THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

JUDGMENT

ON BEHALF OF THE REPUBLIC OF LATVIA

Riga, 7 April 2009

in Case No. 2008-35-01

The Constitutional Court of the Republic of Latvia, composed of the Chairman of the Court session Gunārs Kūtris, Justices Kaspars Balodis, Aija Branta, Juris Jelāgins, Kristīne Krūma and Viktors Skudra,

with the registrar of the Court Līva Rozentāle,

with the presence of a submitter of the constitutional claim Edgars Jansons, Benno Butulis as a representative of a submitter of the constitutional claim Olafs Brežinskis, Liene Cakare as an assistant to the sworn advocate representing a submitter of the constitutional claim Uldis Vizbulis, and Dmitrijs Skačkovs as a sworn advocate representing a submitter of the constitutional claim Mārīte Teivāne,

with the presence of Lauris Liepa as a sworn advocate representing the institution that have issued the contested act, the Saeima (Parliament) of the Republic of Latvia,

according to Article 85 of the Satversme (Constitution) of the Republic of Latvia, Article 16 (1), Article 17 (1) (11) and Article 19.^{2} of the Constitutional Court Law,

on 3, 4 and 10 March 2009, in Riga in an open Court session examined the case

"On Compliance of the Law "On the Treaty of Lisbon Amending the Treaty of European Union and the Treaty Establishing the European

Community" with Article 101 of the Satversme (Constitution) of the Republic of Latvia".

The Constitutional Court has established:

1. On 15 December 2001, at the meeting of the European Council in Laeken, the "Leaken Declaration on the Future of the European Union" (hereinafter – the Leaken Declaration) was adopted. It provided that the European Union (hereinafter – the EU) must become more democratic, transparent and effective. The Leaken Declaration provided for drafting of a Constitution for European citizens, as well as to elaborate a Convention for EU reform preparation. The Convention was finally elaborated, wherein representatives of Latvia participated.

The Treaty establishing a Constitution for Europe (hereinafter – TC) was confirmed on 18 June 2004 in an intergovernmental conference where all 25 Member States of the EU took part, representatives of Latvia included. It was planned to substitute, by means of the TC, several other treaties effective before that time. Representatives of all the Member States signed the TC in Rome, on 29 October 2004.

On 2 June 2005, the Saeima of the Republic of Latvia (hereinafter – the Saeima) adopted the Law "On the Treaty Establishing a Constitution for Europe" by thus adopting and confirming the TC signed in Rome on 29 October 2004, as well as the Final Act and the declaration annexed thereto.

The TC did not come into force because it was rejected at the referendum in France on 29 May 2005 and in the Netherlands on 1 June 2005.

Based on the results of the intergovernmental conference of 18 June 2004 (the TC draft project) and the mandate confirmed by the European Council in 21 and 22 June 2007, the Treaty of Lisbon amending the Treaty on the European Union and the Treaty establishing the European Community (hereinafter – TL) was elaborated (*see: Consolidated texts of the Treaty on the European Union and the Treaty on the Functioning of the European Union. Official Journal C 115, 9 may 2008*). Leaders of the Member States and those of their governments confirmed the TL on 18 – 10 October 2007 in an informal meeting of the European Council in Lisbon and decided that it would be signed on 13 December 2007.

The President and the Prime Minister of the State of Latvia, as well as the Minister of Foreign Affairs together with the leaders of other EU Member States of their governments signed the TL in Lisbon, Portugal, on 13 December 2007.

On 3 April 2008, the Saeima adopted the Law "On Recognizing the Law "On the Treaty Establishing a Constitution for Europe" as Invalid".

On 8 May 2008, the Saeima adopted the Law "On the Treaty of Lisbon Amending the Treaty on the European Union and the Treaty Establishing the European Community" (hereinafter – the Contested Act). It was proclaimed on 28 May 2008. The Contested Act came into force on the next day after proclamation thereof, namely, 29 May 2008.

2. The applicants Edgars Jansons, Raimonds Seņko, Aivars Graikstis, Uldis Vizbulis, Mārīte Teivāne, Kristaps Bergmanis, Raimonds Rutenbergs, Arvīds Kalme, Maija Smila, Māra Pastore, Olafs Brežinskis, Rihards Cicens and Valērija Mihailovska (hereinafter – the Applicants) indicate that the Contested Act breach the basic rights guaranteed by Article 101 of the Satversme of the Republic of Latvia (hereinafter – the Satversme), namely, the rights to participate in the work of the State and of local government according to the procedures provided by law because the TL could have been adopted and confirmed only by a national referendum.

Taking into consideration the principle of unity of the Satversme, it must be admitted that the Contested Act breaches Article 2 and Article 77, as well as the fourth part of Article 68 of the Satversme. Moreover, this breach has lead to violation of the basic rights established in Article 101 of the Satversme. Besides, there exist several other legal bases that provide for the duty of the Saeima to submit the TL to a national referendum.

The principle of sovereignty enshrined in Article 2 of the Satversme is also breached. By referring to Article 20 of the Consolidated Treaty on the European Union (hereinafter – TEU), the Applicants indicate that that the State of Latvia, in the case of necessity, would no more be able to freely decide on the issue regarding eventual withdrawal from the EU. Namely, the withdrawal would depend on the will of other subjects, which Latvia will not be able to control. The absolute majority of votes

provided for in Article 238 of the Consolidated Treaty on the Functioning of the European Union (hereinafter – TFEU) would lead to a situation when the withdrawal could be blocked only by some of the 27 EU Member States. Thus, after coming into force of the TL, Article 2 of the Satversme would become declarative.

Since the Contested Act has, in fact, amended Article 2 of the Satversme, they failed to apply Article 77 of the Satversme without reason. Article 77 of the Satversme refers to a constitution in its material sense. The words "to amend" included therein should not be understood according to their narrow grammatical sense. Article 2 of the Satversme can be amended without introducing any direct changes into its text. Since the Saeima has lodged the national sovereignty to another subject without submitting the issue to a national referendum, Article 2 of the Satversme shall be recognized as non-amended, whilst Article 77 of the Satversme – as breached.

The Applicants hold that, by adopting the Contested Act, the fourth part of Article 68 of the Satversme has been breached. The words "substantial changes" included therein is a notion that must be interpreted from the judicial point of view and applied to the cases when participation in the EU requires, first of all, trends of weakening democracy and, secondly, approximation of the EU to a state entity, and, thirdly, adoption of a new treaty, a constitution for the EU.

Trends of weakening democracy manifest itself through the fact that the TL deviates, regarding voting and decision-making procedures in the Council, from the principle of consensus that is being applied at present. Consequently, other Member States would be authorized to adopt decisions binding on Latvia by ignoring any objections of Latvia and disregarding its interests. Likewise, none of the Member States would have its commissar, which means that equality of the rights of Latvia as a small State will not be ensured within the EU.

When assessing approximation of the EU to a state entity, it is indicated that after adoption of the TL, the EU would be granted all possible authority. It also clearly follows from Article 26 of the TEU that the EU adopts such authority characteristic to a state entity as a common foreign and security policy. Moreover, Item 1 of Article 2 of the TFEU allows the EU to delegate fulfilment of certain functions to the Member States. This, however, is not possible because the EU cannot delegate what does not

pertain to it. Accession of the EU to the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – CPHRFF) should also be taken into consideration because no such rights have been provided for a supranational organization.

The Applicants emphasize that the TL includes about 90 percent of such norms that were included into the TC. Consequently, there is a reason to suppose that, by means of the TL, a completely different EU is being formed, and this Treaty should be regarded as its constitution. Moreover, the TL confers to the EU additional competence and authority regarding its Member States.

When answering the questions set by the Constitutional Court, the Applicants indicate that the TL would become binding on Latvia if a national referendum would be held according to the procedure established in the first part of Article 79 of the Satversme and the result thereof would be positive. On the other hand, in the event if the argumentation provided in the constitutional claim would not be recognized as grounded, a national referendum should be held according to the procedures established in the second part of Article 79 of the Satversme.

The Applicants hold that it has been recognized without reason in the reply of the Saeima that the fourth part of Article 68 of the Satversme provides for an optional national referendum. If the Saeima would have established that the TL provides for substantial changes in the terms for Latvia regarding its membership to the EU, the Saeima would have the duty, rather that the right, to submit the TL to a national referendum. Such duty follows from Article 18 of the Satversme.

The notion "substantial changes in the terms regarding the membership of Latvia in the European Union" introduced in the fourth part of Article 68 of the Satversme is a legal matter. Therefore the Constitutional Court meets no obstacles for examining this notion, even if a half of the members of the Saeima have not established existence of any substantial changes.

It has been indicated in the specifications provided to the application that the first part of Article 101 of the Satversme includes not only the rights of the people to participate in a national referendum whenever it is held but also for the rights to

require holding a national referendum any time when it should be held under the Satversme and other laws.

The TL infringes Article 2 of the Satversme in the terms of its concept and content, which requires, according to the Satversme, a double confirmation. Namely, since the TL amends Article 2 of the Satversme on the merits, the Saeima initially had to adopt a ratification law and then to submit this law to a national referendum. Since the abovementioned law has not been submitted to a national referendum, it has not gained the validity of law.

It is also necessary to take into consideration the fact that Article 77 of the Satversme can be applied in the cases when it is necessary to assess the membership in the EU, as well as substantial terms of the membership. On the other hand, several conditions for delegation of competencies follow from the principle of the sovereignty of people and those of democracy that, i.e. delegation of competencies shall not be restricted by the rights of withdrawal of the Member State; a part of the competencies of several national institutions only shall be delegated; particular competencies only shall be delegated; any delegation of competencies shall be permitted only in the case if it is done for the purpose strengthen democracy.

The rights to withdraw from the EU at present follow from the content and particular character of its fundamental documents, as well as the Vienna Convention on International Rights (hereinafter - the Vienna Convention). However, the TL, unlike the effective regulation, considerably hampers or even excludes any possibility for a Member State to withdraw from the EU. Thus the rights to say "the last word" means the rights of the people to withdraw from the EU immediately, rather than that the people would have to remain two more years in the EU.

Consequently, the objective to strengthen democracy has not been reached. Right on contrary, thus democracy within the EU becomes weaker. A scarcity of democracy is even increased by the procedure for amending the European basic treaty, which permits avoiding national parliaments by thus making them lose control over “gradual loss of certain competencies” by passing it to the EU. In the European Council, Latvia is represented by the State President who is not directly democratically legitimated, which means that his activities may not serve as the basis for amending

the European fundamental treaty. The Council will be authorized to apply the principle of absolute majority of votes when deciding issues in more than 40 domains. This would concentrate the power of large states and weaken the influence of small ones. The rights of one million Europeans to request elaboration of a legal act would neither strengthen democracy because there are no such people as "Europeans".

Even in the case, however, if the Constitutional Court would establish that the Contested Act has gained the validity of law, it was still necessary to hold a national referendum as provided for at least in the fourth part of Article 68 of the Satversme.

The Applicant E. Jansons also indicated at the Court sitting that Article 1 and Article 2 of the Satversme have been recognized the core of the Satversme since 1918. Consequently, other norms of the Satversme, like, accession to another state, shall be interpreted through these articles. Although the Satversme has undergone certain changes in the course of time, its core elements remain unchanged. It is also necessary to interpret the amendments to Article 68 of the Satversme through the core of the Satversme because these norms have been established exactly for the cases as at present, namely, "ratification of the Treaty of Lisbon". Consequently, the fourth part of Article 68 of the Satversme must not be interpreted as an exclusive prerogative of the Saeima. It is also necessary to take into consideration the fact that the society has not been appropriately informed on the issues regarding the TL.

Substantial changes of the TL are irreversible export of competencies of Latvia, these areas being not only cultural values but also strategically relevant areas in the context of the right to self-determination of the State. These areas include foreign policy, security policy, and common judicial system.

B. Butulis, the authorized representative of O. Beržinskis indicated that the TL must not be assessed separately from other EU documents, namely, accession of Latvia to the EU and the TL should be assessed in conjunction with one another. When entering the EU, there existed two main theories on sovereignty. One of the theories admitted that by acceding to the EU sovereignty of people are being infringed, whilst the other theory did not recognize any such infringement. For Latvia to be able to accede to the EU, it was declared, due to certain political considerations, that sovereignty of people is not being infringed. Therefore, when adopting the Contested

Act, it has not been verified whether adoption thereof would breach Article 2 and Article 77 of the Satversme.

Understanding of sovereignty has changed in the course of time; however the notion of sovereignty can be regarded as a legal term with vague, though definable limits. In the context of the above mentioned notion, delegation of national competencies to a supranational organization is of the greatest importance. Such delegation of competencies should be carried out without infringing national sovereignty.

As to the national sovereignty, the rights of the people to withdraw from the EU or any other supranational organization, i.e. the rights to retrieve the competencies once delegated are important. It is also necessary to take into consideration the extent and limits of the competencies delegated.

When assessing delegation of competencies to the EU, it is necessary to take into consideration the second part of Article 68 of the Satversme, which provides that the only purpose for carrying out delegation of State institution competencies to a supranational organization is the purpose of strengthening democracy. On the other hand, the TL would only increase the scarcity of democracy, whilst the influence of Latvia within the Council would decrease. Therefore there would be more and more questions decided without participation of Latvia, which means that it decisions would be made that are not directly legitimated.

A sworn advocate L. Cakare, the authorized representative of U. Vizbulis has indicated that the TL causes two fundamental breaches of the rule of law, namely, loss of sovereignty and decrease in protection of the basic rights. The Saeima, when adopting a law of such importance, has acted contrary to the norms of the Satversme and jeopardized sovereignty of the people. The complex procedure established in Article 50 of the TEU, according to which a Member State can withdraw from the EU, has disabled the citizens of the State to decide on the status of their own State. These rights are being conferred to other persons and institutions, which thus undermines considerably sovereignty of the people. The sovereign power of the citizens of the Republic of Latvia is being delegated from one legal person to another one that is not

related with the Republic of Latvia. It is not established in the norm on democracy and sovereignty included into the Satversme.

When changing the notion of sovereignty of people, Article 2 of the Satversme has been amended. On the other hand, Article 77 of the Satversme is related with the constitution in its material sense. Without introducing direct amendments to Article 2 of the Satversme but delegating sovereignty of the people to other legal persons, this Article in fact is being amended.

Delegation of competencies to international organization without submitting the issue to a national referendum is possible unless sovereignty of the people is not forfeited. The Saeima, however, has not assessed the importance of the norms of the TL. The amendments of such scale introduced by the TL manifest itself through trends of weakening of democracy. Planned changes in the procedure of voting that would come into force within the Council in 2014 and approximate the EU to a state entity serve as a proof of this fact. Weakening of democracy also manifests itself through the fact that the Council is not an institution elected by the inhabitants of Europe.

The EU, in fact, already has a peculiar legal status which is being constantly improved. Consequently, it can be concluded that such improvement and changes approximate the EU to a state entity because the EU, under the TL, takes over such domains where the authority of the EU and that of the Member States compete. Moreover, it gains certain rights to retain authority in the fields overtaken. It can be concluded form the aforesaid that, after coming into force of the TL, the EU would fulfil the competencies of all Member States.

A sworn advocate D. Skačkovs, the authorized representative of M. Teivāne indicated that according to Article 251 of the TFEU a representative directly elected by the people, in fact, is denied the possibility to play any role in the European Parliament. Also, "relations with the Council and the European Parliament resemble the relations between the State Council and the State council of the tsarist Russia rather than in a modern democratic state, and this is unique nowadays". Since all the people has the right to freely decide their destiny and determine its political status without any external influence, the European Council is not entitled to deny the rights to the people of Latvia to freely withdraw from the EU.

When providing answers to the questions set by the Constitutional Court and a representative of the Saeima, it was indicated that the procedure, according to which a Member State can withdraw from the EU, is unclear, because Article 50 of the TEU does not clearly establish the way, according to which the Republic of Latvia, in the case of withdrawal from the EU, would retrieve the competencies delegated to the EU. Moreover, under the second part of Article 50 of the TEU, the Republic of Latvia shall not participate in the decision-taking process regarding withdrawal procedure.

In the course of time, the EU is approximated to a state entity, i.e. it is being federalized. In the result of this, it could lead to weakening of democracy in the EU. New conferred exclusive competencies that cause the greatest concerns regarding the breach of Article 2 of the Satversme are security, foreign affairs, common judicial system and common trade policy. After coming into force the Member States would, in fact, lose the rights to express their own point of view regarding foreign policy. Likewise, the three EU pillars would be destroyed, whilst security would become an ordinary competence of the EU.

Withdrawal procedure of the Republic of Latvia form the EU is established in the third part of Article 68 of the Satversme, namely, withdrawal shall be implemented by means of a national referendum. On the other hand, under the TL, it would be necessary to agree on the terms of withdrawal or wait two more years. Moreover, the State would not participate in the negotiations regarding the withdrawal.

3. The Saeima, the institution that issued the Contested Act has indicated in its reply that the Contested Act does not contradict Article 101 of the Satversme.

Article 101 of the Satversme does not provide for the cases when a national referendum should be held, neither the persons that would be entitled to participate in a national referendum. These cases are established in other norms of the Satversme, whilst Article 80 of the Satversme provides for the rights of citizens to participate in a national referendum. Article 73 of the Satversme establishes the cases when issues may not be submitted to a national referendum, whilst Article 68 of the Satversme provides for the cases when and the terms under which issues regarding participation in the EU shall be submitted to a national referendum. Consequently, it cannot be

regarded that Article 101 of the Satversme puts forth requirements regarding the cases when an issue should be submitted to a national referendum. An answer to the question whether to hold a national referendum follows from interpretation of the fourth part of Article 68 of the Satversme and presence or absence of the respective preconditions.

In order to conclude whether the Contested Act complies with the first part of Article 101 of the Satversme, it is necessary to establish whether this Law has been adopted without breaching the requirements of the fourth part of Article 68 of the Satversme. It can be clearly concluded form the grammatical construction of the above mentioned norm that in the case if at least a half of the members of the Saeima have not demanded a national referendum regarding introducing changes into the terms of EU membership, a national referendum shall not be held.

The Saeima emphasizes: if the constitutional legislator would have intended to provide for an obligatory national referendum in the case if substantial changes are being introduced into the terms of EU membership by means of any treaty, then the fourth part of Article 68 of the Satversme would have had a respective wording without providing for the votes (signatures) of 50 members' of the Saeima in favour of holding a national referendum. The Saeima also indicates that the fourth part of Article 68 of the Satversme confers the Saeima the rights to initiate a national referendum not as a national authority but as a certain number of the members of the Saeima representing the people. Likewise, the members of the Saeima, being representatives of the people, are entitled to exercise these rights on their own discretion if they consider it necessary and compliant with the interests of the Latvian people. Consequently, it can be concluded that this is the competence of 50 members of the Saeima only to decide whether factual and legal circumstances would be recognized as substantial changes in the terms of the membership of the Republic of Latvia in the EU, which would allow the Saeima to decide on holding a national referendum.

Moreover, the Saeima indicates that the change of certain terms of the EU membership cannot be regarded as substantial changes. Broadening of the EU competence regarding a certain issue does not imply “substantial changes in the terms of the membership”. This issue shall be decided upon based on considerations on the

political usefulness. A national referendum provided for in the fourth part of Article 68 of the Satversme must be held by the Saeima only if a draft decision sighed by 50 members of the Saeima is submitted. Whilst there is no such draft decision, the Saeima as a national authority is not entitled to adopt a decision, by the majority of votes, regarding holding of a national referendum regarding substantial changes in the terms of EU membership.

In the reply, the Saeima informs that Latvian membership in the EU, as well as introduction of any changes in the terms of EU membership or EU institutional structure or competence shall be implemented on the basis of international legal instruments, i.e. international treaties, and these treaties are concluded by the EU Member States. Consequently, the respective issue shall be examined in the context of Article 68 of the Satversme.

After the amendments of 8 May 2003, Article 68 of the Satversme provide for two kinds of procedures, according to which the Saeima shall ratify international agreements. Under the first part of Article 68 of the Satversme, as well as taking into consideration Article 23 and Article 24 of the Satversme, international agreements, which settle matters that may be decided by the legislative process, shall require ratification by the Saeima sitting, in which at least a half of the members of the Saeima participate with the absolute majority of votes of the members of the Saeima present. On the other hand, in the cases when partial delegation of competencies of the national institutions to international institutions is provided when entering into international agreements, which settle matters that may be decided by the legislative process, with the purpose of strengthening democracy, then the second part of Article 68 of the Satversme shall be applied. Namely, the Saeima may ratify international agreements in which a part of State institution competencies are delegated to international institutions in sittings in which at least two-thirds of the members of the Saeima participate, and a two-thirds majority vote of the members present is necessary for ratification.

In addition to both procedures included in Article 68 of the Satversme, such cases when the procedure established by article 77 of the Satversme should be applied can exist, namely, if mandatory amendments to the first, second, third, fourth, sixth or seventy-seventh Article of the Satversme would follow from ratification of

international agreements. According to Article 77 of the Satversme, such amendments would come into force only if they would be ratified by a national referendum and at least a half of the citizens of Latvia who have the right to vote would have participated therein.

Any international treaty, which settles matters that may be decided by the legislative process, is being assessed by the Saeima before ratification thereof with a view to establish, according to which procedure it should ratified in order to ensure that Latvia would undertake the international law provided for in the particular treaty in accordance with the procedure established in the Satversme. The leading public administration institution in the field of foreign affairs is the Ministry of Foreign Affairs. Under the normative acts, it provides opinions on lawfulness of international treaties so that the Cabinet of Ministers could decide on submitting thereof to the Saeima.

In addition to this, the Saeima applied, after having received a draft law regarding ratification of an international treaty, the procedure for ratification thereof. Likewise, the Saeima assesses usefulness and conformity of a concluded international treaty with the interests of the State of Latvia. Such rights are enshrined in Article 68 of the Satversme.

The Saeima emphasizes that the first and the second part of Article 68, as well as Article 77 of the Satversme provide for automatic procedures. Namely, if preconditions for applying certain procedures provided for in these norms, then the issues must be decided according to the procedures established in these articles of the Satversme. Likewise, in these cases it is indispensible to verify the procedure, according to which each particular issue must be decided upon. On the other hand, the fourth part of Article 68 of the Satversme provides for an optional procedure, namely, application of this procedure depends on the fact whether the subject provided for in the fourth part of Article 68 of the Satversme requires application thereof.

The Saeima would have had the duty to assess the question whether the TL provides for "substantial changes in the terms of Latvia's membership in the EU" only in the case if a request of at least a half of the members of the Saeima to submit the issue to a national referendum as provided for in the fourth part of Article 68 of the

Satversme would have been received. It is provided for by the fourth pat of Section 11 of the Law "On National Referendums and Initiation of Legislation", namely, "the Saeima shall propose holding a national referendum on substantial changes in the terms regarding Latvia's membership in the European Union if so requested by at least one-half of the members of the Saeima". In this case, the Saeima should make certain not only that one-half of the members of the Saeima have requested holding a national referendum, but also that the international treaty under consideration does provide for substantial changes in the terms of Latvia's membership in the EU.

It is also admitted that, under the wording of the fourth part of Article 68 of the Satversme, establishing of "substantial changes in the terms of the membership of Latvia in the EU" is rather the question of political usefulness. Although it cannot be denied that this notion has a certain legal content that affects application of the fourth part of Article 68 of the Satversme.

The Saeima also expresses its doubt regarding the fact whether any practical infringement of the rights of the Applicants established in the Satversme has occurred at present. First of all, the TL, for the purpose of international law, has not come into effect yet and at present does not cause any legal consequences to the Applicants. Secondly, even in the case if the TL would have came into effect, no automatic subjective public rights to participate in a national referendum follow from the fourth part of Article 68 and Article 72 of the Satversme. Legal construction of both mentioned norms is based on the fact that the criteria for initiating the process is, respective, request of one or several officials, without which no subjective public rights emerge. Therefore the Saeima also asks to assess whether it is useful to continue proceedings in this case.

When assessing what has been indicated by the Applicants, the representative of the Saeima admits that the majority of argumentation provided in the form of oral explanation applies to the structure of the EU and authority of the European Community created already in 1957, rather than to deficiencies of the TL and possible restrictions of rights. In fact, the Applicants contest membership of the Republic of Latvia in the European Union.

It is essential that at the time when the Republic of Latvia joined the European Union, the TC has already been drafted and submitted to the Member States for discussion. Consequently, assessment of the lawfulness of ratification of the TL is affected by the fact that the Saeima had already ratified the TC, and the ratification law of the TC has not been disputed. In fact, possible infringement of the rights of the Applicants could have been caused by the ratification of the TC in 2005.

When assessing the ratification of the TL, it is wrong to assess solely adoption of the Contested Act and only in the context of the work done by the legislator without assessing the actions carried out by the Cabinet of Ministers and the Ministries.

The representative of the Saeima indicated that the Applicants justify reduction of sovereignty by the changes introduced into the rights to withdraw from the EU, as well as by substantial changes in the terms of membership in the EU. Nowadays, understanding of sovereignty has changed considerably, whilst initial understanding thereof "is beneath criticism". An essential parameter was introduced into the definition of sovereignty by the membership in the EU, as well as international regal relations prevailing in the modern world. Whilst the Member States preserve the rights to terminate this restrictive independence by withdrawing from the EU, they do not lose their sovereignty. Consequently, "sovereignty" nowadays, in fact, nowadays also includes such notion as "the rights to the last word". Article 50 of the TEU clearly provides that each Member State can decide on withdrawing from the EU in accordance with their constitutional claims. Taking into consideration legal, political, economic, and social bonds that have been formed between the Republic of Latvia and the EU, the term of two years established in Article 50 of the TEU is proportional. Fulfilment of liabilities towards the EU and its institutions cannot be regarded as any restriction of sovereignty. Consequently, sovereignty of people is not restricted but, on the contrary, exercised.

The European Commission does not represent Latvia as a Member State. It implements any of the common EU policies. The Commissar neither represents the Republic of Latvia. The Commissar must be neutral in its work because he is responsible for "a common range of issues" and does not put forth the identity of the State he or she pertains to as the priority of his or her activities.

By means of the TL, the number of the members of the European Parliament is reduced from 785 to 750. However, Latvia would still have nine representatives under the effective regulation.

To deny decrease of democracy, the Saeima indicates that the civil initiative introduced by the TL that allows one million of the citizens of the EU Member States to initiate adoption of legislative acts is a considerable novelty.

When providing answers to the questions set at the Court sitting, the representative of the Saeima indicated that the Republic of Latvia would not delegate, by means of the TL, any such competence to the EU that would amend the content of Article 2 of the Satversme. Consequently, sovereignty of the State is not being restricted. For instance, in the field of foreign policy and security policy the EU would still have no rights to express a viewpoint that would contradict the one of the Republic of Latvia. Likewise, formation of the European Public Prosecutor's Office would not change Article 2 of the Satversme, whilst the Public Prosecutor's Office would strictly remain the issue of the competence of each Member State. After coming into force of the TL, the Constitutional Court would still be entitled to assess issues related to the extent and limits of sovereignty of the people. On the other hand, as to issues regarding the EU treaties, this shall fall into the jurisdiction of the European Court of Justice.

The responsibility of the Saeima before adoption of each legal norm is assessment of its compliance with Article 1 and Article 2 of the Satversme. Compliance with the above mentioned Articles is being assessed not only when the members of the Saeima decide on confirmation of a certain draft law but also when the respective draft law is being elaborated and discussed, for instance, in the competent Ministry, the Cabinet of Ministers, or in the respective committee of the Saeima. If, during elaboration of the draft law, non-compliance thereof with Article 1 and Article 2 of the Saeima has not been established, there is no reason to apply Article 77 of the Satversme.

4. Invited party, the Cabinet of Ministers, holds that Article 101 of the Satversme does not include "the right to a national referendum". This norm provides

only for the rights to participate in a national referendum. Namely, if a national referendum is held in the cases provided for in the Satversme, then Article 101 protects the rights of the citizens of Latvia to participate therein. The purpose of the constitutional legislator, taking into consideration Article 101 of the Satversme, was not to confer such rights to participate in the work of the State to the citizens of Latvia that are not provided in the Satversme and other laws. Since Article 101 of the Satversme does not provide for the rights to request a national referendum in addition to the procedure established in the Satversme, the Cabinet of Ministers holds that no infringement of the basic rights established in Article 101 of the Satversme has been caused to the Applicants.

When assessing whether the TL could infringe sovereignty of Latvia enshrined in Article 2 of the Satversme and whether the Contested Act complies with Article 2 of the Satversme, the Cabinet of Ministers indicates that sovereignty is one of the most essential and complex constitutional general conceptions. By referring to Kārlis Dišlers, it indicates that the notion of sovereignty includes self-dependence of the State regarding other States and independence of the State from any other State. The people should be regarded as the source of power, and sovereignty of the people means the same as sovereignty of the State. Consequently, the notion of sovereignty emphasizes that those people who have formed their State are politically and judicially independent from other States.

Sovereignty of the people in the traditional meaning is exclusive rights to govern the State. Nowadays, however, it is necessary to take into consideration the fact that all States are politically and economically mutually "dependant". Consequently, the content of the notion of sovereignty included in Article 2 of the Satversme since adoption of it in 1922 has changed. International treaties and increasing mutual dependence restricts the sovereignty rights of all States. In these cases, one can speak about delegation of competence to international organizations. Consequently, understanding of sovereignty as an absolute and unrestricted power has changed. Nowadays absolute sovereignty of a state would at the same time mean isolation of the state.

By referring to the materials and reports of the work group elaborating the amendments to the Constitution, it is being indicated that, when Latvia entered the EU, sovereignty of our State has not been infringed. Joining the European Union does modify the notion of sovereignty included in Article 2 of the Satversme, though it in no case means loss of sovereignty.

The argument included into the constitutional claim that the TL restricts the rights of the Member States to withdraw from the EU is neither grounded. Before coming into force of the TL, the procedure of withdrawal had to be assessed under Article 56 of the Vienna Convention. Greenland has applied this procedure. On the other hand, Article 50 of the TEU provides that the Member States are entitled to unilaterally withdraw from the EU. Although the rights mentioned above cannot be exercised immediately, according to the TL the Member State willing to withdraw from the EU would not need consent of other Member States or EU institutions. The TL introduces, into the EU law, legal solution for withdrawal procedure of a Member State and provides for a detailed procedure of implementation of this procedure. The term of two years established in Article 50 of the TEU shall be regarded as short enough taking into consideration the number of EU Member States, the range of competencies of this organization and multilateral legal relations formed among the Member State willing to withdraw from the EU and other Member States.

Consequently, the Cabinet of Ministers concludes that the TL does not restrict and deprive Latvia of the rights "to say the last word". On contrary, it provides and strengthens these rights. The regulation of Article 50 of the TEU strengthens sovereignty of EU Member States, Latvia included. Therefore the argument of the Applicants that the TL could infringe sovereignty of Latvia established in Article 2 of the Satversme is ungrounded. Consequently, the Contested Act does not contradict Article 2 of the Satversme.

When assessing application of Article 68 of the Satversme in the case under review, the Cabinet of Ministers agrees to the opinion of the Saeima that it clearly follows from the fourth part of Article 68 of the Satversme that in the case if at least one-half of the members of the Saeima have not requested holding a national referendum regarding changes in the terms of Latvia's membership in the EU, no

referendum must be held. Consequently, the abovementioned norm provides for a "non-obligatory" referendum. Namely, the norm leaves it to the members of the Saeima to decide upon the issue. Moreover, they have exclusive rights to assess whether changes in the terms of Latvia's membership in the EU can be regarded as "substantial". Only in the case if at least 50 members of the Saeima hold that changes are substantial and require holding a national referendum, then such referendum must be held. On the other hand, the fourth part of Article 68 of the Satversme does not provide for such rights to other persons.

The Cabinet of Ministers holds that the amendments to the Satversme that provide for the present wording of Article 68 of the Satversme have been introduced with a view to ensure that a national referendum would not be held regarding any changes in the basic treaties but only regarding the most substantial issues of European integration. Any amendments to the EU fundamental treaties are essential both legally and politically, however not all of these amendments to these fundamental treaties can be regarded as "substantial" for the purpose of the fourth part of Article 68 of the Satversme. "Substantial" changes are such changes to the EU fundamental treaties, in the result of which the EU constitutional structure would be changed at the extent when the doubt would arise whether the Latvian people would support Latvia's membership in the EU according to a new integration form.

The TL attaches importance to the European Parliament and national parliaments by making decision-making process more effective in the Council, applying more broadly the procedure of qualified majority of votes and providing changes to the institutional system of the EU. Consequently, the objective of the TL is not to form such constitutional structure of integration form of the EU that would be based on other different principles. The main objective of the TL is to ensure successful functioning of the enlarged EU, as well as further integration of the EU Member States taking into consideration the various levels of mutual integration and economic development of the EU Member States.

The Cabinet of Ministers admits that the text of the TL, though it is not identical with the text of the TC, still resembles it. Although the TL is important for

Latvia, it shall not be regarded as that substantial for the purpose of the fourth part of Article 68 of the Satversme to hold a national referendum.

The statement included in the constitutional claim that the TL implies “a trend of weakening democracy” is neither grounded. On contrary, one of the objectives of the TL is to reduce "scarcity of democracy" in the European Union. The Cabinet of Ministers indicates that in the EU the notion "scarcity of democracy" means "prevalence of executive power”, whilst the TL sets forth requirements of the same scope to the European Parliament when adopting EU legislative acts as those for the council in about 40 new domains. Likewise, after coming into force of the TC, parliaments of the Member States, the Saeima included, would get involved in the EU decision-making process already at the stage of elaboration of the decisions. Moreover, the fourth part of Article 11 of the TEU should be particularly emphasized in this respect.

Likewise, the opinion of the Applicants that decisions in the Council are mainly being adopted according to the principle of consensus is ungrounded. The EU fundamental treaties define the cases when the Council needs simple majority of votes, qualified majority of votes or unanimity to adopt a decision.

The Cabinet of Ministers holds that it is necessary to ensure balance between the ability of the Council to effectively work and observance of the interests of each particular Member State. It is not possible to adopt decisions in the Union of 27 members unilaterally. Although the area of regulation of the TL broadens those fields, in which it would be possible to apply the procedure of qualified majority of votes by permitting a situation when a decision that is disadvantageous for one or another Member State is adopted, such restriction of interests of a certain Member State can be justified with the aim to attain efficient decision-making process in the Council and adequate functioning of the EU, and collaboration of the EU Member States.

Democracy in the EU is neither weakened by the provision of the TL that each Member State shall no more have a constantly working Commissar representing the State. Already the Protocol attached to the Treaty of Nice provided that the number of Commissars in the enlarged union of 27 members would be less that the number of the Member States.

The argument included in the constitutional claim that the TL approximates the EU to a state entity shall also be regarded as ungrounded. By delegating certain competencies to the EU, the Member States do not lose traditional constitutive elements of statehood, i.e. permanent residents, certain territory, government, as well as the ability to enter into international relations with other states. The EU does not provide for "European people" in the social sense, these people having a common language, identity and culture. The structure of the inhabitants of the EU is characterized by a great diversity. EU citizenship is neither autonomous, it does not substitute citizenship of the Member States. EU citizens are all citizens of the Member States, and the Member States are entitled to establish their own procedures for naturalization. Likewise, the EU does not have its own territory, it neither has the rights to change the territories of its Member States, and therefore the borders of the Member States continue existing legally and factually.

The Cabinet of Ministers emphasizes that no comprehensive and exhaustive enumeration of the competencies of the EU and its Members States and mutual division thereof is provided in the EU fundamental treaties. But still, it follows and can be concluded form the EU primary and secondary legal acts, as well as from the case-law of the Court of Justice.

On the other hand, the TL clearly defines the competencies of the EU and establishes the domains of exclusive EU competence and those of joint competencies of the EU and its Member States, as well as the domains wherein the EU can provide its support. The TL provides that the EU shall implement only those competencies that have been conferred thereto by the treaty. It does not provide for any substantial changes in the allocation of competencies between the EU and the Member States in comparison with the present situation. Consequently, the EU is not a state, and the TL does not provide for such changes, in the result of which the EU would become a state.

The Cabinet of Ministers agrees to what has been indicated in the constitutional claim that the CPHRFF does not provide that supranational organizations could adhere thereto. Therefore joining of the EU to the CPHRFF would be possible only after coming into force of respective amendments.

Inese Nikuļceva, a representative of the Cabinet of Ministers indicated at the Court sitting that the rights to participate in the work of the State enshrined in Article 101 of the Satversme include only the rights to participate in national referendums without any ungrounded restrictions, rather than the rights to request holding of a national referendum. There are six ways of national referendums provided in the Satversme. None of these kinds of referendums provide that a citizen could request holding a national referendum. Consequently, the Cabinet of Ministers holds that the constitutional rights of the Applicants have not been infringed.

When assessing Article 2 of the Satversme, it is necessary to take into consideration the fact that joining the EU does not infringe sovereignty of the people, and delegation of competencies to supranational institutions can be associated to sovereignty. It is confirmed by the justification provided by the work group for the Amendments of Article 68 and Article 79 of the Satversme and the minutes of the meetings of the work group filed by the representative of the Saeima.

In Latvia, the notion of sovereignty is at large extent related with the rights of "the last word", and this is the TL in particular that *expressis verbis* provides for such rights in the EU law. Moreover, the so-called theory of competence authority should also be taken into consideration. Namely, insofar as the Member States retain the authority to determine EU competencies, sovereignty cannot be lost. The TL does not change anything as to this aspect.

One cannot agree with the arguments of the Applicants that after coming into force of the TL the EU would take over all the competencies, whilst the Member States would have no more competencies. Even at present competencies are distributed within the EU and the Member States, and this distribution depends on the primary and secondary EU legal acts and the case-law of the European Court of Justice. The TL provides a list of exclusive competencies, shared competencies and complimentary competencies, as well as it provides that the Member States shall manage all other competencies. The TL does not introduce any substantial changes into the distribution of competencies.

The representative of the Cabinet of Ministers holds: since the TL does not amend Article 2 of the Satversme as to its wording and content, no national referendum had to be held, as provided for in Article 77 of the Satversme.

The fourth part of Article 68 of the Satversme provides for the exclusive rights of the members of the Saeima to submit the issue regarding changes in the terms of Latvia's membership in the EU to a national referendum. It can be seen in the transcripts of the Saeima meetings that the members of the Saeima have discussed this issue.

The representative of the Cabinet of Ministers drew attention to what has been established in the fourth part of Article 68 of the Satversme that the issues regarding substantial changes shall be submitted to a national referendum. The constitutional structure of the EU has not changed because the purpose of the TL is to ameliorate and rationalize the work of the enlarged EU rather than to create a new different form of European integration. On 20 September 2003, when a national referendum on Latvia's membership in the EU was held, discussions on its constitutional future took place and the citizens could anticipate the changes.

The representative of the Cabinet of Ministers emphasized that the Contested Act, whereby the TL was ratified, has been adopted in accordance with the second part of Article 68 of the Satversme. The TL strengthens democracy because one of its purposes is to reduce the so-called scarcity of democracy in the EU. It is proved by the fact that the significance of the European Parliament has increased, national parliaments are being involved in EU decision-taking process, and the rights to initiate adoption of EU legislative acts by one million EU citizens are provided. As to the voting procedure, it does not provide for more favourable conditions for small or large Member States within the Council. And the opinion that the influence of small Member States would be reduced is neither grounded.

When providing answers to the questions set at the Court sitting the representative of the Cabinet of Ministers indicated: it follows from the transcripts of the Saeima meetings that the members of the Saeima have been informed upon the fact that, after ratifying the TL, the fourth part of Article 68 of the Satversme could have been infringed. "Since one of the members of the Saeima has drawn attention to this

fact, it is clear that all members of the Saeima have heard and considered this issue and they have discussed whether to submit or not the issue to a national referendum." If the members of the Saeima would have considered that the content of Article 2 of the Satversme is being amended by adopting the Contested Act, then they would not be allowed to adopt this law.

The TL was ratified in a Saeima meeting where at least two-thirds of the members of the Saeima participated, the decision being adopted by at least two-thirds of the majority of the Saeima members. It also has to be emphasized, however, that for the purpose of the Constitutional Court Law "this is a law under consideration since the Constitutional Court shall examine cases on compliance of laws with the Satversme".

5. Invited party – the Ombudsman of the Republic of Latvia (hereinafter – the ombudsman) – admits that Article 101 of the Satversme provides for essential rights that serve as a guarantee for ensuring legitimacy of a democratic state regime. These rights, however, are not absolute because Article 101 of the Satversme does not provide for the condition "according to the proceedings established by law". Consequently, the Satversme provides that the way of exercising these rights shall be established by law, and it is necessary to interpret this condition taking into account the restriction provided for in laws.

The Ombudsman emphasizes that the rights to participate in a national referendum are one of the rights that follow from the first part of Article 101 of the Satversme. Since the procedures for dealing with the issues related with Latvia's membership in the EU are regulated by Article 68 of the Satversme, the meaning of this article in the case under consideration must be assessed. Since the Satversme provides for a condition that regulates activities of the Saeima in such situation, the provisions of Article 68 of the Satversme shall be applied. Wording and each phrase of the Satversme are well-considered provided that sometimes articles of the Satversme are being widely interpreted. On the other hand, Article 77 of the Satversme specifies the cases when a national referendum must be held even if it is not required by a half of the members of the Saeima.

The second part of Article 50 of the TEU provides that a Member State willing to withdraw from the EU must agree with the European Council and conclude an agreement on the withdrawal. It clearly follows from what has been established in the second part of this Article that if a Member State cannot come to terms regarding an agreement on the withdrawal, it shall automatically discontinue its membership in the EU within two years. Hence the State does not forfeit the rights "to the last word" and can freely withdraw from the EU. The State that is a Member State of the EU has undertaken different liabilities; therefore it is clear that in the case if the Member State wants to withdraw from the EU, the EU conducts negotiations with the State and concludes an agreement to regulate further relations with this State, as well as the procedure, according to which former relations would be terminated.

Taking into consideration the aforesaid, the Ombudsman holds that the TL does not amend Article 2 of the Satversme and therefore Article 77 of the Satversme shall not be applied because sovereignty of the State is not affected by the procedure of withdrawal.

As to the relevance of the changes introduced by the TL, it is necessary to take into consideration the fact that in the case under review it shall be decided by the Saeima. Therefore it is not useful to analyse what could be regarded as substantial changes because, although general characteristics could be applied to this notion, the opinion of each member of the Saeima can differ. This falls solely within the competence of the members of the Saeima to decide on the relevance of the changes, as well as on possible organization of a national referendum on the particular issue.

The opinion of the Applicants that the fourth part of Article 68 of the Satversme should be interpreted in such a way that the members of the Saeima should initiate a national referendum in the case if the changes in the terms of Latvia's membership in the EU are substantial is ungrounded. If the constitutional legislator would have wanted to delegate such responsibility to the Saeima, then it would be included in the above mentioned item of the Article. The legislator had no intention to establish mandatory duty to the Saeima to initiate a national referendum in the case if changes in the terms of Latvia's membership in the EU are substantial. The aforementioned is also confirmed by the fact that the third part of Article 68 of the Satversme provides

for a situation when the Saeima has the duty to initiate a national referendum. This proves that the constitutional legislator has deliberately provided only for the rights, not the duty of the Saeima to decide whether to initiate a national referendum in the case when substantial changes are made to the terms of Latvia's participation in the EU.

Līga Lauceniece, the representative of the Ombudsman has indicated that the rights provided for in Article 101 of the Satversme serve as a guarantee for ensuring legitimacy of the democratic state regime. It is also necessary to be emphasized, however, that these rights are not absolute, namely, the way of exercising the rights established in this Article shall be determined by law.

On the other hand, the procedures for dealing with the issues regarding Latvia's membership in the EU are provided for in Article 68 of the Satversme, which means that the importance of this Article in the case under review shall be assessed. Unlike what has been indicated by the Applicants, the fourth part of Article 68 of the Satversme shall be interpreted in such a way that it provides the rights rather than a duty to the Saeima to initiate a national referendum if changes to the terms of Latvia's participation in the EU are substantial.

When assessing Article 50 of the TEU, it is necessary to admit the term of two years established therein is proportionate and one cannot think of a situation when the Republic of Latvia "could make up its mind regarding withdrawal from the EU and leave the Union".

Taking into consideration the aforesaid, it can be concluded that the Contested Act complies with the Satversme, and the basic rights established in Article 101 of the Satversme are not infringed.

6. Invited person – dr.iur. Aivars Endziņš, a professor at the Department of Public Law of the School of Business Administration "Turība" indicated that sovereignty cannot be restricted, namely, "sovereignty either exists or not". Unlike, for example, the Federal Republic of Germany, the Republic of Latvia has consequently followed another way, namely, it has provided that sovereignty exists and it is

associated with the right to the last word that is enshrined in the second part of Article 68 of the Satversme. The TC has not provided for any such regulation regarding withdrawal from the EU, whilst the TL does provide for it. Possible withdrawal from the EU could not be implemented immediately because it would be necessary to solve many different legal issues.

If at least 50 members of the Saeima would consider that changes in the terms are substantial, then the respective issue should be submitted to a national referendum.

The procedure of adoption of a law provided for in the second part of Article 68 of the Satversme resembles the procedure of adoption of the norms of the Satversme. Consequently, these laws, in fact, are laws of constitutional rank as to their characteristic features, although no such hierarchy of laws exist in Latvia.

There are no considerable differences between the TC and the TL, which means that the basic rights enshrined in Article 101 of the Satversme are not being infringed by ratifying the TL.

When providing answers to the questions set at the Court sitting, A. Endziņš indicated that the fourth part of Article 68 of the Satversme provides for the rights rather than the duty of the members of the Saeima to submit an issue regarding substantial changes in the terms of Latvia's membership in the EU to a national referendum. If the Saeima would, by means of a law, accept substantial amendments that would infringe sovereignty of the State then such law could be contested on one-tenth of the persons having the right to vote by submitting a respective draft law.

It is impossible abstractedly distinguish between substantial amendments mentioned in the fourth part of Article 68 of the Satversme from those of Article 2 of the Satversme. It would be possible to speak of amendments of Article 2 of the Satversme if sovereignty of people of independence of the State would be infringed. The requirement of a request of at least 50 members of the Saeima to submit an issue regarding substantial changes to a national referendum has been established with a view not to permit holding a national referendum due to populist considerations. A national referendum would neither be permissible, for instance, regarding adoption of a new EU regulation or directive.

The assessment regarding the level of integration into the EU that the Republic of Latvia should attain in order regard the changes in the terms of membership as substantial depend on the opinion of the members of the Saeima and the government. Another issue is whether the representatives of the Republic of Latvia working in EU institutions are able to defend the position that is principally important for the State.

When assessing the decision-making procedure within the EU, A. Endziņš emphasizes that the voting procedure established in the TL shall not be regarded as any restriction of democracy. The existence of veto rights, in fact, would hamper development because in such a case each Member State would try to solve any issue in its favour basing on its own economic and political criteria.

7. Invited person - Mārtiņš Mits, the Prorector of the Riga Graduate School of Law, doctoral student in Lund University, informed the Court that the in draft project of Chapter 8 of the Satversme, which was elaborated already in 1996, the wording of Article 101 of the Satversme was planned in such a way that it would confer the rights to each citizen to participate in State administration. This notion is directly linked with the wording of Article 21 of the Universal Declaration of Human Rights. On the other hand, the elaboration commission of Chapter 8 of the Satversme has introduced the notion "the right to participate in the work of the State and local government". This notion is directly related with Item “a” of Article 25 of the International Covenant on Civil and Political Rights. Based on the commentaries of the abovementioned Covenant and the transcripts of the Saeima meetings, M. Mits concludes that participation in a national referendum falls into the scope of Article 101 of the Satversme as one of the forms, though not the decisive one, of implementing participation in the work of the State.

When assessing whether, in the case under review, it is possible to speak of the rights to a national referendum, it is necessary to take into consideration Article 25 of the International Covenant on Civil and Political Rights. The abovementioned norm provides for separate rights of a person to participate in the processes that ensure the administration of the State. In the case under review, Article 101 of the Satversme

shall be assessed in conjunction with other articles, namely, the fourth part of Article 68 of the Satversme and Article 2 of the Satversme.

Applying the method of grammatical and historical interpretation, it is possible to conclude that the fourth part of Article 68 of the Satversme ensures the rights of the members of the Saeima rather than their duty to submit the respective issue to a national referendum. In the frameworks of Article 101 of the Satversme, the rights to a national referendum would be created if, in the frameworks of the procedures established in the fourth part of Article 68 of the Satversme, a national referendum would be required by 50 members of the Saeima. In the case under review, no such request has been submitted and the issue was not submitted to a national referendum. There is no reason to consider, however that the fourth part of Article 68 of the Satversme would obligate the members of the Saeima to do so.

The structure of the fourth part of Article 68 of the Satversme, however, can cause serious problems in the case if in the result of political decision no consent of the people regarding legitimacy has been received in relation to the issues where the consent is necessary. It is important to keep in mind that, along with the procedure provided for in the fourth part of Article 68 of the Satversme, the procedure established in Article 77 of the Satversme, which provides for the duty to submit the issues regarding amendments to the content of the sovereignty notion included in Article 2 of the Satversme to a national referendum, also exists.

The amendments introduced in the EU fundamental treaties by the TL shall be assessed from the point of view of Article 2 of the Satversme rather than from the perspective of the fourth part of Article 68 of the Satversme. It follows from the supreme abstraction level of the notion of sovereignty that the amendments to the terms of Latvia's membership in the EU that the changes in the terms of Latvia’s membership in the EU should be of a high degree of relevance. For instance, they should be equal to competence delegation to the EU at the moment when the issue regarding joining of Latvia to the EU was decided upon.

M. Mits emphasizes that the amendments provided by the TL shall be assessed in a full body, for instance, the cases that the possibilities of the Republic of Latvia to directly affect the decisions adopted by EU institutions would decrease should be

compared to the benefits gained in the result of a direct influence of the State within the EU. To given an example, this is the possibility of national parliaments to apply the so-called yellow-card procedure.

The TL introduces institutional changes within the EU that would not considerably influence the former structure. The purpose of the changes is to increase efficiency of EU institutions. The TL does not reach the level, at which it would be possible to speak of delegating new competencies to the EU that would lead to restriction of sovereignty for the purpose of Article 2 of the Satversme. Consequently, the rights to a national referendum do not follow from Article 2 of the Satversme in conjunction with Article 101 of the Satversme, but from the fourth part of Article 68 of the Satversme in conjunction with Article 101 of the Satversme.

When providing answers to the questions set at the Court sitting, M. Mits indicated that that the changes to the terms of Latvia's membership in the EU introduced by the TL are substantial in the frameworks of the fourth part of Article 68 of the Satversme. However, since this procedure is put as the rights rather than a duty of the members of the Saeima, the fact that the members of the Saeima do not exercise these rights does not mean that the Satversme has been breached.

When assessing observance of Article 2 of the Satversme, it is necessary to keep in mind the fact that after entering the EU, the Republic of Latvia has already delegated certain competences to the EU. Consequently, it is important to assess whether, by delegating new competencies, for example, the understanding of the notion of sovereignty included in Article 2 of the Satversme has been restricted. It is necessary to assess, from the judicial point of view, the case of delegation of these authorities in comparison with the previous delegation. It is possible, however, that there comes a moment when it would be necessary to assess the delegated competencies in a full body.

The issues regarding Latvia’s membership in the EU are regulated by special articles of the Satversme, whilst, as to the issues related to delegation of such competencies that infringe the core of sovereignty established in Article 2 of the Satversme, the procedure provided for in the first part of Article 79 of the Satversme shall be applied.

8. Invited person – Mārtiņš Paparinskis, a doctoral student at Oxford University indicates in written explanations provided to the Constitutional Court that, when assessing whether the Contested Act has infringed the rights of the Applicants, it is necessary to take into consideration the area of regulation of Article 101 of the Satversme. The abovementioned norm in its narrow meaning can be applied to the rights to participate in ongoing processes rather that the rights to request organizing such processes.

On the other hand, Article 101 of the Satversme in a wider sense shall be applied to the rights to request determination of certain participation processes, including the cases of national referendums as guaranteed by the Satversme. The words "as provided for by law" establish the extent and content of the rights provided for in Article 101 of the Satversme, and interpretation of the abovementioned human rights would lead to the norms regulating participation processes. Although individuals could not request establishment of a new participation procedure, they could request application of an existent procedure. Based on such interpretation of the first part of Article 101 of the Satversme, the Applicants would have the right to ask the Constitutional Court to assess whether certain normative acts comply with the rights to participation established in the Satversme.

M. Paparinskis indicates that in the constitutional doctrine of Latvia there exist two widely recognized theses related to the nature of sovereignty. The first of the theses provides that since adoption of the Satversme fundamental and conceptual changes have occurred to the relations of the States with international law; therefore constitutional restrictions established can be interpreted in a modern way and considering the nuances. The latter, however, draws attention to the fact that the rights to withdraw from the EU is the main (or even the only) criterion for the conclusion made regarding lack of infringement of sovereignty. Validity of these two theses is being questioned in the opinion provided by the invited persons because they are not obvious.

As to the content of the notion "sovereignty" included in Article 2 of the Satversme, M. Paparinskis indicates that it is necessary to assess at what moment the

use of sovereignty for creation of international liabilities reaches the level when it is necessary to establish a constitutional procedure, in the national legal system, for legitimization of such use.

When analysing the abovementioned questions, first of all, one should assess the nature of the respective international organization. Delegation of competencies to an organization unifying democratic and law-governed states should be assessed differently if compared to delegation of the same competencies to a union of authoritarian states. Secondly, one cold also assess the extent of the competencies delegated to an international organization. Delegation of the competencies in the field of economy, security and foreign affairs to similar international organizations could imply a different influence form the point of view of sovereignty. Thirdly, one could assess institutional structure of the international organization, as well as it's the procedures for legitimization of certain institutions and competencies thereof.

On the other hand, no decisive role can be assigned to the rights to withdraw from any international organization, namely, "the rights to the last word" when assessing the content of Article 2 of the Satversme, which is particularly relevant because the constitutional system of Latvia is based on the "open-state" model as to international law and organizations. Thus, when assessing sovereignty, legitimacy acceptance of "the right to the first word" rather that "the right to the last word", as well as the objectives, nature, structure, activity dynamics, values of the organization implementing the competency, and the possibility of the State and its citizens to influence the processes of competence implementation are of greater importance. When assessing changes to sovereignty from the perspective of democracy, it is necessary to make conclusions regarding the possibilities of the citizens to affect activities of international institutions, as well as lawfulness and observance of the human rights.

Grammatical interpretation of the fourth part of Article 68 of the Satversme allows concluding that in the cases when the changes reach the objectively established level of "considerable changes" at least one-half of the members of the Saeima have the right to request a national referendum. Systematic interpretation confirms the objective and optional character of the request by the Saeima. Consequently, according

to the present wording, "substantial changes in the terms of membership" do not directly mean the duty to hold a national referendum, whilst it only confers the rights to at least a half of the members of the Saeima to request holding a national referendum.

"Substantial changes in the terms of Latvia's membership in the European Union" do not directly specify the criteria that should be taken into consideration when assessing changes introduced in the terms. The changes of the terms could lead to a greater or lesser influence of Latvia onto the legislative process, greater or lesser influence of the citizens of Latvia onto the work of the EU, greater or lesser protection of the human rights, competencies of the EU in different domains and other changes. When interpreting this norm systematically, it is possible to assess it in conjunction with the second part of Article 68 of the Satversme.

The argument of the Applicants that the TL approximates the EU to a state entity is ungrounded. The EU does not require it be regarded as a state; therefore the fact that the states have delegated certain competence to it does not mean that the Union would become a state. Likewise, the reference to potential joining of the EU to the CPHRFF does not mean that the EU would become a state. The fact of accession *per se* is nothing unusual because the European Community already is a member of many international agreements.

When assessing legal regulation that provides for the possibilities of the Member States to withdraw from the EU, it is necessary to take into consideration the fact that no rights to withdraw from the EU existed before. On the other hand, after coming into force of the TL, Article 50 of the TEU would *expressis verbis* provide for such rights.

M. Paparinskis admits that the TL provides for many such changes in the functioning of the TL that are guided towards the complex procedures formed In the course of time and simplification of the institutions. The amendments are not of that scale creating novel or revolutionary procedure that could not have been provided at the initial stage, i.e. at the stage of accession. When assessing all changes in connection, there is no reason to suppose that they would exercise the sovereign rights

at the extent when the notion of sovereignty included in Article 2 of the Satversme would be changed.

At the same time M. Paparinskis holds that the influence of the TL is considerable enough to regard it as substantial changes in the terms of Latvia's membership in the European Union. Since the legal content of the fourth part of Article 68 of the Satversme has not been implemented, the Applicants were not conferred the rights to request holding a national referendum, and their basic rights have not been infringed.

The Constitutional Court holds:

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9. The case was initiated based on possible infringement of the basic rights to participate in the work of the State, as provided for in Article 101 of the Satversme. The first part of Article 101 of the Satversme provides: "Every citizen of Latvia has the right, as provided for by law, to participate in the work of the State and of local government, and to hold a position in the civil service."

The Applicants hold that the rights established in Article 101 of the Satversme have been infringed by means of the procedure of TL ratification because they were denied the possibility to participate in a national referendum regarding the TL as provided for in Article 77 of the Satversme in conjunction with Article 2 of the Satversme, or, in the event if the Constitutional Court would not recognize breach of Article 2 and Article 77 of the Satversme, the fourth part of Article 68 of the Satversme would be breached.

In order to establish whether infringement of the basic rights of the Applicants has occurred, it is necessary to assess whether the case under review falls under jurisdiction of the Constitutional Court and what are the limits for the claim.

10. Latvia joined the EU on 1 May 2004. The national referendum of accession of Latvia to the European Union took place on 30 September 2003. 1 010 467 persons having the right to vote participated therein, 676 700 of whom voted "for" the

accession of Latvia to the EU (*see: Decision of 6 October 2003 of the Central Election Commission No. 20 "On the Results of the National Referendum on Latvia's Membership in the European Union". Latvijas Vēstnesis, 7 October 2003, No. 28*). Hence the decision regarding Latvia's membership in the European Union was adopted and the issue regarding Latvia's membership in the European Union was decided by a national referendum in accordance with the provisions of the third part of Article 68 of the Satversme and requirements of the second part of Article 79 of the Satversme.

10.1 At the time when Latvia was entering the European Union, its activities was regulated by the Treaty on the European Union (hereinafter – the TEU), the Treaty Establishing the European Community (hereinafter – the TEC), as well as the Treaty Establishing the European Atomic Energy Community (hereinafter - Euratom). Last amendments to these treaties were introduced by the Treaty of Nice that came into force on 1 February 2003. Moreover, at that time the preparatory works of the TC have already been launched.

Under the Order of 14 February 2002 of the Cabinet of Ministers No. 85 "On Appointment of a Representative of the Latvian Government and Deputy thereof for Participation in the Leaken Convention Elaborated by the European Union Council" and the Order of 24 December 2002 of the Cabinet of Ministers No. 714 "On Appointment of a Representative of the Latvian Government and Deputy thereof for Participation in the Leaken Convention Elaborated by the European Union Council" regarding participation in the European Convention that elaborated the TL, government representatives and their deputies were assigned.

According to the declaration of 28 December 2002 of the Saeima, four members of the Saeima were also involved in the work of the European Convention, who of them being regular representatives and the other who being their deputies.

In order to assess the draft project of the TC and prepare the Latvia's national position for the intergovernmental conference, the Ministry of Foreign Affairs, under the Regulations of 3 June 2003 of the Cabinet of Ministers No. 286 "Interim procedure for Coordination of Development, Approval and Representation of Latvia's National Position in European Union Issues", established an inter-institutional work group.

Taking into consideration the opinions provided by the competent institutions, those of the EU institutions and institutions of other EU Member States, the work group prepared suggestions for Latvia's national position for the intergovernmental conference.

10.2 The TL was signed on 29 October 2004 in Rome, Italy. On 2 June 2005, the Saeima ratified the TC by adopting the Law "On the Treaty Establishing a Constitution for Europe". The basic purpose of the TC is to create such EU fundamental treaty that could ensure optimal and efficient EU and functioning of the institutions thereof due to joining of new Member States.

On 3 April 2008, the Saeima adopted the Law "On Recognition of the Law "On the Treaty Establishing a Constitution for Europe" as invalid". The abovementioned law was adopted, among the rest things, because on 29 May 2005 the citizens of France and on 1 June 2005 the citizens of the Netherlands rejected the TC in the national referendums, and the EU Member states agreed on elaboration of new amendments to the treaties (*see: annotation to the Law "On the Treaty Establishing a Constitution for Europe" as invalid": http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/367449605F4DFA1DC2257401002B5DAA?OpenDocument*).

The TC was ratified by the Saeima and later recognized as invalid in accordance with the procedure established in the second sentence of the second part of Article 68 of the Satversme. Namely, both laws were adopted at Saeima meetings where at least two-thirds of the members of the Saeima were present, the decisions being adopted with the two-thirds majority of votes of the members of the members of the Saeima present.

Compliance of the Law "On the Treaty Establishing a Constitution for Europe" or the Law "On Recognition of the Law "On the Treaty Establishing a Constitution for Europe" as invalid" with the Satversme has not been contested.

10.3 Representatives of the Member States signed the TL at the European Council on 13 December 2007. Unlike the TC that was adopted as a new and independent treaty, which fully replaced former treaties, the TL was confirmed as amendments to the effective TEU and TEC. Consequently, the TL, unlike the TC,

shall be regarded as amendments to effective treaties rather than a new international treaty for the purpose of Article 36 of the Vienna Convention. According to the second part of the abovementioned Article, each Member State shall participate in elaboration and confirmation of amendments. This means that by means of the TL no conceptually new legal subject is created [*see: Dougan M. The Treaty of Lisbon 2007: Winning Minds, Not Hearts (2008) 45 Common Market Law Review 617, pp. 622 – 624*].

In the case under review, compliance of ratification of the TL with the first part of Article 101 of the Satversme has been contested. Accordingly, the case was initiated only regarding this issue of compliance. Consequently, the arguments of the Applicants regarding the procedure, according to which the Republic of Latvia joined the EU, as well as lawfulness of the Law "On the Treaty Establishing a Constitutional for Europe", dot not fall within the claim and shall not be assessed.

At the same time, the Court recognizes that assessment of the TL or other EU legal act comparable to the TL as to legal consequences, within the frameworks of another case, could be affected, for example, by the fact that it would turn out that in the result of application of the abovementioned acts norms of the Satversme are infringed. Namely, either by applying the norms that are not mentioned in the application or by changing application practice of the EU fundamental treaties for the purpose of Item "b" of the third part of Article 31 of the Vienna Convention, the rights enshrined in the Satversme are being infringed.

In the frameworks of the case under review, the Court must assess the norms that amend the effective norms of the treaties, as well as the norms that are new or repeal the effective norms.

10.4 The Contested Act was adopted according to the procedure established in the second sentence of the second part of Article 68 of the Satversme. Namely, the procedure provided for in the Satversme for concluding international treaties in the cases when Latvia, with a view to strengthen its democracy, delegates a part of the competencies of its institutions to international institutions.

By amendments of May 8, 2003, Article 68 of the Satversme provides for one more kind of acts of a constitutional rank. The Saeima may ratify international agreements, in which a part of State institution competencies are delegated to

international institutions with the purpose of strengthening democracy, in sittings in which at least two-thirds of the members of the Saeima participate, and a two-thirds majority vote of the members present is necessary for ratification. Acts of constitutional rank can be adopted only in the cases established in the Satversme (*see: Judgment of 29 November 2007 by the Constitutional Court in the case No. 2007-10-0102, Para 56.3*).

Laws that are being adopted according to the procedure established in the second sentence of the second part of Article 68 of the Satversme are adopted by the same subject, i.e., the Satversme, as well as they are being adopted according to the same procedure, which is used for introducing amendments to those articles of the Satversme that shall not be recognized the constitutional basis of the Republic of Latvia. The fact that the abovementioned laws are being adopted in two rather than three readings, as provided for in Item 3 of the second part of Section 114 of the Saeima Rules of Procedure, follows from the fact that international agreements, due to their character, are being confirmed at the parliament without introducing any amendments to the text. The legislator is authorized to ratify or reject such agreement. The decision of the legislator to ratify an agreement means assent of the State to enter a particular international agreement.

According to Article 85 of the Satversme and Article 16 (1) of the Constitutional Court Law, the Constitutional Court shall review cases regarding compliance of laws with the Satversme. When interpreting the term "law" used in the abovementioned norms, it is necessary to take into consideration the fact that the purpose of the legislator, when establishing the Constitutional Court, first of all was to create an effective mechanism for protection of the priority of constitutional norms. The assumption that the Constitutional Court may not review the procedure of adoption of such a law with the Satversme that would have been adopted based on the second sentence of the second part of Article 68 of the Satversme, namely, to assess whether the Saeima, when adopting such norms, have breached the procedural order of adoption thereof, would be in conflict with this objective (*see: Decisions of 11 November 2003 b the Saeima Fourth Panel on refusal to initiate a case. Application reg. Nr. 119 - 123*).

11. At the Court sitting, the representative of the Saeima L. Liepa asked to terminate proceedings in the case by indicating that:

1) The TL has not come into force at the international level. Consequently, no infringement of the basic rights has been caused to the Applicants.

2) The Applicants have not exhausted general legal remedies. Based on the decision of 26 April 2007 by the Panel of the Constitutional Court on refusal to initiate a case based on an application of a natural person, it should also be recognized in the case under consideration that the rights of the Applicants to participation an expression of the opinion could have been infringed if they would have exercised the rights to submit a draft project or draft project of amendments to the Satversme regarding confirmation of the TL by means of a national referendum, as provided for in Article 78 of the Satversme;

3) The complaint that was submitted to the constitutional control institution by a person, whose purpose was to protect his subjective basic rights provided for by the Satversme, shall be interpreted as *actio popularis*. In this case, the constitutional claim is directed towards protection of general order and prestige of the legislator rather than to prevention of the infringement of certain basic rights of the Applicants (*see: Transcript of the Constitutional Court sitting of 4 March 2009, case materials, Vol. 4, pp. 20 – 22*).

11.1 The Constitutional Court, when assessing the arguments of the representative of the Saeima that the case should be terminated since the TL has not come into force, admits that in the case under review there is no dispute whether the TL or any of its norms directly infringes or restricts the rights or legal interests of the Applicants. The Applicants question compliance of the procedure of TL ratification with the Satversme. The Applicants have also reiterated at the Court sitting that they contest constitutionality of the ratification procedure rather than the TL. Namely, they ask the Constitutional Court to assess whether the Saeima has appropriately applied the procedure established in the second part of Article 68 of the Satversme or a national referendum should have been held to ratify such treaty, as provided for in the

first or the second part of Article 79 of the Satversme, the Applicants having the rights to participate therein.

Consequently, the fact that the LT has not come into force at the level of international law, may not serve for the ground to refuse assessing compliance of the ratification procedure with the Satversme.

It is also necessary to take into consideration the fact that the task of the Constitutional Court is, on the one hand, to ensure full protection of the Satversme as the supreme law of the State and, on the other hand, it has the duty to ensure, within its scope of jurisdiction, that the Republic of Latvia would enter into international liabilities according to the procedures established in the Satversme. Namely, the Constitutional Court has the duty to ensure supremacy of the Satversme by at the same time securing that the procedure, according to which the State has undertaken certain international liabilities, would not be contested *post factum*, i.e. after coming into force of the particular international treaty.

11.2 When assessing whether the findings of 26 April 2007 by the Panel of the Constitutional Court can be applied to the case under review, the Constitutional Court recognizes that the Panel, when deciding whether a particular application is admissible for its examination at the Constitutional Court, is guiding itself by the arguments provided in the application. The interpretation of the procedural issue established in the Constitutional Court Law provided in the decision of the Panel can generally be applied to the case under review.

On 26 April 2007, the Constitutional Court, based on an application of twenty-one members of the Saeima, initiated a case was initiated on constitutionality of the same legal act also contested by a natural person. The members of the Saeima who signed the application are regarded as a single applicant whose procedural rights are broader if compared to those of a natural person. Such difference mainly applies to the duty of a natural person to substantiate infringement of his basic rights. The practice of the Court to simultaneously review several cases regarding assessment of constitutionality of identical acts, the extent of the rights of the applicants being different, would be non-compliant with the principle of procedural economy.

In the case under review, none of the subjects, according to whose application the Constitutional Court could perform abstract control of a legal norm (act), have brought a court action. The task of the Constitutional Court, according to its jurisdiction, is to ensure existence of such legal system that would allow eliminating regulations that do not comply with the Satversme of other legal norms (acts) of higher legal force at the fullest and most exhaustive level possible, as well as to provide its opinion regarding constitutionally important issues. Consequently, in the case under review, the Constitutional Court has no reason to terminate proceedings without examining the case on the merits.

11.3 The argument that the application of the Applicants should be regarded as *actio popularis* and their rights not being infringed shall be assessed in the context of the first part of Article 101 of the Satversme by investigating the scope thereof. When reviewing cases regarding infringement of separate basic rights, it is necessary to merge the findings of the infringement with case examination on the merits due to the particular character thereof. Although the Constitutional Court Law does not provide for it, the Constitutional Court concludes that there exist certain basic rights, assessment of infringement of which requires examination of the case on the merits. Such procedure is provided, for example, by the third part of Article 29 of the CPHRFF (*see, e.g.:Kovach v. Ukraine, Application no. 39424/02, Judgment of 7 February 2008, para 44; Blumberga v. Latvia, Application no. 70930/01, Judgment of 14 October 2008, para 61*). In the case under review, the Applicants have drawn attention, among the rest, to possible changes to the content of the articles of the Satversme by means of ratification of the TL, these articles being substantial for the legal system of the Republic of Latvia.

Taking into consideration the aforesaid, as well as the fact that the rights of the people to participate in decision-making process regarding issues relevant to the State shall be regarded as substantial basic rights, the Constitutional Court is obligated to provide broadest assessment possible regarding the fact whether the rights of the Applicants have been infringed, as well as to examine the case on the merits.

Consequently, the fact that the TL has not yet come into force, as well as the decision of the Constitutional Court Panel regarding refusal to initiate a case

regarding another application may not serve as the basis, for the Constitutional Court, to terminate proceedings in the case under review and not to assess compliance of the procedure of adoption of the Contested act with the Satversme. The Constitutional Court is entitled to review question regarding the fact whether the TL amending the TEU and the TEC has been ratified according to the procedures established in the Satversme and by observing the requirements regarding a national referendum.

II

12. Article 101 of the Satversme envisages a really important right serving as the guarantee to the existence of democracy and which is directed to ensure legitimacy of the democratic State system. However, the right is not absolute, as Article 101 of the Satversme includes the condition "in the manner prescribed by law" (*see: Judgment of 30 August 2000 by the Constitutional Court in the case No. 2000-03-01, Para 1 of the Concluding Part*).

13. The content of Article 101 of the Satversme must be interpreted in conjunction with Article 89 of the Satversme which determines that the State shall recognize and protect fundamental human rights in accordance with the Satversme, laws and international agreements binding upon Latvia. When interpreting the Satversme and international liabilities of Latvia, it is necessary to find such a solution that would ensure harmony of norms (*see: Judgment of 113 May 2005 by the Constitutional Court in the case No. 2004-18-0106, Para 5 of the Concluding Part*). Consequently, international law and practice of application thereof may serve as an instrument for investigating the content of the legal norms and principles established in the Satversme.

13.1. Item “a” of Article 25 of the UN International Covenant on Civil and Political Rights provides that "every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 [of the Covenant] and without

unreasonable restrictions to take part in the conduct of public affairs, directly or through freely chosen representatives"

The UN Committee on Human Rights has indicated in the General Comment No. 25 that "the allocation of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs protected by article 25 should be established by the constitution and other laws" [*General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25): 12/07/96. CCPR/C/21/Rev.1/Add. 7, para 5*]. The minimum standard established by Item "a" of Article 25 of the Covenant is that the public power must commit itself on the principle of sovereignty. Namely, the government is responsible before the people, whilst the people control the government. The way, in which the rights of the people to sovereignty are being structured, depends on the political system of the respective state. The Covenant does not provide for any model of democracy, and the States in this respect are provided a broad freedom of action (*see: M. Nowak, UN Covenant on Civil and Political Rights. CCPR Commentary, Kehl and Arlington, VA: N.P.Engel, 1993, p. 441, 453*). Such approach is also confirmed by the practice of the UN Committee on Human Rights *(see: Communication No. 205/1986:Canada. 03/12/91. CCPR/C/43/D/205/1986, para 6).*

The institution of a national referendum obviously complies with the modern understanding of the "direct" conduct of public affairs. The rights under article 25 are related to, but distinct from, the right of peoples to self-determination established in Article 1 of the Covenant. By virtue of the rights covered by article 1 (1), peoples have the right to freely determine their political status and to enjoy the right to choose the form of their constitution or government. Article 25 deals with the right of individuals to participate in those processes which constitute "the conduct of public affairs" [*see: General Comment No.25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25): 12/07/96. CCPR/C/21/Rev.1/Add.7 para 2*]. The structure and form of power, according to which citizens are implementing their rights to participate in "the conduct of public affairs", is provided by the Satversme and laws.

13.2. The Saeima recognized in its reply that the first part of Article 101 of the Satversme includes a broad range of issues, whilst only one of these issues is related to participation of the citizens in a national referendum. Article 101 of the Satversme neither provides for the cases when a national referendum should be hold, nor for the persons who have the rights to participate in a national referendum. These cases are provided in other norms of the Satversme, for instance, Article 48, Article 68, Article 72, Article 73, Article 77, and Article 78 (*see: case materials, Vol. 1, pp. 58*). The Ombudsman has also admitted that the right to participate in a national referendum is only one of the rights that follow from the first part of Article 101 of the Satversme (*see: case materials, Vol. 2, pp.45*).

The Constitutional Court admits that the words "to participate in the work of the State" shall be understood as the rights to participate in a national referendum. There is no reason to consider that the first part of Article 101 of the Satversme should be interpreted in such a way that it would apply only to the rights to participate in ongoing processes, namely, it would be applicable only in the cases when possible infringement of human rights could have been caused already during a national referendum. Elaboration materials of Article 101 of the Satversme do not show that the legislator would have had the purpose to include only the rights of private persons to participate in ongoing activities into this norm (*see: case materials, Vol. 1, pp. 74 - 146*). M. Mits, taking into consideration the elaboration materials of Article 101 of the Satversme and what has been indicated in international documents on human rights, drew the attention of the Court to the fact that participation in the work of the State may be carried out directly or indirectly, whilst the abovementioned norm of the Satversme incorporates both these forms of participation (*see: Transcript of the Constitutional Court sitting of 4 march 2009, case materials, Vol. 4, pp. 118 and 119*).

13.3. The first part of Article 101 of the Satversme is applicable to the right to request a national referendum if this is not *expressis verbis* provided for in the Satversme or a law, and this request applies to the cases for holding a referendum, as guaranteed by the Satversme. A private person, based on Article 101 of the Satversme, may request application of the constitutionally guaranteed procedure of a national referendum or to ask to assess whether adoption of a particular law complies with the

right to participation as guaranteed by the Satversme. A national referendum, however, may not be held if the constitution or a normative act in conjunction with the constitution does not provide it. It shall be applicable, for instance, to the cases when deciding on a particular issue falls within the exclusive competence of the parliament [*see: Code of Good Practice on Referendums, adopted by the Council for Democratic Elections at its 19th meeting, Venice, 16 December 2006, and the European Commission for Democracy through Law (Venice Commission) at its 70th plenary session, Venice, 16 – 17 March 2007, Study No. 371/2006, CDL-AD (2007)008, Strasbourg, 19 March 2007, p.11*]. Consequently, private persons may not request creation of participation procedure that is not provided for in normative acts but is desirable (*see: Opinion of M. Paparinskis, case materials, Vol. 3, pp. 44*).

In the case under review, the Applicants have drawn attention to two norms of the Satversme that provide for the right of full-fledged citizens of the Republic of Latvia to participate in a national referendum. Consequently, there is no doubt that the demand has been based on the norms that provide for submission of certain questions to a national referendum, and the Applicants do not ask to introduce new norms to the Satversme or to repeal any norms of the Satversme.

In order to assess whether the basic rights of the Applicants, taking into consideration the procedure of TL ratification, have been breached, it is necessary to establish whether the Applicants have been conferred such rights in accordance with Article 101 of the Satversme in conjunction with Article 2 of the Satversme. If the Constitutional Court would establish that the rights of the Applicants have not been infringed that it will have to assess whether the infringement would have been caused by interpreting Article 101 of the Satversme in conjunction with the fourth part of Article 68 of the Satversme.

The Applicants have the right to ask the Constitutional Court to assess whether the Saeima, when adopting the Contested Act, has acted justly by not submitting it to a national referendum as established in Article 77 of the Satversme or the fourth part of Article 68 of the Satversme.

III

14. Article 2 of the Satversme provides that the sovereign power of the State of Latvia is vested in the people of Latvia. The principle of sovereignty of people is enshrined in this norm (*see: Transcript of the 1st meeting of the 6th session the Constitutional Assembly [Satversmes sapulce] of 20 September 1921*). Under the principle of sovereignty, the Latvian people are the only subject of the sovereign power.

The Satversme divides the power of Satversme among the body of Latvian citizens and the Saeima, however it guarantees the exclusive rights to deal with the fundamental norms of the Satversme of the Latvian people, namely, to repeal the constitution or to establish a new constitutional order. (*see: Judgment of 29 November 2007 by the Constitutional Court in the case no. 2007-10-0102, Para 31.1*). First of all, under Article 78 of the Satversme, the body of the citizens of Latvia may adopt a draft project of amendments to the Satversme. Secondly, according to Article 77 of the Satversme, only the body of the citizens of Latvia may amend Article 1, Article 2, Article 3, Article 4, Article 6 and Article 77 of the Satversme. The norms mentioned in Article 77 of the Satversme "are the most essential articles of the Satversme; it is impossible to change the republican and democratic nature of our State regime without amending these articles. These articles of the Satversme are therefore the people of Latvia are delegated the authority to protect them. These articles can only be amended based on the will of the people expressed by means of a national referendum (obligatory referendum)" (*Dišlers K. Ievads Latvijas valststiesību zinātnē. Rīga: A. Gulbis, 1930, pp. 110*). Consequently, the Saeima may not ignore the rights of the people to participate in the decision-making process that follow from the provisions of Article 2 of the Satversme.

In order to establish whether in the case under review any infringement of the basic rights of the Applicants has occurred, the Constitutional Court has to assess whether the Applicants had the rights, "established by law", to participate in the work of the State, namely, the rights to participate in a national referendum under Article 77 of the Satversme.

15. First of all, the Constitutional Court must establish whether, when adopting the Contested Act, Article 2 of the Constitution could have been amended and, if so, whether such amendments have occurred in the case under review.

15.1. The Applicants have indicated in their application, specifications to the application, as well as at the Court sitting that Article 2 of the Satversme can only be amended without changing its text.

Article 1, Article 2 and Article 3 of the Satversme provides for the fundamental principles of the Latvian State regime. These fundamental principles are put down in the form of abstract and conceptual axioms, whilst the abovementioned articles do not contain any reference to amendment of implementation procedures. Establishment of such procedures is the task of the articles of other chapters of the Satversme. The Constitutional Court has already admitted in its case-law that it is possible to adopt such laws, including laws on ratification of international treaties, that infringe what has been established in Article 1 and Article 2 of the Satversme, and that adoption of these laws without submitting them to a national referendum is non-constitutional according to Article 77 of the Satversme (*see: Judgment of 29 November 2007 by the Constitutional Court in the case No. 2007-10-0102, Para 28.4 and 42.3 of the Establishing Part*).

15.2. The representative of the Saeima has admitted that such point of view of the Applicants is correct and indicated that "the Saeima does not disagree that amendments to Article 2 of the Satversme are not only grammatical; they are also contextual, which means that the amendments can be related to other legal acts by thus changing sovereignty or affecting the extent thereof" (*Transcript of the meeting of the Constitutional Court of 4 March 2009, case materials, Vol. 4, pp. 55*).

The representative of the Cabinet of Ministers also agreed to this opinion of the representative of the Saeima by admitting that "it is possible to agree with the Applicants regarding the fact that Article 77 [of the Satversme] should be applied also in the case if Article 2 [of the Satversme] would have been amended on the merits rather than at the textual level" (*Transcript of the meeting of the Constitutional Court of 4 March 2009, case materials, Vol. 4, pp. 83*).

Consequently it can be concluded that in the case under review there is no dispute about the fact whether Article 2 of the Satversme can be amended without introducing textual changes into this Article but only including such changes into other legal acts.

Consequently, the Constitutional Court must assess whether in the result of adoption of the Contested Act the principle of sovereignty of people enshrined in Article 2 of the Satversme has been infringed and whether after adoption of the Contested Act it had to be confirmed in a national referendum according to the procedure established in Article 77 of the Satversme.

16. In their application, specifications to the application, and at the Court sitting, the Applicants maintained different claims regarding the norms of the TL that possibly infringe Article 2 of the Satversme. In order to assess possible infringement, the Constitutional Court must analyse the respective norms of the TL referred to by the Applicants.

16.1. The basic argument of the Applicants is related with the restricted rights to withdraw from the EU. Initially, the Applicants have indicated that the right of "the last word" of the people means the right to immediately withdraw from the EU because "since such statement has been expressed regarding withdrawal from the EU, then there must exist some serious basis for making the people suffer two more years disregarding their dissatisfaction" (*Specifications to the constitutional claim lodged by the Applicants, case materials, Vol. 3, pp. 74*). Likewise, the Applicants have indicated that Latvia would neither participate in negotiations regarding withdrawal agreement.

At the Court sitting, the Applicants changed their viewpoint by admitting that, according to their mind, withdrawal would not always be possible without the established term of two years because the State would, by that time, have many secondary liabilities that could cause certain legal consequences. Moreover, in the case of withdrawal, it is not clear at what extent Latvia could restore the situation that it had at the time when entering the EU (*see: Transcript of the Meeting of 4 March 2009 by the Constitutional Court, case materials, Vol. 4, pp. 39*). The Applicants, however, did not specify the way and the extent, at which it would be possible to restore the

situation of 2004; neither had they explained what common actions between Latvia and the EU are indispensible for immediate restoration of this situation by sidetracking the requirement regarding mutual agreement.

Article 50 of the TEU provides:

"1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.

2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

A qualified majority shall be defined in accordance with Article 238(3) (b) of the Treaty on the Functioning of the European Union.

5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49."

16.2. The abovementioned article of the TEU is a new norm. The former procedure, according to which Member States could withdraw from the EU, was not regulated in any fundamental treaty. Having assessed this article, the Constitutional Court holds that the arguments of the Applicants regarding the withdrawal procedure shall not be regarded as grounded due to three reasons.

First of all, the regulation regarding the rights to withdraw is not a restriction of sovereignty of people because, at present, Item "b" of Article 54 of the Vienna Convention already provides for the withdrawal procedure from an international treaty. The abovementioned norm of the TEU shall be regarded as *lex specialis* regarding Item "b" of Article 54 of the Vienna Convention that provides that termination of a treaty of withdrawal of a party may take place at any time by consent of all parties after consultation with the other contracting States. Moreover, the TL provides for broader guarantees if compared to general international law. According to the third part of Article 3 of the TEU, the State shall have the right to withdraw from the EU after the term of two years even it has not come to an agreement with other States. On the other hand, according to the second part of Article 50 of the TEU, there is no need to receive the consent of all Member States because a withdrawal agreement is concluded by the Council, by a qualified majority.

Secondly, the Applicants misbelieve that Article 50 of the TEU prohibits Latvia to participate in elaboration of provisions regarding withdrawal procedure. The abovementioned article only provides that the representatives of Latvia shall not participate in the negotiations on behalf of the EU. Latvia, however, preserves its rights as an independent contracting party. The Constitutional Court indicates that in this context the term of two years is substantial in order to ensure the most lenient possible withdrawal procedure observing the rights and legal interests of the State and its citizens that they could have exercised when in the EU.

Consequently, it is not only favourable but also indispensible to have a term, within which it would be possible to make a compromise regarding those persons who are exercising any of the fundamental freedoms of the EU at the respective moment, for instance, persons who are legally residing and working in other EU Member States or have concluded an agreement on goods supply or purchase, provision of services, recognition of qualification, functioning of affiliates of an enterprise, as well as exercise other rights on other states of the world that are a party to special agreements with the EU and that would lose these persons in the case of Latvia's withdrawal from the EU.

Thirdly, the term of two years *per se* does not restrict the possibility of Latvia to withdraw from the EU because the third part of Article 50 of the TEU does not exclude the fact that an agreement regarding withdrawal can be achieved sooner. It is also possible to agree with the opinion of the representative of the Ombudsman that the term of two years established in the abovementioned article is proportionate (*see; Transcript of the Constitutional Court sitting of 4 May 2009, case materials, Vol. 4, pp. 96*).

Article 50 of the TEU that provides for the rights of the Member States to withdraw from the EU does not amend the content of Article 2 of the Satversme.

16.3. The Applicants have also indicated that the EU is gradually becoming a state entity or a federal state, which means that, after coming into effect of the TL, a European people would be created (*see: case materials, Vol. 4, pp. 79 and 85*).

The Constitutional Court does not agree with these arguments of the Applicants.

First of all, according to the fundamental principles of international law that provide for establishment of states, it is necessary to put forth a demand regarding formation of a state without breaching territorial integrity of the states and observing national constitutional provisions. This would mean that all inhabitants of the EU Member States, by exercising their rights to self-determination, would have to put forth such demand in accordance with constitutional requirements of each State.

However, the content of the principle of self-determination includes three elements: the right to self-decision, the right to self-organization and the right to self-government.

The right of people to self-decision as an element of the principle of self-determination means the right of the people to freely and independently decide on its political status by adhering to a certain state on the basis of autonomy or by separating from a state and establishing their own independent state in accordance with the norms of international law.

The right to self-organization of people is the right to independently establish the State regime in the Constitution that is passed by a national referendum or the

Constitutional Assembly [*Satversmes Sapulce*] (*see: Judgment of 29 November 2007 by the Constitutional Court in the case No. 2007-10-0102, Para 18.1*).

The TL does not provide for any such norm that would manifest the will of the EU to become a state, and the inhabitants of the EU Member States have not requested the possibility to exercise their rights to self-determination within the EU. Neither the Contested Act, nor the TL includes direct references to any such demand regarding the right to self-determination.

On contrary, the TEU *expressis verbis* provides for identity of the Member States and respect to sovereignty thereof, which is even more emphasized that in other effective treaties. The second part of Article 4 of the TEU provides that he Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State. This norm in particular guarantees that henceforth there shall exist states and their fundamental constitutional structures, as well as their values, principles, and basic rights that cannot be lost by establishing a supranational organization.

National identity of the Member States is an essential basis of the EU that, being enshrined in treaties, causes legal consequences. The exercise of power by the Union appears not as the will of a single sovereign, but rather as the common exercise of public power by various actors. This is also confirmed by Article 1 of the TEU that provides that the contracting parties establish among themselves a European Union, on which the Member States confer competencies to attain objectives they have in common. The union is not a state, but rather a new form of political and legal order [*see: A. Von Bogdandy, Doctrine of Principles. In: European Integration – The New German Scholarship, J.H.H. Weiler, A. von Bogdandy (ed.), Jean Monnet Working Paper Series 9/03.1. NYU School of Law, New York 2003, 1 – 50, p. 10, 12*].

Secondly, under Article 48 of the TEU and also according to the former Article 48 of the TEU, the Treaties can be amended if all Member States agree to the

amendments in accordance with their constitutional requirements and, if necessary, making a compromise regarding exceptions in the terms of the membership. Consequently, Latvia loses its rights to object, directly or by mans of authorized representatives, any changes within the EU, including the changes that do not comply with the Satversme. The role of the EU institutions in the procedure of amending the Treaties is not fundamental. The EU institutions do not have the right to adopt final decisions, although it has the right to initiate revision of the Treaties. This is an essential characteristic of an organization based on international law. Thus the EU differs from a federal state. Federal states those are mainly federal institutions that adopt amendments to the constitution. Even if states of the federation (like countries, states, cantons) have the right to participate in the elaboration process of amendments to a constitution, no consent of all states is required to ratify the amendments.

Thirdly, when providing arguments for their opinion regarding formation of European people, the Applicants referred to the Charter of Fundamental Rights (hereinafter – the Charter) and Article 9 of the TEU. The Constitutional Court concludes that no such conclusion follows from the text of the TEU or the Charter. The Preamble of the TEU recurrently refers to the interests of the European people. Also in the further text of the TEU the necessity to increase welfare of peoples, not people, is emphasized as one of the basic tasks of the EU (*see, e.g.: Article 3 of the TEU*). In the Preamble of the Charter, whereto the Applicants refer, establishes *expressis verbis* that European peoples, rather than people, form a close mutual association, want to enjoy a peaceful future that would be based on common values. Article 9 of the TEU, as indicated by the Applicants, is not regarded as a new norm. It literally duplicates the valid Article 17 of the TEC that provides for conferring citizenship to persons who have been naturalized in accordance with the legislation of the Member State. Moreover, the EU Member States enjoy such freedom of action that they are entitled to supplement the Treaty with a declaration providing for persons to be regarded as EU citizens at the EU level. This article has been included into the Treaty in 1992 by introducing amendments to the Maastricht Treaty. The Member States, however, who have supplemented the Treaty with a declaration, must observe procedures that follow from the CPHRFF (*see: European Court of Human Rights Case*

of Matthews v. The United Kingdom, Application no. 24833/94, 18 February 1999; Case C-145/04 Kingdom of Spain v. United Kingdom of Great Britain and Northern Ireland [2006] ECR I-7917).

Consequently, the Constitutional Court has no reason to conclude that approximation of the EU to a state entity would take place after coming into force of the TL or European people would be formed by means of the TL.

17. In order to assess the most substantial changes that are introduced by the TL according to the Applicants, they cannot be reviewed separately; it is necessary to take into consideration full body of changes, as well as the balance of rights and duties within the EU. The Constitutional Court recognizes that the State of Latvia is based on such fundamental values that, among the rest, include basic rights and fundamental freedoms, democracy, sovereignty of the State and people, separation of powers and rule of law. The State has the duty to guarantee these values and they cannot be infringed by introducing amendments to the Satversme, these values being introduced by law. Consequently, delegation of competencies cannot exceed the rule of law and the basis of an independent, sovereign and democratic republic based on the basic rights. Likewise, it cannot influence the right of citizens to decide upon the issues that are substantial for a democratic state.

The content of Article 2 of the Satversme provides not only for "the right to the last word" but also the duty to assess requirements of functioning of an international organization. In this context, "the right to the first word" is of more importance, which is a legitimate accept of implementation of sovereignty in a certain way, namely, the objective, nature and structure of an organization that is implementing a competency, as well as the ability of the State and its citizens to affect competence implementation processes. Consequently, it is necessary to assess at what moment exercise of sovereignty to create international liabilities reaches the level when a constitutional procedure must be established to legitimize the exercise of sovereignty in the national law system (*see: Opinion of M. Paparinskis, case materials, Vol. 3, pp. 47, 48 and 50*).

Already before the World War I, when analysing legal consequences that emerge when a state undertakes international liabilities, in international law

sovereignty was evaluated as exercise of sovereign rights rather than restriction thereof. The right to undertake international liabilities is an element of State sovereignty. The Permanent Court of International Justice has indicated: "The Court declines to see in the conclusion of any treaty by which a State undertakes to perform or refrain from performing a particular act an abandonment of its sovereignty. But the right to enter into international engagements is an attribute of State sovereignty" (*Affaire du Vapeur „Wimbledon", CPJI Ser A 01 15, 1923, 25*). When analysing international relations of states and international organizations, it has been admitted that international organizations are institutions, in the frameworks of which the States are merging their sovereignty and resources in order to solve common problems and find common solutions for them by thus acting in favour of their national interests (*see: Scelle G., L'admission des nouveaux membres de la Société des Nations // Revue Générale de Droit International Public, 1921, vol. 28, p. 122, 125-127; Huber M., Die soziologischen Grundlagen des Völkerrechts, Berlin, 1928, ss. 18, 23; Lauterpacht H. (ed). Oppenheim's International Law, Fifth edition, London, 1937, p. 308*).

The notion of sovereignty has always been related with the use of power in internal and foreign relations, and this use has always been subjected to sovereign values establishing it. Values attach normative character to sovereignty, which in our case means relations between the State and an international organization (*sk.: Sarooshi D., International Organizations and Their Exercise of Sovereign Powers, Oxford Monographs in International Law, 2005, p. 9*).The State may be a member to such international organizations, legal relations between the institutions and member states of which may differ, and in each particular case these relations would differently affect the respective constitutional norms, even if the organization is endowed with international legal personality.

Consequently, the Constitutional Court must assess whether possible amendment of Article 2 of the Satversme has occurred along with the amendments to the EU fundamental treaties referred to by the Applicants.

18. In their additional specifications, the Applicants have mentioned several considerations due to which, according to them, Article 2 of the Satversme should be regarded as amended.

Without mentioning particular articles of the EU fundamental treaties, case-law of the European Court of Justice or other facts of legal nature, the Applicants have not substantiated differences between legal regulation, which is presently effective in accordance with the EU fundamental treaties, and the legal regulation that would be established by the TL after coming into force thereof.

However, the Constitutional Court holds that it is necessary to assess the statements of the Applicants.

18.1. Both, in the specifications to the applications and at the Court sitting, the Applicants mentioned the following aspects that influence Article 2 of the Satversme:

1) EU status of a legal person;

2) amount and vagueness of delegated functions, including broadening of exclusive functions;

3) changes in the decision-making procedures that provides for skipping parliaments of the Member States and increasing of the role of the European Parliament and European Council;

4) common foreign and security policy, including armed forces;

5) flexibility clause and *passarelle* procedure;

6) foundation of the European Public Prosecutor's Office;

7) Adoption of the Charter and entering the CPHRFF;

8) formation of the EU court chamber, establishment of the positions of EU chairpersons and EU foreign affairs commissar, as well as the fact that Latvia would be represented by a commissar only for two terms of office out of three terms in the Commission convocation;

9) insufficient information on amendments that the TL would introduce into the EU fundamental treaties.

The Constitutional Court shall no assess usefulness of introduction of certain articles into the EU fundamental treaties, which is the question of political determination. The task of the Constitutional Court is not to permit the possibility to

adopt amendments to Article 2 of the Satversme in non-conformity with the procedures.

Consequently, the Constitutional Court must *ex officio* assess the aspects mentioned by the Applicants and that could cause possible breach of Article 2 of the Satversme.

18.2. The Applicants indicate that, under Article 47 of the TEU, the EU is conferred the status of a legal person. This means that approximation of the EU to a status of a state entity would continue.

The Constitutional Court concludes that, after coming into effect of the TL, the EU would continue functioning based on two treaties, the TEU and the TFEU, and both these treaties would have equal power. Before this, the EU was functioning based on the so called pillar system, where only the first pillar – the European Community - had the status of a legal person. The fact that an international organization has the status of a legal person does not *per se* mean that this organization is being approximated to a state entity. It was indicated by the UNO International Court: "The subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community" (*Reparations for Injuries Suffered in the Service of the United Nations, Advisory Opinion, April [1949] ICJ Rep. 174, 178*). Consequently, the Court has concluded that international organizations are not "states" or "super-states". Instead, they are subjects of other kind of international law. By means of its opinion, the International Court defined the basic claims set forth for an international organization, including the necessity to possess the status of a legal person and authority delegated indirectly (*see: Klabbers J., The Life and Times of the Law of International Organizations, Nordic Journal of International Law 70: 287 – 317, 2001, pp. 302-303).* International organizations, if compared to states, may use their status of a legal person only within the competencies delegated to them, and these competencies are mainly established in the establishing treaty.

Consequently, in order to investigate whether the TL amends the content of Article 2 of the Satversme, it is important to find out what new competencies were delegated to it and whether they are defined clearly enough, rather than to assess the

fact that the EU has gained the status of a legal person. Consequently, the Constitutional Court must assess those amendments to the TL that were mentioned by the Applicants and that apply to the new or changed competencies of the EU.

18.3. The Applicants have indicated that after coming into force of the TL, 32 new competences would be delegated to the EU (*see: Transcript of the Constitutional Court sitting of 4 March 2009, case materials, Vol. 4, pp. 80*). In the specifications to the application it has been indicated that the EU may refuse from delegated competencies by giving these competences back to the Member States. As examples for additionally delegated competencies, the Applicants mentioned, at the Court sitting, such competencies as energy policy and trade policy. In this context, the Applicants also drew attention to the changes in the decision-making procedure.

The Constitutional Court recognizes that the assessment of the competencies must be based on the conclusion that delegation of competencies to the EU and integration of the legal acts of the European Community into our system establishes certain restriction that are permissible only in the case if the EU law is compatible with the principles of a democratic state and sovereign people that follow from Article 1 and Article 2 of the Satversme.

The Constitutional Court indicates that delegation of certain competencies to the EU shall be regarded as the use of sovereignty of people for reaching the aims set forth in the EU treaties rather than weakening of sovereignty of people. Neither the effective treaties, nor the objectives mentioned in article 3 of the TEU that the EU is striving to achieve within the frameworks of its competency in accordance with the sixth part of this Article, contradict the values and interests enshrined in the Satversme. At the same time, as the EU integration develops, it is necessary to take into consideration the fact that Article 2 of the Satversme does not provide for an unlimited delegation of competencies, which would prohibit considering Latvia as a sovereign State.

In the case under review, taking into consideration the references made by the Applicants, there is no reason to establish that the EU would be delegated exclusive competences in accordance with Article 3 of the TEU. The EU has always enjoyed

broad exclusive competency in the issues related with trade (*see, e.g.: http://europa.eu/abc/panorama/index_en.htm*).

This is related not only to the area of regulation of EU internal market but also to the issues of EU external trade. For instance, the EU represents two Member states in the World Trade Organization since 1 January 1995. By coming into force of the TL, protection of trademarks, design patterns, patents and copyright protection will be harmonized. These changes are related with the necessity to achieve the objectives of the Lisbon Strategy adopted in 2005 regarding increase of innovations, research and single market. Likewise, competence in trade policy would also be broadened regarding several aspects, for instance, regarding direct foreign investments.

The Constitutional Court concludes that the opinion of the Applicants that after coming into force of the TL power industry would become an exclusive competency of the EU is ungrounded. As to energy policy, Article 4 of the TFEU provides that the Member States and the EU shall have separate competencies. Because of the present structure of the Treaty, energy policy is not regulated in a separate chapter. The EU, however, when exercising its present competencies that are delegated to it within the frameworks of regulation regarding internal market, environment protection and other fields, has already adopted respective legal acts and elaborated energy policy. For instance, there are documents regarding taxing of power-supply points, regarding public procurement, internal market as well as environment protection adopted [*see: Council Directive (20 December 1968) imposing an obligation on Member States of the EEC to maintain minimum stock of crude oil and/or petroleum products; Council Directive 98/93/EC (14 December 1998) amending directive 68/414/EEC imposing an obligation on Member States of the EEC to maintain minimum stock of crude oil and/or petroleum products; Directive 2006/32/EC of the European Parliament and of the Council on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC*].

Already at present there are several mechanism valid that are relate to energy technologies, European power supply networks, power supply security, climate changes and nuclear waste. Likewise, there is European Energy Charter (*confirmed by the Decision 98/181/EC of 23 September 1997 by the European Communities of the*

Energy Charter Treaty and the European Coil and Steel Community) and Energy Community Treaty (*confirmed by the Council Decision 2006/500/EC of 29 May 2006*) are adopted. *Euratom* is also effective at the moment. It regulates several issues related with energy. Only a small chapter is devoted to energy in the TL by thus separating it from other related issues. In this chapter of the TL it is provided that the main objectives of the EU membership is to ensure functioning of energy market, ensure power supply security, effective use and economy of energy, as well as identification of new and renewable sources of energy. A considerable amendment in the field of energy is the so-called principle of solidarity, according to which in the case if any EU Member State has landed in serious difficulties regarding power supply, the duty of other Member States is to provide assistance (*see: Article 112 of the TFEU*). Consequently, there is no reason to maintain that the competence delegated to the EU in the field of energy would broaden considerably after coming into effect of the TL and that these amendments create infringement of Article 2 of the Satversme.

The effective treaties do not include any such enumeration. On the other hand, Article 5 of the TEU and Title I of the first part of the TFEU "Categories and Areas of Union Competence" precisely define division of competencies between the EU and its Member States. Enumeration of competencies provided in Article 4 and Article 6 of the TFEU ensure a more transparent functioning of the organization. This does not change the situation that has occurred after joining the Union; it only simplifies, restructures it and makes it more precise. Clear separation of competencies by the TL in generally guided towards legal security and positive development mutual relations between national and EU legislation.

Moreover, the EU, when exercising its non-exclusive competencies, must observe the principle of subsidiarity and principle of proportionality that restrict the possibility to broaden competencies; moreover, national parliaments would be involved to monitor application of these principles (*see: Article 5 of Protocol No. 2 of the TFEU "On the Application of the Principles of Subsidiary and Proportionality"*). The abovementioned norms and the principles form a sufficiently distinct normative framework to clearly define the extent of competences that would be delegated to the EU according to the TL.

All EU institutions also have to ensure continuous observance of the principles of subsidiarity and proportionality. The European Court of Justice is basing on Article 263 of the TFEU and shall monitor exercise of competencies in a preliminary rulings procedure that is established in Article 267 of the TFEU.

It is not possible to disagree with the Applicants that the European Court of Justice "has declared it to be the driver of EU integration" (*Transcript of the Constitutional Court sitting of 4 March 2009, case materials, Vol. 4, pp. 32 and Transcript of the Constitutional Court sitting of 10 March 2009, case materials, pp. 129*). Although certain judgments have raised discussions on their future consequences, such conclusion cannot be applied to all its judgments, especially when undertaking new competencies in EU frameworks (*see, e.g.: Opinion 2/92 Competence of the Community or one of its Institutions to Participate in the Third Revised Decision of the OECD on National Treatment [1995], ECR I-521; Opinion 2/94 Accession of the Community to the European Human Rights Convention [1996] ECR I-1759; Opinion 1/94 Competence of the Community to Conclude International Agreements Concerning Services and the Protection of Intellectual Property, WTO [1994] ECR I-5267, Craig P., de Búrca G., EU Law. Text, cases and materials. 4th ed., Oxford University Press, 2008, pp. 97 – 98*). In this doctrine it has also been indicated that the European Court of Justice shall no more be regarded as "the driver of integration", whilst its task is to ensure balance between the competencies and functions of the institutions, between the Member States and their citizens (*see: Albi A., Supremacy of EC Law in the New Member States. Bringing Parliaments into the Equation of Co-operative Constitutionalism, European Constitutional Law Review, 3: pp. 25 – 67, 2007, p. 40*).

18.4. At the Court sitting, the Applicants have reiterated that, as the procedure of voting in the Council changes, the possibility that Latvia as a small state would no more be capable to appropriately protect its interests would increase. "Influence of Latvia upon the Council would decrease from 1.2 to 0.4 percent" (*Transcript of the Constitutional Court sitting of 4 March 2009, case materials, Vol. 4, pp. 32 and transcript of the Constitutional Court sitting of 10 March 2009, case materials, Vol. 4,*

pp. 128). Moreover, transition from consensus voting to codecision procedure would take place in several fields (*see: case materials, Vol. 1, pp. 9 and 10*).

Article 16 of the TEU regarding procedures of voting in the Council provides:

„2. The Council shall consist of a representative of each Member State at ministerial level, who may commit the government of the Member State in question and cast its vote.

3. The Council shall act by a qualified majority except where the Treaties provide otherwise.

4. As from 1 November 2014, a qualified majority shall be defined as at least 55 % of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least 65 % of the population of the Union.

A blocking minority must include at least four Council members, failing which the qualified majority shall be deemed attained.

The other arrangements governing the qualified majority are laid down in Article 238(2) of the Treaty on the Functioning of the European Union.

5. The transitional provisions relating to the definition of the qualified majority which shall be applicable until 31 October 2014 and those which shall be applicable from 1 November 2014 to 31 March 2017 are laid down in the Protocol on transitional provisions."

EU membership means that neither Latvia nor any other Member State has absolute rights to block any decision that is being adopted in the EU. Latvia has not had such rights since the accession to the European Union. Although the TL does provide for several issues, decisions in which are made based on the qualified majority of votes rather than reached on consensus, the Constitutional Court agrees to the opinion of M. Mits that possible decrease of influence of Latvia upon the EU institutions should be assessed taken into consideration amelioration of direct influence of Latvia (*see: Transcript of the Constitutional Court sitting of 4 May 2009, case materials, Vol. 4, pp. 120*). As to this context, there are at least three substantial changes introduced by the TL.

First of all, under the fourth part of Article 11 of the TEU, not less than one million citizens who are nationals of a significant number of Member States may take

the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties. According to the first part of Article 24 of the TFEU, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the provisions for the procedures and conditions required for a citizens' initiative.

Secondly, Article 12 of the TEU and Protocol No. 1 of the TFEU "On the Role of National Parliament in the European Union" provides for encouraging of greater involvement of national Parliaments in ensuring of the principle of subsidiarity and the principle of proportionality. National Parliaments shall have their draft legislative acts, participate in assessment mechanisms of liberty, security and lawfulness, as well as in the revision procedures of the Treaties and notification procedures regarding accession of a new member state. If one-third of the Parliaments do not object adoption of any act, then the Commission shall sign this act.

Thirdly, along with the TL, the so-called Ioannina Compromise, which was introduced in the Declaration No. 7 attached to the TL Final Act, is also established. According to the fourth part of Article 16 of the TEU that provides for voting procedures in the Council from 1 November 2014, the so-called blocking minority that must include at least four Council members is established. According to the Compromise, the blocking minority will be formed, before 31 March 2017, by three-quarters of the number of the Member States or EU citizens mentioned in the fourth part of Article 16. After 1 April 2017, the restriction would be broadened up to 55 percent from the Member States or number of citizens. In order to amend this Compromise, the Council must reach a consensus decision. Moreover, in the cases when a Member state would hold that any of the EU draft normative project infringes its interests, financial balance, social security system of the domain of criminal law, it is entitled to initiate termination of the legislative procedure. In this case, the European Council would be obligated to reach, within the period of four months, a consensus decision regarding continuation or termination of the legislative procedure.

18.5. The Applicants hold that after coming into effect of the TL, Latvia would delegate the competency of the common foreign policy and security policy to the EU because further on decisions would be adopted within the EU (*see: Transcript of the Constitutional Court sitting of 4 March 2009, case materials, Vol. 4, pp. 46 and 48*).

The Constitutional Court agrees with the opinion of the Applicants insofar as the TL formally repeals the pillar system. The former second pillar – common foreign and security policy (hereinafter – CFSP) has been included into Title V of the TEU "General Provisions of the Union's Action and Specific Provisions on the Common Foreign and Security Policy". This is the only pillar that was preserved at the intergovernmental level. Under Article 22 of the TEU, the external action of the Union shall be adopted unanimously with a view to reach the objectives established in Article 21 of the TEU. According to Article 22 and Article 23 of the TEU, it applies to all decisions regarding SFSP. Under Article 24 and Article 31 of the TEU, the common foreign and security policy is subject to specific rules and procedures that provide for the adoption of legislative acts. Under Article 275 of the TFEU, neither the EU court would have the jurisdiction regarding these provisions. The only exception when the EU Court is entitled to review the SFSD decisions is the cases when these decisions are related with the rights of individuals (Article 40 of the TEU and Article 75 of the TFEU). Such practice also exists in the content of the effective Treaties. The European Court of Justice is already reviewing compliance of such regulations and decisions with the Fundamental treaties that introduces sanctions for the European Community based on the UN Security Council resolutions or positions of the Council. In the result of adoption of such acts, bank accounts of individuals are often blocked or travelling restrictions established in the vase if they are suspected for international terrorism (*see: Cases 402/05 P and C 415/05 P Yassin Abdullah Kadi and Al Barakaat International Foundation v Council [2008] Judgment of 3 September 2008; Case T-284/08 People's Mojahedin Organization of Iran v Council [2008] Judgment of 4 December 2008*).

Consequently, the only substantial difference is that the decisions, too, would be adopted in the frameworks of the SFSP. As to the common foreign and security policy, it is provided that this policy is an integral part of the SFSP and the

performance of these tasks shall be undertaken using capabilities provided by the Member States (*see: Article 42 of the TEU*). The TEU provides for elaboration of such policy based on unanimous decisions of the European Council, and it particularly emphasizes the fact that the common foreign and security policy shall not regulate the duties of the Member States in the North Atlantic Treaty organization and shall be consistent with the commitments. In general, the TEU requires adoption of unanimous decisions and does not provides that international liabilities of the Mmeber States would exceed those established in the treaty establishing NATO (*see: seventh part of Article 42 of the TEU*).

18.6. The Applicants mentioned, in the specifications to the application, the flexibility clause and *passarelle* procedure that points to approximation of the EU to the state "element" (entity) (*see: case materials, Vol. 3, pp. 85*).

Although the Applicants have not specified the norm wherein the flexibility clause is included, the Constitutional Court holds that the Applicants meant Article 352 of the TEU by mentioning the so-called flexibility clause. The abovementioned norm has been included into the EU fundamental treaties since foundation of the European Community (*see: Article 3008 of the TEU*). Similar flexibility clauses arealso included in the treaties establishing other organizations, and the UNO International Court has recognized them as an organic element of effective functioning of international organizations (*see: Advisory Opinion, Reparations for Injuries suffered in the service of the UN, ICJ, 11 April 1949*). Moreover, the TL would introduce additional democratic guarantees, namely, national Parliaments would have the right to object in the case if the EU, based on Article 352 of the TFEU, would elaborate a new legal acts. The doctrine regards it as amelioration of EU functioning (*see: Albi, p. 42*).

Passarelle procedure or the norms for simplified revision procedures for fundamental treaties have already been included into the EU treaties (*see, e.g.: Article 42 of the TEU, the second part of Article 137 and the second part of Article 175 of the TEC*). The EU fundamental treaties even after coming into force of the TL would not provide for an equal decision-making procedure within the EU; special decision-making procedures are provided, namely, adoption of an unanimous decision, in

addition to the ordinary decision-making procedure, namely, the codecision procedure, the decisions sometimes being reached by means of a consent provided by the European Parliament or after consulting with the European Parliament. It will not be possible to change the EU competencies in accordance with the *Passarelle* procedure, whilst it will be possible to introduce amendments into the procedure of the decision-making procedure within the EU by transiting from the special decision-making procedure to the codecision procedure. The seventh part of Article 48 of the TEU provides for two kinds of *passarelle* procedures. First of all, the Member States may agree on transition to a codecision procedure. Secondly, the Member States may agree on decision making by a qualified majority of votes in the Council without amending the procedure regarding involvement of the European Parliament into the decision-making process. The Council is entitled to adopt such decision unanimously by also receiving the consent of the European Parliament. As substantial change in the present regulation regarding decision-making procedure can be regarded the fact that other national Parliaments must be informed on the planned changes in the decision-making procedure, the Parliaments being allowed to use their *veto* rights during the period of six months. Consequently, the argument of the Applicants that amendments to the Treaty could be introduced without the consent of the Saeima is ungrounded. The national Parliaments will have no such authority only regarding the effective *passarelle* norms. The TFEU also provides for several exceptions when the *passarelle* norms shall not be applied (*see: Article 353 of the TFEU*).

Consequently, the Constitutional Court concludes that the Latvia will have the rights and the possibility to block changes into the decision-making procedure that are undesirable for it and the Saeima will have the possibility to express its opinion before coming into force of such changes.

18.6. In the specifications to the application and at the Court sitting, the Applicants indicated that the EU would be approximated to a state entity because the European Public Prosecutor's Office would be created. At the Court sitting, the representative of the Saeima indicated that the TL does not provides for establishing of a common Public Prosecutor's Office at the European level and "it is only a political

position that can be implemented" (*see: Transcript of the Constitutional Court sitting of 4 March 2009, case materials, Vol. 4, pp. 61*).

The Constitutional Court recognizes that, first of all, according to the first part of Article 86 of the TFEU, establishing of the Public Prosecutor's Office is just a possibility, namely, also after coming into effect of the TL the European Public Prosecutor's Office shall not be formed automatically.

Secondly, the regulations, by means of which the Eurojust could restructure its public prosecutor's office, shall be adopted by a unanimous decision of the Council and consent of the European Parliament. Thus, during elaboration of the abovementioned regulations, the Republic of Latvia would have the possibility to express its opinion and, in the case of necessity, to block adoption of a decision.

Thirdly, even if the European Public Prosecutor's Office would be formed, one could not admit that it would overtake on have a considerable impact on the competence of the judicial power or public prosecutor's office of the Republic of Latvia. Although the planned competency of the European Public Prosecutor's Office would differ from the present competence of Eurojust, which is to coordinate collaboration between the States for combat against international and organized crime, it would still include the issues related with the financial interests of the EU or issues of international importance.

The Applicants have not indicated any other aspects why establishment of the European Public Prosecutor's Office would be inadmissible. Consequently, the Constitutional Court recognizes this argument of the Applicants as ungrounded.

18.7. The Applicants indicate that the EU cannot enter the CPHRFF, which confers such rights only to states. The human rights established in the Charter can also be related with the rights established in Article 8 of the Satversme, and application of the Charter may prove to be incompatible with the Satversme (*see: Transcript of the Constitutional Court sitting of 10 March 2009, case materials, Vol. 4, pp. 132*).

The Constitutional Court first of all indicates that the second part of Article 6 of the TEU provides only that *"the Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties".* Consequently, the

objective is set assuming that such accession may take place only in accordance with the provisions of the TEU and CPHRFF.

The fact that, under the second and the third part of Article 6 of the TEU, the Charter and the Charter and the CPHRFF shall become binding to the EU is not non-compatible with the Satversme because both these mentioned documents are based on seminal values and principles. Moreover, the Constitutional Court has reiterated that the objective of the legislator was not to contrast the norms of human rights established in the Satversme with international legal norms. On its essence the Satversme cannot envisage a lesser scope of ensuring or protecting fundamental rights than is envisaged in any of the international legal acts. A different conclusion would be at variance with the idea on the law-governed state, incorporated in Article 1 of the Satversme; because one of the main forms of expression of the law-governed state is recognition of human rights and fundamental freedoms as the highest value of the state (*see*: *Judgment of 14 September 2005 by the Constitutional Court in the case No. 2005-02-0106, Para 10*).

Moreover, it must be indicated that on 28 March 2006, Latvia has ratified Protocol No. 14 of the CPHRFF (*see: Law of 9 February 2006 "On the Protocol No., 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Amending the Control System of the Convention"*). Article 17 thereof provides for amendments to Article 59 of the CPHRFF by supplementing it with a second item that would give the possibility to the EU to accede this Convention.

The European Court of Justice has already acceded to 47 different Conventions of the European Council (*see: http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=13&CL=ENG)*. Moreover, the Community represents the Member States in different international organizations or international treaties; for example, since 1995 - World Trade Organization, since 1 April 1998 – the UN Convention on the Law of the Sea in accordance with restrictions of competence division [*see: http://www.wto.org/english/theWTO_e/countries_e /european_communitiese.htm un http://www.un.org/Depts/los/referencefiles/chronological_lists_of_ratifications.htm#The%20United%20Nations%20Convention%20on%20the%20Law%20of%20the%20Sea;C-459/03 Commission v. Ireland (Mox Plant) [2006] ECR I-4635*].

Article 51 of the Charter clearly provides that this Charter does not establish any new power for the Community or the Union, or modify powers and tasks defined by the Treaties. It delegates responsibilities to the institutions and other subjects of the EU, as well as the Member States only in the case when applying the EU law. The Charter may not be applied on other fields that Latvia has not delegated to the EU. Consequently, the constitutional mechanism for the protection of human rights is autonomous and independent from the Moreover, it is indicated that along with recognising the Charter as legally binding document, protection of the rights of persons would be ameliorated because hitherto it has been ensured only at the level of general legal principles, whilst this is not enough in the context of legal security (*Application no. 62023/00, Emesa Sugar v. Netherlands, ECtHR decision of 13 January 2005, Case C-17/98 Emesa Sugar v. Aruba [2000] ECR I-665, Craig and Búrca, pp. 425 – 426*).

In the frameworks of the case under consideration, it is possible to establish that in the future, after coming into force of the TL, several systems for protection of human rights would exist, *inter alia*, the systems of the Republic of Latvia, that of the EU and the CPHRFF. Latvia has already agreed to this step by ratifying Protocol No. 14 of the CPHRFF, which has not been contested at the Constitutional Court. Moreover, the Court cannot assess *in abstracto* the claim regarding possible collision of different systems for protection of human rights. Such collisions will have to be solved at each particular case taking into consideration circumstances of each case.

18.8. The Applicants drew attention to several institutional amendments that approximate the EU to a state entity, namely to the fact that offices of the EU Chairman and the EU Foreign Affairs Commissar would be established, the fact that Latvia would be represented by a commissar only for two terms of office out of three terms in the Commission convocation, as well as the fact that European Judicial Panel with a broadened scope of competencies would also be formed.

The effective treaties provide that chairmen of the European Council shall be the leader of the Presiding State of the chairperson of its government who shall be conferred the respective authority for the term of six months. Under the fifth part of Article 15 of the TEU, the European Council shall elect its President, by a qualified

majority, for a term of two and a half years, renewable once. Such planned changes of organizational nature would ensure broader succession of the EU activities; however it is not allowed to infringe the activities of Latvia as a sovereign State.

The argument of the Applicants regarding establishment of the position of the EU Foreign Affairs Commissar is unclear. Obviously the Applicants wanted to refer to merging of the competence of a foreign affairs commissar and the High Representative of the Union for Foreign Affairs and Security Policy (hereinafter - the High Representative) by means of the new treaty.

On of the tasks provided for in the Leaken Declaration was to ensure a greater legal capacity of the EU institutional framework and thus ensure a more efficient and coordinated implementation of foreign policy. Under Article 18 of the TEU, the High Representative shall conduct the Union's common foreign and security policy. He shall contribute by his proposals to the development of that policy, which he shall carry out as mandated by the Council. The same shall apply to the common security and defence policy. The same applies to the common security and defence policy. Although the High Representative shall conduct the Foreign Affairs Council in accordance with the fourth part of Article 18 of the TEU, he shall be responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action. When working in the Commission, according to the second or the third part of Article 18 of the TEU, the High Representative shall carry out his functions in accordance with the authority conferred by the Council. Consequently, although the High Representative shall be bound by the Commission procedures, it is possible to conclude that the functions of the commissar of foreign affairs would be restricted because his competence will not be established by the Commission but by the Council. The competence of the High Representative would follow from decisions of the Council, wherein decisions are being adopted unanimously, rather than from decisions of the Commission. This is also confirmed by the fourth part of Article 18 of the TEU that provides that in exercising these responsibilities within the Commission, and only for these responsibilities, the High Representative shall be bound by Commission procedures to the extent that this is

consistent with his authority conferred by the Council and comply with the decisions of the Foreign Affairs Commission.

Consequently, like it is provided in Article 18, Article 26 and Article 27.d of the TEU, the High representative shall be bound by the Council procedures rather than those of the Commission. This means that the High Representative shall not be entitled to express his viewpoint and undertake any initiative without a unanimous consent of the Council. Consequently, Latvia will not lose the rights to restrict the scope of activities of the High Representative.

The argumentation provided by the Applicants is not precise regarding reduction of the number of commissars provided by the TL either.

First of all, the provision regarding reduction of the number of commissars was already provided for in the Treaty of Nice that was valid at the moment when Latvia joined the EU. The Treaty of Nice was supplemented by the Protocol on Enlargement of the European Union. Article 4 of the Protocol includes provisions regarding the Commission. The second part of this Article provides that when the Union consists of 27 Member States, Article 213(1) of the Treaty establishing the European Community and Article 126(1) of the Treaty establishing the European Atomic Energy Community shall be replaced by the following:

"1. The Members of the Commission shall be chosen on the grounds of their general competence and their independence shall be beyond doubt.

The number of Members of the Commission shall be less than the number of Member States. The Members of the Commission shall be chosen according to a rotation system based on the principle of equality, the implementing arrangements for which shall be adopted by the Council, acting unanimously.

The number of Members of the Commission shall be set by the Council, acting unanimously.

This amendment shall apply as from the date on which the first Commission following the date of accession of the 27th Member State of the Union takes up its duties."

Consequently, it was known already before accession of Latvia to the EU that all Member States will not always be represented.

Secondly, according to the constitutional structure of the EU, the European Commission and the commissars represent the interests of the EU in general rather than the interests of each State. Under Article 17 of the TEU, the Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them. Consequently, it is not important whether each Member State would be represented by its own commissar to act in the national interests.

Thirdly, as it has been indicated in the Presidency Conclusions adopted at the European Council meeting in Brussels, The European Council agrees that provided the Treaty of Lisbon enters into force, a decision will be taken, in accordance with the necessary legal procedures, to the effect that the Commission shall continue to include one national of each Member State (*see: Brussels European Council, Presidency Conclusions, 11th-12th December 2008, Brussels, 13 February 2009, 17271/1/08 REV 1, point 2*). Such conclusions by the European Council, according to Article 4 of the valid TEU, provides for general development of the EU.

The Constitutional Court concludes that the Applicants, by referring to the European Judicial Panel, has meant The Court of Justice of the European Union shall include the Court of Justice, the General Court and specialised courts (*see: Article 19 of the TEU*). It is not planned to introduce substantial changes into the EU judicial system by means of the TL, although separate conditions providing detailed competencies for courts can be distinguished (*see: Douglan, p. 673*). The main of these conditions are the following: simplified revision procedures regarding sanctions for the states that do not observe EU acts; increase of competencies regarding security, freedom and justice (*see: Article 46 of the valid TEU and Title IV of the TEU*), repealed restrictions of court jurisdiction regarding the effective Title VI of the TEU. As to the issues that are included in the third pillar, there is a transitional period of five years established. According to Article 276 of the TFEU, the Court of Justice of the European Union shall have no jurisdiction to review the validity or proportionality of operations carried out by the police or other law-enforcement services of a Member State or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security. The

Constitutional Court indicates that Article 275 of the TFEU excludes jurisdiction of the Court of Justice upon the SFSP and the acts that have been adopted in the frameworks thereof. This Article, like previously, does not prohibit examining such issues that restrict the rights of natural and legal persons. After coming into force of the fourth part of Article 263 of the TFEU regarding legal acts that do not require further implementation activities from the Member States but infringes the rights of legal and natural persons, their rights to go to court of the EU will be broadened. When assessing changes to the court jurisdiction in general, it is necessary to admit that the capacity of the court to review decision that restrict the rights of individuals would increase [*see: Spaventa E., Fundamental What? The difficult relationship between foreign policy and fundamental rights, in Cremone M. and de Witte B. (eds.), EU Foreign Relations Law: Constitutional Fundamentals, Hart Publishing, 2008*]. Consequently, the Constitutional Court establishes that, although the scope or jurisdiction of EU courts would increase, it will at great extent related with additional guarantees for protection of the rights and natural and legal persons.

18.9. The Applicants hold that the breach of the principle of sovereignty included in Article 2 of the Satversme expresses itself through the fact that "deliberate concealment of information from the society regarding the content and consequences of the Treaty of Lisbon" has been admitted, or the provided information has been euro-optimistic rather than neutral (*case materials, Vol. 3, pp. 80 and 81*).

The Constitutional Court admits that the highest possible awareness of the society on the issues regarding the EU shall no doubt be evaluated positively, and this favours transparency of the decisions adopted in this respect. Dissemination of additional information shall be regarded as expression of good administration, which at the same time increases understanding of the society regarding a particular issue and creates the basis for larger discussions on possible problematic issues. In the result of such awareness, the society has the possibility to participate in the decision-making process of national importance regarding integration issues into the European Union.

The Constitutional Court indicates, however, that is has no reason to recognize the process of the way, according to which the society was informed on the TL, as possible infringement or restriction of sovereignty of the people. Actions of national

institutions when informing the society on the issue insofar as this duty is *expressis verbis* provided for by normative acts depends rather on determination of the public power regarding politically useful action that is not subject to strict court assessment by means of legal arguments.

The Constitutional Court has not established any norms of the TL that would infringe the principle of sovereignty of the people enshrined in Article 2 of the Satversme. Consequently, based on Article 77 of the Satversme, a national referendum should not be held.

IV

19. The fourth part of Article 68 of the Satversme provides: "Substantial changes in the terms regarding the membership of Latvia in the European Union shall be decided by a national referendum if such referendum is requested by at least one-half of the members of the Saeima."

The Applicants indicate that the abovementioned norm, also taking into consideration the historical circumstances of elaboration of the norm, obligates the members of the Saeima to submit substantial changes in the terms regarding the membership of Latvia in the EU. Moreover, this duty also follows from the solemn promise of a member of the Saeima provided for in Article 18 of the Satversme.

The Saeima does not recognize such interpretation of the fourth part of Article 68 of the Satversme and holds that this norm provides only for the rights of the members of the Saeima to submit substantial changes in the terms regarding the membership of Latvia in the EU. Members of the Saeima shall use the abovementioned rights taking into account considerations of political usefulness.

19.1. The Constitutional Court indicates that establishment of the content of the fourth part of Article 68 of the Satversme shall first of all be carried out by applying grammatical interpretation of legal norms. Namely, the Constitutional Court, taking into account the contradicting interpretation of the fourth part of Article 68 of the Satversme by the participants of the case, must investigate whether the abovementioned norm provides for the duty or the right of the members of the Saeima

to submit substantial changes in the terms regarding the membership of Latvia in the EU.

Interpretation of the fourth part of Article 68 of the Satversme offered by the Saeima is supported by the Ombudsman. It holds that this norm shall be interpreted as a norm providing for the right of the members of the Saeima to initiate a national referendum if changes in the terms regarding the membership of Latvia in the EU are substantial. If the elaborators of the Satversme would have wanted to provide for such duty for the members of the Saeima, this would have been included into the abovementioned article (*see: case materials, Vol. 2, pp. 46*).

M. Paparinskis also admits that the wording "substantial changes in the terms" "does not directly mean a duty to hold a national referendum; it rather confers the rights to at least one-half of the members of the Saeima to request it disregarding the opinion or recommendation of other members of the Saeima" (*see: case materials, Vol. 3, pp. 52*). At the Court sitting, a similar opinion was expressed by A. Endziņš who indicated that this is the right of the members of the Saeima, and they must consider whether to exercise these rights. If 50 members of the Saeima would hold that these amendments should be submitted to a national referendum, then holding of a referendum is mandatory (*see: Transcript of the Constitutional Court sitting of 4 March 2008, case materials, Vol. 4, pp. 102*).

Likewise, M. Mits admits that the fourth part of Article 68 of the Satversme requests organizing a national referendum in the cases when there are two cumulative conditions. M. Mits indicated at the Court sitting: "If we apply grammatical method of interpretation [..] then it is necessary to conclude that the fourth part of Article 68 of the Satversme provides for the right rather than the duty of the members of the Saeima to submit the respective issue to a national referendum[..] In the frameworks of Article 101 [of the Satversme] the rights to a national referendum would have been established if a national referendum would be requested by 50 members of the Saeima in accordance with the fourth part of Article 68 of the Satversme. In the case under review, this has not been done. The issue has not been submitted to a national referendum, whilst there is no reason to hold that the fourth part of Article 68 of the

Satversme obligated members of the Saeima to do this" (*see: Transcript of the Constitutional Court sitting of 4 March 2008, case materials, Vol. 4, pp. 119 and 120*).

The Constitutional Court agrees that grammatical interpretation of the fourth part of Article 68 of the Satversme gives no reason to conclude that it would establish the duty of the members of the Saeima to submit substantial changes in the terms of the membership of Latvia in the EU to a national referendum. By admitting that it provides for the duty of the members of the Saeima would mean that the finding would not comply with the grammatical text of the fourth part of Article 68 of the Satversme.

19.2. However it must be admitted that the use of grammatical methods of interpretation in the majority of cases can nor be considered as sufficient to reveal the content of a legal norm, and therefore other interpretation methods should also be used (*see, e.g.: Judgment of 4 February 2003 by the Constitutonal Court in the case No. 2002-06-01, Para 3 of the Establishing Part, Judgment of 20 December 2006 by the Constitutonal Court in the case No. 2006-12-01, Para 9.1 and Judgment of 21 December 2007 by the Constitutonal Court in the case No. 2007-12-03, Para 19*).

Applying historical interpretation method, the sense of the legal norm is established by taking into account the circumstances, under which it has been created (*see, e.g.: Judgment of 8 February 2007 by the Constitutonal Court in the case No. 2006-09-03, Para 12*).

It can be seen in the materials of the work group elaborating Article 68 and Article 79 of the Satversme that initially a norm analogous to the fourth part of article 68 of the Satversme has not been included in the draft project (*see: case materials, Vol. 3, pp. 128*). On the other hand, since the moment when the work group agreed on supplementing Article 68 by the fourth part thereof, the wording "if requested by at least one-half of the members of the Saeima" has remained unchanged up to the moment when the norm has been adopted in the Saeima (*see: case materials, Vol. 3, pp. 144., 146., 162., 166. and 171*).

Discussions of the work group elaborating Article 68 and Article 79 of the Satversme and Annotation of the draft law "Amendments to the Satversme of the Republic of Latvia" do not show that the fourth part of Article 68 of the Satversme would provide for a duty of the members of the Saeima to submit substantial changes

in the terms of the membership of Latvia in the EU to a national referendum. Also the persons invited by the Constitutional Court, taking into account historical circumstances of elaboration of the fourth part of Article 68 of the Satversme, point out the right rather than the duty of the members of the Saeima established in the abovementioned Article (*see: Opinion of M. Paparinskis, case materials, Vol. 3, pp. 52 and statement of M. Mits at the Court sitting, case materials, Vol. 4, pp. 119*).

The argument that theoretical substantiation provided by the work group regarding the amendments to Article 68 of the Satversme, in the context of the fourth part of which it has been clearly indicated that a national referendum is not obligatory and that the members of the Saeima have the rights to choose whether to submit any issue related to the EU to a national referendum, is substantial. It is indicated in the abovementioned substantiation that the fourth part of Article 68 of the Satversme confers such rights to the Saeima that are not related with fundamental constitutional principles, i.e. the rights to assess the terms regarding Latvia's membership in the EU and decide whether to submit the issue to a national referendum. The abovementioned norm has introduced a novel and non-obligatory way of a national referendum. The first words "if it is requested" specify the most essential difference between a national referendum provided for in the third part of the same Article, namely, a national referendum of this kind is not obligatory, and not less than a half of the members of the Saeima have the right to choose whether the submit or not any issue regarding integration into the EU to a national referendum. The initial objective of such amendment was to ensure that a national referendum is held on very important issues regarding integration into the EU. The fourth part of Article 68 of the Satversme ensures the possibility to find out the will of the people in the case if the EU, which Latvia has adhered to, changes its constitutional structure at the extent that it may cause doubt whether the people of Latvia would approve Latvia's membership in Europe after significant change of the form and structure thereof (*see: Kādēļ Latvijas konstitūcijā nepieciešami labojumi? Jurista Vārds, 15 May 2001, No. 14.*).

19.3. In order to establish the content of separate norms of the Satversme at the fullest extent possible and in an equitable manner, they must be compared to other norms of the Satversme. As to several other norms of the Satversme, when ensuring

the legal consequences provided for therein, a wording that is analogous to that of the fourth part of Article 68 of the Satversme is used, namely, the wording "if it is requested". For instance, Article 20 of the Satversme provides: “The Presidium shall convene sittings of the Saeima if requested by the President, the Prime Minister, or not less than one third of the members of the Saeima.” Article 26 of the Satversme provides: „The Saeima shall appoint parliamentary investigatory committees for specified matters if not less than one-third of its members request it”, whilst Article 72 of the Satversme provides that „The President has the right to suspend the proclamation of a law for a period of two months. The President shall suspend the proclamation of a law if so requested by not less than one-third of the members of the Saeima. This right may be exercised by the President, or by one-third of the members of the Saeima, within ten days of the adoption of the law by the Saeima. The law thus suspended shall be put to a national referendum if so requested by not less than one-tenth of the electorate. If no such request is received during the aforementioned two-month period, the law shall then be proclaimed after the expiration of such period. A national referendum shall not take place, however, if the Saeima again votes on the law and not less than three-quarters of all members of the Saeima vote for the adoption of the law”.

Consequently, an obligatory precondition for performing respective activities is a request of a certain number of members of the Saeima as established in the Satversme, namely, the Satversme lies implementation of the respective activities with the request submitted by a sufficient number of members of the Saeima. Implementation of this activity falls within the exclusive competence of the members of the Saeima as representatives of the people, rather that within the area of competence of the Saeima as an authority. Consequently, the Satversme confers the right to several members of the Saeima to express their viewpoint regarding issues of national importance and to supervise actions of the majority of the parliament. The fourth part of Article 68 of the Satversme has an analogous structure.

The Constitutional Court has recognized that that the Satversme is a short, laconic but at the same time a complicated document. Namely, no norm of the Satversme or its part may be regarded as excessive, because such an understanding

shall destroy the inner logical structure of the Satversme (*see: Judgment of 16 December 2005 by the Constitutional Court in the case No. 2005–12–0103, Para 17*). If any of the wording of the Satversme has been conferred a certain content, then it is necessary to take it into consideration in order to ensure appropriate application of the respective norms of the Satversme.

In order to emphasize the duty of the Saeima to implement or refrain from certain action, the wording of the fourth part of Article 68 of the Satversme is used in other parts of the Satversme. For instance, the third part of Article 68 of the Satversme provides that "membership of Latvia in the European Union shall be decided by a national referendum, which is proposed by the Saeima". Consequently, the pre-condition permitting dealing with the issues regarding Latvia's membership in the EU is the duty of the Saeima to initiate a national referendum. If the Saeima fails to fulfil this duty, then no legal basis is created to hold a national referendum and solving the issue regarding Latvia's membership in the EU.

The second part of Article 66 of the Satversme provides: "If the Saeima makes a decision that involves expenditures not included in the Budget, then this decision must also allocate funds to cover such expenditures". Consequently, if the Saeima wants to adopt a decision that is related with expenditures not included in the Budget, it has the duty to establish, in the decision, the source of resources, by means of which it is planning to cover the expenditures. On the other hand, Article 77 of the Satversme provides: "If the Saeima has amended the first, second, third, fourth, sixth or seventy-seventh Article of the Constitution, such amendments, in order to come into force as law, shall be submitted to a national referendum". Consequently, the Saeima, when amending any of the articles mentioned in Article 77 of the Satversme, also has the duty to submit the respective amendments to a national referendum. If the Saeima fails to fulfil this duty, the amendments would not come into force.

19.4. The fourth part of Article 68 of the Satversme and the second part of Article 79 of the Satversme confers the rights to the people to decide issues regarding substantial changes in the terms of the membership of Latvia in the European Union if it is requested by at least a half of the members of the Saeima. Such wording ensures the possibility to find out the will of the people in the case if the EU changes its

constitutional structure at the extent that it may cause doubt whether the people of Latvia would approve Latvia's membership in Europe after significant change of the form and structure thereof; at the same time it is ensured that a national referendum would be held only regarding very important issues regarding integration in the EU (for instance, substantial changes in the EU Fundamental Treaties). The present wording does not allow submitting any issue to a national referendum (for instance, acts adopted by EU institutions, like directives, regulations etc.) (*see: Annotation of the draft law "Amendments to the Satversme of the Republic of Latvia", document No. 318, A http://www.saeima.lv/saeima8/mek_reg.fre).*

The Constitutional Court admits that such interpretation of the fourth part of Article 68 of the Satversme that its unequivocal wording would be explained as the duty of the members of the Saeima to submit substantial changes in the terms of the membership of Latvia in the EU would not comply with the principle of legal security. Validity of such a conclusion is not confirmed by the objective of the legislator due to which such a norm has been included into the Satversme. The Applicants E. Jansons, in fact, substantiates such interpretation of the fourth part of Article 68 of the Satversme by means of an argument of political usefulness, namely, if this issue would have been submitted to a national referendum, then "the trust capital of the Saeima would have been higher" (*see: Transcript of the Constitutional Court sitting of 4 March 2009, case materials, Vol. 4, pp. 27*).

Therefore it is possible to suppose that the Applicants, in fact, ask the Constitutional Court to carry out development of the fourth part of Article 68 of the Satversme, i.e. its teleological reduction. Namely, the Applicants hold that the words "if it is requested by at least one-half of the members of the Saeima" cannot be applied in the cases when substantial changes are being introduced in EU integration taking into consideration amendments to the EU Fundamental Treaties. In such cases, the abovementioned amendments shall always be automatically submitted to a national referendum. However, prohibition to apply teleological reduction may follow from the principle of legal security in the case if it is necessary to strictly follow the unequivocal legal norm (*see: Neimanis J. Tiesību tālākveidošana. Rīga, Latvijas Vēstnesis, 2006, pp. 155*).

The Constitutional Court admits that decision regarding politically most useful solution is, first of all, the duty of directly and democratically legitimized parliament. "No deviation from the text in a fundamental law may be justified by usefulness [..] fundamental laws reveal its basis: to be an irrevocable law for citizens; to be the determining factor, without which life is impossible" [*Sinaiskis V. Lietderība un noteikumi likumu tulkošanā (Sakarā ar dep. Goldmaņa neaizskaramību). Jurists, No.3, 1928, 72.col.*].

The Constitutional Court concludes that the fourth part of Article 68 of the Satversme provides, as a pre-condition for the people to exercise their rights to participate in the decision-making process regarding the issues on amendments to the EU Treaty, for a request of at least one-half of the members of the Saeima. Although such exercise of the rights of the people provides for a certain pre-condition, the Constitutional Court may not reassess constitutionality of certain norms of the Satversme because such assessment does not fall within its jurisdiction. The Constitutional Court, however, *de lege ferenda* agrees to what has been indicated by M. Mits that a national referendum no doubt has a substantial role in legitimizing decisions of national importance (*see: case materials, Vol. 4, pp. 57 and 58*).

20. At the same time, the Constitutional Court agrees with the opinion of the Applicant that the Saeima, when assessing ratification of any international treaty which settle matters that may be decided by the legislative process, are first of all obligated to assess this treaty. The fact that other national institutions have already performed such assessment (for instance, the ministry that is responsible for the respective domain) does not relieve the Saeima of its responsibility to assess the respective issue itself. Article 68 of the Satversme *inter alia* provides that all international agreements, which settle matters that may be decided by the legislative process, shall require ratification by the Saeima. The Constitutional Assembly, when including the above norm in the Satversme has not conceded that the State of Latvia could avoid fulfilling its international commitments. The demand to require ratification of the international agreements by the Saeima was incorporated in the Satversme with the aim of precluding such international liabilities, which shall

regulate issues under the procedure of legislature without the assent of the Saeima. Thus it can be seen that the Constitutional Assembly has been guided by the presumption that international liabilities "settle" issues and they shall be fulfilled (*see: Judgment of 7 July 2007 by the Constitutional Court in the case No. 2004-01-06, Para 3.2 and Para 6 of the Establishing Part*).

Neither the Saeima discussions, nor the opinions of the commissions provide an answer to the question how the issue whether the TL would introduce substantial changes in the terms of the membership of Latvia in the EU has been assessed before ratification of the TL. On the other hand, it can be concluded indirectly from the Saeima discussions regarding ratification of the TL that it has been assessed whether the TL would introduce substantial changes in the terms of the membership of Latvia in the EU. For instance, a member of the Saeima and a representative of the responsible commission Leopolds Ozoliņš indicated at the discussions: "The principles and norms included into the draft law comply with the main tasks of validation of the Law and the national position of the Republic of Latvia. The Treaty does not provide for substantial changes in the terms of Latvia's membership in the EU. Along with coming into force of the TL, the possibilities of Latvia to participate in the decision-making process in the EU would increase" (*Transcript of the meeting of 19 may 2005 of the 8th Saeima of the Republic of Latvia, http://www.saeima.lv/steno/2002_8/st_050519/st1905.htm).*

The Constitutional Court indicates that the fact whether the members of the Saeima are able to adopt an objective decision regarding ratification of any international treaty that delegates a part of the competencies of Latvia to the EU depends, at great extent, on preliminary assessment of the respective treaty available to the members of the Saeima, *inter alia* accessible at the authorities supervised by the Cabinet of Ministers and provided in the opinions of experts. After receiving the respective draft law, the Saeima is obligated to assess, in accordance with the procedure established in the Satversme and laws, firs of all according to which procedure the law should be ratified. Existence of such duty was confirmed by the representative of the Saeima who indicated: "Ratification of each normative act in the Saeima is tested whether it complies with hierarchy of normative acts and whether it

complies with the requirements of Article 1 and Article 2 of the Satversme" (*see: Transcript of the Constitutional Court sitting of 10 May 2009, case materials, Vol. 4, pp. 154*).

After having got acquainted with the transcripts of the Saeima meetings and other case materials, have no reason to hold that the voting of the members of the Saeima regarding ratification of the TL has been arbitrary and adopted on the basis of incomplete information. Moreover, the duty to assess legal acts that are submitted to voting is the question of political responsibility.

Since, at the process of adopting the Contested Act, the procedure established in Article 68 of the Satversme has not been breached, the rights of the Applicants established in Article 101 of the Satversme are neither infringed. Consequently, it can be concluded that the Contested Act complies with Article 101 of the Satversme.

The Constitutional Court

Based on Article 30 – 32 of the Constitutional Court Law

h o l d s :

The Law "On the Treaty of Lisbon Amending the Treaty of European Union and the Treaty establishing the European Community" has been adopted in conformity with the procedures established in the Satversme of the Republic of Latvia and consequently complies with the first part of Article 101 of the Satversme.

The Judgment is final and not subject to appeal.

The Judgment is announced on 7 April 2009.

The Presiding Judge G. Kūtris