UNIVERSITY OF LATVIA

Summary of Doctoral Thesis

Arta Snipe

COMPULSORY LAND LEASE IN THE CITIES OF THE REPUBLIC OF LATVIA: THE CASES WHERE PRIVATIZED MULTI-APARTMENT BUILDINGS ARE LOCATED ON RESTITUTED LAND

Riga, 2020

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SUMMARY OF DOCTORAL THESIS

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The thesis contains the introduction, five chapters, summary, reference list.

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ANNOTATION

The aim of the doctoral thesis "Compulsory land lease in the cities of the Republic of Latvia: the cases where privatized multi-apartment buildings are located on restituted land" is to find solutions to the problems arising out of compulsory land lease relations in the cities of the Republic of Latvia. These problems are faced by the participants of the compulsory land lease relations: landowners, apartment owners, and building managers. The central subject of the thesis is the legal relations between landowner and apartment owners of privatized multi-apartment building (plattenbau), when the latter is located on a land lot owned by landowner other than the apartment owners. The study features a comprehensive theoretical analysis of the compulsory land lease. Concurrently, it has practical meaning and application.

The author has identified 4 tasks of the thesis research. The first task is to comprehensively describe the legal institution of compulsory land lease. To accomplish the task the author analyzes the historical circumstances in which the separate ownership of a land and a building and the compulsory land lease were formed; followed by the analysis of the legal nature of compulsory lease relations; evaluating whether it is systematically correct to regulate this legal relationship as part of obligations law not as an institution of property law. Further on the author analyzes the essential elements of the lease relationship: the subject matter and the lease fee, followed by the analysis of the applicable legal provisions. The second task is to find the basis of the right of claim within the scope of compulsory land lease relations. For this the author examines the basis of the legal relationship between the parties and the claims the parties have against each other. The third task is to analyze the procedural provisions and to give recommendations aiming to ensure that landowners can effectively protect their rights and legal interests in courts. To achieve this task, the author analyzes the rights and obligations of apartment owners, the building managers and the landowners, as well as the status of the building manager in court proceedings, their right to sign lease agreements and their scope of representation. The fourth task is to evaluate the possible ways of transferring land ownership rights and merging the separate immovables, so that the building and the land under it are owned by the same persons and registered as one property, as well as to formulate recommendations for an economically justified lease fee.

The aim and tasks of the doctoral thesis are achieved by analyzing legal provisions and scholarship, and relevant case law. The author analyzes 90 Supreme Court rulings and nearly 100 first and appellate court judgments in compulsory land lease disputes. Materials of legislative process and examples of practice are used to illustrate the issues that are to be solved.

The results of the doctoral thesis are presented in 37 summary theses, which include both recommendations for improvement of regulations and recommendations for ensuring uniformity in the interpretation of existing legal provisions.

CONTENTS

1. THE DESCRIPTION OF THE DOCTORAL THESIS

1.1. The importance of the thesis research topic

The doctoral thesis is research on the compulsory land lease involving apartment houses, privatized during the post-Soviet era, that originally had been erected on nationalized land which eventually was subject to restitution to the original owners of the land or their heirs.

Under the land reform initiated after the restoration of Latvia's independence in 1990, the ownership of the land, which was nationalized between 1940 and 1980, was restored to former owners or their heirs (Latvijas Republikas Augstākā Padome, 1991b). At the same time, the title to the buildings which were legally built on these lots before the occupation of Latvia or during the Soviet rule were retained or granted to their owners or legal possessors. In this way, the land and buildings came into possession of different persons and were recognized as autonomous ownership objects (Latvijas Republikas Augstākā Padome, 1992, sec. 14). This situation in Latvian is called '*dalītie īpašumi*' – separate immovables. It should be mentioned that English version of a term widely used in Latvia is 'divided properties',[1] which is a confusing translation. In the event of "*dalītie īpašumi*" one real estate consists of two autonomous objects of ownership, i.e. a land and a building on it. The legislature chose to regulate the compulsory legal relations between the land and the building owners in accordance with legal provisions governing the lease agreement (Latvijas Republikas Augstākā Padome, 1991c, sec. 12). These relations are called compulsory land lease (Latvijas Republikas Satversmes tiesa, 2009a, paras 4, 6, 14.2).

According to the information provided by the State Land Service of the Republic of Latvia in 2015 in Latvia there were 3677 apartment buildings totaling of 110,970 apartments, which were located on 7354 land lots owned by other persons (Latvijas Republikas Tieslietu ministrija, 2015a, p. 3). There are compulsory land lease relations between the owners of these apartments and the landowners.

Compulsory land leasing is recognized as a part of obligations law and regulated by the terms of a lease agreement, although the legal nature of the compulsory land lease relations bears more similarity to legal relations under property law. The dual legal nature of compulsory land lease creates difficulties in applying the substantive law provisions and in dispute resolution.

Nonetheless, the legal institution of compulsory land lease has not been explored in depth. This legal institution is unique and can be found only in Latvia, as only in Latvia the ownership rights were restored to land lots on

[1] See: https://www.tm.gov.lv/en/news/draft-law-on-termination-of-compulsory-divided-properties-in-privatized-apartment-buildings-to-be-tr

which plattenbaus were built during the years of Soviet occupation. Therefore, the compulsory land lease has not been described in scholarship outside Latvia. No comprehensive analysis of the legal concept has been conducted, in Latvian scholarship compulsory land lease issues have been addressed by authors in various studies only in relation to the specific practical problems.

The compulsory land lease is a topical issue: the regulation on separate immovables has been on the government agenda since 2010, followed by the decision to merge the properties by transferring the ownership of the land to apartment owners, so that the building and the land under it are owned by the same persons and registered as one property (hereinafter referred to as "merging of properties"), and thus terminate compulsory land lease as such (Latvijas Repubikas Ministru kabinets, 2011). Bills "on termination of compulsory divided properties in privatized apartment buildings"[2] have been submitted to the parliament already twice (Latvijas Republikas Tieslietu ministrija, 2015b; Latvijas Republikas Saeimas Valsts pārvaldes un pašvaldības komisija, 2018b). Since 2011 at least once a year amendments to the regulations on the compulsory land lease have been tabled, aimed primarily at reducing the lease fee amount.[3] Also the Constitutional Court has addressed the amount of land lease in the course of several cases, where the most important are cases No. 2008-34-01, No. 2008-36-01, No. 2010-22-01, No. 2011-01-01 and No. 2017-17-01. Nevertheless, there has been no theoretical study on the legal institution of the compulsory land lease. This suggests that the doctoral thesis has both theoretical and practical implications, both now and in the foreseeable future, in assessing potential regulatory changes and addressing specific disputes. The doctoral thesis as an analytical research on the legal institution will remain scientifically relevant even if the relevance of the compulsory land lease decreases as a result of the merging of properties.

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[2] Terminology used by the Ministry of Justice.

[3] See, e.g., Latvijas Republikas 10. Saeimas deputāti. Likumprojekts "Grozījumi likumā "Par zemes reformu Latvijas Republikas pilsētās" (Nr. 391/Lp10). Available: http://titania.saeima.lv/LIVS10/SaeimaLIVS10.nsf/0/ B2F9889804B68138C22578A9004A0F62? [accessed on 16.08.2018.], Latvijas Republikas Tieslietu ministrija. Likumprojekts "Grozījumi likumā "Par zemes reformu Latvijas Republikas pilsētās"" (Nr. 423/Lp11). Available: http://titania.saeima.lv/LIVS11/saeima livs11.nsf/0/51238D053BF1960CC2257A9B002C5C8D? [accessed on 16.08.2018.], Latvijas Republikas 12. Saeimas deputāts S.Dolgopolovs. Priekšlikumi likumprojekta "Grozījumi likumā "Par valsts un pašvaldību dzīvojamo māju privatizāciju" (446/Lp12) 3. lasījumam. Available: http://titania.saeima.lv/LIVS12/ SaeimaLIVS12.nsf/0/1863F955861CF539C2257F9D00252469? [accessed on 16.08.2018.], Latvijas Republikas 12. Saeimas deputāts A. Elksniņš. Priekšlikumi likumprojekta "Grozījumi likumā "Par valsts un pašvaldību dzīvojamo māju privatizāciju" (446/Lp12) 3. lasījumam. Available: http://titania.saeima.lv/LIVS12/SaeimaLIVS12.nsf/0/ 11A87AA271C6FF49C2257F9B0044CE84? [accessed on 16.08.2018.].

1.2. The aim and tasks of the doctoral thesis research

The aim of the doctoral thesis is to find solutions to problems arising out of the compulsory land lease relations in the cities of the Republic of Latvia. These problems are faced by participants of the compulsory land lease relations: landowners, apartment owners, and building managers. The central subject of the thesis is the legal relations between landowner and apartment owners of a privatized multi-apartment building (plattenbau), when the latter is located on a land lot owned by landowner other than the apartment owners.

For my research I have formulated four tasks.

My first task is to comprehensively describe the legal institution of compulsory land lease, to disclose its contents and provide the characteristics that distinguishes it from other similar legal relations. To accomplish the task, I describe the historical context in which the separate immovables and the compulsory land lease institutions were created, and analyze the legal nature of compulsory land lease relations. Here my task is to evaluate whether it is systematically correct to regulate this legal relationship as part of obligations law, not as an institution of property law. Further on I analyze the essential elements of the lease relationship: the subject matter and the lease fee and continue by analyzing the applicable legal provisions.

My second task is to find what is the basis of the right of claim within the scope of the compulsory land lease relations. For this I examine the basis of the legal relationship between the parties and the claims that the parties have against each other. I also look for an answer to a question about when the limitation period for claims arising out of compulsory land lease relationship begins.

My third task is to analyze the procedural provisions and to give recommendations aiming to ensure that landowners can effectively protect their rights and legal interests in courts. To achieve this task, I analyze the rights and obligations of apartment owners, the building managers, and the landowners, as well as the status of a building manager in court proceedings, their right to sign lease agreements and their scope of representation. I also analyze the procedural rules on lodging such claims, on the continuance of proceedings if a change of ownership or change of building manager takes place, on a solution in the case of a liquidation of a building manager, on the enforcement of a judgment, and on a possible subrogation of the defendants in proceedings.

My fourth task is to evaluate the possible ways of transferring land ownership rights to apartment owners and merging the properties, so that the building and the land under it are owned by the same persons and registered as one property. Using both legal and economic analysis and calculations of key economic indicators, I also formulate recommendations for an economically justified lease fee. Compulsory land lease will exist for as long as separate immovables exist, so it is important to link the analysis of lease fee amounts to the state policies aimed at merging the properties.

As a result of the research I have presented the recommendations aimed to improve the legislation so that, on the one hand, it ensures the landowners' right to receive income from their property and, on the other hand, it motivates stakeholders, particularly apartment owners, to use the opportunity and right to buy out the land, thereby facilitating the merging of properties.

1.3. Research questions of the doctoral thesis

Research questions are formulated according to the aim and tasks of the doctoral thesis:

1. Whether compulsory land lease relations are correctly qualified as part of obligations law, as opposed to being qualified as an institution of property law. Should this legal institution be regulated as part of property law?
2. What is the basis of the right of claim within the scope of the compulsory land lease relationship?
3. When the limitation period for claims arising out of compulsory land lease relationship begins?
4. How to determine the amount of land lease, if the parties have not reached an agreement on it?
5. What is the optimal land lease amount that would constitute a fair return on the property?
6. Should, in the absence of an agreement between the parties on the lease fee, then the value added tax be added to the lease fee set in the law?
7. What are the applicable legal provisions: in which cases the provisions of the law "On Land Reform in the Cities of the Republic of Latvia" should be applied, in which cases – the provisions of the law "On Privatization of State and Municipal Residential Houses", and in which cases – the provisions of the Residential Property Management Law?
8. Who is the defendant in claims arising out of compulsory land lease relationship: apartment owners or the building manager?
9. Is a subrogation of the defendant from building manager to the apartment owners possible if there is a judgment against the building manager establishing the compulsory land lease relationship and recovering the lease fee?
10. How should legal relations between landowners and apartment owners be regulated to facilitate the merging of properties?

1.4. Research methods

I used the following research methods in the doctoral thesis research: 1) The descriptive method was used to explain the legal concept of compulsory land lease and its elements; 2) The dogmatic approach was applied to understand the meaning and purpose of legal provisions. Using this method, scientifically

sound conclusions are drawn from the analysis of legal provisions; 3) The historical method is used to analyze the establishment, meaning, purpose, and content of the legal concept of separate ownership and to investigate the course of development of this legal concept, including the impact of the Constitutional Court judgments; 4) The comparative method is used in two ways: to evaluate the opinions of different authors and court cases in the application of legal provisions regulating compulsory land lease, and to compare the development of legal provisions and concepts; 5) The sociological method is used to analyze legal provisions and concepts in connection with socio-economic circumstances, explaining the choices of the legislator in the context of specific historical, economic, social events; 6) The analytical method is used to disclose the content of legal concepts and principles, and provisions, and to identify situations that are not yet regulated by the law. The method is also used to scrutinize the application of legal provisions in the case law; 7) The empirical method is used to test hypotheses – how legal provisions are applied in specific cases in courts; 8) Formal logic is used in the research: the deductive method is used to reconstruct syllogisms in judgments and opinions expressed in scholarship, while the inductive method is used to consolidate existing legal provisions and practice at their application; (9) The economic analysis is used to calculate the optimal land lease fee amount that would constitute a fair return on the property.

1.5. Scientific publications and presentation of the research findings

The research findings have been presented in the following publications:

1. Snipe A., Šlitke N. Atbildētājs prasībā par zemes nomas līguma noslēgšanu. Jurista Vārds, 11.12.2007., No. 50 (503), pp. 1-8.
2. Snipe A., Šlitke N. Piespiedu noma – konsensuāllīgums vai reāllīgums?. Jurista Vārds, 15.07.2014., Nr. 27 (829), 4.lpp.
3. Snipe A., Šlitke N. Akcesorās atbildības trīsstūrī: zemes īpašnieks, ēkas īpašnieks un pārvaldnieks. Jurista Vārds, 10.01.2017., No. 2 (956), pp. 20-27.
4. Snipe A. Par saistības un prasības noilgumu saistībai, kas radusies uz likuma pamata. Jurista Vārds, 16.09.2017., No. 40 (994), pp. 23-25.
5. Snipe A. Satversmes tiesas konsekventā cīņa ar Saeimas populismu. Jurista Vārds, 05.06.2018., No. 23 (1029), pp. 22.-29.
6. Snipe A. Tiesību avotos maldoties: tiesām un tiesību zinātnei izvirzāmās prasības. Jurista Vārds, 02.10.2018., No. 40 (1046), pp. 25.-31.
7. Snipe A. Separation of ownership and compulsory land lease in Latvia: challenges and solutions. Sociālo Zinātņu Vēstnesis, No. 1 (28), 2019, pp. 67-86. ISSN 1691-1881, eISSN 2592-8562.

8. Snipe A. Tiesisks darījums un tā noslēgšanas brīdis zemes likumiskās (piespiedu) nomas tiesisko attiecību gadījumā. Socrates: Rīgas Stradiņa universitātes Juridiskās fakultātes elektroniskais juridisko zinātnisko rakstu žurnāls. Rīga: RSU, 2018, Nr. 3 (12), pp. 61-75. ISSN 2256-0548. Available: https://www.rsu.lv/sites/default/files/imce/Dokumenti/ izdevumi/Socrates_12_2018.pdf.
9. Snipe A., Balodis K. Origins of Separated Ownership and Possible Solutions for Unifying Thereof. Journal of the University of Latvia "Law", No. 12, 2019, pp. 139-161. ISSN 1691-7677. Available: https://doi.org/10.22364/jull.12.10.
10. Snipe A. Pievienotās vērtības nodoklis zemes piespiedu nomas gadījumā. Jurista Vārds, 01.10.2019., No. 39 (1097), pp. 30.-33.
11. Snipe A. Amount of the lease fee in the compulsory land lease relations. The 7th International Scientific Conference of the Faculty of Law of the University of Latvia "Legal Science: Functions, Significance and Future in Legal Systems I" 16-18 October 2019, Riga. Collected conference papers. Rīga: LU Akadēmiskais apgāds, 2019, pp. 207-216. ISBN 978-9934-18-471-0 2019. Available: https://doi.org/10.22364/iscflul.7.18.
12. Snipe A. Amount of the lease fee in the compulsory land lease relations. Poster presentation in the 7th International Scientific Conference of the Faculty of Law of the University of Latvia "Legal Science: Functions, Significance and Future in Legal Systems". Riga, October 16-18, 2019.
13. Snipe A. Prasījuma tiesību noilgums zemes likumiskajā (piespiedu) nomā. Socrates: Rīgas Stradiņa universitātes Juridiskās fakultātes elektroniskais juridisko zinātnisko rakstu žurnāls. Rīga: RSU, 2019, No. 1 (13), pp. 76-95. ISSN 2256-0548. Available: https://www.rsu.lv/sites/default/files/imce/Dokumenti/izdevumi/ Socrates_13_2019.pdf, https://doi.org/10.25143/socr.13.2019.1.076-095.

1.6. The volume and the structure of the doctoral thesis

The doctoral thesis consists of an introduction, five chapters, summary, reference list, and annotations in Latvian, English and German. The total volume of the thesis is 266 pages.

2. THE OUTLINE OF THE DOCTORAL THESIS

Introduction

In the introduction of the doctoral thesis I explain the importance of the research topic and the practical and theoretical significance of the research, its aim, tasks, the subject of the research, and applied research methods.

Chapter 1. Separate immovables and the compulsory land lease

The chapter contains six subchapters.

In the first subchapter I reveal the historical context of legislature's decision to create a situation where a land and buildings on it are owned by different persons. Under the land reform initiated after the restoration of Latvia's independence, the ownership of the land, which was nationalized between 1940 and 1980, was restored to former owners or their heirs (Latvijas Republikas Augstākā Padome, 1991b). The aim of the restitution was to demonstrate the country's "return" to democracy and the rule of law (Crowder, 1994, p. 262), as well as to restore historical justice (Grūtups, 1995, pp. 8, 10). At the same time the title to the buildings, which were legally built on these land lots before the occupation of Latvia or during the Soviet rule, was retained or granted to the owners or legal possessors of these buildings. Although the law provided that the ownership of the land lot within the historical boundaries was not restored if the citizens of the Republic of Latvia have built residential houses on it during the occupation period, this exception did not apply to buildings owned by non-citizens or apartment buildings owned by the state or municipality (Latvijas Republikas Augstākā Padome, 1991c, sec. 12). In these cases, the law provided the landowner with a choice: to request the restoration of the title to the historic property and receive the lease from its users, or to request compensation certificates, or to request an equally valuable land lot. There were problems to allocate equally valuable land lots as the amount of free land in the cities was limited. There was a long-lasting lack of clarity about property compensation and insufficient assets available to cover the value of state compensation certificates (Foster, 1996, p. 644). This led to a situation whereby most former landowners and heirs chose to request for the restoration of the title to the land lot, even if there were buildings owned by others built on it (Grūtups, 1995, p. 10). In this way, the land and buildings came into possession of different persons and were recognized as autonomous ownership objects. The legislature chose to regulate the compulsory legal relations between landowners and building owners in accordance with legal provisions governing the lease agreement (Latvijas Republikas Augstākā Padome, 1991c, sec. 12). Due to

its compulsory nature, this relationship is called a compulsory land lease (Latvijas Republikas Satversmes tiesa, 2009a, paras 4, 6, 14.2). This term was introduced by the Constitutional Court and is commonly accepted although a term "statutory lease" would be more accurate instead.

In the second subchapter I explain the legislative basis of separate ownership of land and buildings on it. Separate ownership has been established by Section 14 of the Law "On the Time and Procedure of the Introduction, Inheritance and Property Law Part of the Renewed Civil Law of the Republic of Latvia of 1937". This legal provision prescribes that a building can be an autonomous ownership object as opposed to Section 968 of the Civil Law, which provided that a building attached to the ground is component part of a tract of land and belongs to the owner of the ground.

In the third subchapter I describe the laws regulating the compulsory land lease, identifying the provisions regulating legal relations among landowners, apartment owners, and building managers. The fundamental legal provisions applicable can be found in the law "On Land Reform in the Cities of the Republic of Latvia", in the law "On Privatization of State and Municipal Residential Houses", in the Residential Property Management Law and in the Civil Law. In case law, when settling disputes arising out of compulsory land lease relations, in most cases courts do not make a distinction between the law "On Land Reform in the Cities of the Republic of Latvia" (Section 12) and the law "On Privatization of State and Municipal Residential Houses" (Section 54). However, the second part of Section 12 of the Law "On Land Reform in the Cities of the Republic of Latvia" is applicable until the date (if) the apartment building in question is handed over for privatization. The provisions of the law "On Privatization of State and Municipal Residential Houses" are applicable during the privatization process (Latvijas Republikas Augstākā Tiesa, 2017b). When the privatization process in a building is completed, the scope of the manager's authority and the content of the management assignment is governed solely by the Residential Property Management Law and the Civil Law (Latvijas Republikas Augstākā Tiesa, 2017d).

In the fourth subchapter I compare the situation in Latvia with the situation in other Central and Eastern European countries, which also faced the transition to a market economy after the collapse of the Soviet Union. I compare Latvia's choice to restore ownership to those countries in similar circumstances: Lithuania, Estonia, Hungary, the German Democratic Republic, Czechoslovakia, Albania, and Poland. Latvia's choice to establish separate ownership as a result of restitution is unique. Other countries in similar situations have opted for different solutions and have encountered other difficulties. For instance, there were disputes over the amount of compensation (Fisher and Jaffe, 2000, p. 239). Neither Lithuania nor Estonia restored the title of the land lots to the former owners if the land was built upon, retaining the land in state's possession and allowing the building owners to use and redeem it (Riigikogu, 1991, sec. 7;

Lietuvos Respublikos Seimas, 1997, sec. 12). Czechoslovakia also provided an exception that ownership rights are not restored to a land that has been vacant, but now is built upon; in these cases former owners were only entitled to financial compensation (Strong, Reiner and Szyrmer, 1996, p. 98; Fisher and Jaffe, 2000, p. 242). A similar restriction was laid down in the law governing restitution in Albania (The Assembly of the Republic of Albania, 2004, sec. 8). Hungary, on the other hand, chose to compensate the value of the nationalized properties in cash or by vouchers, despite the criticism that the amounts paid did not correspond to the value of the properties (Pogany, 1997, pp. 162-163; Blacksell and Born, 2002, p. 183). As a result, only Latvia has to deal with a lasting conflict between the interests of landowners and building owners.

In the fifth subchapter I describe the situation regarding separate ownership in Latvia in 2019, almost 30 years after the beginning of the property reform. Separate ownership was intended as a temporary state (Latvijas Republikas Saeimas Valsts pārvaldes un pašvaldības komisija, 2018a). In drafting the laws governing the land reform, members of the Supreme Council assumed that by including in the law provisions of redemption, repurchase, buy out or pre-emption, properties would be merged and separate ownership and compulsory land lease issues thus will disappear (Latvijas Republikas Augstākā Padome, 1991a, v. A. Seile, J. Lazdiņš). However, this was not the case for apartment buildings. The laws and regulations so far have not facilitated the merge of properties (Rozenfelds, 2012, p. 114). According to the information provided by the State Land Service of the Republic of Latvia in 2015 in Latvia, there were 3677 apartment buildings totaling of 110 970 apartments, which were located on 7354 land lots owned by other persons (Latvijas Republikas Tieslietu ministrija, 2015a, p. 3). Although the data are not accurate as they also include land properties owned by apartment owners but recorded in another section of the Land Register, they do indicate that separate ownership is widespread. Since 2012 the question of how to merge the properties has been included in government's agenda (Latvijas Repubikas Ministru kabinets, 2012, sec. 119.1.). Bills addressing this question have been submitted to the parliament already twice, but an agreement has not been reached on the most appropriate form of how to merge the properties. Therefore, it can be predicted that the issues of separate ownership and compulsory land lease will remain important for a long time.

In the sixth subchapter I analyze the legal institution of compulsory land lease. Lease agreements are regulated by obligations law, however, the fact that the rights of the owners of the land and the building are absolute makes the compulsory lease seem more like an encumbrance on the property. There are several indications suggesting that the legislature's initial choice to regulate the relationship between a landowner and building owner under the terms of the lease agreement was not an appropriate solution. In the case of separate ownership landowners cannot effectively exercise their ownership rights, since

they cannot control, use or dispose of their land (Latvijas Republikas Tieslietu ministrija, 2012, p. 5). Compulsory land lease bears more similarities to a real servitude than to a lease, there is also a similarity between compulsory land lease and usufruct, *emphyteusis*, real charges, *obrok* and *superficies*. In the subchapter I assess how appropriate it would be to choose any of these alternatives to regulate relationships in a case of separated ownership. If compulsory land lease was reformed into an institution of property law (encumbrance), it would minimize uncertainty as to when the relationship has been established and when the right of claim has risen, since the right of claim would not be linked to the entering into contract.

Chapter 2. Establishment of compulsory land lease relations

In this chapter I address on one of the most important issues in compulsory land lease: the basis and establishment of the right of claim. A lease agreement binds only its participants, relative rights arise on its basis, for example, the lessor's right to demand payment of the rent from the lessee. In compulsory land lease, the rights of the owners of both properties are absolute, they have the characteristics of sovereignty (Balodis, 2007, p. 121). However, the compulsory land lease is recognized as a part of obligations law, which cause difficulties in the interpretation of legal provisions, as this legal relationship is significantly different from the lease relationship in general. This notwithstanding, in this chapter I scrutinize the establishment of compulsory land lease relations in view of the existing regulation where they are recognized as a lease contract. I assess whether these relations are established directly by a law or in addition a signing of a contract or a court judgment is required. The chapter contains three subchapters.

In the first subchapter I search for an answer to a question: which obligations arise directly from the law (arriving at the conclusion that it is an obligation to enter into a lease contract) and which obligations arise from the contract (a right to demand performance of a contract and an obligation to perform). Section 1402 of the Civil Law provides that obligations arise either from contracts, or from wrongful acts, or directly from the law. Although with the same facts it is often possible to claim either a performance of a contract or to base the claim on an unlawful conduct, under Latvian law these are considered competing claims, where each of them gives rise to a different obligation (i.e. either to perform or to cover the losses)(Brox, 2000, p. 18).

In order to establish that an obligation has arisen directly from the law, the legal provision must clearly define the elements of an obligation, i.e. these can be derived from the law alone (Torgāns, 2000, p. 17). Elements of a contract are different from the elements of an obligation. These under Section 1404 of the Civil Law include not only the parties, the subject-matter, and what one party is bound to perform for the other's benefit, but also the consent and the form of the contract. If the parties have not signed a lease agreement, the elements of

a contract cannot be found, i.e. the consent of the parties has not been reached and the subject matter of the contract is not identified. The aforementioned prevents compulsory land lease relations from being classified as a contract. In the subchapter I conclude that compulsory land lease relations arise directly from the law and are not dependent on individual landowners or building owners. If we accept compulsory land lease relations as part of obligations law, I conclude that directly from the law arise the rights and duties to enter into contract (sign a lease agreement), and, consequently a right to apply to the court, asking it to establish the elements of the obligation, namely, the subject matter and the lease fee. Both a landowner and a building owner has this right to apply to a court.

In the second subchapter I identify when a right of claim arises. Here I distinguish between claims based on ownership rights and claims based on contractual or non-contractual (arising directly from the law) obligations. I explore situations where there is a written lease agreement between the parties and when no written agreement has been concluded. I separately analyze the establishment and content of a claim brought against the building manager and a claim against individual apartment owners.

In order to ensure procedural economy, the law contains specific provisions that provide for the landowner the right to bring an action against a manager of a building. However, this right is limited and depends on the scope of a manager's authority. Only a duly authorized manager can be a defendant in a litigation relating to conclusion of a lease agreement or recovery of the lease fee. With regard to the right to bring an action against individual apartment owners, historically three periods with different legal regulations should be examined: (1) until October 1, 2014, when the interpretation of Section 1068 of the Civil Law precluded the right to bring an action against an individual apartment owner; (2) in between October 1, 2014 and October 1, 2015, when the elements of the obligation could be derived from the law, but the law did not give the right to bring separate claims against the individual apartment owners; (3) from October 1, 2015, when the law explicitly allowed direct payments between the service provider and apartment owners, not engaging a building manager.

In the third subchapter I examine the limitation period of the right to bring the claim. Claims in compulsory land lease relations can arise directly from the law: it is the right to claim the conclusion of a lease agreement. In specific conditions directly from the law arises also a right to claim the payment of the lease fee. It was true in the period between October 1, 2014 and December 31, 2017, when the elements of the obligation could be derived from the law: the law contained provisions both regarding the subject matter of the lease and the amount of the fee. Claims in compulsory land lease relations can also arise from a contract if one is concluded between the parties.

In the case of a written contract, the limitation period begins to run when the debtor is late. Where a claim arises directly from the law, it must be

distinguished whether it is a claim to conclude a lease agreement or a claim to recover a debt, and when it is time-barred. The limitation period is interrupted by the bringing the claim to the court, or by the reminder to the debtor, or by debtor's recognition of the debt (Torgāns, 2006, pp. 282-283). There is disagreement among the practitioners on whether a reminder sent to a building manager or an action brought against a manager can serve as a reminder to the apartment owner, interrupting the running of the limitation period. The case law tends to accept it; however, the facts of each case must be assessed on a case-by-case basis, including, in particular, inspection of the scope of the manager's authority (Latvijas Republikas Augstākā Tiesa, 2017a).

Chapter 3. Application of substantive and procedural law provisions

In the disputes concerning compulsory land lease relations, procedural complications in most cases arise due to the large number of potential litigants on the lessee's side. In the chapter I address questions of how to bring an action to court, what claims should be brought, against whom the action is to be taken, and whether the defendant can be substituted. I have outlined these issues mainly from the viewpoint of a landowner, as in most cases litigation is initiated by a landowner as a creditor. The chapter has a practical use, as I have explored specific problems the parties face in the application of legal provisions during the dispute resolution. The chapter contains five subchapters.

In the first subchapter I analyze the out of court settlement possibilities in disputes arising out of compulsory land lease relations. When a dispute between a landowner and apartment owners has been brought to a court, the apartment owners often complain that the landowner has not complied with a mandatory out of court dispute resolution procedures. For instance, landowner has not offered to conclude a lease agreement. The wording of the law "If the parties cannot agree otherwise, the land lease amount shall be determined [..]" (Latvijas Republikas Augstākā Padome, 1991c, sec. 12 (2)1; Latvijas Republikas Saeima, 1995, sec. 54 (2)) may give an impression that there is a mandatory pretrial dispute resolution procedure. However, the law does not prescribe that. If a landowner decides to use any out of court dispute resolution means or procedures, it should be done in a way that does not qualify as unfair commercial practice (Patērētāju tiesību aizsardzības centrs, 2017).

In the second subchapter I analyze the most common claims that landowners bring to the court. For a long time, it was common that in the absence of a lease contract one should be first concluded through the court and only after that the landowner could recover the lease fee. Thus, the plaintiffs (landowners) often asked the court to order the defendant to enter into lease agreement (Rīgas pilsētas Kurzemes rajona tiesa, 2000; Rīgas pilsētas Vidzemes priekšpilsētas tiesa, 2011b),

sometimes the court in its judgement established the elements of the land lease contract: subject matter, lease fee and ancillary provisions (Latvijas Republikas Augstākā Tiesa, 2009; Rīgas pilsētas Vidzemes priekšpilsētas tiesa, 2011a). However, judgements imposing a duty to conclude or sign a lease agreement were unenforceable (Rīgas pilsētas Kurzemes rajona tiesa, 2000, 2011, 2012). To recover the lease fee the landowner had to bring a new claim to the court. In 2016, the Supreme Court recognized that a court judgment establishing a compulsory land lease relationship (i.e. determining the land lot and setting the fee) replaces any other act or contract (Latvijas Republikas Augstākā Tiesa, 2016d). Establishment of the lease relationship for court is necessary only to decide on the lease recovery. Still there is no consistent case law as to whether a state fee should be paid also for the claim to establish the lease relationship even in cases when the court is also asked to rule on the recovery of the debt (Kurzemes apgabaltiesa, 2017a, 2017c; Rīgas apgabaltiesa, 2018b, 2018a).

In the third subchapter I examine the parties in the proceedings arising out of compulsory lease relations. I also analyze the right of a single land co-owner to bring an action to the court without informing the other co-owners. This is permissible in cases when there is no dispute over the leased land lot (i.e. area and boundaries of it), as all the land co-owners lease (or should lease) the same land lot to all apartment owners. Each land co-owner has the right to receive the lease fee in proportion to his percentage of ownership of the land (Latvijas Republikas Satversmes tiesa, 2011; Latvijas Republikas Augstākā Tiesa, 2016e, 2016a, 2016c).

Determining who is the defendant in proceedings in compulsory land lease disputes is one of the most difficult and responsible issues for successful lease fee recovery. In the fourth subchapter I deal with issues related to suing the building manager and bringing actions against individual apartment owners. I have analyzed the restrictions on suing the manager or individual apartment owners, and difficulties in enforcing judgments in the case of insolvency event or liquidation of the building manager.

The law "On Privatization of State and Municipal Residential Houses" establishes both the duty of an apartment owner to participate in the management of the apartment building and the right of a landowner to bring an action against a building manager (Latvijas Republikas Saeima, 1995, secs 50 (1)2, 50 (1)3; 54 (4)). The purpose of this provision is to ensure procedural economy – to simplify the filing of claims and the litigation process for both the landowner and the court. Up until the moment the apartment owners have taken over the management of a building from the municipality, the latter has the obligation to manage the building (Latvijas Republikas Saeima, 1995, sec. 50 (7)). The manager appointed by the municipality has the right to enter into a land lease contracts on behalf of the apartment owners (Latvijas Republikas Saeima, 2009, sec. Trans.prov. 7). If the management of the building has been transferred to the apartment owners, the landowner shall enter into a land lease agreement

with the person appropriately authorized by the apartment owners (Latvijas Republikas Augstākā Tiesa, 2010). Thus, before a lawsuit can be brought against a building manager, the scope of his authority must be clarified. The manager may be defendant in such proceeding only if it has been authorized by the apartment owners to enter into a lease agreement (Latvijas Republikas Augstākā Tiesa, 2017b). In the absence of such authorization the lawsuit should be brought against the apartment owners. The manager's authority to represent apartment owners cease to exist upon termination of the management agreement (Latvijas Republikas Senāts, 2019, sec. 9.3.).

The lessee and the land user in compulsory land lease relations is an apartment owner (Latvijas Republikas Saeima, 2009, secs 1. 2), 17.2 (1), 17.2 (2)). The law explicitly allows bringing claims against individual apartment owners only since October 1, 2015 (Latvijas Republikas Saeima, 2009, sec. Trans. prov. 23.). Still, there is a joined lease relationship between all the apartment owners and the landowner. In accordance with the principle of legal equality, while adjudicating individual cases against apartment owners, all the disputes concerning one building and one land lot should be resolved similarly. A situation where a judgement produces different legal effects for different subjects of the same legal relationship (apartment owners as co-debtors) is incompatible with the principle of legal equality (Latvijas Republikas Augstākā Tiesa, 2016b, para. 8.5.).

In the fourth subchapter I disclose the difficulties to enforce judgments made in cases against building managers and suggest possible solutions. One of them: to allow substitution of the defendant, the building manager, in the proceedings. Case law recognizes the right of the landowner to bring an action against apartment owners and to claim the uncovered lease on a form of damages or loss of profit from the property only after the judgement against the manager has been declared unenforceable (Latvijas Republikas Augstākā Tiesa, 2016b, para. 7). However, a solution should be sought to make the existing judgment against the manager enforceable against the apartment owners without the need to bring to the court a number of new claims.

In the fifth subchapter I inspect the procedural issues related to the burden of proof. Claiming that land lease recovery should be made simple to guarantee the landowners' right to income from the property, I argue that the landowner's burden of proving at the initial stages of litigation should be limited to the closest facts giving rise to an entitlement. The plaintiff's task would be extremely onerous and often even impossible if he had to prove not only existence of their claim, but also its origin (Bukovskis, 2015, pp. 341-342).

Chapter 4. Essential elements of the lease: the subject matter and the lease fee

Given that the compulsory land lease relations are recognized as an institution of obligations law, a type of lease agreement, in this chapter I examine the essential elements of obligation arising out of compulsory land lease as a lease agreement: the subject matter and the lease fee. The chapter contains four subchapters.

In the first subchapter I approach the problem of how to determine the subject matter of a lease: the leased lot, where the boundaries and the area of the land lot must be known to the parties (Torgāns, 2008, p. 99). While the court has a wide discretion to determine the area and boundaries of the land lot leased in cases when there is a mansion or state-owned objects (referred to in the third paragraph of the first part of Section 12 of the law "On Land Reform in the Cities of the Republic of Latvia") situated on the land lot, the regulation is different with regard to apartment houses (Rīgas apgabaltiesa, 2011). If there is a privatized multi-apartment building on a land lot, the boundaries of it ought to have been determined by an administrative act during the privatization process. In these cases, courts are not entitled to review it.

In practice, there are situations where the leased land has not been determined during privatization process, as well as situations where the apartment owners do not agree with the area determined. Only since October 1, 2014, Section 85 of the Law "On Privatization of State and Municipal Residential Houses" provides for an administrative procedure for reviewing the leased land lot. Until the area of leased land has not been changed in administrative procedure, the court shall not establish a different subject matter of the compulsory land lease relationship then the one determined during privatization (Latvijas Republikas Augstākā Tiesa, 2017c, para. 20.).

In the second subchapter I disclose the changes in the regulation of lease amount since the beginning of property reform in 1991 until May 2019, reviewing the most significant amendments to the law and the rulings of the Constitutional Court. The amount of the lease fee is the most controversial aspect in compulsory land lease relations. It has caused almost all the disputes between landowners and building owners and has been the reason for most of the amendments to the laws and all the proceedings in the Constitutional Court. In the subchapter I disclose the history and circumstances in which amendments were adopted in 2008, 2009, 2014 and 2017, as well analyze the decisions of the Constitutional Court in cases no. 2008-36-01, 2010-22-01 and 2017-17-01. I separately analyze the legal provisions in force at each time period between each amendment and Constitutional Court ruling, disclosing the circumstances that led to the adoption of amendments.

In the third subchapter I scrutinize the application of value added tax to compulsory land lease payments. Although the legal provisions regarding

the application of value added tax to lease payments have not changed during the years, the case law regarding the taxation and calculation of value added tax on land lease has changed significantly over time. Until 2016, it was recognized in case law that in addition to the land lease payment, value added tax ought be calculated and paid (Latvijas Republikas Augstākā Tiesa, 2007). In December 2011, the Supreme Court ruled that the maximum lease fee is set by law and that "lessees do not have to compensate VAT paid by landowner" (Latvijas Republikas Augstākā Tiesa, 2015, para. 10.4.). After this judgment, the case law on value added tax became controversial. Some courts applied the findings of the case, ruling that the VAT was part of the debt recovered (Kurzemes apgabaltiesa, 2017b; Zemgales apgabaltiesa, 2017b). Some courts rejected the claim to recover VAT at all (Rīgas apgabaltiesa, 2017; Zemgales apgabaltiesa, 2017a). Some courts criticized the reasoning behind the Supreme Court's judgment (Vidzemes apgabaltiesa, 2017). The Supreme Court has dealt with the issue of VAT in two more cases, in both cases the majority of senators held the opinion that apartment owners shall not pay VAT in addition to the lease fee, while landowners maintained their responsibility to pay VAT to the state. However, on both occasions several senators added their dissenting opinions to the judgements (Jonikānis and Kušnire, 2018; Salenieks, 2018; Jonikānis *et al.*, 2019).

In this subchapter I analyze the application and calculation of VAT from different aspects: from the constitutional law point of view, as the legislature's freedom of choice to recognize compulsory land lease as taxable transaction or to exempt it; from the point of view of public (tax) law, assessing the calculation of value added tax; from the point of view of legal theory, distinguishing between general and special law provisions in disputes regarding the land lease fee and value added tax; and lastly from the economic aspect of determining the fair lease fee amount, ensuring that the constitutional rights of both parties are not infringed. I question also whether the leasing of land in a compulsory land lease relations should be recognized as an economic activity and a supply of services within the meaning of Directive 2006/112/EC on the common system of value added tax (Council of the European Union, 2006). European Court of Justice has ruled that the leasing of immovable property is in principle covered by the concept of economic activity, however, it is normally a relatively passive activity, not generating any significant added value, which is why it is exempted from the value added tax (Court of Justice, 2001, paras 50-53). The exemption provided for in the Directive relates to certain transactions which constitute an economic activity which, by their nature, do not produce relevant added value, as it does not involve active use of immovable assets (Court of Justice, 2003, para. 27). Activities which are of an industrial or commercial nature and which involve the provision of a service are generally taxable (Court of Justice, 2004, paras 17-20). I argue that compulsory land lease does not fulfill these requirements and thus does not qualify as a provision of a service within the meaning of the Directive.

In the fourth subchapter I search for and calculate the optimal lease fee amount in compulsory land lease relations. The lease fee amount is affected by legal, economic, and political considerations. When the lease fee is determined by the law, political considerations are dominant. When the court determines the lease fee in the event of a dispute, legal considerations prevail, but upon agreement between the parties, the economic considerations prevail.

The presence of the political aspect in the legislation process means the influence of the political and social situations, public values, the political course the state takes. The concepts of "socially responsible state" or "support for free market economy" are political considerations as the legislature creates the laws in accordance with these ideas and aims. When legislature's decisions become too politically influenced, they are controlled by other branches of state power. This is ensured by the Constitutional Court, which assesses the amount of the lease fee from the legal perspective and guarantees the balance between the rights and interests of the persons involved (Latvijas Republikas Satversmes tiesa, 2009b, para. 13). Actions of legislature must comply with the constitution and general principles of law (Latvijas Republikas Satversmes tiesa, 2018, para. 21.3).

When there is a separate ownership of a land and a building and compulsory land lease relations between the parties, there is no free market or competition among the landlords. Law and economics scholarship suggests that the normative regulation should replace bargaining when transaction costs are too high, as per the so called Normative Hobbes Theorem (Cooter, 1982, p. 18ff). This suggestion ins fully applicable to compulsory lease relations, which means that the rent in the case of a dispute must be determined by a law.

The amount of fair renumeration can only be calculated economically. In a free market, price is determined by supply and demand, but the market exists only where the service can be freely bought or sold to anyone, which is not the case in compulsory land lease. The economic aspect of the lease fee has not been assessed in legislation process. As the optimal lease fee amount should be a fair renumeration, then it is appropriate to apply economic models and economic indicators that are used to determine the return from the property (Brueggeman and Fisher, 1997, para. 256). In the subchapter I use formulas for capitalization rates, return on capital, and net operating income to calculate the optimal lease amount that should allow for the landowner to receive a fair return on their property and not lose its value over time.

Chapter 5. Merging of separate immovables

Although the deficiencies of the separate ownership of a land and a building and compulsory land lease relations sometimes are exaggerated not, only in media but even in expert discussions, undeniably, taking into account political, social, and economic considerations, legislators could do far more to support and stimulate the merging of separate immovables, so that the building and

the land under it are owned by the same persons and registered as one property. Both the executive power and the legislature have expressed the opinion that merging of separate immovables is the preferable long-term solution. In the chapter I evaluate different possible models of merging separate immovables, outlining the advantages and disadvantages of each. The chapter contains four subchapters, where in each of the first three subchapters I assess a specific merging model. For each of the models I analyze the complexity of initiating the merging process, the costs involved, and are the fundamental rights of those involved respected.

In the first subchapter I evaluate the model for merging of separate immovables elaborated by the Ministry of Justice. According to this model, the buyout procedure is initiated by a decision of the community of apartment owners (Latvijas Republikas Tieslietu ministrija, 2019). The advantage of this model is the complete consolidation of properties, if the buyout procedure succeeds. However, the requirement to have a coordinated decision by the community of apartment owners and the right of each apartment owner to contest this decision makes it cumbersome and hard to implement. The obligation to pay the total buyout price is the pre-requisite for exercising this right which can preclude the buyout procedure (Latvijas Republikas Saeimas Valsts pārvaldes un pašvaldības komisija, 2018b). It is highly probable that only a small part of apartment owners will exercise the buyout rights in accordance with this procedure.

In the second subchapter I evaluate the model which entails adoption of a regulatory framework allowing full or partial merge of separate immovables and ownership on the basis of an agreement reached by a landowner and one or several apartment owners (Biedrība "Zemes reformas komiteja" and Dzīvokļu īpašnieku un īrnieku biedrība "Tauta pret Zemes Baroniem", 2019). Under this model the amendments are to be made in the regulation for the registration of property rights in the Land Register. Currently, an apartment owner, upon acquiring ownership of undivided shares of the land, may register its title only in that division of the Land Register, in which the land property has been entered. Thus, the person still owns two immovables (an apartment and a part of land underneath it) which are legally separate. The properties are merged only if the respective undivided shares of the land property are registered as part of the apartment property, amending the composition of the apartment property in the subdivision of the Land Register. While the title to the land and to the apartment are recorded in different sections of the Land Register, the title to the property is not merged, even if the land is fully co-owned by apartment owners (Rozenfelds, 2012, p. 116). Amendments in the Law of Land Register and the promotion of buyout agreements would allow to merge the separate immovables without a considerable financial burden on the state budget.

In the third subchapter I evaluate the model involving eminent domain of land properties with subsequent privatization. The advantage of this model is

its relatively simple implementation, but it has drawbacks from both a legal and a financial point of view. Although there is a number of land lots which are already owned by the apartment owners and the separate ownership exists only legally, up to € 100 million would be needed to buy the land owned by other persons (Latvijas Republikas Ministru Kabinets, 2018). Mass expropriation of land property would also be incompatible with Article 105 of the Constitution of Latvia: the Constitutional Court has emphasized that coercive expropriation of property must not become a common practice for ensuring state needs. The legislator must be convinced that there are no other solutions for the public needs and that the property is indeed expropriated in exceptional cases (Latvijas Republikas Satversmes tiesa, 2009c, para. 13.3). This solution also does not encourage apartment owners to buy land: does not solve the demand problem.

In the fourth subchapter I summarize the findings for all of the models described, as well argue that the amount of the lease fee, if set in law, has an effect on the interest of apartment owners to buy out the land under the apartment building. I stress that the primary task of the state is to adopt a regulation for making entries in the Land Register that will allow to legally merge separate immovables. It is also upon the state to motivate both landowners and apartment owners to reach an agreement on buying the land, i.e. using tax reliefs. In order to motivate apartment owners to buy out land, it must be more financially advantageous for them to acquire the land than to continue leasing it.

3. CONCLUSIONS AND PROPOSALS

Considering the issues identified in the thesis and the analysis of the legal provisions, case law, and scholarship, I have put forward following conclusions and proposals:

On separate ownership

1. The establishment of separate ownership of a land and a building on it is a result of a decision made by the legislature at the beginning of the land reform. It is advisable to promote the merging of separate immovables, which can be done both by adopting appropriate regulations and by motivating the stakeholders (apartment owners and landowners) to use this regulation.
2. The Latvian term "*dalītie īpašumi*" should be translated into English as "separate immovables" or "separate ownership of land and buildings", not "divided properties". One should not use a verb "to terminate" the separate immovables, a verb "to merge" should be used instead, while describing "merger of properties" or "merger of separate immovables".

On regulation of compulsory land lease relations

3. In compulsory land lease relations the building owner's right to use a property of another is not dependent on the individual landowner or building owner and is valid against any third person. The legal nature of the compulsory land lease relations bears more similarities to legal relations under property law. The fact that the right of the landowner to receive the "rent" is made dependent on the conclusion and execution of a lease contract is a cause of difficulties in the application of legal provisions and the settlement of disputes. This can be solved by transforming the compulsory land lease into an institute of property law.
4. The compulsory land lease relations are to be regulated as a separate legal institution by incorporating the relevant legal provisions into the Civil Law, or by adopting a new law regulating the merging of separate immovables, or introducing amendments in the existing law "On Land Reform in the Cities of the Republic of Latvia". In the latter case, the amendments should provide that this law is applicable to settle disputes arising in a result of land reform also after the completion of land reform in cities. The most preferred option is to adopt a new subchapter in the Property Law part of the Civil Law. The new subchapter of the Civil Law would include provisions on the land lot used, the fee amount to be paid in the case of a dispute, payment terms and deadlines, the establishment of the right to claim and limitation periods, and the termination of the compulsory

lease relationship, either by the confusion of debtor and creditor (in the case of a buyout) or the destruction of a building.

5. The compulsory land lease relations are to be transformed into a legal predial servitude, a right to use the land established by law. The servient estate is the land property where in the Land Register it should be added that the right of use is established only for the part of the land property that is functionally necessary for the maintenance of the building. The dominant estate is a building. Entries regarding the encumbrance and its extent shall be entered in sections of Land Register of the land and of the building, respectively. Despite the foreseeable technical difficulties in developing this regulation, this solution is the most appropriate of the considered alternatives for regulating legal relations between the owners of separate immovables.
6. The compulsory land lease relations can be transformed into a personal servitude, a usufruct. However, since personal servitude is a charge on a thing for the benefit of an identified person, this solution is not the most appropriate option to regulate legal relations between the owners of separate immovables, when multi-apartment building is located on a land lot.
7. The compulsory land lease relations can be transformed into an emphyteusis. These legal concepts are similar, especially regarding the content of obligations of the parties in already established relationships. However, the replacement of a compulsory land lease by emphyteusis would not address the main disputes that arise between the parties: the establishment of this relationship, the scope of rights and obligations of the parties, and the collection of payments. The most important difference that precludes the use of emphyteusis to regulate legal relations between the owners of separate immovables is that the establishment of emphyteusis is voluntary: the consent of the parties on all essential elements (subject matter and fee) is a prerequisite for emphyteusis to come into force.
8. There would be no justification to regulate legal relations between the owners of separate immovables in accordance with the provisions of building rights (*ius superficiarium*), since the latter regulates only the voluntary creation of separate ownership of a land and a building, legal relations of the parties during its existence, and the voluntary termination of the separate ownership.
9. It would not be adequate to re-establish a regulation of quit rent (*obrok*) to regulate legal relations between the owners of separate immovables, as it governs the relationship between the owner (the person holding *dominium directum*) and the user (person holding *dominium utile*). This concept includes the recognition of the divided ownership (*dominium divisium*), which is incompatible with the Civil law of Latvia. Under

the Civil Law, the relationship between the owner and the person using the property as their own is regulated as *iura in re aliena*.

10. The transformation of compulsory land lease into an institution of property law can reduce the number of disputes, as the established encumbrance does not have to be re-established when the owners of the building or the land change. If there is no dispute over the fee (the amount of renumeration) and due dates of payment, and a written contract is not required for the debt collection, the payments are is easier to collect and recover, and simplified recovery mechanisms can be used (i.e. orders of payment or enforcement orders for uncontested claims, or small claims procedure), thus reducing the workload of courts and debt recovery costs. Reduction of the recovery costs and expenses related to the fee collection would allow the legislator to reduce the fee amount set in law, thus balancing the interests of both parties involved.

On the basis of obligations under compulsory land lease

11. In the compulsory land lease relations, directly from the law arise the rights and duties to enter into contract (sign a lease agreement), and, consequently a right to apply to the court, asking it to establish the elements of the obligation, namely, the subject matter and the lease fee. The wording of the legal provisions is not so clear to define the elements of an obligation in each individual case. Only a lease agreement, either concluded voluntarily or through the court, gives the basis for a claim to pay the stipulated lease fee.
12. The compulsory land lease shall not be considered a contract if there is no written agreement concluded between the parties. Essential elements of an obligation arising out of compulsory land lease, the subject matter and the lease fee, are established by a judgement, which replaces an agreement. Only when the court ruling takes effect the contents of the obligation shall be established and at that point a contract is deemed to be concluded (also for tax purposes).

On applicable legal provisions

13. The Law "On Land Reform in the Cities of the Republic of Latvia", supplemented by the Civil Law provisions, shall be recognized as the law containing general provisions on the compulsory land lease (*lex generalis*). Legal provisions incorporated in the law "On the Privatization of State and Municipal Residential Houses" and the Residential Property Management Law, shall be applied as provisions governing a specific subject matter (*lex specialis*).
14. The provisions of the law "On Privatization of State and Municipal Residential Houses" are applicable to the compulsory land lease relations from the date the apartment building is handed over for privatization,

and are applicable during the privatization process, i.e. until the management of the building is taken over by the community of apartment owners.

15. Once the privatization process in a building is completed and the management of the building has been taken over by the community of apartment owners, legal relations among a landowner, apartment owners, and a building manager are regulated under Residential Property Management Law, while the specific issues regarding compulsory land lease shall be settled under the Section 12 of the law "On Land Reform in the Cities of the Republic of Latvia".

On the subject matter of the lease

16. Until the land lot that is necessary to maintain a building is definitively established, individual co-owners of a land or a building shall not enter into a contract stipulating future provisions of the lease. This it to prevent that within the same legal relationship, there are different contents of the obligation between the parties (e.g. different land lots are leased to individual apartment owners or apartment owners lease shares of different land lots from individual landowners).

On the lease fee

17. Considering the high *transaction costs* in the bargaining among the stakeholders in compulsory land lease relations, the renumeration for the use of property (lease fee) in the event of dispute should be set in the law.
18. It is not possible to set in the law a lease fee amount that that at the same time fulfills a social function with regard to apartment owners and gives a fair return of the property to landowners.
    a. Politically a lease fee amount around 3-4 % of cadastral value per year is preferred to ensure a favorable environment for the apartment owners.
    b. Legal considerations state that the lease fee amount should be at least 6 % of the cadastral value not to infringe the constitutional rights to the property of the landowners.
    c. Economical calculations show that for a property not to lose its value and give a fair return, the lease fee amount should be over 10 % of the cadastral value per year.

In this situation, a duty of a socially responsible state is to find a solution where the protection of apartment owners does not happen at the expense of landowners, which may be reached by merging separate immovables.

19. For a landowner to receive a fair return of the property, the net income should be of at least 5-6 % of the value of the property per year. To

achieve this without imposing a disproportionate burden on apartment owners:

a. Real estate tax should be compensated by lessee (if paid by landowner) or, in the case of separate immovables, the real estate taxpayer should be the building owner. In the latter case the municipality could, if appropriate, provide tax reliefs to building owners.
b. Compulsory land lease shall be exempt from value added tax as provided for in Article 135 (1) l) of Council Directive 2006/112/EC.
c. When apartment owners chose direct payments between the service provider and apartment owners; they should in addition to lease fees cover also billing service costs.

On value added tax (VAT)

20. Article 135 (1) l) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax provides that the leasing or letting of immovable property in the European Union is a tax-exempt transaction, unless the Member State has included a specific exception in the legislation. These exemptions relate to transactions which constitute an economic activity which involve an active use of immovable assets, not only passive allowance to use the asset. Given that the deadline for transposition of Council Directive 2006/112/EC has expired and Article 135 (1) l) of the Directive is sufficiently clear, it may have a horizontal direct effect. Thus, compulsory land lease shall not constitute a taxable transaction (supply of services) under Council Directive 2006/112/EC and the lease fee is not subject to VAT.

On limitation period for claims

21. In the absence of a written lease agreement between the parties, the claim to establish a lease relationship, to determine the subject matter and lease fee, and to recover the lease debt shall expire within the general limitation period (10 years). If the parties have entered a written contract, the right to bring an action for performance of the contract shall expire 10 years after the payment is due. If this is a commercial transaction for any of the parties, the claim shall be subject to a commercial limitation period of 3 years.
22. In view of the 21st century turnover rate, the general limitation period for civil claims should be reduced. It is inadequate that the right of action can be exercised for whole 10 years from the day the claim has been established.
23. The limitation period shall be interrupted by a reminder to the debtor himself or his deputy. If the debtor is the apartment owner, the limitation period is interrupted by a reminder to the duly authorized building manager.

On rights and duties of a building manager

24. The landowner can bring a lawsuit against individual apartment owners for establishing a lease relationship and recovering the debt. Claims against building managers or other authorized deputies of apartment owners may be brought if:
    a. The building is managed by the municipality or company authorized by municipality. They are recognized as apartment owners' deputies in buildings where the management rights have not been transferred to the community of apartment owners or a person duly authorized by apartment owners.
    b. The building is managed by a co-operative society or association under management agreement entered into prior to the entry into force of the Residential Property Management Law.
    c. The management of the building has been taken over by the community of apartment owners or a person duly authorized by apartment owners and the management agreement provides for the deputy the authorization to solve the land lease issues.
25. The Residential Property Management Law must include a presumption that the building manager has received full authorization from the apartment owners. That is, that he is entitled to represent the community of apartment owners in all matters relating to the management of the residential building, unless another deputy is designated. In the case of litigation, it is the responsibility of the defendant to designate another potential deputy before court has proceeded to the merits.
26. The Residential Property Management Law must require every building manager who currently performs management duties to register with the Register of Building Managers, sanctioning apartment owners if their building manager has failed to do so. This will ensure that any third party is aware of the person who is responsible for the management of a specific building at any given time.
27. In order to facilitate the settlement of disputes involving a community of apartment owners, Section 15 of the Apartment Ownership Act must provide that a community of apartment owners has legal capacity and may be a plaintiff and a defendant in proceedings. The community shall exercise its procedural rights and obligations through its legal representative. Unless there is no other person designed, the building manager shall have the right to represent community of apartment owners. The judgment pronounced in the case against the community of apartment owners must be binding and enforceable against each member of the community: each individual apartment owner.
28. If the landowner has brought a claim to recover the lease fee against a building manager, the judgement in the case shall be binding on

the apartment owners. If the judgment is not enforceable, the court should allow substitution of the defendant, the building manager, with the apartment owners.

29. If the building manager has been declared insolvent and insolvency administrator collects debts from the apartment owners for payment for the services rendered to the building, the recovered funds shall be payed directly to the service providers in accordance with Section 14 (4^2) of the Housing Management Act and not used to cover all the claims lodged by the creditors under Section 118 of the Insolvency Law.

On merging of the separate immovables

30. The merging of separate ownership is theoretically possible in accordance with the procedure laid down in the draft law elaborated by the Ministry of Justice. However, the procedure provided in the draft law is cumbersome and difficult to implement because it requires a coordinated decision and coordinated action by the community of apartment owners. The drawback of this option is that only a part of owners of residential buildings will exercise the buyout rights in accordance with this law.
31. The merging of separate ownership is possible through the coercive expropriation of land properties for further transfer to privatization (private takings). Coercive expropriation solves the holdout (supply) problem, an inability to reach an agreement between apartment owners and landowners, but does not motivate apartment owners to buy the land (it does not solve the demand problem). However, this option is not in line with the case law of the Constitutional Court saying that mass expropriation of properties would infringe property rights of landowners enshrined in the Constitution. This option also places a burden on the state budget and could be appropriate only in cases where the apartment owners want to buy the land, but the landowner does not agree to sell it.
32. Separate immovables can be merged when apartment owners and landowners have concluded a sales agreement for all the land property or undivided shares of it. However, existing rules regulating the registration of the title in the public register (Land Register) do not provide for the merging of separate immovables in such case. In order to merge the properties, the respective undivided shares of the land property should be registered as part of the apartment property, amending the composition of the apartment property in the subdivision of the Land Register. The regulation of registration of title in Land Register must be amended accordingly. When an apartment owner buys the undivided shares of the land property, the changes should be registered in the composition of the land property. This division of the Land register should record only the undivided shares not owned by building owners;

the undivided shares of the land, owned by building owners are to be registered in the Land Register division where the building is registered. The title to the undivided shares is to be registered in the subdivision of the register, where the title of the apartment is registered, by describing that this immovable consists of both an apartment and land. The alternative option is to merge the two divisions (records) of the Land Register, so that the building and the land is registered in one division. Then when registering the transfer of land ownership, a reference shall be made which apartment property now includes also undivided shares of the land. The title these undivided shares of the land shall be registered in the subdivision where the apartment is registered, to avoid creation of land co-ownership.

33. Merging of the separate immovables is preferred as it would allow to reduce tension between landowners and apartment owners. Apartment owners are the superior owners of the land property. The state's responsibility is to create the necessary preconditions for simple buyout procedure by reducing regulatory obstacles to create a regulatory framework that would allow to properly register the title to undivided shares of land already owned by apartment owners in the cases where separated ownership of the land and a building exists only formally. The State should adopt a policy that encourages both parties to exercise buyout rights. If the buyout price is proportionate to the cadastral value of the land, it should serve as an incentive for landowners to sell it, as it immediately yields a return of 20 years. If the amount of payment under lease purchase is lower or equal to the land lease payment, apartment owners have financial interest in buying out the land. The interest of apartment owners in buyout is lower if there are no efficient mechanisms for landowner to use in order to collect the lease fee, and payment of the fee can be easily avoided. The interest in buyout increases when state or municipality adopts support measures, e.g. real estate tax reductions or opportunities to participate in municipality funded programs for building insulation or refurbishment of buildings.

On procedural issues

34. If a land lot is co-owned by several landowners, each co-owner is entitled to receive the lease fee proportionally to his undivided share of the land property.
    a. Unless there is a dispute over the borders or area of the leased land lot, each co-owner of a land shall have an independent right to claim the lease fee from each co-owner of the building; it is not required to bring in co-owners as codefendants, coplaintiffs or third parties.
    b. Unless there is an agreement on shared use of the land, it is not permissible for individual landowner to lease a specific square meters

of land lot corresponding mathematically to its undivided share of a property.

35. The use of out of court dispute resolution procedures in lease recovery should be encouraged, thus reducing lease fee recovery expenses compared to potential litigation.
36. Case law should encourage a cumulation of actions against multiple defendants (e.g. owners of the apartments in the same building), thus both lessening the workload of the courts and reducing litigation costs.
37. The only documents supporting the landowner's claim should be the proof of the plaintiff's title to the land and the defendant's title to the apartment, and the calculation of the lease fee. Other evidence must be presented only if the defendant invokes the defense that the calculation is incorrect.

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