs of society according to the procedure established by law. Such principle of the protection of property and rights to property is also formulated in international legal instruments. For instance, in the second part of Article 17 of the Universal Declaration of Human Rights it is specified: "No one shall be arbitrarily deprived of its property"; in the first part of Article 1 of the Protocol 1 pertaining to the European Convention for the protection of Human Rights and Fundamental Freedoms it is maintained: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law".

The independence of the Republic of Lithuania was destroyed by force, in realization of unlawful secret agreements of 1939 between the USSR and Hitler's Germany. The unlawfulness of these agreements and their consequences was officially declared already in the February 1990 Resolution of the Supreme Council of the Lithuanian SSR "On 1939 Treaties between Germany and the USSR and elimination of their consequences to Lithuania. It was also stated in this resolution that elections to the People's Seimas, which took place on 14-15 July 1940, were carried out in violation to the Constitution of Lithuania, and it was declared that "the 21 July 1940 Declaration of the People's Seimas concerning Lithuania's entrance into the USSR is unlawful and null and void as it did not express the will of the Lithuanian People".

In the 11 March 1990 Law of the Republic of Lithuania "On the Reinstatement of the 12 May 1938 Constitution of Lithuania" it was stated, that the 12 May 1938 Constitution was suspended when on 15 June 1940 the Soviet Union committed aggression against the independent State of Lithuania and annexed it". Thus, the People's Seimas, which had been formed in violation to the Constitution of Lithuania, was used for the destruction of the economic system established in the Constitution, and for the unconstitutional enforcement of economic system of an alien state on Lithuania. The Declaration of 22 July 1940 "On Proclaiming all the Land of Lithuania National Property", i. e. state-owned property, may serve as an example of such acts of the People's Seimas. The next day the People's Seimas adopted "Declaration on Nationalization of Banks and Large-scale Industry", followed by nationalization of other property as well. Such overall nationalization and elimination of private property was carried out not only in rough violation of the 1938 Constitution of Lithuania, but also unlawfully denying human natural right to private ownership by force. Lawful state

property could not and did not appear on the basis of such arbitrary acts of occupation government, as rights may not originate on unlawful basis. Therefore, property taken from people in such a way, may be considered as property which is only factually managed by the state.

The right of private ownership found its way back into the legal system of the State due to the constitutional provisions of Article 44 of the Provisional Basic Law and Article 46 of the 1992 Constitution. Thereby, the continuity of the provisions of the 12 May 1938 Constitution governing the property right has been confirmed. However, it is impossible to impartially reconstruct the complete former system of property relations which existed in Lithuania in 1940. In the Law "On the Provisional Basic Law of the Republic of Lithuania" it was stated that even changes which took place during occupation period should not be ignored. In the preamble to this Law it is determined that the Supreme Council has taken into consideration the necessity of bringing the provisions of the 12 May 1938 Constitution of Lithuania "with today's changing political, economic and other social relations".

The Supreme Council by the 11 March 1990 Law "On the Reinstatement of the 12 May 1938 Constitution of Lithuania" did not terminate the validity of Chapter 8 of this Constitution entitled "National Economy", the norms of which regulate property relations, however, in item 4 of this Law established that "the reinstatement of the Constitution of Lithuania does not in itself re-establish other laws in effect in the Republic of Lithuania prior to 15 June 1940". While recognizing the restitution of property and continuity of property rights, the Supreme Council on 15 November 1990 confirmed the following statements: "The recognition of continuity of citizens' rights of ownership is unquestionable", "To establish that citizens of Lithuania are entitled to the right to restore the existing real property in kind in the scope and procedure prescribed by laws, and when there is no such possibility, to receive due compensation".

The circumstance that there was a need to resolve the issue concerning continuity of the rights of ownership and to vote the recognition of the continuity of property rights of the citizens of the Republic of Lithuania shows, that the Supreme Council considered the rights of ownership that had been possessed before nationalization (the right of a particular person to manage, use and dispose of property) as unlawfully nullified. The promulgation of the provision of continuity of property rights was a basis for the implementation of a limited restitution, i. e. for the protection of property rights that had been violated, in the conditions and procedure prescribed by laws.

While recognizing the continuity of property ownership rights, the Supreme Council by the statement of 15 November 1990 actually also ascertained that situations were possible when all the existing property could not be restored in kind. In such cases, it was provided for the possibility to receive compensation. The Constitutional Court indicates that the provision that, providing there is no possibility to restore property in kind, it must be adequately compensated for, does not contradict the principles of inviolability of property and protection of property ownership rights, because fair compensation also ensures restoration of property ownership rights.

The realization of said rights is established in the Law

of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property". In Article 1 of this Law it was specified: "This Law shall legislate the procedures and conditions of the restoration of the right of ownership to the citizens of the Republic of Lithuania to the property which was nationalized under the laws of the USSR (Lithuanian SSR), or which was otherwise unlawfully made public, and which, on the day of enactment of this Law, is considered the property of the State, of the public, of co-operative organizations (enterprises), or of collective farms".

The Supreme Council by this Law has recognized that the rights of ownership to the property which was nationalized under the legal acts of the Lithuanian SSR, or which was otherwise unlawfully made public, must be restored. The legislator, while maintaining that the rights of ownership that had been unlawfully terminated, must be restored, also recognized that it had to be done in the procedure and conditions prescribed by laws. It is, on the one hand, overall forcible character of violation of the rights of ownership and, on the other hand, the decision to carry out only limited restitution which predestined the situation when the rights of former owners, that had been unlawfully terminated, could not be protected by means of norms of civil law that were in force at that time. For this purpose, a special law like the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property", had to be enacted.

Under this Law, the rights of ownership shall be restored not to all former owners of property and not to all the property they had possessed. It contains special conditions, restrictions rather, which are applied to former owners of property who desire to restore their property in kind. Therefore, the statement, that by said Law an attempt is made only to regulate the procedure of the restoration of the rights of ownership, may not be considered as grounded.

The fundamentals of the restoration of the rights to private ownership and to land, which had been earlier violated, were formulated already in the legal acts of the Supreme Council of the Republic of Lithuania. The establishment of additional conditions and restrictions, disregarding these acts, would not be in compliance with the principled provisions of the continuity and restoration of the rights of ownership, enacted by the legislator. After the enforcement of the Constitution of the Republic of Lithuania on 2 November 1992, laws that were amended or newly adopted laws had to be co-ordinated with it.

Article 2 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" is titled: "Citizens Entitled to Restored Ownership Rights", and in this Article, a notion "former owner" is used to define such a person. He, i. e. "the owner of property" is not mentioned in the Law with regard to present time. While evaluating the status of a citizen, who tries to restore the unlawfully terminated rights of ownership, the fact when he acquires the right to manage, use and dispose of some specific property, is of considerable importance.

Until his property is restituted or he is paid an appropriate compensation for it, the subjective rights of the former owner to a specific property are not restored yet. The law by itself shall not create subjective rights until it is applied to a specific subject pertaining to the restoration of

a specific property. In such a situation the legal meaning of the decision of the institution authorized by the State to restore property in kind or compensate for it is, that only from this proper moment, the former owner acquires the rights of ownership to such property.

The legislator, having defined the procedure and conditions of the restoration of the rights of ownership, emphasized the priority of restoring the actual land property. However, in the event when, due to the factual present land-tenure relations and public interests, it is impossible to grant the actual property, the former owner is guaranteed the right to choose the manner of restoring the right of ownership in the procedure and conditions prescribed by laws.

The restoration of the rights of ownership and land reform are two inseparable processes. Their unity is expressed through their common object - land, therefore, the restoration of the rights of ownership to land is co-ordinated with land reform.

The afore mentioned circumstances must be necessarily taken into consideration while evaluating the compliance of the legal norms of the Law in dispute with the Constitution.

1. On the compliance of the parts of item 3 of the Law "On Appending and Amending the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property"", adopted 15 July 1993, by which Parts 5 and 6 of Article 4 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" of 18 June 1991 have been amended, with the Constitution of the Republic of Lithuania.

In Parts 5 and 6 of Article 4 entitled "Conditions and Procedures for the Restoration of the Right of Ownership to Land Situated in Rural Areas" of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" , adopted 18 June 1991, which has been amended by the Law in dispute, it is established: "The right of ownership to land used for agricultural purposes shall be restored to: persons establishing farmer's holding; members of agricultural companies and partnerships; persons planning to use the restored land for private economic purposes as well as other agricultural activities; persons, who intend to lease the restored land for other legal persons engaged in farming.

While restoring the right of ownership to the land used for agricultural purposes, it may be done only after identification of the use of this land. This may be either:

1) a person, regaining this land, provided that he is establishing a farmer's holding or is going to use this land for private economic purposes;

2) a tenant (a farmer, . a person ready to engage in farming, or an agricultural company), consenting to lease the land (or portion thereof), which is unnecessary for the needs of the landowner's family, for at least 3-year-period. Preliminary consent to lease plots of land used for agricultural purposes, designed in the land-planning project, must be witnessed by a notary. The priority for renting the land goes to the present user of this land."

The specific purpose and status of land, in comparison to other objects of real property, predetermine special legal regulation of land relations. Thus, in the first part of Article 47 of the Constitution it is established that, land, internal waters, forests, and parks may only belong to the citizens and the State of the Republic of Lithuania by the right of ownership. The only exception is set forth in the

second part of Article 47 of the Constitution: "Plots of land may belong to a foreign state by the right of ownership for the establishment of its diplomatic and consular missions in accordance with the procedure and conditions established by law".

The second part of Article 54 of the Constitution contains the provision that the exhaustion of land shall be prohibited by law. This constitutional principle of land protection shows that land is interpreted as a public value having its social function - to serve the welfare of the people. The society is not indifferent to the way the land is used, because it is in public interests to preserve the productivity of land. Therefore, the right of the state to regulate conditions of the restoration of the rights of ownership to land is vital in order to co-ordinate the interests of former owners with the public interests.

Parts 5 and 6 of Article 4 establish the conditions for the restoration of the rights of ownership, under which land used for agricultural purposes is returned in kind. The specific character of agricultural land is that it is used for agricultural production. Therefore, the legislator, while determining the conditions for the restoration of the land used for agricultural purposes, must neither impair the rights of former owners, nor ignore the public interest to use this land for agricultural purposes. Such public interest is based on the provision established in the third part of Article 46 of the Constitution that, the State shall regulate economic activity so that it serves the general welfare of the people.

Parts 5 and 6 of Article 4 contain the provisions that land used for agricultural purposes may be restored to : 1) persons establishing a farmer's holding; 2) members of agricultural companies and partnerships; 3) persons who desire to use the land regained for personal economic needs and other agricultural activity. Said persons at present are already users of the land which is given back to them. It will further be used for its special purpose, therefore, their interests do not contradict public interests.

The provision of the fifth part of Article 4 that the land used for agricultural purposes may be restored "to persons who are going to lease the land which is restored to them for other natural and legal persons engaged in farming", to a portion of former landowners, i. e. to those who themselves are not going to use the land for agricultural purposes, prescribes an unusual condition.

The conclusion of lease contract is the owner's right based on his free will. The obligation to lease land, imposed on the owner, is not acceptable from the point of view of the traditions of civil law, as it restricts the freedom to dispose of land. Though, it must not be disregarded, that this is only a temporary measure used in the implementation of land reform. Land is restored to former owners ready to lease it, even if they would not use it for agricultural purposes. However, while applying unusual conditions for lease, which actually make the former owner lease the restored land for its real user, it is necessary to ensure the imposition of such imperative conditions on the other party to the lease contract as well. Thus, in cases when the owner chooses the lease of the land (or a portion thereof) as a condition of the restoration of the land which he had in his ownership earlier, the factual user of this land must conclude a lease contract with a landowner. In the event that the factual land user refuses to conclude a

lease contract, such land should be restored to the former owner as a person who has met the condition prescribed by law to lease land. Disputes among parties pertaining to the lease contract and conditions thereof are to be investigated in civil procedure. Another interpretation of the provisions of the Law concerning the land lease would mean the violation of the rights of the former landowner as well as the principle of equality among parties to the contract.

In the event that the former landowner does not desire to conclude said lease contract, he may choose another way of restoring the rights of ownership as an alternative. Such possibility to choose does not deny the principle of the inviolability of property, therefore, Parts 5 and 6 of Article 4 of the Law in dispute do not contradict the Constitution.

2. On the compliance of the items 14, 15, 16, 17, 18, and 19 of the Law "On Appending and Amending the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" ", adopted 15 July 1993, by which Article 12 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" of 18 June 1991 has been appended by items 10, 11, 12, 13, 14 and 15, with the Constitution of the Republic of Lithuania.

In Article 12 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" of 18 June 1991, which is entitled "The Buying out of Land" it is established: "Land required for State needs as well as other land shall be bought out from persons defined in Article 2 of this Law in the manner specified in Article 16 of this Law..."

This Article provides for the cases of buying out of land. The buying out of land regulated by said Article is not identical to the purchase according to the contract of sale which is regulated by the norms of civil law. The contract of sale, in accordance with general principles of making contracts, is based on the free will and equality of the parties. Under this contract, the owner himself assumes the obligation to transfer his property to the purchaser at a contract price, and nobody can make him conclude this contract. The notion "buying out", used in Article 12, actually means the right of the institutions authorized by the State to adopt a decision not to restore the existing real property to the former owner provided that there are appropriate conditions established by the legislator himself. Buying out of the land is conditioned by the public interest in it but not by the will of the former owners and other persons specified in the Law. Buying out is not a voluntary transferral of one's property but its seizure compensating for its value. Said persons have only the right to choose the manner of compensation in the procedure prescribed by law. In case of disputes pertaining to the manner of compensation of property or its value, they may defend their interests in court.

While considering the issues of returning the land to former owners, facing the system of socio-economic relations, that was formed during the period of 50 years, is inevitable. Land-tenure has changed: land areas were planted with forests; new water bodies came into being; railways and motor ways were built; the main network of oil and gas pipes was laid on; urban areas and land areas covered by industrial enterprises have expanded; large-scale specialized units of agricultural production have been built and are functioning at present. Due

to such new circumstances, the right of the state to regulate the conditions of the restoration of the rights of ownership, so that the interests of former owners and public interests were co-ordinated to the utmost, should not be ignored. The activity of State and its institutions, trying to establish the procedure and conditions of the restoration of the unlawfully terminated rights of ownership, must be based on the constitutional provisions ensuring the protection of the rights of ownership and the general welfare of the people.

In item 10 of Article 12 it is established that land shall be bought out if "it is occupied by orchards, berry-fields, nursery-gardens, gardens with the installed irrigation systems of specialized agricultural enterprises. Such plots may be given back into ownership in kind, without changing the nature of land use, for the persons who shall lease it for agricultural enterprises using this land under the conditions specified in item 9 of said Article.

This norm provides for buying out of land containing orchards, berry-fields, nursery-gardens as well as gardens with installed irrigation systems, that belong to specialized agricultural enterprises. Farming lands of such agricultural enterprises are formed with reference to perspective farming using long-term investments. Apart from irrigation and reclamation systems, other special industrial objects, such as depositories, refrigerators, equipment for production processing, etc., are installed in these companies. Such orchards, berry-fields, nursery-gardens, gardens along with all the equipment comprise a complete industrial-technological unit. Therefore, special technologies, the same means of pest control can be used, and the cultivation of fruit and vegetables can be specialized.

Unconditional restoration of land would violate industrial-technological integrity of existing complexes, it even can lead to the ruining of all the operation of these units, so that their useful technological potential would be left unused. This would impair the public need for specialized production. The obligation to conclude a lease contract concerning the land to be returned is established meeting the interests of the former owner and society. With regard to the legislator's standpoint that the land must be used for agricultural purposes, the Constitutional Court expressed its opinion while resolving the issue whether Parts 5 and 6 of Article 4, which have been amended by the Law in dispute, are in conformity with the Constitution.

However, the provision of item 10, that plots of land "may be" returned is flawed as it creates legal ambiguity. Such a provision means that the right of the former owner to restore land in kind may be restricted even in cases when he agrees to lease land under conditions prescribed by the Law in dispute. The consent of the former owner to lease shows that he meets all the conditions established by the Law in dispute, therefore, it must be evaluated as a juridical fact ensuring the restoration of the actual land property. However, in the presence of said provision ("may be"), this right of the former owner might be restricted by certain state institutions, officials, or current land users. Such possibility of subjective decisions contradicts the provision that the restoration of the rights of ownership is predetermined only by the conditions established in the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property". Therefore, the provision of item 10 of

Article 12 that plots of land "may be" restored, contradicts Article 23 of the Constitution.

In item 11 of Article 12 it is established that land shall be bought out if it "contains irrigation systems for overhead irrigation of fodder areas by disposed waters of cattle-breeding complexes".

This norm expresses the legislator's desire to ensure the functioning of existing cattle-breeding complexes as special technologies. Such complexes were formed as integral production systems, the functioning of which cause ecological problems which must not be ignored. Disposed waters that appear in the production cycle of cattle breeding complexes, must be permanently discharged. For overhead irrigation of such waters plots of land of appropriate size are needed, on which system of two-way regulation of humidity regime - pumping stations, communications of underground pipelines and systems of overhead irrigation - would be installed. If such special technology of elimination of disposed waters were not used, natural environment would be threatened.

The objective situation is such that the industrial-technological process requires said plots of land with above-mentioned equipment. Therefore, such plots of land used for special purposes must necessarily be left near cattle-breeding complexes, because it is related to the public demand for the guarantee of ecological protection.

Due to systematic irrigation of land areas, an appropriate regime of the utilization of irrigated land, essential limitations on crop rotation must be applied. Upon restoration of such land to former owners, the interests of cattle-breeding complexes and individual landowners would inevitably clash. An attempt to combine those interests may face objective as well as subjective obstacles, and may cause disorder in the functioning of the existing ecologically safe production systems.

While solving the issues concerning the restoration of the rights of ownership and providing for the buying out of said plots of land, the legislator took into account not only economic but also ecological interests of society. Thereby, the legislator implemented the function of the State to concern itself with the protection of the natural environment, established in Article 54 of the Constitution. Therefore, there is no ground for recognizing that item 11 of Article 12 contradicts the Constitution.

In item 12 of Article 12 it is established, that land "of forest districts and national parks to be used for the needs of forestry shall be bought out according to the standards determined by the Ministry of Forestry".

Item 12 of Article 12 provides for the possibility not to return the land used for agricultural purposes in kind provided that this land, in compliance with the standards determined by the Ministry of Forestry, is assigned to forest districts and national parks. The restriction of the restoration of the right of ownership is related under this item to vague needs of forestry, without specifying any objective criteria for public interest. The statement that land not subject to restoration is necessary for the maintenance of horses needed for work in forests, is not a convincing argument, because such utilization of land may not be regarded as public interest. The right to draft standards for agricultural land to be used for the needs of forestry, vested in the Ministry of Forestry, is also groundless. In this case, governmental institution is

entitled to the right to determine the size of plots of land to be bought out for its own needs. The establishment of new conditions to be applied in the restoration of the right of ownership is within the competence of the legislator. The Ministry of Forestry actually becomes an institution resolving issues concerning ownership, i. e. it restricts the rights of the former owners to restore land in kind. Whereas, land may be seized only upon a specific decision adopted in compliance with the provisions of the third part of Article 23 of the Constitution.

Limitations on the restoration of land, set forth in item 12, are not based on objectively expressed public interests, therefore, such restriction of the restoration of the rights of ownership of former owners contradicts Article 23 of the Constitution of the Republic of Lithuania.

In item 13 of Article 12 it is established, that "land to be bought out in a rural area, shall be used for the construction of residential houses, common use of residents or other public needs in accordance with the settlement-development projects".

In occupation period in Lithuania, upon denial of the private ownership to land and implementation of collectivization of agriculture as well as establishment of large-scale state farms, an appropriate structure of rural settlements was formed. That period saw the construction of many new rural settlements. Land, which before occupation used to be private property, was now used for the construction of these settlements. At present, the situation is such, when some land areas that used to be private property is now built over by residential houses, structures used for economic, cultural and other social purposes, therefore, this and other commonly used land in settlements may not be considered the existing real property and is not objectively possible to be returned for the former owners.

Due to the economic reform in general, and land reform taken apart, the perspectives of the development of rural settlements are subjected to changes as well. They change in the process of restoration of the rights of private ownership to land. Therefore, preliminary purchase of land for the future construction of residential houses in accordance with settlement-development projects, for common use of residents or for other public needs, may not be based on public interest.

Buying out of land in rural settlements according to the development projects provide for the possibility to privatize it later, i. e. other persons will be allowed to acquire it. That would mean, however, the violation of the right of former owners to restore land.

In conformity with afore mentioned arguments it is recognized that item 13 of Article 12 contradicts Article 23 of the Constitution.

In item 14 of Article 12 it is established, that "rivers and lakes belonging to the water fund of the State and local governments shall be bought out if they are ascribed to water bodies not subject to privatization in accordance with the procedure established by the Government of the Republic of Lithuania".

The legislator, while adopting on 18 June 1991 the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property", established the conditions which were applied to former owners while returning inland waters. In item 8 of the resolution of the Supreme

Council of the Republic of Lithuania "On the Process of Enforcement and application of the Law of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property"" it is determined that: "A person shall own any lake of the size determined by the Government of the Republic of Lithuania, water reservoir, canal, pond, and other surface water body, if it is surrounded on all sides by his property".

By way of implementing this resolution, the Government in paragraph 1, item 15 of resolution No 470 of 15 November 1991 established, that the restored area of afore mentioned waters along with land "must not exceed 5 hectares. In exceptional cases, the restored area may exceed 10 hectares, provided that the Department of the Environmental Protection of the Republic of Lithuania gives its consent thereto".

In conformity with earlier formulated provisions of the legislator, the process of the restoration of unlawfully terminated rights of ownership and returning of water bodies to their former owners has already been under way. New conditions that are determined in item 14 of Article 12 impose even more restrictions on the rights of former owners who have not restored their water bodies yet.

Only small in size water bodies have been returned. Therefore, the restrictions imposed on the restoration of such waters may not be justified by abstract public interest. In case that such interest is related to a specific water body, it may, regardless of its size, be seized only in accordance with the decision adopted under the provisions prescribed by the third part of Article 23 of the Constitution.

In item 14 of Article 12, buying out of internal waters is based on their adherence to the State fund or the fund of local governments. This adherence of waters does not manifest public interest. On the contrary, due to this adherence, the possibility arises to ascribe any water bodies to this fund, in accordance with the provision that they are not subject to privatization. Such norm impairs the rights of former owners to restore water bodies in kind, therefore, item 14 of Article 12 contradicts Article 23 of the Constitution.

In item 15 of Article 12 it is established that "land taken into the state land fund for establishing a farmer's holding shall be bought out provided that at present it is leased by persons who are actually engaged in farming and have structures used for economic activity, but may not restore this land in kind."

It was the Law "On Farmer's Holding in the Lithuanian SSR", adopted on 4 July 1989, which at the end of Soviet period for the first time established the allocation of land for farmer's holdings. Those who desired to engage in farming were allotted land free of charge from the land fund designed for farmer's holdings. This fund appropriated land from the state reserve, state forest fund, State farms, collective farms as well as other enterprises and organizations (Article 7 of the Law "On Farmer's Holding in the Lithuanian SSR").

Said provisions were not nullified upon the adoption of the 11 March 1990 Law "On the Provisional Basic Law" in Article 3 of which it is established that: "Laws and other legal acts heretofore in force in Lithuania which do not conflict with the Provisional Basic Law of the Republic of Lithuania shall remain in effect in the Republic of Lithuania. With the presence of such norm, Land Code of the Republic of Lithuania, in accordance with the Law of 5 April 1990, was appended by

Article 48-1 providing for the appropriation land into the land fund designed for farmer's holdings. Under this Law, plots of land were appropriated into the fund disregarding the right of ownership of former owners, although the institute of private property had already been returned into the legal system of the state. The allocation of land according to the Law on Farmer's Holding had not been terminated until the day of the enforcement of the Law on Land Reform of the Republic of Lithuania, i. e. until 1 September 1991 (Paragraph 1, item 1 of the Resolution of the Supreme Council "On the Procedure for the Enforcement of the Law on Land Reform of the Republic of Lithuania" of 25 July 1991).

The provisions of item 1, Article 8 of the Law on Land Reform meant , that the citizens, having received land under the Law on Farmer's Holding, had to buy out or lease from the State an additionally acquired plot. Such provisions show that the State took the obligation to protect the rights of citizens who had acquired land according to the Law on Farmer's Holding, and to pay an appropriate compensation for the former owners.

Thus, the State by laws provided the conditions for persons who acquired land into the ownership under the Law on Farmer's Holding, to settle on this land, engage in farming, as well as to have various structures there. Failing to provide the possibility for the State to buy out such land from the former owners, the contents of legal relations already regulated by laws, would be changed. That would mean retroactive validity of Article 12 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" of 18 June 1991, because it would be applied to juridical facts and legal consequences which appeared on the basis of the Law on Farmer's Holding. Item 15 of Article 12 has eliminated the clash of laws, therefore it does not contradict the Constitution.

Conforming to Article 102 of the Constitution of the Republic of Lithuania as well as Articles 53, 54, 55 and 56 of the Law on the Constitutional Court of the Republic of Lithuania, the Constitutional Court has passed the following ruling:

To recognize that concerning the Law of the Republic of Lithuania "On Appending and Amending the Law of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" ", adopted 15 July 1993:

1) those parts of item 3, by which Parts 5 and 6 of Article 4 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" of 18 June 1991 have been amended, do not contradict the Constitution of the Republic of Lithuania;

2) the provision "may be" of item 14, by which Article 12 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" of 18 June 1991 has been appended by item 10, contradicts Article 23 of the Constitution of the Republic of Lithuania. Other provisions of this item do not contradict the Constitution of the Republic of Lithuania;

3) item 15, by which Article 12 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" of 18 June 1991 has been appended by item 11, does not contradict the Constitution

of the Republic of Lithuania;

4) item 16, by which Article 12 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" of 18 June 1991 has been appended by item 12, contradicts Article 23 of the Constitution of the Republic of Lithuania;

5) item 17, by which Article 12 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" of 18 June 1991 has been appended by item 13, contradicts Article 23 of the Constitution of the Republic of Lithuania;

6) item 18, by which Article 12 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" of 18 June 1991 has been appended by item 14, contradicts Article 23 of the Constitution of the Republic of Lithuania;

7) item 19, by which Article 12 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" of 18 June 1991 has been appended by item 15, does not contradict the Constitution of the Republic of Lithuania.

This Constitutional Court ruling is final and not subject to appeal.

The ruling is promulgated on behalf of the Republic of Lithuania.