



The norm in the spatial plan of the Jūrmala City, which defines the use of territory and construction rules for the land plot Bulduri 1607, does not violate a person's right to live a benevolent environment

On 6 October 2017 the Constitutional Court passed a judgement in case No. 2016-24-03 “On Compliance of Para 2361 “Use of Territory and Construction Rules” of Binding Regulation No.8 of 24 March 2016 by Jūrmala City Council “On Approving the Graphic Part, Regulation on the Use of Territory and Construction in the Spatial Plan of Jūrmala City” with Article 115 of the *Satversme* of the Republic of Latvia”.

Contested Norm

Para 2361 “Use of Territory and Construction Rules” of Binding Regulation No.8 of 24 March 2016 by Jūrmala City Council “On Approving the Graphic Part, Regulation on the Use of Territory and Construction in the Spatial Plan of Jūrmala City” (hereinafter – the Spatial Plan of 2016) provides that on the land plot with the Cadastre No. 1300 007 1607 (hereinafter – Bulduri 1607) construction of also such resort objects that are linked to the use of the local mineral water resources is permitted. The maximum density of construction comprising such objects – 10%, height of constructions and number of storeys – twelve metres, 2.5 storeys.

Norm of Higher Legal Force

Article 115 of the *Satversme*: “The State shall protect the right of everyone to live in a benevolent environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment.”

Facts of the Case

The case was initiated on the basis of an application by twelve natural persons. The applicants hold that the contested norm, which allows construction on the land plot Bulduri 1607, is incompatible with the right to live in a benevolent environment that is enshrined in Article 115 of the *Satversme*. Allegedly, this norm was included in the

Spatial Plan of 2016, disregarding the objections expressed by local residents during public discussion of the Plan. The Jūrmala City Council, in adopting the contested norm, is said to have disregarded the principle of sustainability and the precautionary principle. Moreover, the fact that the land plot Bulduri 1607 is located in the protected zone of dunes on the coastal beach of the Gulf of Rīga (hereinafter – protected zone of dunes) and that a large area of it is covered in forest also had been disregarded.

The Court's Findings and Ruling

On the scope of Article 115 of the *Satversme*

Article 115 of the *Satversme*, *inter alia*, imposes an obligation upon institutions of public power to establish and to maintain an effective system for environment protection. The right to live in a benevolent environment as a fundamental right comprises also an individual's right to have a public person adopt and implement any decision related to the use of environment within a framework of an effective system for environment protection. Spatial planning, in turn, is one of the measures for reaching the aims of the national environment policy and, thus, is an area that is connected to environment. [7.]

The State's obligations to ensure the right to a benevolent environment have been specified in both national and international provisions of environmental law. The Constitutional Court recognised that the norms of environmental norm specified the content of Article 115 of the *Satversme* and that the constitutionality of the contested norms should be examined also in interconnection with them. [7.]

On the obligations of a local government in developing spatial planning documents of local level

Regulatory enactments grant to a local government broad discretion in determining the content of a spatial plan. Whereas the general principles of law, principles of public administration and principles of spatial planning determine the legal framework for exercising this discretion correctly. [8.1.]

The Constitutional Court noted that the system for planning territorial development has been created in a form, where the planning documents of higher level are less detailed, these predominantly define a set of possible general development measures to reach the set aims. Whereas planning documents of lower level define more specific requirements for the use of a territory and construction, i.e., the system of planning development of a territory comprises a number of various interconnected documents that differ as to their aims and level of detail. Some obligations of a local government in the field of spatial planning may differ, depending upon the type of planning document, its aim and level of detail. [8.2.]

On the process of spatial planning with regard to the land plot Bulduri 1607

The Constitutional Court recognised that in certain cases the spatial plan adopted by the local government might be insufficient for implementing a development plan within a specific territory, because an additional, more detailed planning document had to be adopted. In such cases a mandatory pre-requisite for implementing the construction plan is a valid detailed plan. [8.3.]

The Constitutional Court found that prior to beginning new construction on the land plot Bulduri 1607, drafting of a detailed plan was mandatory. It does not follow from the contested norm that on land plot Bulduri 1607 a new building design would be certainly implemented or that it would be implemented in accordance with all the parameters of construction allowed in the contested norm. I.e., a detailed plan drafted and approved in compliance with provisions of regulatory enactments will determine, whether and to what extent construction is allowed on the land plot Bulduri 1607. [8.3.]

Thus, with respect to the land plot Bulduri 1607, the process of spatial planning has not been concluded yet, and this circumstance must be taken into consideration in examining compliance of the contested norm with Article 115 of the *Satversme*. [8.3.]

On the procedure of drafting and adopting the contested norm

The Constitutional Court found that in the procedure of drafting the Spatial Plan of 2016 strategic assessment of impact upon environment had been conducted and an

environmental report was prepared, opinions by the institutions were received, and public discussions were organised. [10.1.]

A local government has the right to disagree with the public opinion that is expressed; however, the answers provided by the local government with respect to proposals received in the course of drafting the spatial plan, irrespectively of the scope of the particular answer, must be such that allow ascertaining that these proposals had been assessed. [10.1.]

The Constitutional Court noted that the contested norm, compared to the permitted use defined in the previous valid spatial planning of Jūrmala City, decreased the number of allowed storeys on the land plot Bulduri 1607, decreased threefold the permitted density of construction and allowed construction only of a particular type of resort object. As regards adoption of the contested norm, the preparatory materials for the Spatial Plan of 2016 confirm that the solution chosen by the local government is substantiated, and the public proposals have been examined and also partially included in the final wording of this spatial plan. [10.2.]

Thus, in adopting the contested norm, the procedure established in regulatory enactments has been complied with. [10.2.]

On the principle of sustainability and the precautionary principle

The Constitutional Court recognised that sustainability was one of the constitutional principles aimed at protection and implementation of aims and values included in the *Satversme*. This principle does not require placing environmental interests above economic and social interests in spatial planning; however, it does require assessing all these interests as being equally important. Moreover, the chosen solution must be carefully considered and substantiated. [11.]

The precautionary principle, in turn, is implemented in adoption of a spatial plan through, *inter alia*, the procedure of strategic evaluation. Its objective is to limit the negative impact of a planning document upon environment. [11.]

The Constitutional Court found that some requirements that followed from the principle of sustainability and precautionary principle could differ, depending upon the level of detail in the planning document. In the particular case, the inclusion of the contested norm in the Spatial Plan of 2016 does not violate the principle of sustainability and precautionary principle. [11.]

On possible construction in the territory, which is located in the protected zone of dunes and is partially covered in forest

Pursuant to the Spatial Plan of 2016, the land plot Bulduri 1607 is located in the protected zone of dunes with the functional zoning “Territory of nature and greenery (DA5)”. This land plot is partially covered in forest. The contested norm permits construction on this land plan in certain scope resort objects that are linked to the use of local mineral water resources. [12.1., 12.2.]

The Constitutional Court recognised that information about the forest area within the land plot Bulduri 1607 has changed several times. However, establishing the particular area of forest, as well as updating and registering these data fall within the competence of institutions of public administration and not that of a local government. A local government’s obligation to identify the precise area of forest in each land plot located within its administrative territory does not follow from regulatory enactments. [12.2.,12.3.]

The Constitutional Court underscored that in examining compliance of the contested norm with the *Satversme* a distinction must be made between the construction that the contested norm permits on the land plot Bulduri 1607 and implementation of the construction design in nature. The Protection Zone Law, as well as other norms of regulatory enactments define special requirements regarding implementation of construction design in nature and construction in such a territory, and, in case of necessity also responsible state institutions will be able to set such requirements. The legal regulation that is currently in force and is applicable to the land plot Bulduri 1607 is aimed at protecting values of nature found in the protected zone of dunes, however, it does not totally exclude further development of this territory. [12.5.]

The local government, abiding by requirements of protection, defined for the protected zone of dunes and the forest located therein, in norms of environmental law, has the right to include in the spatial plan also norms that define construction as the permitted use of territory on a land plot that is located in the protected zone of dunes and is partially covered in forest. Thus, by adopting the contested norm, the Jūrmala City Council has acted within the limits of its discretion granted by the legislator. [12.5.]

The Constitutional Court recognised the contested norm as being compatible with Article 115 of the *Satversme* of the Republic of Latvia.

The judgement by the Constitutional Court is final and not subject to appeal, it shall enter into force on the day of its publication.

The text of the judgement [in Latvian] is available on the homepage of the Constitutional Court:

http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/11/2016-24-03_Spriedums.pdf

The press release was prepared with the aim to facilitate understanding of the actual facts of the case. It shall not be regarded as part of the judgement and is not binding to the Constitutional Court. The judgements, decisions and other information regarding the Constitutional Court are available at the homepage of the Constitutional Court www.satv.tiesa.gov.lv.

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