



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

J U D G E M E N T

On Behalf of the Republic of Latvia

Riga, 22 November 2011

Case No. 2011-04-01

The Constitutional Court of the Republic of Latvia, composed of the Chairperson of the Court hearing Aija Branta, Justices Kaspars Balodis, Kristīne Krūma, Uldis Ķiniš, and Sanita Osipova

having regard to constitutional complaints of Mr Normans Karlsons, Mr Armands Apsāns, Mr Egons Baltgailis, Mr Modris Kalniņš, Mr Mareks Krūčs, Mr Edgars Leimanis, Ms Iverta Lerha-Krūce, Mr Eduards Mazūrs, Mr Juris Mičerevskis, Mr Dzintars Risterss, Ms Santa Strode, Mr Olafs Švanks, Mr Arnolds Vende, Mr Jurijs Višņakovs and Mr Leonīds Mohovikovs

according to Article 85 of the Satversme [*Constitution*] of the Republic of Latvia, Article 16 1st indent, Article 17 (1) 11th indent and Article 28.¹ of the Constitutional Court Law,

on 26 October 2011 in writing examined a case

“On Compliance of Section 13 (1) (2) of the Insolvency Law insofar as It Applies to Persons Who have Started Working as an Insolvency Procedure Administrator Pursuant to the Requirement of Section 13 of the Law “On Insolvency of Enterprises and Companies” regarding Higher Education in Economics, Management or Finance, and Para 7 of Transitional Provisions of

the Insolvency Law with Article 1, Article 91 and Article 106 of the Satversme of the Republic of Latvia”.

The Facts

1. Since coming into force of Chapter VIII “Fundamental Human Rights” of the Satversme of the Republic of Latvia (hereinafter – the Satversme), stipulated requirements in respect to education of an insolvency administrator have been amended several times.

1.1. When Chapter VIII of the Satversme came into force in 1998, legal status of an insolvency administrator was regulated by the Law “On the Insolvency of Undertakings and Companies” adopted on 12 September 1996. It came into force on 12 October 1996 and became null and void on 1 January 2008. Section 13 “Qualification of an Administrator” (according to the wording of the law of 13 June 2002 amended by the law of 29 May 2003) provided: “Only a natural person who has higher legal education or higher education in the field of economics, management or finance, or for not less than three years practical work experience in supervisory institutions of undertakings or companies and executive bodies, who has successfully completed the requirements for obtaining certification in the administrator specialisation and to whom the Agency has, in conformity with this Law, issued a certificate, may be an administrator.”

1.2. On 1 November 2007, the Saeima adopted a new Insolvency Law (“hereinafter – the 2007 Insolvency Law) that came into force on 1 January 2008 and lost its force on 1 November 2010. Section 13 (1) “The Requirements for the Administrator of Insolvency Proceedings” of the Law provided:

„(1) A natural person with the capacity to act may be the administrator of insolvency proceedings: [..]

2) who has received a State-recognised education document concerning the acquisition of a second level higher vocational education in jurisprudence and acquired the qualification of a lawyer or has received a State-recognised education document concerning the acquisition of a higher academic education in jurisprudence and acquired an academic degree;

3) who has at least three years of experience in the profession; [..]

5) who has successfully passed the administrator’s examination;

6) who has obtained a certificate of the administrator of insolvency procedure.”

However, Para 3 of Transitional Provisions of the above mentioned law provided: “Certificates that have been issued before the date of coming into force of the present Law shall be recognized as valid within the term indicated therein. After the expiry of the term, a person who has obtained higher legal education or higher education in economics, management or finance shall have the right to re-certification of the administrator of insolvency procedure according to the procedure established in the present law.”

1.3. The effective Insolvency Law has been adopted by the Saeima on 26 July 2010. It came into force on 1 November 2010. Section 13 (1) “The Requirements and Restrictions Set Out for the Administrator of Insolvency Proceedings” of the law provides:

„A natural person with the capacity to act may be the administrator of insolvency proceedings (hereinafter – administrator): [..]

2) who has received a State-recognised education document concerning the acquisition of a second level higher vocational education in jurisprudence and acquired the qualification of a lawyer or has received a State-recognised education document concerning the acquisition of a higher academic education in jurisprudence and acquired an academic degree;

[..] 4) who has at least three years work experience in the profession of a lawyer or profession comparable thereto following the acquisition of the education and qualification referred to in Paragraph one, Clause 2 of this Section.”

Section 16 (1), 16 (2) and 16 (3) „Certification and Re-Certification of an Administrator” of the Insolvency Law provides:

„(1) An administrator’s certificate is a document which certifies the professional qualification of an administrator and gives a person the right to undertake and fulfil the duties of an administrator.

(2) A person who complies with the requirements of Section 13, Paragraph one of this Law and who has attended the training course of administrator applicants, has the right to undergo the certification of an administrator.

(3) The Association of Administrators shall issue an administrator’s certificate to a person who has successfully fulfilled all the requirements of the certification.

The period of validity of an administrator certificate shall be two years. The period of validity of an administrator certificate may be extended by performing re-certification.”

Meanwhile, Para 7 of Transitional Provisions of the Insolvency Law (hereinafter – the Contested Transitional Provision) establishes the following:

“For administrators whose certificates have been issued in compliance with the requirements of Section 13 of the Law On the Insolvency of Undertakings and Companies for at least three years practical experience in the supervisory institutions of undertakings or companies and executive bodies, but who do not have a higher education in jurisprudence, the requirement referred to in Section 13, Paragraph one, Clause 2 of this Law regarding a higher education in jurisprudence shall be applicable from 1 January 2017. For administrators whose certificates have been issued by 31 October 2010, but who do not have a higher education in jurisprudence, the requirement referred to in Section 13, Paragraph one, Clause 2 of this Law regarding a higher education in jurisprudence shall be applicable from 1 January 2017. If the administrator referred to in the first and second sentence of this Clause has not commenced studies in an educational establishment for the acquisition of a higher education, he or she shall commence these by 1 January 2012 and submit a statement issued by the institution of higher education to the Association of Administrators. The administrators referred to in the first and second sentence of this Clause, who are studying at an institution of higher education, when applying for re-certification, shall submit a statement issued by the institution of higher education about the successful continuation of the studies, to the Association of Administrators. If the administrator has not commenced studies at an institution of higher education until the deadline specified in the third sentence of this Clause, or, when applying for re-certification has not submitted a statement regarding the successful continuation of the studies, his or her certificate shall be recognised as valid within the time period indicated therein and this administrator shall not be re-certified.”

2. In the present case, two following cases were merged into one based on 29 April 2011 decision of a justice of the Constitutional Court:

1) the case No. 2011-04-01 “On Compliance of Para 7 of Transitional Provisions of the Insolvency Law with Article 1, Article 91, Article 106 of the Satversme of the Republic of Latvia” that was initiated based on a constitutional complaint of Mr Normans Karlsons (hereinafter – the First Applicant);

2) the case No. 2011-06-01 “On Compliance of Section 13 (1) (2) of the Insolvency Law insofar as It Applies to Persons Who have Started Working as an Insolvency Procedure Administrator Pursuant to the Requirement of Section 13 of the Law “On Insolvency of Enterprises and Companies” regarding Higher Education in Economics, Management or Finance with Article 91 and Article 106 of the Satversme of the Republic of Latvia” that was initiated based on a constitutional complaint submitted by Mr Armands Apsāns, Mr Egons Baltgailis, Mr Modris Kalniņš, Mr Mareks Krūčs, Mr Edgars Leimanis, Ms Iveta Lerha-Krūce, Mr Eduards Mazūrs, Mr Juris Mičerevskis, Mr Dzintars Risterss, Ms Santa Strode, Mr Olafs Švanks, Mr Arnolds Vende, Mr Jurijs Višņakovs and Mr Leonīds Mohovikovs (hereinafter – the Second Applicants).

Both groups of applicants (hereinafter all together referred to as – the Applicants) are certified administrators of insolvency procedure (hereinafter – administrators) who have obtained higher education in economics, management or finance but have no legal education.

2.1. The First Applicant asks recognizing the Contested Transitional Provision as non-compliant with Article 1, Article 91 and Article 106 of the Satversme.

The First Applicant indicates that he has higher education in economics. In 2004, according to the legal regulatory framework effective at that time he met all requirements for acquisition of profession of an administrator and obtained certificate of an administrator. Taking into account the legal regulatory framework of administrator’s education effective at that time, he had legitimate trust into the fact that he would be able to continue working as administrator. Although the 2007 Insolvency Law established the requirement of legal education for administrators, Para 3 of Transitional Provisions of the law did not apply it to administrators who had already been certified. However, no similar legal regulatory framework has been included in the Contested Transitional Provision.

Having accrued six years of length of service in the profession of insolvency administrator, the First Applicant has obtained the necessary practical skills and theoretical knowledge; he has improved his knowledge on regular basis with the

purpose to successfully fulfil duties of an administrator. He has proved his skills by passing re-certification. More lenient measures that would restrict their rights at a lesser extent if compared to the requirements to obtain another higher education can be applied to administrators who have obtained working experience and who fulfil requirements of re-certification; and this would permit to verify skills and knowledge of administrators.

The First Applicant indicates that proportionality of restriction of the fundamental rights has neither been assessed. Acquisition of qualification of a lawyer is a time-consuming and expensive process. Since necessary knowledge and experience is already obtained when working as administrator, acquisition of legal education would only be formal.

The First Applicant holds that administrators enjoy equal and comparable conditions as sworn notaries and sworn bailiffs do. These persons have also been established new requirements in respect to their education, namely, they must obtain an academic master's degree in law. However, the requirement shall not be applied to notaries already working in their profession. However, the period for acquisition of education for sworn bailiffs considerably exceeds that of administrators.

2.2. The Second Applicants ask the Court to recognize the Contested Norm insofar as it applies to persons who have started working as administrators of insolvency procedure pursuant to the requirement of a higher education in economics, management or finance enshrined in Section 13 of the Law "On Insolvency of Enterprises and Companies" as non-compliant with the first sentence of Article 91 of the Satversme and the first sentence of Article 106 of the Satversme.

According to the Second Applicants, they have already proven their knowledge and practical skills that are necessary to perform the work of an administrator. Therefore the requirement to obtain legal education established in the Contested Norm should be regarded as restriction of fundamental rights established in Section 106 of the Satversme.

The Second Applicants do not contest that the restriction has been established by law and it has a legitimate aim. They neither contest the fact that measures selected by the legislator are appropriate for reaching of the legitimate aim. However, the aim can also be reached by applying more lenient measures. To verify

skills and knowledge of a person necessary for the position of an administrator, they pass an examination pursuant to 9 November 2010 Regulation No. 1038 “Training of Applicants to the Position of Insolvency Procedure Administrator and Procedure of Certification of Insolvency Procedure Administrators” (hereinafter – the Regulation No. 1038). Moreover, it is possible to prescribe additional training courses in those fields of law that are regarded as substantial for the profession of an administrator.

The benefit gained by the society from the restriction of the fundamental rights of administrator is not material. Trust of the society into competence and skills of the Second Applicants can not be increased only due to the fact that the latter would obtain the second education. Former successful work as an administrator already proves competence of the Applicants. Moreover, the requirement to obtain the second higher education set forth in respect to the Applicants is subject to considerable expenses and time to be consumed. Namely, in order to meet requirements of bachelor’s or master’s study programmes, they would need five to six years. The study fee reaches five to six thousand lats.

According to the Second Applicant, the Contested Norm contradicts the principle of equality. As to their legal status, they can be compared to two groups of persons; first, to administrators who have obtained higher education in law and, second, to representatives of other professions (a detective, a residential house manager) in respect to whom the legislator has established certain preconditions for launching of their activities in a particular profession.

The law sets forth a requirement that the position of an administrator requires not only certain vocational education but also assessment of knowledge skills and work in the form of certification and re-certification. Administrators are re-certified once per two years. In case if an administrator would have failed to increase qualification and his or her work would fail to comply with requirements of normative acts, certificate would not be restored.

Consequently, the ability of a person to perform the work of an administrator can be assessed not only based on a document testifying vocational education but also based on verification of knowledge and skills based on a certain procedure.

3. The institution that adopted the Contested Norm and the Contested Transitional Provision (hereinafter – the Contested Regulatory Framework), **the**

Saeima indicates that it does not share the opinion of the Applicants. The Saeima holds that the Contested Regulatory Framework does comply with legal norms of a higher legal force and asks recognizing the Contested Regulatory Framework as compliant with Article 1, Article 91 and Article 106 of the Satversme.

The Saeima does not deny that the Contested Norm establishes certain restriction to the fundamental rights of the Applicants established in Article 106 of the Satversme; however, it has a legitimate aim and it does comply with the principle of proportionality. The Saeima also refers to case-law of the Constitutional Court and indicates that boundaries to the freedom of a person to freely choose their occupation are established in Article 106 of the Satversme, namely, the qualification requirements each occupation requires a minimum level of education, theoretical knowledge, skills and responsibility that is necessary for successful fulfilment of respective work duties.

The Saeima emphasizes that the administrator plays the major role in insolvency procedure when applying legal acts on insolvency in an effective and objective way. One of the duties of an administrator is to protect debtor's assets and their value, as well as represent interests of creditors and employees. Therefore it is important for an administrator to have an appropriate qualification and such knowledge, experience and individual characteristics that would ensure an effective development of insolvency procedure and overall trust into normative regulatory framework of insolvency. Consequently, the legitimate aim of the Contested Regulatory Framework is to ensure a lawful, effective and uninterrupted course of insolvency procedure, which complies with interests of protection of rights of other persons according to Article 116 of the Satversme.

The Contested Norm requires for an administrator to have obtained higher vocational education of the second level, which would include qualification of a lawyer. Likewise, a person would meet the requirement of the Contested Norms in case if he or she would obtain higher academic education, namely, he or she would obtain a bachelor's or master's degree according to Section 3 (2) of the Law on Institutions of Higher Education. Nonetheless, the words "scientific degree" used in the Contested Norm does not cause and has never caused any legal consequences in the meaning of the Law on Institutions of Higher Education.

The Saeima holds that the requirement of higher legal education set forth to administrators is logic and necessary because work of an administrator is mainly

activities of legal nature. There are no other means that would guarantee that all administrators, irrespective of their practical working experience, would obtain necessary knowledge to ensure effective application of legal norms. A State-recognized diploma on acquisition of higher legal education would serve as a proof for the fact that an administrator has obtained knowledge at a required level in the field of law, which can not just be regarded as formality.

4. A summoned person, **the Ministry of Justice of the Republic of Latvia** (hereinafter – the Ministry of Justice) holds that the Contested Regulatory Framework does comply with Article 1, Article 91 ad Article 106 of the Satversme. It is aimed at increase of insolvency procedure quality. The Contested Regulatory Framework does not guarantee to certain persons the right to occupy position of an administrator; however, it ensures that the position would be occupied by a qualified person. The majority of duties of an administrator are actions of legal nature.

According to the Ministry of Justice, the purpose of the Contested Regulatory Framework is to ensure that all administrators would have a lawyer's qualification, which would guarantee that they would be able to assure an effective and lawful implementation of judicial remedy procedure, as well as that of a legal person insolvency procedure and a natural person insolvency procedure, and aims would be eventually reached. This purpose is related to the democratic regime of the State and security of the society.

By referring to 18 May 2010 Cabinet of Ministers Regulation No. 461 “Regulations Regarding the Classification of Occupations, the Basic Tasks Appropriate to the Occupation and the Basic Qualification Requirements, and the Procedures for the Use and Updating of the Classification of Occupations”, the Ministry of Justice emphasizes that the profession of an administrator has been included into the standard of lawyer's profession.

The Insolvency Law introduces many other novelties and considerably amends the insolvency procedure system of Latvia. Consequently, the role of an administrator in the system has also changed. Therefore it was necessary to review requirements to be set forth to administrators. The Contested regulatory Framework grants an administrator broader authority and commits him or her to a greater responsibility if compared to the previous legal regulatory framework.

The Ministry of Justice emphasizes that a State-recognized diploma on higher legal education is a sufficient and necessary testimony of the fact that the administrator has obtained knowledge in the field of law. Otherwise, any requirement of a certain education could only be regarded as formality, and individuals could refer to sufficient amount of knowledge obtained when practicing. Training of administrators established in the Regulation No. 1038 can not substitute competence that can only be obtained in a higher education institution and it is not an alternative measure to reach the legitimate aim. The Contested Regulatory Framework establishes a sufficient transitional period, within which administrators having no legal education could obtain it. The differentiated attitude towards the Applicants and other groups of persons referred to in the applications has been established based on an objective criterion, i.e. education.

5. A summoned person, a **State agency “Insolvency Administration”** [„*Maksātnespējas administrācija*”] (hereinafter – the Administration) holds that the Contested Regulatory Framework does comply with Article 1, Article 91 and Article 106 of the Satversme. It does not deny that the Contested Regulatory Framework establishes restriction of the fundamental rights of the Applicants enshrined in Article 106 of the Satversme, however, it has been established by law, it has a legitimate aim and it complies with the principle of proportionality.

The Administration emphasizes that the requirement of a higher education in law established in the Contested Regulatory Framework has been set forth based on authority granted to an administrator in the frameworks of insolvency procedure. When fulfilling the numerous tasks provided in the Insolvency Law, an administrator needs not only practical experience but also comprehensive knowledge in the field of law. An administrator partially needs competence in the field of economics and finance; however, he can not do without legal education.

When verifying compliance of action of administrators with stipulated requirements, as well as reviewing complaints, in 2010, the Administration has adopted 398 decisions on action of an administrator in a particular insolvency procedure. In 48 cases, administrators were committed to prevent established infringements of normative acts. Likewise, in 2010, the Department for Monitoring of Administrators submitted 86 applications regarding dismissal of administrators.

6. A summoned person, an association “**The Latvian Association of Certified Administrators of Insolvency Process**” [*“Latvijas Sertificēto maksātnespējas procesa administratoru asociācija”*] holds that the Contested Regulatory Framework does comply with Article 1, Article 91 and Article 106 of the Satversme. The right to freely choose one’s occupation established in Article 106 of the Satversme have been restricted in the very first section. This right is closely related with skills and qualification of an individual. Taking into consideration tasks and responsibility of an administrator, the requirement of an obligatory legal education has been established with good reason.

At present, training programme for administrators is adapted to persons who have obtained legal education. Training of administrators and their certification procedure ensures that persons having obtained legal education have also acquired necessary knowledge in the field of economics, management and finance. The totality of 440 questions of administrators’ examination can be classified into the following fields: accounting and finance – 40 questions; tax and administration thereof – 40 questions; economics and commercial administration – 40 questions, whilst 120 questions are devoted to insolvency procedure.

In the frameworks of re-certification procedure, administrators’ knowledge in certain fields is not tested; instead, indices of professional activity and qualification are assessed.

The Findings

7. The First Applicant asks the Constitutional Court to assess compliance of the Contested Transitional Provision with the principle of legitimate expectations that follows from Article 1 of the Satversme. Likewise, he asks to assess compliance of the Contested Transitional Provision with the right to freely choose one’s occupation and working place according to one’s skills and qualification as established in Article 106 of the Satversme, as well as its compliance with the principle of equality established in Article 91 of the Satversme (*see: Case materials, Vol. 1, pp. 1 – 12*).

However, the Second Applicants ask the Constitutional Court to assess compliance of the Contested Norm with the basic rights enshrined in the first

sentence of Article 106 of the Satversme and the principle of equality established in the first sentence of Article 91 of the Satversme (*see: Case materials, Vol. 1, pp. 34 – 46*).

Both applications provide a similar substantiation of infringement of the rights established in Article 91 and Article 106 of the Satversme, though different norms have been contested.

8. The Constitutional Court concludes that a technical mistake has occurred in the decision of 29 April 2011 on merging of cases and extension of the term for submitting a reply (*see: Case materials, Vol. 1, pp. 31 – 32*). The case No. 2011-04-01 “On Compliance of Para 7 of Transitional Provisions of the Insolvency Law with Article 1, Article 91, Article 106 of the Satversme of the Republic of Latvia” has been initiated based on a constitutional complaint of the First Applicant (*see: Case materials, Vol. 1, PP. 21 – 24*). However, the case No. 2011-06-01 “On Compliance of Section 13 (1) (2) of the Insolvency Law insofar as It Applies to Persons Who have Started Working as an Insolvency Procedure Administrator Pursuant to the Requirement of Section 13 of the Law “On Insolvency of Enterprises and Companies” regarding Higher Education in Economics, Management or Finance with Article 91 and Article 106 of the Satversme of the Republic of Latvia” has been initiated based on a constitutional complaint of the Second Applicants (*see: Case materials, Vol. 1, pp. 129 – 131*). Consequently, the title of the case should be put as following:

“On Compliance of 13 (1) (2) of the Insolvency Law insofar as It Applies to Persons Who have Started Working as an Insolvency Procedure Administrator Pursuant to the Requirement of Section 13 of the Law “On Insolvency of Enterprises and Companies” regarding Higher Education in Economics, Management or Finance with Article 91 and Article 106 and Compliance of Para 7 of Transitional Provisions of the Insolvency Law with Article 1, Article 91, Article 106 of the Satversme of the Republic of Latvia”.

9. The legislator has established in the Contested Norm that any person who has received a State-recognised education document concerning the acquisition of a second level higher vocational education in jurisprudence and acquired the qualification of a lawyer or has received a State-recognised education document

concerning the acquisition of a higher academic education in jurisprudence and acquired an academic degree can work as an administrator.

However, the Contested Transitional Provision establishes period, within which certified administrators with higher education in economics, management and finance should obtain higher education in law in order to be able to work as an administrator.

It has been established in case-law of the Constitutional Court that infringement of the fundamental rights may either be anticipated or potential (*see: Judgment of 22 February 2002 by the Constitutional Court in the case No. 2001-06-03, Para 2.4 of the findings, and judgment of 20 May 2002 in the case No. 2002-01-03*). It has been established in legal doctrine that a potential or an anticipated infringement of rights means that the fundamental rights of an individual would be infringed, namely, it is rather probable that application of a contested norm could cause negative consequences to applicants (*see: Rodiņa A., Konstitucionālās sūdzības teorija un prakse Latvijā. Rīga: Latvijas Vēstnesis, 2009, pp. 161 – 168*).

The Applicants are certified administrators who have not obtained the required legal education. According to the normative regulatory framework that was effective when these persons were certified, qualification of an administrator was testified by higher education in economics, finance or management, or higher legal education, or not less than three years of practical working experience in supervisory institutions of undertakings or companies and executive bodies.

The Constitutional Court concludes that the Contested Regulatory Framework will concern the Applicants in the future in case if they would fail to start studies and obtain higher education in law within the term established in the Contested Transitional Provision. Taking into account the fact that the requirement of higher legal education is established in the Contested Norm, the Constitutional Court has to assess whether it complies with the fundamental rights established in Article 91 and Article 106 of the Satversme.

Consequently, the Constitutional Court will first assess compliance of the Contested Norm with Article 91 and Article 106 of the Satversme of the Republic of Latvia.

10. The Second Applicants ask assessing compliance of the Contested Norm with Article 91 and Article 106 of the Satversme of the Republic of Latvia. It can be concluded from their application that they ask recognizing the Contested Norm as non-compliant with the first sentence of Article 91 and the first sentence of Article 106 of the Satversme (*see: Case materials, Vol. 1, pp. 34 – 46*).

10.1. Article 91 of the Satversme provides: “All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind.”

Article 91 of the Satversme includes two mutually related principles – the principle of equality in the first sentence and that of prohibition of discrimination in the second sentence (*see: Judgment of 14 September 2005 by the Constitutional Court in the case No. 2005-02-0106, Para 9.3*). The objective of the principle of prohibition of discrimination incorporated in the second sentence of Article 91 of the Satversme is to prevent the possibility that in a democratic and law-governed state, based on some inadmissible criterion like race, nationality or gender, the basic rights would be restricted (*see: Judgment of 29 December 2008 by the Constitutional Court in the case No. 2008-37-03, Para 6*).

Consequently, in the frameworks of the present case, the Constitutional Court will assess compliance of the Contested Norm with the principle of equality that is established in Article 91 of the Satversme.

10.2. Article 106 of the Satversme provides: “Everyone has the right to freely choose their employment and workplace according to their abilities and qualifications. Forced labour is prohibited. Participation in the relief of disasters and their effects, and work pursuant to a court order shall not be deemed forced labour.” Substantiation of the second sentence does not apply to infringement of prohibition of compulsory work.

Consequently, in the frameworks of the present case, the Constitutional Court will assess compliance of the Contested Norm with the first sentence of Article 106 of the Satversme.

10.3. It has been established in the case-law of the Constitutional Court that the principle of equality established in the first sentence of Article 91 of the Satversme shall generally be applied in conjunction with other fundamental rights. The rights, enshrined in Section 91 of the Satversme are “comparable”, namely, they may demand equal attitude but - just by themselves – they cannot reveal what

the above attitude shall be, namely, favourable or unfavourable. To choose one of the solutions, other reasons, which are out of the framework of the notion of equality, shall be used (*see: Judgment of 29 October 2010 by the Constitutional Court in the case No. 2010-17-01, Para 6.2.1*).

Consequently, compliance of the Contested Norm with the first sentence of Article 91 of the Satversme shall be assessed in conjunction with the fundamental rights established in the first sentence of Article 106 of the Satversme.

11. In its case-law, the Constitutional Court has interpreted, several times, the first sentence of Article 106 of the Satversme and has decided on methods and content of its interpretation. The concept "employment" embraces performance of the offices of the procurator, the sworn advocate and the sworn notary, i.e. to occupations in which legal relations are not based on the labour agreement, regulated by the Labour Law (*see: Judgment of 18 December 2003 by the Constitutional Court in the case No. 2003-12-0106, Para 7*).

Consequently, the rights established in the first sentence of Article 106 of the Satversme shall be applied to the position of an administrator.

12. The first sentence of Article 106 of the Satversme provides a person with the rights to freely choose employment, taking into account the body of abilities, knowledge and skills that characterize preparedness and suitability of a person for fulfilment of a particular job, taking into account education, practical experience at the particular work, as well as other knowledge, skills and abilities that a particular person has acquired and developed (*see, e.g.: Judgment of 1 November 2007 by the Constitutional Court in the case No. 2007-08-01, Para 7*).

The requirements of the Contested Norms apply not only to candidates to an administrator's position but also to certified administrators who have not yet obtained higher legal education.

To assess the conformity of the impugned act with the above fundamental rights, one has to establish whether any restrictions of these rights are included within its norms (*see: Judgment of 22 March 2005 by the Constitutional Court in the case No. 2004-13-0106, Para 20*).

The Applicants have obtained higher education in economics, management or finance, they have acquired training necessary for administrators, proven their knowledge and skills according to the administrators' certification procedure established by law and have worked as administrators for several years already. Pursuant to the Contested Norm, a person would discontinue working as an administrator in case if he or she would fail to obtain higher legal education.

Consequently, the Contested Norm does restrict the fundamental rights established in the first sentence of Article 106 of the Satversme.

13. The Constitutional Court has reiterated that the principle of legal equality obliges equal attitude only to persons who are in equal and comparable circumstances. However, only if it has been established that there is an objective and reasonable aim, the principle of equality permits different attitude to persons, who are in different circumstances. The principle of legal equality admits and even requires a different attitude to persons, who are in different circumstances. Only in case if it is established that an objective and reasonable grounds exist, the principle of equality permits a differentiated attitude towards persons who enjoy equal conditions, or an equal attitude towards persons who enjoy different conditions (*see, e.g.: Judgment of 13 May 2005 by the Constitutional Court in the case No. 2004-18-0106, Para 13 of the Findings, and judgment of 4 January 2007 in the case No. 2006-13-0103, Para 6*).

A differentiated attitude is discriminating, if it does not have an objective and well-grounded reason, i.e. – a legitimate aim or if the chosen means and the advanced objectives are not proportionate (*see: Judgment of 23 December 2002 by the Constitutional Court in the case No. 2002-15-01, Para 3 of the Findings*).

When assessing whether the Contested Norm complies with the first sentence of Article 91 of the Satversme, the Constitutional Court has to investigate the following: 1) whether persons (groups of person) enjoy equal and, according to certain criteria, comparable conditions; 2) whether the Contested Norm establishes an equal or a differentiated attitude towards these persons; and 3) whether such attitude has an objective and reasonable grounds, namely, whether it has a legitimate aim and whether the principle of proportionality has been observed.

14. To make out whether and what persons or groups of persons are in equal and comparable under certain criteria circumstances, it is necessary to find the uniting feature of this group (*see: Judgment of 21 May 2004 by the Constitutional Court in the case No. 2003-23-01, Para 12*).

14.1. Higher education as a precondition for a person to occupy the position of an administrator has already been established in Section 13 of 12 September 1996 Law “On Insolvency of Enterprises and Companies”. Applicants for the position of an administrator did not, however, had a duty to obtain higher education in law. Persons with higher education in economics, management or finance and persons who had at least three years of practical experience in supervisory institutions of undertakings or companies and executive bodies could likewise become administrators.

However, the 2007 Insolvency Law established, in particular, that an application to the position of an administrator had to obtain higher vocational education in law and qualification of a lawyer. Nonetheless, the requirement was not applied to those persons who already worked as administrators. Consequently, two groups of persons could work as administrators: 1) persons who became administrators pursuant to 12 September 1996 Law “On Insolvency of Enterprises and Companies”; 2) persons who obtained higher legal education after coming into force of 2007 Insolvency Law, namely, after 1 January 2008. Moreover, the Contested Norm applies the requirement of higher legal education to all certified administrators, as well as persons who are willing to obtain an administrator’s certificate. Consequently, the Contested Norm would prohibit certified administrators who have obtained higher education in economics, management or finance or who have at least three years of practical experience in supervisory institutions of undertakings or companies and executive bodies.

The Second Applicants indicate that they have already obtained one higher education but in law. They consider that they enjoy equal and comparable conditions if compared to the two groups of persons: 1) administrators who have obtained higher education in law; 2) representatives of other professions (residential house managers, detectives) in respect to whom the legislator has set forth preconditions for launching activities in the profession (*see: Case materials, Vo. 1, pp. 43 – 44*).

The Constitutional Court has already emphasized importance of practical work, for instance, when working as a residential house manager (*see: Judgment of 18 February 2010 by the Constitutional Court in the case No. 2009-74-01, Para 19*). Practical working experience is an important prerequisite for working as an administrator. However, the amount of duties differs. The Administration, the Association and the Ministry of Welfare have good reason to consider that, when performing duties established in the Insolvency Law and exercising their stipulated authority, administrators need not only practical experience but also comprehensive knowledge in law (*see: Case materials, Vol. 1, pp. 44, 54, 58 – 59*). Section 13 (1) (4) of the Insolvency Law includes a requirement for an application to an administrator's position to have at least three year working experience as a lawyer or in any similar profession. Although the legislator has thus failed to emphasize the role of working experience in administrator's work, it would never substitute comprehensive knowledge in law.

If compared to other professionals, administrator's work implies different duties and responsibility. Therefore education requirements established by the legislator in respect to administrators are different. Consequently, compliance of the Contested Norm with the principle of equality shall be assessed only in the context of requirements to be set forth to administrator's education.

Persons who have obtained higher education in economics, finance or management and persons who have obtained higher legal education enjoy equal and comparable conditions.

14.2. The Contested Norm establishes that a person who has received a State-recognized education diploma on acquisition of higher education in law shall have the right to work as an insolvency procedure administrator. Consequently, persons having no higher legal education but who were certified insolvency procedure administrators as on the moment of coming into force of the Contested Norm shall have the duty to obtain another education, namely, legal education.

However, the Contested Norm does not set forth the above mentioned education requirement in respect to administrators who have obtained higher legal education in the period when the Law "On Insolvency of Enterprises and Companies" was in force. The above mentioned requirement shall not be applied to persons who have become administrators after 1 January 2008 because higher legal education already was a precondition according to the 2007 Insolvency Law norms.

Consequently, the Contested Norm establishes a differentiated attitude towards persons with higher education in economics, finance or management and persons with higher education in law.

15. The court file does not contain any material that would cause doubt on the fact that the Contested Norm would not have been adopted and proclaimed according to proper procedure.

The restriction included into the Contested Norm has been established by law.

16. Circumstances and arguments why it is needed shall be the basis for any restriction of fundamental rights, namely, the restriction is determined because of significant interests – the legitimate aim (*see: Judgment of 22 December 2005 by the Constitutional Court in the case No. 2005-19-01, Para 9*). Section 116 of the Satversme provides that the rights established in Article 106 of the Satversme “may be subject to restrictions in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals.”

The Saeima indicates that the position of an administrator has been introduced with the purpose to ensure a lawful and effective course of insolvency procedure, and especially in respect to management of property of insolvent enterprises (companies). Such insolvency procedure helps improving and stabilizing entrepreneurial environment, as well as reduces everyday risk of entrepreneurs (*see: Case materials, Vol. 2, pp. 52 – 53*). According to the Ministry of Justice, higher education in law is indispensable to an administrator because, if compared to the previous normative regulatory framework, an administrator has been granted broader authority by, among the rest, reducing the role of creditors’ meeting. By increasing the role of an administrator, the purpose of the Insolvency Law is being implemented, as well as efficiency and rapidity of insolvency procedure is facilitated (*see: Case materials, Vol. 3, pp. 57 – 58*).

Insolvency procedure is generally aimed at protection of rights of creditors and debtors (*see: Judgment of 20 April 2010 by the Constitutional Court in the case No. 2009-100-03, Para 9.4*). By referring to findings of the Federal Constitutional Court of Germany, the Constitutional Court has already concluded that the main

task of an administrator is to ensure effectiveness of insolvency procedure (*see: Judgment of 23 February 2006 by the Constitutional Court in the case No. 2005-22-01, Para 10.2*). Taking into account the amount of responsibility of an administrator, it is necessary for him or her to have proper qualification, knowledge and experience. It ensures not only undisturbed course of insolvency procedure but also facilitates trust of the society into effectiveness of insolvency procedure. This reduces length and expenses of insolvency procedure and increases amount of resources invested in the frameworks thereof. This complies with interests of creditors, those of the debtor and the State, as well as facilitates balancing of these interests.

The legitimate aim of the Contested Norm is protection of rights of other persons.

17. The principle of proportionality provides that if the public power restricts rights and legal interests of a person, one has to observe a reasonable balance between the interests of a person and the State of the society. In order to assess, whether the legal provision passed by the legislator complies with the principle of proportionality, one has to investigate whether the means utilized by the legislator are suitable for achieving the legitimate objective, whether such action is indispensable, i.e., whether the objective can be reached by other means that restrict the rights and legal interests of a persons at a lesser extent, and whether the action of the legislator is proportionate or commensurate, i.e., whether the benefit gained by the society is greater than the losses caused to the rights and legal interests of a person. If, when assessing the legal provision, it is acknowledged that it is in conflict with at least one of the above criteria, then it is in conflict with the principle of proportionality and is unlawful (*see: Judgment of 16 May 2007 by the Constitutional Court in the case No. 2006-42-01, Para 11*).

18. The Constitutional Court has established that qualification requirements for any profession include the minimum education level and a certain level of theoretic knowledge, abilities and responsibility, needed to successfully discharge one's basic duties, and education is one of the criteria for the person to prove its suitability for holding the corresponding office (*see: Judgment of 4 June 2002 by*

the Constitutional Court in the case No. 2001-16-01, Para 2.2 and 4.2 of the Findings).

The Administration and the Association indicated that, when performing duties established in the Insolvency Law, an administrator needs knowledge in law (*see: Case materials, Vol. 3, pp. 43 – 44, 54*). It is possible to agree that the above mentioned knowledge is necessary to be able to apply legal norms in the correct manner and to ensure optimal and just solution in different situation of insolvency procedure. Therefore an administrator needs appropriate education.

Pursuant to Section 1 (2) of the Law on Institutions of Higher Education, the term “higher education” a degree of education in which personality development based on science or art, or science and art, in the selected academic or professional, or academic and professional, field of study, as well as the preparation for scientific or professional activity, which takes place after the completion of a secondary education.

The Constitutional Court has already concluded in Para 14.1 of the present Judgment that practical working experience is an important prerequisite for administrator’s work. However, it can not substitute knowledge in law necessary to perform duties of the position.

The Contested Norm is appropriate for reaching of the legitimate aim.

19. The Second Applicants hold that the legitimate aim of the Contested Norm can be reached by applying more lenient measures, for instance, by means of an examination or training courses (*see: Case materials, Vol. 1, pp. 39 – 46*). However, the Saeima holds that only a State-recognized diploma can testify the fact that an administrator has obtained necessary knowledge in law (*see: Case materials, Vol. 2, pp. 57*).

19.1. When adjusting any field or area, the State is committed to elaborating such legal regulatory mechanism, according to which efficient measures are applied to reach the objective. When establishing restriction of fundamental rights, the legislator has the duty to select the most lenient measure to reach the legitimate objective. Consequently, it is necessary to assess whether the same objective can be reached by other measures that would restrict the rights of persons at a lesser extent (*see: Judgment of 18 February 2010 by the Constitutional Court in the case No. 2009-74-01, Para 18.3*).

When assessing whether the legitimate aim may be reached in a more lenient way, the Constitutional Court takes into consideration that a more lenient means are not any means, but only such by which the aim may be reached in the same quality (*see: Judgment of 13 May 2009 by the Constitutional Court in the case No. 2008-47-01, Para 15*).

Consequently, the Constitutional Court shall assess whether it is possible to reach the legitimate aim at the same quality by applying other means that would restrict rights of persons at a lesser extent.

19.2. Draft Insolvency Law initially provided that any administrator needs either two higher vocational education of the second level or, respectively, qualification or a lawyer or an economics and an academic education in law and a scientific degree. It follows from the annotation to the draft law that the Association was positive about such wording of the law (*see: Case materials, Vol. 2, pp. 65 – 98*).

The Contested Norm in its effective wording was included into the Insolvency Law in the second reading. The Saeima indicated that the respective suggestion has been submitted based on what has been established in 9 February 2010 Cabinet of Ministers meeting (Minutes of the meeting No. 7 50. §) (*see: Case material, Vol. 2, pp. 54*).

19.3. The Constitutional Court has indicated the following: “The fact whether the particular profession is regulated by law serves as a criterion to distinguish between professions that require certain vocational education to testify the necessary vocational qualification and professions, vocational qualification in which can be testified in another way” (*see: Judgment of 18 February 2010 by the Constitutional Court in the case No. 2009-74-01, Para 18.2*).

The Second Applicants indicate that the administrator’s profession is not included into the list of professions established in the Law “On the Regulated Professions and the Recognition of Professional Qualifications” (*see: Case materials, Vol. 1, pp. 40*). However, the Ministry of Justice indicates that the administrator’s position is included in the profession classification of 18 May 2010 Regulation No. 461 “Provisions Regarding Profession Classification, Basic Tasks and Education Requirements for Professions, and use and Updating Procedure of the Profession Classification” (hereinafter – Regulation No. 461) (*see: Case materials, Vol. 3, pp. 57*).

According to Section 1 (12) of the law “On the Regulated Professions and the Recognition of Professional Qualifications”, a regulated profession is professional activities regulated in the Republic of Latvia or the aggregate of regulated professional activities in the professions specified in this Law, as well as such professional activities or aggregate of regulated professional activities in other European Union Member States and member states of the European Free Trade Association, for the commencement and performance of which a requirement for an adequate professional qualification has been put forward in the legal acts of the relevant state. One of the purposes of the above mentioned law is to ensure the conformity of professional activities with specific quality requirements and criteria, if these activities are related to the protection of public interests, the safety and the protection of health thereof. Consequently, the requirement of having appropriate education is of a particular importance in respect to those professions that are regulated according to certain procedure.

The Constitutional Court establishes that the administrator’s profession is not mentioned in the Law “On the Regulated Professions and Recognition of Professional Qualifications”. However, Section 3 (1) of the law provides that the minimum requirements for the education programmes of the regulated professions shall be determined by the law and Cabinet regulations.

According to profession classification established in the Regulation No. 461, the administrator’s profession pertains to the standard of the lawyer’s profession as senior expert of legal affairs which is not classified in other documents (code 2619 09). The administrator’s duty is to perform functions of an insolvency procedure administrator for legal and natural persons, as well as that of legal protection. Consequently, to perform duties of an administrator, it is necessary to have not only knowledge in economics, management and finance, but also in law.

It can be concluded from the standards of the profession that duties of an administrator shall be performed by a lawyer (code 1.20.) who has obtained professional competence necessary for performance of professional activities and acquired skills and knowledge required for performance of basic tasks.

It is stated in legislative guide on insolvency law of the United Nations Commission on International Trade Law that the complexity of many insolvency proceedings makes it highly desirable for the insolvency representative to be

appropriately qualified, with knowledge of the law (not only insolvency law, but also relevant commercial, finance and business law), as well as adequate experience in commercial and financial matters, including accounting [sk. *United Nations Commission on International Trade Law (UNCITRAL) Legislative Guide on Insolvency Law, United Nations, New York, 2005, p. 175* http://www.cnudmi.org/pdf/english/texts/insolven/05-80722_Ebook.pdf].

Content and requirements of subjects of law, when obtaining higher education in economics, management or finance, considerably differs from requirements that are established for study course of law in higher legal education programmes. Study courses of law attended by the applicants may not be compared to the body of knowledge in law to be acquired in the frameworks of higher legal education programme.

Consequently, the opinion of the Second Applicants that an administrator does not need acquiring higher education in law is ungrounded.

19.4. Irrespective of the sector, public or private, where a person is employed, the State has the right to establish requirements, according to which a person, when selecting a particular employment, must prove his or her skills and qualification by having obtained vocational education. On the one hand, the legislator should elaborate such legal regulation in this field for persons who have freely chosen their occupation could gain living; however, on the other hand, the legal regulation should be of the nature to simultaneously ensure protection of interests substantial for the society (*see: Judgment of 18 February 2010 by the Constitutional Court in the case No. 2009-74-01, Para 14*).

The benefit that the society gains from application of this criterion is, first of all, confidence that persons who are entitled to hold public office are theoretically and practically prepared enough. The document on a formal education testifies existence of theoretical and practical training, however presence of such document *per se* does not always manifest that a person lacks the respective knowledge and skills. Yet in the cases when a person is delegated the State power, not only the fact that the person is trained well enough, but also the fact that this training is testified in a certain way and the society may be confident that the person is able to fulfil his or her duties at a high quality is of great importance (*see: Judgment of 10 May 2007 by the Constitutional Court in the case No. 2006-29-0103, Para 19.2*).

An administrator is a person appointed by a court. He or she fulfils functions of national importance. Consequently, in the frameworks of its freedom of action, the legislator has the right to establish such education requirements for administrators that it considers as necessary for reaching of the legitimate aim. When assessing nature of the normative regulatory framework and the amount of authority granted to administrators, the legislator has the right to establish stricter requirements in respect to administrators' education if compared to previous regulatory framework.

19.5. Pursuant to Section 4 of the Regulation No. 1038, the following subjects are included in training programme for applicants to an administrator's position: civil law and civil procedure; administrative procedure; insolvency procedure, accounting and finance, taxes and administration thereof; economics and business management; labour law and labour protection; record keeping and archiving; ethics. The Association indicates that, at present, the administrators' training programme has been established in respect to persons who have obtained education in law.

The Association does not ensure testing of persons in subjects that are usually studied in depth when obtaining legal education (*see: Case materials, Vol. 3, pp. 52*). Training of applications for an administrator's occupation and the procedure of administrators' certification ensures verification of certain knowledge, in the result of which it is possible to verify whether persons having legal education have also obtained necessary knowledge in economics, management or finance (*see: Case materials, Vol. 3, pp. 51, 53*).

Consequently, the task of training programme for applications for an administrator's office is not to ensure acquisition of knowledge in law.

19.6. Administrator's work is assessed once per two years in the frameworks of re-certification procedure. The re-certification procedure is established in Section 70 of the Regulation No. 1038. When performing re-certification, the Association assesses indices of professional activities and qualification improvement of an administrator in the period of 24 months. Evaluation takes place by summarizing all points referred to in Section 70 of the Regulation No. 1038. For an administrator to have the right to re-certification, he or she must obtain at least 100 points, 50 out of which are attributed for qualification improvement and at least 50 – for professional activities.

The purpose of re-certification is not verification of legal knowledge of a person. However, in the frameworks of re-certification procedure, it is possible to verify whether administrators have successfully used their knowledge in practice and whether they improve their knowledge. Both, the Ministry of Justice and the Association indicate that this procedure does not comprise verification of legal knowledge necessary for effective fulfilment of administrator's functions (*see: Case materials, Vol. 3, pp. 59 – 60, 52 – 53*).

Although re-certification procedure ensures regular examination of administrators' activities, certification shall not be regarded as verification of legal knowledge of administrators.

19.7. The purpose of the Contested Norm is to establish education and qualification requirements for a person in a particular field of science rather than to ensure that a person would reach a certain education level.

The Contested Norm ensures acquisition of specific legal knowledge necessary for administrators. The State has established procedure, according to which a person can testify that he or she has obtained necessary knowledge, namely, this can be testified only by presenting a State-recognized higher education diploma that proves person's competence in legal issues. Consequently, the society gains benefit from the fact that a particular person is competent to fulfil functions of an administrator.

Consequently, there are no other alternative measures that would permit reaching of the legitimate aim of the Contested Norm at the same quality.

20. The Applicants hold that the legislator has committed, without reason, persons who already have higher education to obtaining higher education in law. Thus the restriction of fundamental rights of person is non-proportional if compared to benefit gained by the society (*see: Case materials, Vol. 1, pp. 41 – 45*).

The Contested Regulatory Framework does not prohibit persons who have no higher legal education to perform duties of an administrator for a certain time. The legislator has selected a lenient solution for reaching of the legitimate aim by establishing a transitional period for meeting the stipulated education requirement.

The Constitutional Court has already concluded in Para 19 of the present Judgment that the requirement to obtain higher legal education shall be regarded as the most appropriate solution for reaching of the legitimate aim of the Contested

Norm. Higher legal education ensures knowledge necessary for fulfilment of duties of an administrator, whilst the differentiated attitude established in the Contested Norm has objective and reasonable grounds.

The benefit gained by the society from the Contested Norm is greater than detriment caused to an individual, and the Contested Norm does comply with the principle of proportionality.

21. The First Applicant contests constitutionality of Para 7 of Transitional Provisions of the Insolvency Law. It establishes the term, within which certified administrators should obtain higher education in law, as well as period for starting studies and submitting a notice on starting of studies or successful continuation thereof (*see: Case materials, Vol. 1, pp. 1 – 12*).

Taking into account the fact that the requirement of obtaining higher education in law is established in the Contested Norm, whilst the Contested Transitional Provision establishes the procedure, according to which the requirement shall be applied to certified administrators, compliance of the Contested Transitional Provision with Article 1, Article 91 and Article 106 of the Satversme shall be assessed in conjunction with legal regulatory framework of the Contested Norm and considerations mentioned in Para 15 – 20 of the present Judgment.

22. The First Applicant holds that the Contested Transitional Provision contradicts the principle of legitimate expectations; therefore it fails to comply with Article 1 of the Satversme (*see: Case materials, Vol. 1, pp. 1 – 4*).

22.1. It has been established in case-law of the Constitutional Court that a range of legal principles of a law-governed State follow from Article 1 of the Satversme, including the principle of legitimate expectations. The Constitutional Court has indicated that “state institutions shall be consistent in their activities as regards normative acts passed by them, they shall take into account trust in law, that could arise on the basis of a specific normative act” (*see: Judgment of 10 June 1998 by the Constitutional Court in the case No. 04-03(98), Para 3*).

The Constitutional Court has also concluded that functioning of the principle of legitimate trust depends on the fact whether the person’s trust in the legal norm is legitimate, well-grounded and reasonable, in its turn, the legal regulation on its

essence shall be reasonably definite and constant, so that one can trust in it (*see: Judgment of 8 November 2006 by the Constitutional Court in the case No. 2006-04-01, Para 21*).

22.2. The First Applicant holds that action of the legislator, when amending normative regulatory framework, was inconsistent. The Applicant had trusted into the fact that, based on previously obtained higher education and the certificate, he would still be able to work as an administrator (*see: Case materials, Vol. 1, pp. 2*).

In order to assess whether the act that has established deviation from the rights once granted to persons complies with the principle of legitimate expectations, the Court shall assess: 1) whether a person has been conferred legal security to safeguarding or implementation of any particular rights; and 2) whether a reasonable balance between protection of legal security of a person and ensuring of interests of the society has been observed (*see: Judgment of 26 November 2009 by the Constitutional Court in the case No. 2009-08-01, Para 23*).

The First Administrator works as administrator since 2004. According to the effective legal regulatory framework, a person who has obtained higher education in economics, finance or management or has at least three years of practical work experience in supervisory institutions of undertakings or companies and executive bodies might work as an administrator. Consequently, when receiving a certificate of an administrator, the person had the reason to hold that he or she complies with effective education requirements.

The 2007 Insolvency Law introduced considerable amendments into education requirements for administrators. However, these requirements were not applied to administrators already certified. Moreover, the Contested Transitional Provision established new requirements in respect to certified administrators who had not higher education in law.

The principle of legitimate expectations does not exclude the right of the State to amend existent regulatory framework. An opposite approach would lead to inability of the State to react to changing living circumstances. The principle of legitimate expectations requires that the State, when amending normative regulatory framework, would observe a reasonable balance between trust of a person and those interests, in favour of which regulatory framework is being amended (*see: Judgment of 1 December 2010 by the Constitutional Court in the case No. 2010-21-01, Para 19*).

Taking into account what has been concluded in Para 15 – 20 of the present Judgment, the legislator had the right to require obtaining higher education in law to certified administrators. The First Applicant did not have the right to trust into the fact that the legislator would introduce no amendments to the normative regulatory framework.

The First Applicant had the right to trust only into the fact that the legislator would provide a reasonable transitional period for acquisition of higher education in law.

23. Transitional provisions are a part of normative act that regulates different issues of coming into force and application of a normative act in a particular time frame (*see: Judgment of 10 January 2011 by the Constitutional Court in the case No. 2010-18-01, Para 14.4*).

The Contested Transitional Provision establishes two terms. First, certified administrators had to start studies of law in a higher education establishment before 1 January 2012. Second, certified administrators would be applied the requirement of higher legal education as from 1 January 2017. An administrator having failed to start studies before 1 January 2012 or applying for re-certification shall not be re-certified in case if he or she fails to present a notice on having started studies.

Consequently, the Constitutional Court shall assess whether the Contested Transitional Provision shall be regarded as proportional.

24. When assessing compliance of such a norm with the principle of legitimate expectations that commits a person to start studies in a higher education institution within a certain time frame, the Constitutional Court has indicated that such term is reasonable and compliant to the Principle of legal security insofar as there persons had real possibility to initiate studies in the respective speciality. In separate cases the fact that a person had to enter a higher education institution in a rather short term (*see: Judgment of 10 May 2007 by the Constitutional Court in the case No. 2006-29-0103, Para 19.5.5*).

24.1. The Contested Transitional Provision ensures that certified administrators and the society are informed on the procedure and terms or execution of requirements of the Contested Norm. The Saeima, the Ministry of Justice and the

Administration are of the viewpoint that the Contested Transitional Provision is proportional because persons had enough time to submit documents to the higher education institution and to obtain higher legal education within the term established in the Contested Transitional Provision (*see: Case materials, Vol. 2, pp. 58 – 59, Vol. 3, pp. 45 – 46, 61 – 62*).

The process of acquisition of higher legal education is long and it can be related to considerable expenses. Persons working as administrator need additional time to be able to fully participate in the study process and successfully master study courses.

24.2. The Constitutional Court has concluded that in order to make the transition lenient in this case, persons had to simultaneously be provided with real possibilities to acquire a higher education, namely, the time limit had to be long enough so that there would be a possibility to acquire a higher education if it is necessary, for instance, for fulfilment of urgent and immediate responsibilities of civil service, due to important conditions in a family, health condition or short term material difficulties (*see: Judgment of 10 May 2007 by the Constitutional Court in the case No. 2006-29-0103, Para 19.5.3*).

When establishing the term for starting studies of law in a higher education institution, as well as the term, as from which the requirement of higher legal education would be applied, the legislator had to assess whether there exist any reasons that do not depend on the persons for starting studies within the established period. Likewise, the legislator had to make sure whether particular terms would permit a person finishing the studies in time. The term established in the Contested Transitional Provision, namely, 1 January 2017 when a person ought to finish studies of law, shall be assessed in conjunction with the term of starting studies – 1 January 2012. The possibility to obtain higher legal education within the term established in the Law is limited in case if a person is not given enough time for initiating studies of law in a higher education institution.

Several higher education institutions of Latvia ensure the possibility to obtain higher legal education, whilst the length of studies differs in each of them. According to requirements of a lawyer's profession included in Para 1 of Section 1.20.2 of Appendix 2 of the Regulation No. 461, a lawyer needs the fifth qualification level with higher education master's degree in law that is granted after five years of studies, or fifth level vocational qualification studies of law started

before 1 July 2010 without acquisition of a master's degree because it is testified by a State-recognized higher education diploma. Consequently, a person can obtain vocational lawyer's qualification within at least five years.

The Insolvency law was proclaimed on 6 August 2010 and came into force on 1 November 2010. When compared to the terms established in the Contested Transitional Provision with those established by higher education institutions, it can be concluded that certified administrators did not have the possibility to submit documents to a higher education institutions to start studies before the autumn semester of 2010.

In order to observe the transitional period established by the legislator, administrators could enter a higher education institution to start studies in spring or autumn semester of 2011. However, not all higher education institutions provide the possibility to start studies in spring semester. The majority of certified administrators, who had to obtain higher legal education, could most probably submit documents for studies in a higher education institution only in autumn 2011. The factual consequences of the term for starting studies included in the Contested Transitional Provision imply that the majority of certified administrators could start acquisition of higher legal education only in autumn semester of 2011. The Constitutional Court considers the term for starting studies established in the Contested Transitional Provision as non-proportional. Of course, this also applies to the term established in the Contested Transitional Provision, as from which the requirement of higher legal education would be applied.

Enrolment in a higher education institution takes place on a competition basis taking into account results of centralized State examinations and other factors. Consequently, administrators could have additional difficulties to start studies in a higher education institution within the term established by the legislator. The short transitional period does not permit administrators to get duly prepared for the study process and to start studies in a higher education institution according to proper procedure.

It is possible to agree with the opinion of the Saeima that it is in the interests of the society to ensure compliance of knowledge and qualification of administrators with the new legal regulatory framework as soon as possible (*see: Case materials, Vol. 2, pp. 59*). However, the transition to the new regulatory framework should have a reasonable term. Namely, such term that would permit

certified administrators obtaining higher legal education along with fulfilling their work duties. Moreover, such term should not exclude the possibility to take an academic leave in certain cases.

Taking into account the aforesaid, the term for starting studies and acquiring higher legal education established in the Contested Transitional Provisions shall be recognized as inadequately short ones. The legislator has failed to take into consideration legal expectations of certified administrators to adopting of such legal regulatory framework that would permit them obtaining higher legal education required by the Contested Norm within a reasonable term.

Therefore the Contested Transitional Provision insofar as it determines 1 January 2012 as the term for starting studies of law in a higher education institution and 1 January 2017 as the term for application of the requirement of higher legal education as non-compliant with the principle of legitimate expectations.

25. Having established the non-compliance of the Contested Transitional Provision with the principle of legitimate expectations included in Article 1 of the Satversme, it is no more necessary for the Constitutional Court to assess compliance thereof with Article 91 and Article 106 of the Satversme.

The Constitutional Court has indicated that the Saeima enjoys a broad freedom of action in relation to legislative technique, including issues on wording of transitional regulatory framework and the choice on its introduction in the text of a law, transitional provisions of a law or determining the term for coming into force of a particular law (*see: Judgment of 19 June 2010 by the Constitutional Court in the case No. 2006-29-0103, Para 9.4.2*).

The legislator has applied the education requirement established in the Contested Norm in respect to administrators who have not yet obtained legal education, including all Applicants, in the future, namely, after occurrence of the terms established in the Contested Transitional Provision. Although the Applicants have contested different norms, they are closely related.

26. According to the rights granted in Article 32 (3) of the Constitutional Court Law, the Constitutional Court shall see to it that the situation, which might develop from the moment the impugned norms lose validity, to the moment while

the Saeima passes new norms, violates neither the fundamental rights of the submitters of the claim, guaranteed by the Satversme, nor creates relevant harm to state or public interests (*see: Judgment of 16 December 2005 by the Constitutional Court in the Case No. 2005-12-0103, Para 25*). Pursuant to the aforesaid, the legal norm that the Constitutional Court recognized as non-compliant with a legal norm of a higher legal force, shall be regarded as null and void as on the date of publishing of the present Judgment unless the Constitutional Court has ruled otherwise.

The legislator needs time to prevent deficiencies of the normative regulatory frameworks referred to in Para 24 of the present Judgment. The legislator has to adopt such normative regulatory framework in respect to administrators who have been certified according to requirements of Section 13 of the Law “On Insolvency of Enterprises and Companies” requiring not less than three years of practical experience in the supervisory institutions of undertakings or companies and executive bodies but who have no higher education in law, as well as administrators who have been certified before 31 October 2010 but who have no higher education in law, that would establish a reasonable term for starting and finishing studies of law in a higher education institution.

When determining the moment, as of which the terms established in the first, the second and the third sentence of the Contested Transitional Provision, namely, 1 January 2012 before which a person should start studies of law in a higher education institution, and 1 January 2017 before which the requirement of higher legal education would be applied, the Constitutional Court shall take into consideration the mutual relation of the Contested Norm and the Contested Transitional Provision. In order to protect legitimate expectations of persons, the Contested Transitional Provision insofar as it establishes 1 January 2010 as the term for starting studies in a higher education institution and establishes the duty to submit a notice on having started studies issued by the higher education institution to the Association, shall not be applicable during the period between coming into force of the present Judgment and introducing of necessary amendments into the Contested Transitional Provision.

Taking into account the former case-law of the Constitutional Court in establishing terms for eliminating deficiencies of law, as well as the above mentioned considerations, the Constitutional Court establishes the term of 1 March

2012, before which the legislator has to eliminate all deficiencies of the normative regulatory framework established in Para 24 of the present Judgment.

The Ruling

Based on Article 30 – 32 of the Constitutional Court Law, the Constitutional Court

h o l d s :

1) the words “from 1 January 2017” of the first sentence, the words “from 1 January 2017” of the second sentence and the words “from 1 January 2012” of the third sentence of Para 7 of Transitional Provisions of the Insolvency Law do not comply with Article 1 of the Satversme and shall be null and void as from 1 March 2012;

2) Section 13 (1) (2) of the Insolvency Law insofar as it applies to persons who have started working as an insolvency procedure administrator pursuant to the requirement of Section 13 of the Law “On Insolvency of Enterprises and Companies” regarding higher education in economics, management or finance does comply with Article 91 and Article 106 of the Satversme of the Republic of Latvia in case if the legislator would amend the terms established in the first, the second and the third sentence of Para 7 of Transitional Provisions of the Insolvency Law before 1 March 2012 by ensuring persons with the possibility to meet the requirement of higher legal education in law within reasonable time frame.

The Judgment shall not be subject to appeal.

The Judgment shall come into force on the date of publishing it.

Presiding Judge

A. Branta

Translated by E. Labanovska, translator of the Constitutional Court