

THE CONSTITUTIONAL COURT OF

THE REPUBLIC OF LITHUANIA

R U L I N G

On the compliance of the norms of Parts 1 and 2 of Article 6 of the Republic of Lithuania Law on Land regulating the rights of institutions of local self-government in the sphere of the possession of State land as well as Article 24 of the said law with the Constitution of the Republic of Lithuania

25 September 1996, Vilnius

The Constitutional Court of the Republic of Lithuania, composed of the justices of the Constitutional Court Egidijus Jaraðiūnas, Kęstutis Lapinskas, Zigmas Levickis, Augustinas Normantas, Vladas Pavilionis, Jonas Prapiestis, Pranas Vytautas Rasimavičius, and Juozas Pilys,

the secretary of the hearing - Daiva Pitrenaitė,

the petitioner - Andrius Kubilius and Kęstutis Skrebys, both the members of the Seimas and representatives of a group of the members of the Seimas of the Republic of Lithuania,

the party concerned - Julius Jurginis, the representative of the Seimas, the secretary of the Ministry of Public Administration Reforms and Local Government Affairs,

pursuant to Part 1 of Article 102 of the Constitution of the Republic of Lithuania and Part 1 of Article 1 of the Law of the Republic of Lithuania on Constitutional Court, in its public hearing on 5 September 1996 conducted the investigation of Case No. 16/95 subsequent to the petition submitted to the Court by the petitioner - a group of the members of the Seimas of the Republic of Lithuania - requesting to investigate if the norms of Parts 1 and 2 of Article 6 of the Republic of Lithuania Law on Land regulating the rights of institutions of local self-government in the sphere of the possession of State land as well as Article 24 of the said law are in compliance with the Constitution of the Republic of Lithuania.

The Constitutional Court

has established:

On 26 April 1994 the Seimas passed the Republic of Lithuania Law on Land (Official Gazette “Valstybės žinios” No. 34-620, 1994). By the 13 June 1995 Law “On Amending and Appending the Republic of Lithuania Law on Land”, among others, certain norms of Articles 6 and 24 of the aforesaid law were amended.

The petitioner requests to investigate if the norms of Parts 1 and 2 of Article 6 of the Law on Land regulating the rights of the institutions of local self-governments in the sphere of the possession of State land are in compliance with Article 119, Part 2 of Article 120 and Part 2 of Article 46 of the Constitution, as well as if Article 24 of the Law on Land is in conformity to Part 2 of Article 77 and Part 2 of Article 120 of the Constitution.

I

The petitioner grounds his request with the following arguments:

1. It is established in Part 1 of Article 6 of the Law on Land: “By the decision of the Government of the Republic of Lithuania, the right of possession of State land shall be vested in [...] local self-government institutions [...]”, i.e. the Government is granted a limitless right to regulate the right of local government institutions to possess State land. For instance, by its decision the Government can commission a local self-government institution with possession of particular plots of land which are on the territory of the local government, however, at its will, it can arbitrarily deprive the local self-government institution of this right. The law does not prescribe any limitations to Government decisions.

Article 119 of the Constitution entitles local governments to the right of self-government which is implemented through local government councils. The procedure for the organisation and activities of self-government institutions shall be established by law, whereas in Part 2 of Article 120 of the Constitution it is guaranteed that “local governments shall act freely and independently within the limits of their competence which shall be established by the Constitution and laws”. Thus, according to the Constitution, only the Constitution and laws may limit the competence of local governments, and never the Government by its decision.

The petitioner is of the opinion that the aforesaid norm of Part 1 of Article 6 of the Law on Land permits the Government to establish the whole content of local governments’ right to possess land considering that an abstract legal right of local governments to possess land does not define the actual content of local government competence, i.e., it is not established in the law as to what particular State land (or portion thereof) local governments are entitled to possess, and, correspondingly, the law neither regulates nor limits possible Government decisions concerning local governments. Thus, in the opinion of the petitioner, it is the decision of the Government that regulates the activity of the local government, and not the law. It obviously contradicts Part 3 of Article 119 of the Constitution whereby “the procedure for the [...] activities of self-government institutions shall be established by law”.

Furthermore, the petitioner alleges that, in addition, such a provision of Part 1 of Article 6 of the Law on Land contradicts the provision of Part 2 of Article 120 of the Constitution whereby local governments shall act freely and independently within the limits of their competence. The fact that the Government by its decision can deprive a local

government with the right to possess State land, disallows the local government to act freely and independently while possessing State land.

This provision, in the opinion of the petitioner, contradicts Articles 97 and 98 of the Civil Code of the Republic of Lithuania wherein it is established that the subjects of public property law shall be the State and local governments in the Republic of Lithuania whereas land shall be an object of public property law with the exception of the cases when these objects belong by the ownership right to other subjects of property law.

Item 5 of Article 21 of the Law on the Government of the Republic of Lithuania prescribes: “The Government of the Republic of Lithuania shall: [...] 5) hold, use and dispose of the State property according to the procedures and situations established by law.” Meanwhile, in the opinion of the petitioner, the Law on Land has not established as to what procedures and situations the Government shall possess, utilise and dispose of State land, it is obvious, however, that, in the Law of Land, the Government and local governments should be equal and not subordinate subjects of public property law.

2. It is established in Part 2 of Article 6 of the Law on Land: “The possessor of State land shall have the right, without exceeding the given authority, to utilise the land, to lease the land to other natural and legal persons for the period of up to 3 years, as well as to adopt decisions regarding the allotment of land for utilisation to natural and legal persons providing the laws and legal acts do not prescribe otherwise.” Thus it is established by law that a local government institution which acquired the right to possess State land by the decision of the Government may lease it to other natural and legal persons for the period not exceeding 3 years.

The petitioner alleges that because of such a limitation of local governments’ rights they are not permitted to freely and independently plan and promote their socio-economic development while establishing local government enterprises or permitting to establish private enterprises as it requires a long-term land lease but not that of 3 years. The actual right of self-government institutions to freely and independently plan and promote socio-economic development of their territory is a traditional and one of the most important rights of self-government. Such a right cannot be implemented without the independent and factual right of self-government institutions to lease to private entities of economy for a long term the State land which is possessed by the local government. The petitioner assumes, therefore, that the provision of Part 2 of Article 6 of the Law on Land whereby local governments are permitted to lease the State land which is possessed by them only up to the period of only 3 years contradicts Articles 119 and 120 of the Constitution.

The petitioner also alleges that local governments which are closest to the society know better people’s interests if compared with other government institutions. The provision that local governments are permitted to lease the State land that is possessed by them up to the period of only 3 years diminishes local governments’ opportunities to promote economic efforts and initiative which are useful to the community, and this contradicts Part 2 of Article 46 of the Constitution that stipulates: “The State shall support economic efforts and initiative which are useful to the community.”

3. Part 1 of Article 24 of the Law on Land stipulates: “State land shall be sold or in any other way transferred into private ownership by the county governors in accordance with the procedure established by law and the Government of the Republic of Lithuania.”

The petitioner alleges that the provision according to which the Government must establish by its decision as to what procedure state (public) property is transferred into private one contradicts Part 2 of Article 128 of the Constitution wherein it is established: "Procedures concerning the management, utilisation, and disposal of State property shall be established by law." He is of the opinion that in case that the Constitution provided that "procedures shall be established by law", the content of those procedures must be established by the law-maker and not the Government. Therefore, the law-maker may not transfer to anyone else, including the Government, this right which has been commended to it as it was made in regard of State land in Part 1 of Article 24 of the Law on Land.

4. It is established in Part 2 of Article 24 of the Law on Land: "While making contracts of sale and purchase as well as of lease and use of land plots, either the county governor or, upon of his authorisation, the head of the county governor's administration service for organisation of land exploitation and geodesy shall represent the State." The provision that "the county governor [...] shall represent the State", in the opinion of the petitioner, contradicts Part 2 of Article 77 of the Constitution wherein it is established that only the President shall represent the State of Lithuania.

The said provision also contradicts Article 9 of the Law of the Republic of Lithuania on the Governing of the County wherein it is prescribed that the county governor may adopt decisions concerning making contracts of sale and purchase as well as of lease and use of land if this is related to the land reform (item 3 of Article 9) or if this is free state land stock which has not been transferred into the possession of the institutions of self-government (item 1 of Article 9). In all other cases the county governor shall merely perform legal registration of land (item 2 of Article 9).

The petitioner is of the opinion that the disputed norm contradicts Article 99 of the Civil Code, too, which stipulates: "The possessions of the State and local governments shall be managed, utilised and disposed of by corresponding institutions of the supreme power and government, as well as those of local power and government, of the Republic of Lithuania on the grounds of laws and other normative acts of the Republic of Lithuania." The petitioner deems that it is impossible to consider that the county governor, not to mention the head of the county governor's administration service for organisation of land exploitation and geodesy who is authorised by the latter, is an institution of the supreme power and government, as, according to Part 1 of Article 1 of the Law on the Governing of the County, the county is only a higher territorial administrative unit of the Republic of Lithuania whereas the county governor is an institution through which the Government shall organise the governing in this territory.

5. The petitioner also assumes that the provision of Article 24 of the Law on Land that either the county governor or the head of the service for organisation of land exploitation and geodesy who is subordinate to the former shall sell, lease or transfer to use State land irrespective of who is entitled to possess it contradicts the provision of Part 2 of Article 120 of the Constitution which reads: "Local governments shall act freely and independently within the limits of their competence which shall be established by the Constitution and laws". In the opinion of the petitioner, taking into account that the county governor may sell, lease or confer the right to use state free land stock which self-government institutions are granted to possess pursuant to item 1 of Article 9 of the Law on the Governing of the County, then local governments cannot freely and independently implement this legitimate right of theirs.

On the grounds of the motives set forth, the petitioner requests to recognise that the norms regulating the rights of self-government institutions in the sphere of possessing of State land of Parts 1 and 2 of Article 6 of the Law on Land

passed on 26 April 1994 and amended on 13 June 1995 contradict Article 119, Part 2 of Article 120 and Part 2 of Article 46 of the Constitution, whereas Article 24 of the said law contradicts Part 2 of Article 77 and Part 2 of Article 120 of the Constitution.

The representatives of the petitioner in essence reiterated the request and arguments of the group of Seimas members.

II

The representative of the party concerned - the Seimas - explained in the court hearing:

1. According to Part 1 of Article 5 of the Constitution, “in Lithuania, the powers of the State shall be exercised by the Seimas, the President of the Republic and the Government, and the Judiciary”. Thus, the representative of the party concerned is of the opinion that local governments do not exercise the powers of the State, therefore they may not take over the functions of the State to dispose of State land as local governments are the subject of neither State land law nor land property law in general (Part 1 of Article 47 of the Constitution). When the Law on Supplementing Article 47 of the Constitution of the Republic of Lithuania, as well as the Constitutional Law on the Subjects, Procedure, Terms and Conditions and Restrictions of the Acquisition into Ownership of Land Plots Provided for by Part 2 of Article 47 of the Constitution of the Republic of Lithuania, has gone into effect, local governments will be able to acquire from the State into their possession only such land that is designed to exploit buildings and facilities which are necessary to perform their functions or to build them pursuant to the same procedure and conditions that are applied to every other national subject (legal person).

2. The representative of the party concerned alleges that the following normative acts establish the property rights of the State and local governments:

1) Part 3 of Article 95 of the Civil Code:

“Public property shall consist of State property and local governments’ property”;

2) Part 1 of Article 95¹ of the Civil Code:

“Natural persons, legal persons, the State and local governments may be subjects of property law in the Republic of Lithuania”;

3) Article 98 of the Civil Code:

“In the Republic of Lithuania, the objects of public property law shall be:

1) land, natural resources, except for the cases when these objects belong to other subjects of property law by the right of ownership;

2) material resources assigned to implement the functions as well as the fulfilment-management functions of the supreme powers of the State and of local governments of the Republic of Lithuania;

3) portion of the possessions which belongs to the Republic of Lithuania or the local government together with other subjects of property law by the right of shared property;

4) the possessions of state (local governments') enterprises, offices and organisations;

5) state (local governments') banks and financial resources of budgets."

In the opinion of the representative of the party concerned, when these Civil Code provisions are applied to State land, they may not contradict Article 47 of the Constitution, i.e., only the State may be the subject of state land law.

The representative of the party concerned alleges that the right of the State to transfer the possessions that belong to it to other institutions is provided for in Article 96 of the Civil Code which establishes that "the owner shall possess the property which belongs to him, he shall use and dispose of it according to the laws of the Republic of Lithuania, however, he may not violate the rights and legitimate interests of other persons". Part 2 of the said article stipulates: "The owner must permit other persons, the State or the local government to use his property in limited manner in cases and under the conditions provided for in laws and to the extent the laws permit to do so." Article 99 of the Civil Code also establishes this right of the State wherein it is stipulated that "the possessions of the State and local governments shall be managed, utilised and disposed of by corresponding institutions of the supreme power and government, as well as those of local power and government, of the Republic of Lithuania on the grounds of laws and other normative acts of the Republic of Lithuania." Furthermore, Part 2 of the said article provides that "state or local governments' enterprises, offices and organisations shall manage, utilise and dispose of corresponding possessions of the State or the local government following their regulations (statutes) on trust".

The representative of the party concerned assumes that, according to the provisions of the aforementioned articles, it is permitted to possess and utilise property following the procedure established not only by laws but by other normative acts, too. Besides, the State as the owner of the property (land) is entitled to establish conditions regarding the possessing and use of this property. In his opinion, the following causes determine state regulation in the sphere of the possession and use of land:

1) The implementation of land reform. According to Article 3 of the Law of the Republic of Lithuania on Land Reform, "the object of land reform shall be the Land Fund of the Republic of Lithuania". It means that land reform is an integral process and it may not be commissioned to be accomplished to several institutions. According to item 3, Article 9 of the Law of the Governing of the County, the county governor shall implement land reform, and according to item 1 of the said article, he shall manage free state land stock, with the exception of land transferred into the possession for the institutions of local authorities.

2) Economic functions. Following the Republic of Lithuanian Law on Territorial Planning, the regulations and control of the utilisation of the State land, as well as permission to use it, its lease, management and supervision must be ensured by the institutions which are responsible for these possessions. Part 1 of Article 123 of the Constitution stipulates: "In higher level administrative units, the administration shall be organised by the Government according to

the procedure established by law.” In the Law on the Governing of the County, the competence of the Government and that of its commissioned institutions are set forth wider, namely:

a) Part 1 of Article 1 establishes: “The county is a higher territorial administrative unit of the Republic of Lithuania, the governing of which shall be organised by the Government through the governor of the county, the Ministries and other Government institutions. The government of the county is a constituent part of state administration”;

b) Article 8 establishes the powers of the county governor in the sphere of territorial planning and monument conservation;

c) Article 9 establishes the powers of the county governor in the sphere of land use planning, land cadastre and agriculture. Item 4 of this article stipulates that the county governor shall “perform state regulation of land servitude (ownership) and land use, as well as state control of land use”.

The representative of the party concerned also assumes that Article 30 of the Law on Land establishes corresponding functions and competence of State institutions in regulating relations pertaining to land wherein the competence (in accordance with other laws) of local self-government institutions is explicitly set forth. Therefore, in his opinion, it is impossible to assert that there exist no legal provisions regulating the procedure of the local self-government institutions’ activities while possessing allotted to them free stock of State land. The representative of the party concerned is of the opinion that this procedure does not contradict the Law on Self-Government.

3. The representative of the party concerned also alleges that the question raised by the petitioner as to why the Government and not law establishes which land shall transferred to local governments into possession it may not be associated with Part 3 of Article 119 of the Constitution as this part merely mentions the procedure of the activities of local self-government institutions but not the portion of State property which is allotted to them to possess. In his opinion, the requirement that only law should establish as to what particular land plots must be transferred to local governments and how they must be managed is not a grounded one as there exists no law which were particularised to such an extent that it were adjusted to implement directly (e.g., the provisions regarding taking of land of Article 32 of the Law on Land were particularised in the procedure approved in the 24 October 1995 Government Resolution No. 1379 “On submitting and examining requests regarding taking of land for public needs as well as confirming the procedure of recovering losses suffered from the taking of land”, whereas the provisions concerning allotment of State land for use of Article 22 of the Law on Land were particularised in the 13 November 1995 Government Resolution No. 1428 “On the procedure of allotment of State land for use”, etc.).

The representative of the party concerned assumes that the fact that there exist restrictions on the rights of local-self government executive institutions to lease the land which has been allotted into their possession is determined by the specific character of use and privatisation of land during the land reform. State land plots are not steady because they are gradually privatised: they are (in rural areas) returned in equivalent kind, they are allotted to become one’s property or sold, also they are allotted for use or leased for long term by giving the right to build capital buildings. During the land reform, the decisions regarding the aforementioned questions are adopted only by the county governor and the Government.

4. In the opinion of the representative of the party concerned, the allegation of the petitioner that “in the Law of Land, the Government and local governments should be equal and not subordinate subjects of the public property law” is not a correct one because they are not subjects of equal value in respect of land property law. In the assumption of the representative of the party concerned, the county governors shall have the right to dispose of State land pursuant to Articles 7, 17 and 19 of the Law on Land Reform, Article 24 of the Law on Land, as well as Article 9 of the Law on the Governing of the County.

According to item 5, Article 21 of the Law on the Government, the Government shall “hold, use and dispose of the State property according to the procedures and situations established by law”, and, according to item 10, Article 12 of the Law on the Governing of the County, when exercising the powers attributed to him, the county governor shall have the right “in cases and according to the procedure established by laws, to manage, utilise, and dispose of state property”. The representative of the party concerned is of the opinion that local government institutions are not granted such a right, however, when the Constitutional Law on the Subjects, Procedure, Terms and Conditions and Restrictions of the Acquisition into Ownership of Land Plots Provided for by Part 2 of Article 47 of the Constitution has gone into effect, local governments will have the right to dispose of land which they have acquired into property, and, furthermore, they have already entered into the State land possession and management process by implementing the documents of territorial planning, viz., by establishing the character and conditions of activities, construction regulations, co-ordinating the boundaries of land plots which are formed, etc.

5. The representative of the party concerned assumes that the allegation of the petitioner that the provision of Part 2 of Article 24 of the Law on Land that while making land contracts, either the county governor or, upon of his authorisation, another person shall represent the State contradicts Part 2 of Article 77 of the Constitution wherein it is established that only the President shall represent the State of Lithuania is not a correct one. Part 2 of Article 77 of the Constitution prescribes that the President of the Republic “shall perform all the duties which he or she is charged with by the Constitution and laws”. In the opinion of the representative of the party concerned, the President of the Republic, as one of the subjects of the State powers, is commissioned by no law with solving questions concerning sale, possession or use of land, meanwhile, the county governor is permitted to dispose of State land by the aforementioned articles of the Law on the Governing of the County, the Law on land Reform, and the Law on Land.

In the opinion of the representative of the party concerned, by the provisions of these legal acts, it was attempted to ensure land management during the time period when land reform is carried out, to avoid the fissure of structures implementing the reform, as well as to include to participate in this process local government executive institutions as much as possible.

The representative of the party concerned, on the grounds of the motives set forth, alleged that the request of the petitioner is not a grounded one.

The Constitutional Court

holds that:

It is established in Part 1 of Article 47 of the Constitution: "Land, internal waters, forests, and parks may only belong to the citizens and the state of the republic of Lithuania by the right of ownership".

Article 54 of the Constitution consolidates the constitutional principle of protection of land, along with other major entities of nature.

It may be seen from Articles 47 and 54 of the Constitution that land is estimated as a universal value the main social function of which is to serve the welfare of the nation. Therefore it is especially important that this value were used rationally and effectively. This grounds an objective necessity as well as duty for the state to regulate land property relations so that all interests of subjects of land legal relations were co-ordinated and the main function of land were ensured. While regulating land relations, the provision of Article 10 of the Constitution may not be forgotten which consolidates the principle of the integrity and indivisibility of the territory of the State of Lithuania. Naturally, the rights of land owners must be such that they would not become dependent on arbitrary will of other land legal relations' subjects, namely, its managers and users. This is also applicable to the rights of the state as the only owner of state land.

It should be noted that the legal status of State land was formed on the basis of Lithuanian law traditions, too. In view of historical perspective, it could be observed that, in the past, the State of Lithuania had the exclusive right to possess state land belonging to it by the property right so that it were properly used in general welfare of the nation. This is confirmed in Article 90 of the 1922 Constitution, Article 91 of the 1928 Constitution, Article 53 of the 1938 Constitution. On 11 March 1990, after the Independent State of Lithuania had been reinstated, this right of the State was consolidated in the Provisional Basic Law (Articles 45 and 46).

The processes of the restoration of ownership right to land and land reform which take place presently in the State are inseparable from each other and realised through one common object - land. When ensuring the development of these processes, it is necessary to co-ordinate interests of various subjects as much as possible. It should be noted that neither the Constitution, nor other effective laws deny the State's possibility to choose priorities in the sphere of regulated legal relations and to establish certain specific requirements to corresponding subjects, in this case to managers of State land and its users. The purpose of land determines specific features of the regulations of land legal relations.

It is established in the 20 June 1996 Constitutional Law on Supplementing Article 47 of the Constitution of the Republic of Lithuania, as well as in the Constitutional Law on the Subjects, Procedure, Terms and Conditions and Restrictions of the Acquisition into Ownership of Land Plots Provided for by Part 2 of Article 47 of the Constitution of the Republic of Lithuania (hereinafter in the ruling referred to as the Constitutional Law), that local governments will have the right to acquire into property land plots for non-agriculture purposes. By granting the local governments the right to acquire into property such land plots which have the said purpose, it is indicated, together with other conditions, limitations and corresponding procedure, that these plots will permitted to be used only for construction and exploiting of buildings and facilities which are necessary to perform immediate functions of local governments. It is also important that the Constitutional Law will go into effect only after the Europe Agreement which establishes an association of European Communities and their Member States and the Republic of Lithuania has entered into force.

It should be noted that the constitutional consolidation of the right of local governments to acquire land into property and its development in other laws is a new phenomenon in the evolution of local self-government institutions in

Lithuania. The legislator will design a new system of legal norms on the law level to regulate the would-be land property relations. This is in conformity to the essence and purposes of the 1985 European Charter of Local Self-government.

However, presently local governments are not land owners as yet, therefore they may be not held subjects of land property relations which are equal with the State. Thus a conclusion is to be made that the norms of civil law regulating property relations in general and protecting the rights of property relations' subjects may not be applied to protection of not existing even though potential or attempted rights of local governments to land property. Therefore, when judging problems concerning land, one must, first of all, ground himself on land laws.

The circumstances set forth must be primarily considered while judging the contested norms of the Law on Land.

1. On the compliance of the norms of Article 6 the Law on Land regulating the rights of local self-government institutions in the sphere of the possession of state land with Part 2 of Article 46, as well as Article 119 and Part 2 of Article 120 of the Constitution.

1.1. The owner or, upon his authorisation, other persons are entitled to transfer the possessions to other persons. It established in item 5, Article 21 of the Law on the Government that the Government shall "hold, use and dispose of State property according to the procedures and situations established by law". Thus the Government performs the functions of the state property (in the case under investigation - state land) owner. The purpose of land, if compared to other objects of immovable property, conditions specific legal regulation of land relations, too.

According to the Law on Local Self-Government, the competence of local self-government institutions in the sphere of legal relations regarding possession of State land is not the main (independent) but that delegated by the State (Articles 14 and 16). The Constitutional Court holds that pursuant to Part 1 of Article 6 of the Law on Land the State shall delegate the right to possess State land to local self-government institutions by commissioning the Government to register it officially. Thus the Government as an institution which implements the functions of the State property owner is empowered to grant the right to other subjects to possess State property by the procedure established by the Constitution and laws.

The Constitutional Court assumes that the provision of Part 1 of Article 6 of the Law on Land that the Government by its decision shall grant the right to possess State land does not provide with the grounds to assert that thereby the content of the right of local governments to possess land is established. The content of the right to possess land is regulated in laws (the Law on Land, the Law on Land Reform, the Law on the Leasing of Land, etc.). It means that the Seimas has not delegated the right to the Government to define the content of the right which was granted to the local governments to possess State land. The Seimas, however, may commission the Government to adopt corresponding act whereby State land were transferred to local governments by the right of possession. It should be noted that after the aforesaid Constitutional Law has been applied, local governments will be permitted to have the right of ownership to land.

At the same time, the Constitutional Court notes that the provision "by the decision of the Government" of Part 1 of Article 6 of the Law on Land leaves a possibility to interpret its content in dubious manner, as well as to vaguely conceive the limits of legal regulation. However, the interpretation of legal notions must be not only literal but also

logical and systemic. Such interpretation methods of the notion “by the decision of the Government” leaves no grounds to assert that Part 1 of Article 6 of the Law on Land permits the Government to interfere with the competence of local governments’ activities that are established by laws in the sphere of the possession of the transferred State land. Therefore the allegation that the provision of Part 1 of Article 6 of the Law on Land permits the Government to define the whole content of the right of local governments to possess land is not a grounded one.

1.2. It is established in Part 2 of Article 6 of the Law on Land that the possessor of State land shall have the right, without exceeding the given authority, to utilise the land, to lease the land to other natural and legal persons for the period of up to 3 years, as well as to adopt decisions regarding the allotment of land for utilisation to natural and legal persons providing the laws and legal acts do not prescribe otherwise.

Such rights of local governments in the sphere of land possession are determined by the legal status of State land. The State as a subject of public property law by giving the right to manage the possessions which are its property may impose certain limitations on the management and use of its possessions, e.g., servitude, certain restrictions on the term of land leasing contracts, prohibition to change the major purpose of land use without the consent of the owner, etc. However, only law may establish restrictions for the possession of State land. As regards the disputed norm, this is established in Part 2 of Article 6 of the Law on Land and Part 5 of Article 9 of the Law on the Leasing of Land.

Thus all restraints concerning management of State possessions as established by law provide with no basis to assert that this restricts economic efforts and initiative which are useful to the community.

Taking account of all motives set forth, a conclusion is to be drawn that the norms of Article 6 the Law on Land regulating the rights of local self-government institutions in the sphere of the possession of state land are in compliance with Part 2 of Article 46, as well as Article 119 and Part 2 of Article 120 of the Constitution.

2. On the compliance of Article 24 of the Law on Land with Part 2 of Article 77 and Part 2 of Article 120 of the Constitution.

2.1. It is established in Part 1 of Article 24 of the Law on Land: “State land shall be sold or in any other way transferred into private ownership by the county governors in accordance with the procedure established by law and the Government of the Republic of Lithuania.” The petitioner alleges that the provision of this law “in accordance with the procedure established [...] by the Government” violates Part 2 of Article 128 wherein it is prescribed: “procedures concerning the management, utilisation, and disposal of State property shall be established by law”.

According to item 2, Article 94 and item 2 of Article 21 of the Law on the Government, the Government shall implement laws and resolutions of the Seimas concerning the implementation of laws. Consequently, legal acts adopted by the Government may not contradict laws or change the content of the legal norm, in this case, land relations regulated by the Law on Land. The commission for the Government to regulate the procedure of State property transfer as consolidated in Part 1 of Article 24 of the Law on Land must also be accomplished on legal basis.

Thus, if the Seimas’ commission for the Government to establish the procedure of State property transfer as indicated in Part 1 of Article 24 of the Law on Land were understood as the requirement of the legislator to establish the procedure of the process of the property transfer or as a general requirement to adopt a corresponding legal act which is

in conformity to laws, the disputed norm would be in compliance with the Constitution. Therefore the doubt alone that the wording of the disputed norm of the Law on Land may be understood ambiguously is insufficient to ground the statement that the provision “in accordance with the procedure established [...] by the Government” of Part 1 of Article 24 of the Law on Land contradicts Part 2 of Article 120 of the Constitution.

Alongside, the Constitutional Court notes that such a wording of the said norm is a defective one as obscurities may arise whether the law or the substatutory act is the genuine source of regulation of land relations. This is so because Part 1 of Article 24 of the Law on Land does not particularise the competence of the legislator and the Government in the sphere of establishing the procedure of the transfer of State land into private ownership. A more precise wording of the disputed norm of Part 1 of Article 24 of the Law on Land is necessary because of the imperative requirement of item 6, Article 10 of the Constitutional Law stipulating that the Government shall establish only procedures of decisions regarding issues of acquiring land into property.

2.2. It is established in Part 2 of Article 24 of the Law on Land: “While making contracts of sale and purchase as well as of lease and use of land plots, either the county governor or, upon of his authorisation, the head of the county governor’s administration service for organisation of land exploitation and geodesy shall represent the State.” The petitioner is of the opinion that the provision “the county governor [...] shall represent the State” contradicts Part 2 of article 77 of the Constitution which stipulates that the President shall represent the State of Lithuania.

In the opinion of the Constitutional Court, this constitutional norm has a different meaning. Part 2 of Article 77 of the Constitution means, first of all, that the function of the President of the Republic as the head of the State is to represent the State of Lithuania in the sphere of international relations, i.e., the relations with other states and international organisations. It is, in essence, the representative function of the head of the state. Actually, similar functions are performed by the heads of other supreme institutions of power - the Seimas and the Government. Nonetheless, it is impossible to link the sense of Article 77 of the official representation of the state with granting of any particular rights and powers let alone representation in property relations. The procedure of representation in the sphere of civil legal relations is established by the Civil Code and other laws.

In the sphere of internal affairs, the state may be represented by other state officials who are obligated by laws or other legal acts which establish their competence. In this disputed case, the commissions of the county governor to represent the state in the sphere of civil legal relations while making contracts of sale and purchase as well as of lease and use of land plots are prescribed not only in Part 2 of Article 24 of the Law on Land but also in the Law on the Governing of the County.

2.3. The provision “State land shall be sold or in any other way transferred into private ownership by the county governors in accordance with the procedure established by law and the Government of the Republic of Lithuania” of Part 1 of Article 24 of the Law on Land does not restrict possibilities of local governments to act freely and independently within the competence which shall be established by the Constitution and the laws as the county governor may sell, lease or grant the right to use only state free land stock. State free land is land which has not been transferred, leased or given for use to other subjects, as well as institutions of local self-government. This is established in item 1, Article 9 of the Law on the Governing of the County. It provides that the county governor shall “manage state free land

stock, with the exception of land transferred into the possession of the institutions of local self-government”. Thus the contested provision of Part 1 of Article 24 of the Law on Land is in compliance with the norm “local governments shall act freely and independently within the limits of their competence which shall be established by the Constitution and laws” of Part 2 of Article 120 of the Constitution.

2.4. The motives of the petitioner concerning the inconsistency of the disputed provision of Part 2 of Article 24 of the Law on Land with Article 9 of the Law on the Governing of the County and with Article 99 of the Civil Code are related to issues of collision of laws which shall be judged by the legislator but never by the Constitutional Court (Article 1 of the Law on the Constitutional Court).

On the grounds of the arguments set forth, a conclusion is to be drawn that Article 24 of the Law on Land is in compliance with Part 2 of Article 77 and Part 2 of Article 120 of the Constitution.

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

ruling:

To recognise that the norms of Parts 1 and 2 of Article 6 of the Republic of Lithuania Law on Land regulating the rights of institutions of local self-government in the sphere of the possession of State land as well as Article 24 of the said law are in compliance with the Constitution of the Republic of Lithuania.

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

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

Justices of the Constitutional Court:

Egidijus Jaraðiūnas

Kęstutis Lapinskas

Zigmas Levickis

Augustinas Normantas

Vladas Pavilionis

Jonas Prapiestis

Pranas Vytautas Rasimavičius

Juozas Bilyis

