



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## DECISION ON REFERRING QUESTIONS TO THE COURT OF JUSTICE OF THE EUROPEAN UNION FOR PRELIMINARY RULING IN CASE No. 2016-04-03

*Riga*

*28 February 2017*

The Constitutional Court of the Republic of Latvia comprised of: chairman of the court sitting Aldis Laviņš, Justices Kaspars Balodis, Gunārs Kusiņš, Uldis Ķinis, Sanita Osipova, Daiga Rezevska, and Ineta Ziemele,

having regard to an application by the Administrative District Court,

with the participation of the authorised representative of the institution that adopted the contested act, the Cabinet of Ministers, Gunita Aizstraute,

and Marija Paula Pelēce as the secretary of the court hearing,

on the basis of Article 85 of the *Satversme* [Constitution] of the Republic of Latvia, as well as Para 3 of Section 16, Para 9 of the first part of Section 17, as well as Section 19<sup>1</sup> and Section 28 of the Constitutional Court Law,

examining, on 31 January, as well as on 8 and 28 February 2017, at an open court hearing the case “On Compliance of the Cabinet of Ministers Regulation of 14 April 2015 No.187 “Amendment to the Cabinet of Ministers Regulation of 30 November 2004 No.1002 “Procedure for Implementing the Programming Document “Latvia’s Rural Development Plan for the Implementation of Rural

Development Programme for 2004-2006””” with Article 105 of the Satversme of the Republic of Latvia”,

**established:**

1. On 7 April 2004 the *Saeima* [the Parliament] adopted the Law on Agriculture and Rural Development (hereinafter – the Rural Development Law), which entered into force on 24 April 2004. Pursuant to Section 2 of the Rural Development Law, the purpose of this Law is to provide a legal basis for agricultural development and to specify sustainable agricultural and rural development policy in accordance with the Common Agricultural Policy and the Common Fisheries Policy of the European Union.

The seventh part of Section 5 of the Rural Development Law provides: “The Cabinet shall determine the procedures by which State aid and European Union support shall be administrated and supervised and the procedures by which European Union support for rural and fisheries development is administrated and supervised.”

On 30 November 2004 the Cabinet of Ministers, pursuant to the aforementioned provision of the Rural Development Law, issued Regulation No. 1002 “Procedure for Implementing the Programming Document “Latvia’s Rural Development Plan for the Implementation of Rural Development Programme for 2004-2006”” (hereinafter – the Cabinet Regulation No. 1002), which entered into force on 7 December 2004. This Regulation approves the programming document “Latvia’s Rural Development Plan for the Implementation of Rural Development Programme for 2004-2006” (hereinafter – the Rural Development Plan) and the procedure for implementing thereof.

Subsection 9.3 of the Rural Development Plan comprises the Measure “Early Retirement” (hereinafter – the Measure), providing, *inter alia*, that this allows elderly farm owners, who do not want to or for various reasons are unable to continue and develop economic activities, to give away, sell, give as gift his farm or

part thereof to another person, receiving for that early retirement support and keeping a certain amount of resources to produce food for his own and family's self-consumption. This Subsection also points out the grounds of the Measure, its goals, target audience, recipients of support, conditions for receiving support, type and amount of support, restrictions, date of introduction, administering of the Measure, as well as connection to other measures and the expected outcomes.

It is also noted in Subsection 9.3 of the Rural Development Plan that the legal basis of the Measure is Section IV (Article 10-12) of the Council Regulation (EC) No. 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations (hereinafter – Regulation No. 1257/1999) and Section 4 (Article 7-10) of the Commission Regulation (EC) No 817/2004 of 29 April 2004 laying down detailed rules for the application of Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) (hereinafter- Regulation No. 817/2004). The aforementioned regulations were in force until 31 December 2007.

Subsection 12.3.2. of the Rural Development Plan “Specifics of Administering each Measure” includes, *inter alia*, section “Early Retirement”. By the Cabinet of Ministers Regulation of 14 April 2015 No.187 “Amendment to the Cabinet of Ministers Regulation of 30 November 2004 No.1002 “Procedure for Implementing the Programming Document “Latvia’s Rural Development Plan for the Implementation of Rural Development Programme for 2004-2006”” (hereinafter – the contested norm) deleted from section “Early Retirement” of Subsection 12.3.2. of the Rural Development Plan from subparagraph “a” the following words: “If the recipient of support passes away during the period, when the concluded agreement on receipt of early pension is in force, his monthly pension for the remaining period shall be disbursed to the person, whose inheritance rights have been confirmed pursuant to the national regulatory enactments”. The contested norm entered into force on 30 April 2015.

**2. The applicant – the Administrative District Court** (hereinafter – the Applicant) holds that the contested norm is incompatible with Article 105 of the *Satversme* [Constitution] of the Republic of Latvia.

The Applicant has a pending administrative case No. A420301915, which has been initiated on the basis of an application by a private person with regard to validity of a public law agreement. The Rural Development Service had discontinued the commitments that it had assumed within the framework of the Measure by an agreement on granting support vis-à-vis the applicants in the aforementioned administrative case.

The Applicant notes, *inter alia*, that the contested norm comprises a restriction upon a fundamental right enshrined in Article 105 of the *Satversme* – the right to property. Following adoption of the contested norm a situation has developed, where the heirs of the farm transferor could lose both the right to inheritance in the form of property that had been transferred – if the farmer has transferred the farm to another person, as well as the right to receive support granted in the framework of the Measure. It is noted in the annotation to the contested norm that after implementation of the Measure many recipients of support had given as a gift their farm to their potential heirs, therefore in the case, where the transferor of the farm passes away, the transferee of the farm receives support granted in the framework of the Measure. The Applicant holds that the contested norm had been adopted without comprehensive assessment of the actual situation, i.e., without taking into consideration cases, where the transferee of the farm is a person, who is not the heir of the particular transferor of the farm.

Allegedly, neither Regulation No. 1257/1999, nor the Rural Development Plan prohibits the transferor of the farm from transferring the farm to his potential heir. Therefore the State, upon commencing administration of the Measure, had to examine the aim and efficiency of the Measure, *inter alia*, taking into account that a farm could be transferred to a person, who would also inherit the support granted in the framework of the Measure. The Cabinet had guaranteed to persons the right to

claim support as inheritance, but later established a restriction upon this right, without assessing its proportionality.

Upon concluding an agreement on receipt of early retirement pension, the transferor of the farm and his heirs could have developed legitimate expectations that instead of the hereditaments the persons would have the right to inherit the particular support granted in the framework of the Measure, if they continue fulfilling commitments assumed through the agreement.

**3. The institution, which issued the contested act, The Cabinet of Ministers,** does not uphold the Applicant's opinion and is of the opinion that the contested norm complies with Article 105 of the Satversme,

The Cabinet notes that on 30 June 2004 the European Commission adopted a decision "On Approving Latvia's Rural Development Programming Document for the Programming Period of 2004 – 2006". This document, approved by the European Commission, had been based upon the Rural Development Plan in the same wording that was introduced by Cabinet Regulation No. 1002 and comprised a provision on inheriting support granted in the framework of the Measure.

When the respective planning period ended, it was established that the Measure failed to reach the desired outcome and set objectives. Therefore it was decided to discontinue the Measure, i.e., not to include it in the successive Latvia's rural development planning documents. Pursuant to Para 1 of Article 93 of the Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (hereinafter – Regulation No. 1698/2005), in the planning periods of 2007–2013 and 2014 – 2020 financing for further disbursements of the respective support until 2021 was envisaged only to those persons, who had become involved in the Measure already in the planning period of 2004–2006.

It had been concluded at the sitting of 19 October 2011 of the European Commission Rural Development Committee that the financing of the European Agricultural Guidance and Guarantee Fund (hereinafter – the Agricultural

Guarantee Fund) was not applicable to inheriting the early retirement support. The Cabinet holds that inheriting of this support is incompatible with the goal defined in Regulation No. 1257/1999 and leads to wasting of financials resources of the European Union and the Republic of Latvia.

One among the legitimate aims of the restriction upon fundamental rights included in the contested norm is said to be prevention of incompatibility of the Cabinet Regulation No. 1002 with provisions of Regulation No. 1257/1999, as well as the principle of effective and efficient use of financing. Farmers can rely only on receiving such support that complies with the European Union law.

4. In the case under review the following persons have been recognised as summoned persons in the case: the Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman), the State Audit Office, the Ministry of Welfare, the Rural Support Service, *LL.M.* Solvita Harbaceviča, the Cabinet’s representative at the Court of Justice of the European Union (from 2011 to 2016) *Mg. sc. soc.* Inguss Kalniņš, the Cabinet’s representative at the Court of Justice of the European Union *Dr. iur.* Irēna Kucina, sworn advocate *M.Jur. (Oxon)* Debora Pāvila, visiting associate professor of the University of Latvia Faculty of Law *Dr. iur.* Christoph Johann Ulrich Schewe, *Mg. iur.* Anita Zikmane and lecturer at the Department of Civil Law of the University of Latvia Faculty of Law *Mg. iur.* Kristīne Zīle.

These persons have provided diverging opinions on interpretation of provisions of Regulation No. 1257/1999 and on whether the contested norm comprises a restriction upon the right to own property.

#### **The Constitutional Court found:**

5. To examine compliance of the contested norm with the right to own property enshrined in Article 105 of the Constitutional Court, the Constitutional Court must first and foremost establish, what is considered as being the object of the right to property in this case and whether the contested norm restricts this right.

**5.1.** In the framework of the Measure transferors of farms receive support pursuant to an agreement that has been concluded on the basis of, *inter alia*, provisions of Regulation No. 1257/1999 and the Cabinet Regulation No. 1002. Until the contested norm entered into force, Subparagraph “a” in Section “Early Retirement” in Subsection 12.3.2. provided that in the case, where the recipient of support passes away during the period, where the agreement that had been concluded on receiving early retirement pension is in force, his monthly pension for the remaining period would be disbursed to the person, whose rights to inheritance had been approved in compliance with national regulatory enactments.

The Constitutional Court has found that the right to direct aid by the state in the form of definite amount of money established by a regulatory enactment falls within the scope of Article 105 of the *Satversme* (*see, for example, Judgement of 27 October 2010 by the Constitutional Court in Case No. 2010-12-03, Para 8–10*). The right of farm transferor to receive support pursuant to agreements that he has concluded with the Rural Development Service in the framework of the Measure, is an object of the right to property.

Whereas until the adoption of the contested norm, Subparagraph “a” in Subsection 12.3.2 “Early Retirement” of the Rural Development Plan provided *expressis verbis* that the right to receive support in the framework of the Measure could be inherited. Case materials contain Certificate of Succession, where a certain sum of money as the early retirement pension capital in the framework of the Measure is indicated as part of the accepted succession (*see Case Materials Vol. 1, p. 17*). It also follows from the case materials that the support granted to the farm transferor in the framework of the Measure was further disbursed to his heirs (*see Case Materials, Vol. 1, pp. 12 and 21*). This means that heirs of the farm transferor, pursuant to the national legal provisions, actually inherited the support granted in the framework of the Measure.

**5.2.** Pursuant to provisions of Subsection 9.3. of the Rural Development Plan, the Measure’s legal basis was Section IV (Article 10-12) of Regulation

No. 1257/1999 and Section 4 (Article 7-10) of Regulation. 817/2004. The Constitutional Court has recognised that following accession to the European Union Latvia has the obligation to fulfil commitments that follow from the Treaty on Latvia's accession to the European Union. Namely, with ratification of this Treaty, the European Union law has become inseparable part of the Latvian law. Pursuant to this Treaty the legal acts adopted by the European Union institutions are also binding upon Latvia. To prevent possible conflicts between the Latvian and the European Union law, in applying national legal acts the legal acts of the European Union and interpretation thereof enshrined in the judicature of the Court of Justice of the European union (hereinafter – CJEU) must be taken into account (*see Judgement of 7 June 2004 by the Constitutional Court in Case No. 2004-01-06, Para 7, and Judgement of 17 January 2008 in Case No. 2007-11-03, Para 24.2*).

The European Commission, by approving on 30 June 2004 the Rural Development Plan, which envisaged the possibility to inherit support granted in the framework of the Measure, recognised that this Plan complied with Regulation No. 1257/1999. Whereas it was concluded at the sitting of 19 October 2011 of the European Commission Rural Development Committee that inheriting of the early retirement support did not comply with rules of Regulation No. 1698/2005 (*see Para 10 of the Minutes in Case Materials, Vol. 1, p. 94*). The Cabinet held that, thus, the financing of the Agricultural Guarantee Fund was not applicable to inheriting the support granted in the framework of the Measure (*see written response by the Cabinet in Case Materials, Vol. 1, pp. 79 and 80*). Already after the contested norm was adopted, on 11 May 2015 the Directorate General of the European Commission Rural Development Committee sent a letter to the Cabinet, repeatedly confirming the position expressed at the sitting of 19 October 2011 of the European Commission Rural Development Committee and pointing out that within the framework of the Measure support was not applicable to the heirs of farm transferor and that no new commitments had been envisaged after 19 October 2011(*see Case Materials, Vol. 1, pp. 98 and 99*).



CJEU has recognised that a Member State's practice that is incompatible with the legal regulation of the European Union cannot create legal certainty in a private person, who benefits from this situation. Consequently, it follows that actions by a national authority that is responsible for application of the European Union law cannot create in a private person legal certainty regarding benefitting in the future from treatment that is incompatible with the European Union law (*see Judgement of 14 June 2012 by CJEU in case C-606/10 ANAFE, ECLI:EU:C:2012:348, Para 57–83*).

In the case under review it is essential to establish, whether persons (both the transferor of a farm and his heirs) could expect that the support to be received in the framework of the Measure would be transferred to heirs of the farm transferor. In this respect, the Constitutional Court must examine the legal nature of inheriting support granted in the framework of the Measure in interconnection with regulation included in the European Union legal acts, i.e., it must establish, whether Regulation No. 1257/1999 prohibited from including in the Cabinet Regulation No. 1002 provisions on inheriting the support granted in the framework of the Measure.

If Regulation No. 1257/1999 prohibited a Member State from envisaging the possibility to inherit support that was granted in the framework of the Measure, then the right of the farm transferor's heirs to receive support granted in the framework of the Measure should not be regarded as an object of the right to own property and, thus, the contested norm could not create a restriction upon fundamental rights.

**6.** Although regulations as sources of the European Union law have general application and are binding in their entirety and are directly applicable in all Member States (The Treaty on the Functioning of the European Union, Article 288), to implement provisions of some regulation the Member States have to take implementing measures (*see Judgement of 7 July 2011 by CJEU in case C-523/09 "Rakvere Piim un Maag Piimatööstus", ECLI:EU:C:2011:460, Para 18*). In the context of the European Union law the admissibility of implementing measures

is assessed by determining, whether the regulation leaves the Member States discretion and whether it requires them to adopt implementation measures (*see Judgement of 24 June 2004 by CJEU in case C-278/02 “Handlbauer”, ECLI:EU:C:2004:388, Para 27*). The Constitutional Court draws attention to circumstances that cause doubts regarding interpretation of provisions of the European Union law.

**6.1.** It might seem *prima facie* that the provisions of Article 10-12 of Regulation No. 1257/1999 establish clear and precise obligations. The pre-requisites for receiving support in the framework of the Measure envisaged in Regulation No. 1257/1999 might point to the personal nature of the respective right, i.e., that this right to receive support is vested only in the person, who himself has transferred his farm to another person.

In examining in the case under review Article 10-12 of Regulation No. 1257/1999 and Article 7-10 of Regulation No. 817/2004, it could be concluded that measures for implementing the Regulation must be adopted; however, supplementing the pre-requisites for receiving the support payment is not envisaged. These pre-requisites are included in Article 11 of Regulation No. 1257/1999, pursuant to which the person who can claim the respective support is not less than 55 years old, but not yet of normal retirement age at the time of transfer, has practised farming for the 10 years preceding transfer, and, upon transferring the farm, stops all commercial farming activity definitely. The personal nature of the support to be disbursed is confirmed also by Para 2 of Article 12 of Regulation No. 1257/1999, pursuant to which the transferor of the farm could receive this support, from which the old-age pension disbursed by the Member State was deducted, for the maximum period of 15 years or until his 75<sup>th</sup> birthday. Article 7 of Regulation No. 817/2004 confirms that the support to be disbursed is linked to one farm and the concrete owners thereof, who had been such at the moment of transfer. Whereas heirs of the farm transferor are persons, who are not parties to the agreement on granting support in the framework of the Measure, and

no criteria or requirements have been set in regulatory enactments with respect to them.

Support in the framework of the Measure should not be equalled to compensation for property due to both the transferor of a farm and his heirs. The purchase agreement included in the case materials also points to this, the sales price of the transferred property indicated in it is considerably smaller than the amount of support granted in the framework of the Measure (*see Case Materials, Vol. 1, p. 29*). Essentially, support in the framework of the Measure is granted to the transferor of a farm for his own personal decision to discontinue entirely commercial agricultural activity. Thus, in the framework of the Measure monetary resources are granted to the transferor of a farm for resignation from continuing his commercial activity.

**6.2.** On the other hand, it is underscored in Recital 23 to Regulation No. 1257/1999 that early retirement from farming should be encouraged in order to improve the viability of agricultural holdings, taking into account the experience acquired in the implementation of Regulation (EEC) No. 2079/92, instituting a Community aid scheme for early retirement from farming (hereinafter – Regulation No. 2079/92). Thus, in the case under review the basic principles and goals of the Measure established in Regulation No. 2079/92 must be taken into consideration.

*Mg. sc. soc.* Inguss Kalniņš, a person summoned in the Case, holds that the goals defined in this regulation can be interpreted rather broadly, since its primary objective had been to ensure revenue to elderly farmers, who decided to discontinue agricultural activity. To replace elderly farmers with such farmers, who could increase viability of farms, had been only the next objective. Pursuant to Article 7 of Regulation No. 2079/92 the Member States had to adopt all necessary regulatory enactments to ensure that this type of support was more attractive compared to any other early retirement scheme existing in this field (*see transcript of the sitting of 31 January 2017 of the Constitutional Court, Case Materials, Vol. 2, pp. 65- 67*). Likewise, the summoned persons the Rural Support Service and *LL.M.* Solvita Harbaceviča agree that inheriting the support may be a tool (an incentive) for

farmers to get involved into the Measure at all (*see transcript of the sitting of 31 January 2017 of the Constitutional Court, Vol. 2, pp. 73, 75, 100 and 101*). The summoned person – the Ombudsman, in turn, underscored that quite often several members of the family were employed in a farm, and, thus, the requirements set for the transferor of the farm not to engage in commercial agriculture, was indirectly met also by his heirs (*see opinion of the Ombudsman, Case Materials, Vol. 1, p. 135*).

Thus, it could be concluded that the provisions of Regulation No. 1257/1999 on early retirement grant to the Member States discretion with respect to measures for implementing it and that the possibility to inherit the support follows from goals of Regulation No. 1257/1999. Moreover, the enumeration of prohibitions from granting the support included in the rules of Regulation No. 1257/1999 does not *expressis verbis* envisage prohibition from inheriting the support.

In the legal and actual issue under review, CJEU case law has not been established yet. In view of the above, the provisions of Regulation No. 1257/1999 could not be regarded as such that set out clear and precise obligations, which in term of fulfilment or consequences thereof do not depend from adoption of any successive act. Thus, in the particular case *acte clair* doctrine is not applicable, as there are doubts, whether Regulation No. 1257/1999, indeed, prohibited the Member States from including into their regulatory enactments the institution of inheriting the support.

7. In the case under review, Para 1 and 2 of Article 2 of the Treaty on the Functioning of the European Union on the shared competence of the European Union and the Member States in some areas should be taken into consideration. Pursuant to Subparagraph “d” of Para 2 of Article 4 of the Treaty on the Functioning of the European Union the European Union and the Member States share competence in the area of agriculture.

The Council of the European Union, in adopting Regulation No. 1257/1999, has exercised the competence of the European Union in the area of agriculture.

However, in the case under review there are doubts as to the significance, from the vantage point of exercising the shared competence of the European Union and the Member States, of the decision by the European Commission by which the provision in Cabinet Regulation No.1002 on inheriting support granted in the framework of the Measure was approved.

**7.1.** With respect to implementing measures of Regulation No. 1257/1999, Article 41 and the successive Articles of this Regulation envisage conditions for drawing up rural development plans as part of rural development programming, referred to in Para 3 of Article 40 of the Regulation. Whereas Para 1 of Article 41 of Regulation No. 1257/1999 imposes upon the Member States an obligation to submit to the European Commission rural development plans, the content of which is defined in Article 43 of this Regulation and Annex 2 to Regulation No. 817/2004. Pursuant to Para 2 of Article 44 of Regulation No. 1257/1999, the European Commission appraises the proposed plans to determine, whether they are consistent with this Regulation. On the basis of these rural development plans, the European Commission approves rural development programming documents.

**7.2.** In undertaking the implementing measures of Regulation No. 1257/1999, the Republic of Latvia submitted to the European Commission the Rural Development Plan for approval.

CJEU in its case law has pointed to the legal consequences that are caused by the approval of national regulation by the European Commission. The respective draft legal regulation, following approval by the European Commission, is to be regarded as being final and, thus, the Member State may adopt it (*see, for example, Judgement of 3 October 2013 by CJEU in case C-267/11 P „European Commission v. Republic of Latvia”, ECLI:EU:C:2013:624, Para 45–59*).

On 30 June 2004 the European Commission adopted the decision “On Approving Latvia’s Rural Development Programming Document for the Programming Period of 2004 – 2006”. This programming document is based upon the Rural Development Plan in the same wording that was introduced by the

Cabinet Regulation No. 1002 and comprised regulation on inheriting support granted in the framework of the Measure.

Thus, the provision included in Subparagraph “a” of Section “Early Retirement” in Subsection 12.3.2 of the Rural Development Plan “If the recipient of support passes away during the period, when the concluded agreement on receipt of early pension is in force, his monthly pension for the remaining period shall be disbursed to the person, whose inheritance rights have been confirmed pursuant to the national regulatory enactments” was approved in due procedure by the European Commission, which recognised this rule, together with the Rural Development Plan in its entirety as being consistent with Regulation No. 1257/1999. If, however, the rules of Regulation No. 1257/1999 prohibited from inheriting support granted in the framework of the Measure, then it should be recognised that the decision of 30 June 2004 by the European Commission on approving the relevant procedure was incompatible with the rules of this Regulation.

**7.3.** Although on 30 June 2004 the European Commission recognised the Rural Development Plan, which established the possibility to inherit support granted in the framework of the Measure, as being consistent with Regulation No. 1257/1999, it was concluded at the sitting of 19 October 2011 of the European Commission Rural Development Committee that inheriting of the early retirement support was incompatible with rules of Regulation No. 1698/2005. The summoned person – the Rural Support Service, applied this, by analogy, also to Regulation No. 1257/1999 (*see transcript of the sitting of 31 January 2017 of the Constitutional Court, Case Materials, Vol. 2, pp. 73 and 79*).

The agreement on granting support in the framework of the Measure contains also a provision on the State’s right to change the procedure for receiving the support (*see Case Materials, Vol. 1, pp. 15 and 16*). The Cabinet points out that the contested norm had been adopted by examining and complying with the conclusions made by the European Commission Rural Development Committee at its sitting of 19 October 2011 (*see transcript of the sitting of 31 January 2017 of the Constitutional Court, Case Materials, Vol. 2, p. 51*).

Doubts regarding interpretation of provisions of Regulation No. 1257/1999 follow also from the letter of 11 May 2015 by the European Commission Directorate-General for Agriculture and Rural Development to the Cabinet, which had been prepared already after the contested norm had been adopted (*see Case Materials, Vol. 1, pp. 98 and 99*). It is pointed out in the letter that even if the rural development plans approved by the European Commission had envisaged the possibility to inherit the early retirement support and, thus, legal certainty had been created, the respective rules had changed as of 19 October 2011. As of this date it should be clear to all Member States that disbursements from the early retirement scheme were not applicable to the heirs of the recipient of the support and henceforward in this respect legitimate expectations could no longer be quoted. 19 October 2011 is to be considered as “the cut-off date with respect to new commitments” (in this context assuming new commitments means signing new support agreements with a clause on possible inheritance).

It might be concluded from the above that until 19 October 2011 provisions of Regulation No. 1257/1999 envisaged the right of persons to inherit the support granted in the framework of the Measure, but following this date the rules of Regulation No. 1257/1999 no longer envisaged this subjective right of persons. A similar opinion was expressed also by the summoned person *Dr. iur.* Christoph Johann Ulrich Schewe (*see transcript of the sitting of 31 January 2017 of the Constitutional Court, Case Materials, Vol. 2, pp. 55- 61*).

Whereas the summoned person *M.Jur. (Oxon)* Debora Pāvila, *inter alia*, drew attention to the fact that the European Commission Rural Development Committee had been established to monitor implementation of the rules of Regulation No. 1698/2005, and not those of Regulation No. 1257/1999, therefore the conclusions made at the sitting of 19 October 2011 pertain to interpretation of provisions of Regulation No. 1698/2005 in connection to the planning period of 2007 –2013, and not to the issue under review (*see transcript of the sitting of 31 January 2017 of the Constitutional Court, Case Materials, Vo. 2, pp. 107 -111*).

Thus, the conclusions made in this sitting may be interpreted differently, since, although they pertain directly to inheriting support granted in the framework of the Measure, the sitting itself formally did not pertain to that planning period, during which the regulatory enactments of the Republic of Latvia envisaged such regulation. Moreover, it follows from the letter of 11 May 2015 by the Directorate General of the European Commission Rural Development Committee to the Cabinet that the aforementioned conclusions applied only to new commitments. It must be also taken into account that these conclusions were not made by the European Commission, but by a structural unit thereof, i.e. a committee.

**8.** Additional considerations might follow from considerations referred to in Para 7 of this Decision with respect to occurrence of a person's subjective rights and the moment, as of which, possibly, these rights no longer exist.

**8.1.** If envisaging the right to inherit within the framework of the Measure had been initially prohibited by Regulation No.1257/1999, then it is essential to establish, whether the particular actual case is such, where a national practice that is not consistent with legal provisions of the European Union could have caused legal consequences. The summoned person *Mg. iur.* Anita Zikmane points to such a possibility. I.e., in the situation that has developed in Latvia, it can be presumed that the party concluding an administrative agreement could not have known about the possible error of the State and the European Commission, i.e., to know that support granted in the framework of the Measure could not be inherited (*see transcript of the sitting of 31 January 2017 of the Constitutional Court, Vol. 2, pp. 93- 99*).

CJEU has recognised as a significant fact that it is expected from farmers as professionals to be informed, upon submitting application for support, about the terms of granting this support and to pay special attention to these. However, there may be situations, where persons actually could not find out that the practice implemented by the State was erroneous (*see Judgement of 2 July 2015 by CJEU in*



*case C-684/13 “Johannes Demmer v. Fødevarerministeriets Klagecenter”, ECLI: EU:C:2015:439, Para 83–93).*

The Cabinet holds that heirs of a farm transferor had subjective right to inherit support granted in the framework of the Measure until adoption of the contested norm (*see transcript of the sitting of 8 February 2017 of the Constitutional Court, Case Materials, Vol. 2, pp. 119 and 120*).

In the particular situation many owners of small farms, who met a number of requirements following from the national and the European Union legal provisions, became involved in the Measure. In such circumstances farmers could not be recognised as subjects, who should have detailed knowledge of the European Union legal regulation and interpretation thereof.

**8.2.** However, if CJEU were to recognise that inheriting support granted in the framework of the Measure had been inconsistent with rules of Regulation No. 1257/1999, but farmers in the particular situation had gained subjective right to support in the framework of the Measure, the applicability of conclusions made at the sitting of 19 October 2011 of the European Commission Rural Development Committee to the case under review might be significant. These conclusions formally apply to rules of Regulation No. 1698/2005 and the planning period of 2007 to 2013, during which the Cabinet had not envisaged support in the framework of the Measure. Nevertheless, the minutes of the meeting had been sent also to the Ministry of Agriculture of the Republic of Latvia.

In view of the above, different conclusions could be drawn, i.e.:

1) The goal of Regulation No. 1257/1999 allowed and still allows inheriting support granted in the framework of the Measure, whereas the conclusions made at the sitting of 19 October 2011 of the European Commission Rural Development Committee apply to another Regulation and the planning period of 2007 –2013;

2) On 30 June 2004 the European Commission approved inheriting of support granted in the framework of the Measure as being consistent with rules of Regulation No. 1257/1999, however, the European Commission Rural Development Committee at its sitting of 19 October 2011 revoked the respective

procedure, therefore as of this date persons have lost their subjective right to inherit support.

On 28 February 2017 the Constitutional Court has adopted a decision on the procedure for adopting a decision on referring a question to CJEU for preliminary ruling.

In view of the above and on the basis of Section 26 of the Constitutional Court Law and Article 267 of the Treaty on the Functioning of the European Union,

**The Constitutional Court decided:**

**1. To refer the following questions to the Court of Justice of the European Union:**

**1.1. Whether, in view of the shared competence of the European Union and Member States in the field of agriculture, the provisions of Regulation No. 1257/1999 in interconnection with one of the aims of this Regulation – to involve farmers in the Measure of early retirement – is to be interpreted as meaning that in the framework of applying Measures of Regulation No. 1257/1999 a Member State is prohibited from adopting such legal regulation that would allow inheriting the early retirement support?**

**1.2. If the answer to the first question is affirmative, i.e., that the provisions of Regulation No. 1257/1999 prohibit inheriting the early retirement support, whether in the actual situation, where the legal provision of a Member State was approved by the European Commission in due procedure as being compliant with rules of Regulation No. 1257/1999 and farmers became involved in the Measure of early retirement, a person could acquire subjective right to inherit the support granted in the framework of this Measure?**

**1.3. If the answer to the second question is affirmative, i.e., that a person could acquire such subjective right, whether the conclusion made by the sitting of 19 October 2011 of the European Commission Rural Development Committee that early retirement support was not applicable to heirs of the transferor of a**

**farm could be considered as being the grounds for early termination of the acquired subjective right referred to above?**

**2. To suspend legal proceedings in the case until a ruling by the Court of Justice of the European Union has entered into force.**

The decision is not subject to appeal.

Chairman of the court sitting

Aldis Laviņš