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Practice of the Constitutional Court of the Republic of Latvia in the sector of economic rights

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PRACTICE OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA IN THE SECTOR OF ECONOMIC RIGHTS

Honourable ladies and gentlemen!

It is not possible to enlarge upon all spheres, which could be attributed to the notion ”economic rights” in a report. Therefore I shall touch upon one of the most important moments that has been felt by every resident of Latvia regardless of his/her origin and profession – upon the Property Reform.

Since October 1998 the right to property has been fixed on a constitutional level by Article 105 of the Constitution of the Republic of Latvia. The Article establishes that ” everyone has the right to property. Property may not be used against the interests of society. Property rights may be restricted only in accordance with the law. A forced alienation of property for the needs of society is permissible only in exceptional cases on the basis of an individual law, for fair compensation.”

Looking back into the history it can be seen that only a little bit more than ten years ago the reality of Latvia was determined by the Constitution of the USSR, which established that the state had the exclusive property rights both to the land and to the means of production. During the last ten years Latvia has experienced the process of transition from the above reality to the tradition of the European democratic states: private property to land and means of production. The transition was connected with an extremely hard, complicated and painful process- the Property Reform, which has not been completed yet.

One can speak of three mutually connected directions of the Property Reform: 1) restitution of property and denationalisation; 2) the Land Reform; 3) privatisation of enterprises. Realisation of all of them has been connected with a really hard problem, resulting from the tragic history of the State of Latvia.

” The Republic of Latvia was proclaimed on November 18, 1918 and on September 22, 1921 it became the member of the League of Nations. The development of Latvia as an independent state was interrupted by the non-aggression pact (Molotov- Riebentrop Pact) concluded by two totalitarian powers- nationalsocialistic Germany and communist USSR- on August 23, 1939. Their sole aim was to divide Europe into spheres of influence. Violating the basic principles of international rights as well as agreements concluded between Latvia and the USSR, the latter, using military force, illegally annexed it to the USSR. Thus the political regime and the legal system of the USSR were introduced in Latvia. In summer of 1941, when the Second World War raged in the territory of Latvia, it was occupied by the nationalsocialistic Germany, which introduced the regime of its own, realised deportations and other repressive measures and used

the territory of Latvia as the place for extermination of people from other occupied states. At the end of the Second World War, the USSR renewed its occupational regime in Latvia."[1]

Latvia managed to maintain its *de jure* but *de facto* "during the years of occupation the USSR purposefully realised genocide against the Latvian nation… The occupational regime killed innocent people, repeatedly deported a large number of inhabitants and applied other repressive measures, mercilessly punishing persons, who dared to protect (with arms or any other means)) the idea of renewal of independence in Latvia, illegally and without any compensation expropriated property of the inhabitants and suppressed manifestation of the free thought."[2]

During the fifty years of occupation in compliance with the Soviet laws other persons- owners or users- managed the expropriated and divested properties. Therefore the most painful problem was the contradiction between the persons, who had been the owners of the property in 1940, before it was expropriated, and the *bona fide* beneficiaries who used the above property at the moment of realisation of the Reform.

The essence of the problem lay in the violation of international rights, namely- violent occupation and annexation of Latvia. And the State of Latvia cannot be blamed for that. The State had to find compromises to equalise consequences of the above violation. On the one hand it was necessary to soften and as far as possible make the maltreatment even and on the other hand- not to make a new maltreatment. Within the limits of possibility we have tried to implement the above reforms with the measures a democratic and legal state has at its disposal. At the same time, one cannot compensate the maltreatment experienced during 50 long years. Another fact testifies the complicated nature of the process: in 1997 Latvia acceded to the European Convention for the Protection of Fundamental Human Rights and Freedoms (henceforth- the Convention) and some of its Protocols, among them also Protocol 1. Taking into consideration the fact that Article 64 of the Convention envisages the possibility of making reservations to any particular provision of the Convention to the extent that any law then in force in the Member State is not in conformity with the provision, the Saeima included the following reservation in the Law on the Convention: " Demands of Article 1 Protocol 1 shall not be attributed to the Property Reform, which regulates restitution of property or granting compensation to the former owners (their heirs), whose property has been nationalised, confiscated, collectivised or otherwise illegally expropriated during the annexation by the USSR as well as to the process of privatisation of agricultural enterprises, fishermen collective bodies and state or municipal property."[3]

The most important of the reforms indisputably is the Land Reform together with the renewal of the validity of the 1937 Civil Law and the principle (fixed in it) that the building and the land are inseparably bound. As is known, the Latvian legislator did not elaborate a new Civil Law but renewed the validity of the 1937 Civil Law of Latvia[4] and with special laws[5] determined the time

[1] Declaration on the Occupation in Latvia.
[2] The same source.
[3] Text of the Judgement in case No. 09-02 (98)
[4] January 14, 1992 Law "On the Republic of Latvia 1937 Civil Law"
[5] July 7, 1992 Law "On the Term and Procedure by which the Introduction, Heritage Rights and the Part on Rights on Things of the Renewed 1937 Civil Law of the Republic of Latvia Becomes Effective", May 25, 1993 Law "On the Term and Procedure by which the Part on Family Law of the Republic of Latvia Renewed 1937 Civil Law Becomes Effective".

and procedure of the Chapters becoming effective. The validity of the 1937 Law on the Land Books was also renewed.[6]

As has been stressed during the process of elaboration of the Law by one of the main ideologists of the Land Reform[7] the Deputy of the Supreme Council of the Republic of Latvia J.Kinna, when implementing the land reform the deputies took into consideration " the moment that the memory of the nation is alive, and as alive is the will to return to one's own land, to one's own roots… therefore we have no right to forget 1940 (1940 is to be taken as the basis) and continue the absurdity".[8] Simultaneously the interests of the *bona fide* beneficiaries were protected as much as possible.

It is actually impossible to mention all the nuances of the Land Reform, as only the normative acts, regulating the process, cover more than one hundred pages.

The most important acts were:

- November 21, 1990 Law " On Land Reform in Rural Regions";
- July 9, 1992 Law " On Land Privatisation in Rural Regions";
- November 20, 1991 Law " On Land Reform in the Cities of the Republic of Latvia".

The Land Reform in rural regions and in the cities was implemented differently.

The Land Reform in rural regions was based on the fundamental principle that restitution of property rights to the former owners or their heirs (who owned it in 1940) was the priority. One should mention that property rights were renewed only to physical persons: the citizens of the Republic of Latvia and on the basis of specific laws also to some legal persons: religious organisations[9] and several public organisations[10].

To protect *bona fide* beneficiaries it was determined that there were several cases when the former owners or their heirs would not be able to renew property rights to real estate but would be granted land compensation or compensation vouchers. Thus the property right was not renewed to the former landowners or their heirs if on the land or on part of the land, which had formerly belonged to them, had legally been formed farms or farms for personal use; purchased or built dwelling houses or the process of building was begun; if there were historical, cultural and archaeological monuments on the land; if there were mineral deposits in it and if the land was necessary for selection, research, experiment and study as well as other purposes.

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[6] March 30, 1993 Law "On the Renewal and Procedure by which December 22, 1937 Law on Land Books Becomes Effective".

[7] See A.Grūtups. E.Krastiņš "The Land Reform in Latvia", Riga, 1995, page 55

[8] 27.07.90. A Verbatim report of the Supreme Council session.

[9] May 12, 1992 Law "On Restitution of Property to Religious Organisations" and the Law "On the Renewal of Property Rights to Jūrmalciems Baptist Congregation " adopted on February 15, 2001.

[10] The Law " On Restitution of Real Estate to Academic Corporations" (adopted on December 10, 1996); the Law " On the Renewal of Property Rights to the Estonian Society of Latvia" (adopted on January 29, 1997); the Law " On Restitution of the Land-Related Property to the Latvian Agronomists Society" (adopted on March 25, 1997); the Law "On the Renewal of Property Rights to the Society of the Jewish Hospital "Bikur Holim" (adopted on June 2, 1998); the Law "On the Renewal of Real Estate Property Rights to the Union of Latvian Book Industry Specialists" (adopted on April 15, 1998); the Law " On the Renewal of Property Rights to the Liiv Union- "Līvod Īt"" (adopted on December 22, 1999); the Law " On Restitution of the Land-Related Property to the Union of Latvian Disabled Veterans (adopted on October 13, 1999 and May 28, 1997).

In the cities the property rights of the former landowners or their heirs have been restituted with an exception of cases:

1) if the former owners or their heirs have alienated buildings and constructions, built on the land (or part of it), which has formerly belonged to them in compliance with the procedure determined by law after July 22, 1940;
2) if the citizens of the Republic of Latvia in accordance with the procedure envisaged by the law have built (or are building) dwelling houses on the land (or part of the land) of the former landowners; or if the citizens have obtained the dwelling houses under the procedure envisaged by law up to June 20, 1992;
3) if there are specially protected nature objects (or their parts), objects of education, culture and science of state significance, national sport centres as well as objects of the state or city engineering and technical, energetic and transportation infrastructure – streets, bridges, underpasses, tunnels, railway lines and ports on the land of the former owners.

To illustrate how complicated the land reform was I could mention that during its culmination – from August 9, 1993 to May 1, 1995, the Central Land Commission adopted decisions in 560 land disputes, but the Supreme Court reviewed 84 cassation claims on land.[11]

The Constitutional Court in Latvia is just a little bit more than four years old, therefore its activity has not been connected with the beginnings of the Property Reform. However, during these four years the Court has had to review several complicated cases, connected with the Property Reform.

One of the most interesting cases[12] was reviewed at the Constitutional Court in April 1998. At that time Chapter 8 of the Satversme (Constitution) of the Republic of Latvia " Fundamental Human Rights" and Article 105 (mentioned at the beginning of my report) had not yet been passed, but Latvia had already acceded to the European Convention for the Protection of Human Rights and Fundamental Freedoms as well as to its First Protocol.

Article 21 of the Law "The Rights and Obligations of a Citizen and a Person", then in force, determined that "The state recognises and protects the property and its rights of inheritance. The forced expropriation of property shall occur solely by a court decision in accordance with the procedures prescribed by law. If the property is expropriated for the realisation of a public project, then appropriate compensation is due to the owner". In its turn Article 1 of the Law "On Coercive Expropriation of Real Estate for State or Public Needs" establishes that "Coercive expropriation of real estate for State or public needs is admissible in exceptional cases only against compensation and on the basis of a specific law."

During the Land Reform the legislator repeatedly changed the norms, even those relating to cases when property rights to land, on which there were objects for public needs, might be restituted. The situation arose that – depending on time when the former owners had submitted documents, say , about the land in the territory of the international airport "Riga" and the Riga Free Trading Port- side by side with the land not to be restituted, there were land-related

[11] A.Grūtups. E.Krastiņš. "The Property Reform in Latvia", Riga, 1995, pages 72-73

[12] Case No.09-02 (98) "On Conformity of Paragraph 2 of the Supreme Council September 15, 1992 Resolution "On the Procedure by which the Republic of Latvia Law "On Eminent Domain Takes Effect"" (wording of the Amendment of December 19, 1996) with Article 1 of the First Protocol of the European Convention of Human Rights and Fundamental Freedoms".

properties restituted to their owners. Taking the above situation into consideration the legislator determined that, when expropriating the real estate necessary for the State or public needs- for maintenance and operation of specially protected nature objects, objects of education, culture and science of state significance, state training farms, national sport centres as well as objects of engineering and technical, energetic and transportation infrastructure, according to which ownership rights are renewed or shall be renewed in accordance with the law to former owners (their heirs), the extent of compensation shall be determined in money in the procedure established by law, but the sum shall not exceed the evaluation of the real estate in the Land Books or cadastral documents drawn up before July 22, 1940 in which the value of the real estate is indicated. Simultaneously the procedure of alienation of the above real estate was applied also to "owners who have acquired the real estate from the former landowner (his/her heir) on the basis of the endowment contract."

In the case, reviewed by the Constitutional Court, the petitioner questioned conformity of the above norms with the European Convention for Protection of Human Rights and Fundamental Freedoms, which establishes principles of determining compensation for expropriated property. And namely, the petitioner questions the principle that the former owners and their heirs as well as persons, who have acquired the property on the basis of endowment contract, shall not receive compensation which corresponds to market value of the nineties, but shall receive compensation, corresponding to values of 1940.

The issue of the case, reviewed by the Constitutional Court, focused on the principles of the Land Reform and a reasonable compromise between the interests of the former owners and the interests of the society. However this case was important for the development of the legal theory of Latvia from the standpoint of methodology of interpretation of legal norms. The viewpoint of the scientists of the sector of law was like this: " this Judgement of the Constitutional Court is the first example in practice of Latvia when the Latvian institution has realised the practice of the institution of the international judicial system and has applied it, at the same time ascertaining if the national forms conform with the principles, elaborated by the international forum. Besides, the Constitutional Court does not only mention the international agreement- the European Convention for the Protection of Human Rights and Fundamental Freedoms- and some of its Articles (one may come across such practice also at the courts of general jurisdiction). On the basis of analysis of the practice of the European Court of Human Rights and publications of well-known authors, the Court substantiates the contents of the adequate Article. These are methods to be applied at a court of any developed democratic state and in this case have been used by the Constitutional Court of Latvia."[13]

The Constitutional Court analysed the contents of Article 1 (Protocol 1, European Convention for the Protection of Human Rights and Fundamental Freedoms), stressing that the general principle on peaceful enjoyment of possessions shall always be viewed together with the right of the state to limit enjoyment of the possession subject to the conditions provided for by Article 1 of Protocol 1 of the Convention.

As to the amount of compensation when expropriating a property in the State or public interests, the Constitutional Court concluded that Article 1 of the First Protocol of the Convention determines the right to certain compensation but not full compensation for the expropriated property. The amount of compensation shall be reasonably balanced with the value of the expropriated property. However Article 1 (Protocol 1) of the Convention does not

[13] Ziemele I. A Comment on a Judgement. The Journal of Human Rights 9-12/1999, pages 249-250

envisage the right of the owner to full compensation for the alienated property. The Constitutional Court stressed that ”the procedure of evaluation and determination of the amount of compensation for the expropriated real estate conforms with the fundamental principle of the process of denationalisation in the Republic of Latvia- to denationalise the property or to compensate it in the amount of its value at the moment of nationalisation”. The principle was to renew social fairness and to fairly balance public and individual interests in the context of the consequences of annexation of Latvia by the USSR.

The Constitutional Court had to evaluate the above Article of the Convention together with Article 14 of the Convention, namely, to take a decision on the issue whether in the disputable norms one could not detect discrimination of those persons who had acquired the property on the basis of the endowment contract. The Constitutional Court applied the approach, fixed in the practice of the European Court of Human Rights stating that ” Difference in treatment shall be considered discriminatory if it has no objective and reasonable justification, in a word, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the legal aim sought to be realised.”

Evaluating the above and several other issues the Constitutional Court declared the disputable norms as conformable with Article 1 of the First Protocol of the Convention.

When reviewing another case, the Constitutional Court protected the vital interests of the politically repressed persons- the former owners. In compliance with the Law[14] as persons politically repressed shall be recognised persons who have suffered from the repressions of the communist and nazi regimes. Several laws determine to the above persons essential easements and advantages, among them also the right of receiving compensation in cash when exchanging the land-related compensation vouchers.

In the case[15], reviewed at the Constitutional Court in April 1999 was questioned the norm, establishing the term of submitting applications on receiving compensation in cash when exchanging the compensation vouchers for land-related property, granted to the former landowners – politically repressed persons.

The Constitutional Court analysed the norm incorporated into 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”.

Interpreting the issue historically, the Constitutional Court took into consideration the conditions that served as grounds for elaborating the legal norm and obliging the legislator to determine the obligation of the State to ensure restoration of politically repressed persons’ rights. The Court stressed the idea that it was not just the ache of the politically repressed persons, but ”it is the wound of the Latvian nation, a deep wound, a festering wound that has remained after

[14] The Law ” On the Determination of the Status of Politically Repressed Persons Suffered During the Communist and Nazi Regimes" (adopted on April 12, 1995).
[15] Case No. 04-01 (99) ” On Conformity of Paragraph 29 of the Cabinet of Ministers May 20, 1997 Regulations No. 187 ”The Procedure for the Repayment in Cash to Persons who were Granted Compensation Vouchers for the Former Land-Related 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 Privatisation 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””.

interaction of two totalitarian regimes just because our small country happened to find itself between these two regimes."

Interpreting the above legal norm systematically, the Constitutional Court took into consideration Article 1 of the Satversme (Constitution), which determines that Latvia is an independent, democratic republic and the general legal principles resulting from it: the principle of a law-based state, the principle of justice and trust in law. The Constitutional Court concluded, "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 the stability of the legal norm included in 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 maltreatment and injustice would be compensated in accordance with the law.[16]

The primary and the main objective of the law, consequently also of the Law "On the Determination of the Status of Politically Repressed Persons Suffered During the Communist and Nazi Regimes" of any law-based and democratic state is justice and guaranteeing justice. 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 from repressions during the communist and nazi regimes, has remained unchanged.

The Constitutional Court also came to the conclusion that "the objective of the Law "On the 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, establishing a fixed date. Thus- there are still persons who are going to be granted the status of a politically repressed person and all the State guarantees, mentioned in Chapter 4, do refer and shall refer to them.""

After the completed interpretation the Constitutional Court concluded that "the idea 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 enjoyment 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."" The Constitutional Court declared the norm of the disputable norm of the Cabinet of Ministers' Regulations as null and void from the moment of the announcement of the Judgement. Thus many politically repressed persons were granted the possibility of exchanging their land-related compensation vouchers for cash at face value, that ten to twenty times exceeded the market price of the vouchers.

Side by side with the Land Reform privatisation of enterprises is another important form of the Property Reform. I would like to mention the Constitutional Court case[17], reviewed in March 1998. The Council of the State Control submitted the application on initiating a case.

[16] The same source.

[17] Case No 04-05 (97) "On Conformity of the Joint Interpretation by the Ministry of Finance (No. 047/475 Confirmed on April 30, 1993) and by the Ministry of Economic Reforms (No. 34 – 1.1-187, Confirmed on May 4, 1993) "On Revaluation of Fixed Assets by Enterprise and Entrepreneur Company Accountancy" and Interpretation by the Ministry of Economy No. 3 – 31.1- 231 of December 28, 1993 "On the Procedure of Application of the Joint Interpretation by the ministry of finance and the Ministry of Economic Reforms "On Revaluation of Fixed Assets by Enterprise and Entrepreneur Company Accountancy" with the Law "On the Procedure of Privatisation of Objects (Enterprises) of the State and Municipal Property as well as with other laws.""

Two acts- interpretations passed by ministries – which envisaged reducing the buy-out payment of the object and determined that the difference between the preceding value of the fixed assets and the value, established by the Privatisation Commission, can be drawn up as a loan without interest. The acts stated that if the privatisation project of an object (enterprise), the purchase and sale agreement or the agreement on lease buy-out of an object envisages investment, which covers the above difference and if all the conditions have been observed on the term the lease buy-out establishes, or- in case of purchase and sale agreement- in a year after the agreement has become effective, the institution, which has signed the agreements, adopts a decision to write the differences off. The laws, regulating this sector, did not envisage special norms.

The Constitutional Court in its Judgement analysed the Satversme (Constitution) and several laws to decide in whose authority it was to regulate the process of privatisation, when establishing a new economic system in Latvia. The Constitutional Court decided that this was the area of responsibility of the legislator and that the ministries, when passing the disputable act have groundlessly interfered in the sector of legislature. The Constitutional Court declared the disputable acts as not being in compliance with Article 64 of the Satversme and null and void from the moment of announcement of the Judgement.

One should mention that the petitioner asked to declare the disputable acts null and void from the moment of their adoption. However, when discussing the term of the acts becoming invalid ”the Constitutional Court considered the following principles: principle of justice, rule of law, the principle of separation of power and trust in law. When comparing significance of the above principles, one understands that of really essential importance are the following elements of trust in law: influence of retrospective force of the judgement on public and private interests; longevity of legal relations, established on the basis of the Joint Interpretation as well as possible changes in the legal status of the subjects of privatisation who trusted in legality of the disputable acts and others.”

There is no possibility of mentioning all the Constitutional Court cases, which could be considered as interesting and important in the sector of economic rights in a report. The above three touched upon several topical problems, however these are not the only ones in the not too long -for the time being- practice of the Constitutional Court.

As from July the individuals will have the right of submitting claims to the Constitutional Court, it can be foreseen that soon the activities of the Constitutional Court will widen and its practice will be more extensive. The Law envisages that any person, who holds that his/her fundamental rights have been violated, may submit a claim to the Constitutional Court on compliance of laws and international agreements signed or entered into by Latvia with the Satversme (Constitution), on conformity of other normative acts or their parts with the legal norms (acts) of higher legal force as well as compliance of the national legal norms of Latvia with the international agreements entered into by Latvia, which are not contrary to the Satversme.

The right of a person to submit an application to the Constitutional Court is connected with violation of the fundamental rights established by the Constitution of the Republic of Latvia. Article 105 of the Satversme (Constitution) of the Republic of Latvia determines the right to property. Thus it means the experience of the Constitutional Court of the Republic of Latvia will be quite extensive. I hope we shall have the possibility to discuss it at one of our next meetings.

Thank you for your attention!