



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT ON BEHALF OF THE REPUBLIC OF LATVIA Riga, 18 February 2010 in Case No. 2009-74-01

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

having regard to the application of Vitolds Peipiņš,
according to Article 85 of the Satversme (Constitution) of the Republic of Latvia, Article 16 1st indent, Article 17 (1) and Article 19.² and 28.¹ of the Constitutional Court Law,

on 19 January 2010 in writing examined the case

“On Compliance of the First Part of Section 13 of the Law on Management of Residential Housing with Article 91 and Article 106 of the Satversme of the Republic of Latvia”.

The Facts

1. The Saeima (Parliament) of the Republic of Latvia (hereinafter – the Saeima), on 4 June 2009 adopted the Law on Management of Residential Housing (hereinafter – Law on Housing Management). It came into effect on 1 January 2010.

The Law on Housing Management establishes the principles of management of residential housing, as well as mutual relations, rights, duties and responsibility of persons

involved in the management process of residential housing, and competence of the State and a local government in this field. Pursuant to provisions of this Law, a residential housing manager is an owner or a manager of the house. Namely, Section 10 (1) of the Law on Housing Management provides that all housing management activities or separate managerial tasks of them (hereinafter – management of residential housing) can be transferred by an owner of the housing to its manager.

The Law on Housing Management also regulates the issue on vocational qualification for residential housing managers. Section 13 (1) (hereinafter – Contested Norm) establishes the following: “A manager shall have the right to fulfil management task in an apartment house if he or she has obtained vocational education necessary for managing residential houses and a document testifying at least the fourth vocational qualification level, except for cases stipulated in this section. If a manager is a legal person, vocational education necessary for managing residential houses and a document testifying at least the fourth vocational qualification level is mandatory for an employee of the legal person fulfilling tasks established in the management agreement for the respective house.”

Section 13 (2) of the Law on Housing Management provides that a document testifying vocational education and at least the third vocational qualification level is required if managing of residential housing is performed by its owner or one of its owners, whose management activities have been authorised by other owners of the house and if the total area of the house is greater than 1500 square meters. Vocational education established in the Contested Norm, however, is not necessary for apartment house managers, as well as in case if a residential house is managed by its owner or one of its owners, whose management activities have been authorised by other owners of the house, and if the total area of the house does not exceed 1500 square meters.

Para 5 of the Transitional Provisions of the Law on Housing Management provides that, by 31 December 2011, management of residential housing can be performed by each person having obtained vocational education and a document testifying at least the third vocational qualification level established in the Contested Norm, except for the case mentioned in Para 6 of the transitional Provisions of the Law. Para 6 of the Transitional Provisions establish that a person who, before the date of coming into force of this law, has concluded an agreement on management of residential housing shall have the right to

continue fulfilling liabilities undertaken by the agreement with respect of the fact whether vocational qualification of the person complies with requirements established in the Contested Norm, but no longer than up to 31 December 2011.

2. The applicant **Vitolds Peipiņš** (hereinafter – Applicant) asks recognizing the Contested Norm as non-compliant with Article 91 and Article 106 of the Satversme of the Republic of Latvia (hereinafter – Satversme).

The Applicant holds that the Contested Norm restricts the basic rights established in the Satversme. In accordance with norms of the Law on Housing Management, as from 2012 he would no more be able to be employed in management of residential housing because he has not obtained vocational education necessary for a housing manager as required in the Contested Norm. The Applicant indicates that he is a housing manager since 1993. Moreover, he is also able to use the academic knowledge acquired in his profession in his work because he also works as associate professor at a higher education institution and lectures on entrepreneurship related with real estate and this training course also includes knowledge necessary for residential housing management. The Contested Norm prohibits the Applicant to use the knowledge acquired in practice and continue working as a housing manager because the norm requires formal training requirements. Consequently, the basic right to freely choose a profession and a workplace in accordance with one's skills, as established in Article 106 of the Satversme has been restricted.

The Applicant holds that the Contested Norm neither complies with Article 91 of the Satversme because it provides for a different attitude towards the profession of a manager if compared to other professions for which different requirements for proving an adequate qualification has been established. For instance, the Law on Detective Activity that regulates detective activity as a special economic activity provides that persons who have been granted a certificate shall have the right to work in this field. The above mentioned certificate can be granted to persons who have obtained vocational education or who have at least five years of working experience. The Applicant holds that, by establishing several ways of testifying qualification necessary for a particular profession, a person is being restricted at a lesser extent because it has the possibility to choose the way of obtaining the necessary qualification in order to be able to work in the selected

profession. Similar provisions are also applied to the profession of accountants. Consequently, the Contested Norm is not proportional because it prohibits housing managers to choose the way of obtaining and testifying compliance of one's skills and knowledge with the established qualification requirements.

The Applicant holds that the Contested Norm lacks an objective and reasonable grounds if compared to requirements established for representatives of other professions.

The Applicant also maintains that the Contested Norm has been protected with a view to protect the society from residential housing management executed by non-professional and unqualified persons. The aim of the Law on Housing Management is protection of interests of a certain group of the society, as well as adjustment of entrepreneurial environment; however the Contested Norm is not appropriate for reaching its legitimate objective. According to the Applicant, this objective can also be reached by other means, for instance, introduction of public registers with the required data on experience and training of a housing manager, or insurance of risks related with professional activities, or submission of a certificate testifying qualification.

3. The institution that adopted the Contested Norm, **the Saeima** does not share the opinion of the Applicant and holds that the Contested Norm does comply with the principle of equality and it does not provide for an ungrounded restriction to the right of persons to choose profession.

The Saeima draws attention to the fact that Section 13 of the Law on Housing Management includes several exceptions to requirements enshrined in the Contested Norm. Transitional Provisions of the Law also establish that persons have the right to continue working in residential housing management up to 31 December 2011 if they have concluded an agreement on residential housing management. Consequently, the Saeima maintains that, after the facts have been established, it is worth examining whether the application complies with requirements of Article 19.² of the Constitutional Court Law and whether it is useful to continue proceedings in the case under review.

The Saeima indicates the following: should proceedings in the case be continued, it is necessary to take into account the fact that qualification requirements for a housing manager established in the Contested Norm are grounded and indispensable.

The Saeima refers to case-law of the Constitutional Court and indicates that the legislator has the right to establish requirements, according to which a person should testify his or her qualification, for instance, by passing tests established by the State or by obtaining education in a State-recognized learning process.

It has been indicated in the reply that several conditions have been established in the field of residential housing management. The requirement of an adequate education in management is only one of the several preconditions included in the Law and necessary for successful residential housing management. The Saeima holds that leaving selection of a manager to flat owners is inadmissible, provided that no requirement of an adequate vocational training is set forth because residential housing management is a responsible process that requires broad knowledge and skills to prevent all possible risks. Education and qualification requirements are established for a housing manager by balancing restriction of rights of a person and interests of the society, namely, by preventing all possible damage to security and health of other persons and preserving high quality of the surrounding environment. Consequently, the Contested Norm has a legitimate objective, which is protection of the rights of other persons and security of the society.

The Saeima does not agree to the opinion of the Applicant that vocational education necessary for a housing manager is a formal requirement and it does not testify the capacity of a person to perform residential housing management. The Saeima holds that a document testifying acquisition of a formal education testifies theoretical and practical training; however absence of such a document does not automatically mean that a person does not possess the respective knowledge and skills. The Contested Norm, however, is appropriate for reaching the legitimate objective because the society can be sure that a person has obtained certain education, he or she is able to perform residential housing management at a sufficient level.

The Saeima holds that the Applicant has not indicated any particular group of persons and proven why it enjoys similar or, according to certain criteria, comparable conditions. The Contested Norm does not distinguish between several groups of persons and does not provide for a different attitude towards any of them. Consequently, the Contested Norm does not breach the principle of legal equality. The Saeima draws attention to the fact that other external normative acts also provide for training and

qualification requirements of persons. For instance, such requirements have been established for an insurance broker, cargo transporters and insolvency administrators.

Taking into account the aforesaid, the Saeima asks the Constitutional Court to recognize the Contested Norm as compliant with Article 91 and Article 106 of the Satversme.

4. The summoned party – **Ministry of Education and Science** holds that the Contested Norm does comply with Article 91 and Article 106 of the Satversme. The restriction included in the Contested Norm is socially indispensable and proportional.

It follows from the Law on Housing Management that the scope of competence of a housing manager is closely related with implementation and protection of interests of the society. Consequently, the requirements established by the Contested Norm are grounded because a State-recognized education document allows other persons to be sure that a housing manager who has acquired the respective national education standard and programme would execute residential housing management at an appropriate level. Moreover, Section 8 (3) and (4) provides that higher education programmes cannot be obtained by means of self-education.

The Ministry of Education and Science indicate that requirements of the Contested Norm comply with other normative acts. Namely, the profession standard “housing manager” (hereinafter – profession standard of a manager) is included in Section 3.18 of Appendix 4 of 13 February 2007 Cabinet of Ministers Regulations No. 125 “Regulations regarding profession classifier, basic tasks and basic qualification requirements for professions, and procedure for the use and updating of profession classifier (hereinafter - Profession Classifier)”. It is established in the above mentioned standard that the profession of a manager requires the fourth level vocational qualification. The Ministry of Education and Science informs that at present the education required in the Contested Norm can be obtained in three education institutions. Moreover, Section 27 (8) of the Vocational Education Law provides that the fourth level vocational qualification is implemented in a college or higher education institution. This programme is a special way how a person already having obtained education and vocational experience can acquire vocational qualification of a certain level. Moreover, the State performs accreditation of

all educational programmes. This prevents any differences in the content of educational programmes in State and private higher education establishments and colleges.

The summoned persons holds that it does not follow from the Law on Housing Management that qualification of a housing manager is testified only by a diploma of the first level higher vocational education or a diploma on the second level vocational education with qualification of “housing manager” or “real estate manager”. Based on the content of the education programme obtained, it is necessary to assess whether a person who has obtained higher vocational education with another vocational qualification has acquired all skills and knowledge required for the profession of a housing manager.

5. The summoned person – Ombudsman of the Republic of Latvia (hereinafter – Ombudsman) – holds that the Contested Norm does not comply with Article 91 and Article 106 of the Satversme.

The Ombudsman indicates that this is the employer who assesses individual skills and qualities of a person and compliance of his or her vocational qualification with the duties to be fulfilled in accordance with the Labour Law and other labour legal regulatory acts, when employing the person. The Contested Norm not only restricts the right of a person to choose employment but also the right of an employer to select, in its opinion, most appropriate persons for the position of a housing manager.

The Ombudsman emphasizes that ability of a person to work as a housing manager cannot be testified only by a document on obtained education. A person can testify its vocational qualification by means of documents reflecting practical working experience, his or her results of vocational qualification test, and testimonials.

According to the Ombudsman, this is practical rather than theoretical knowledge of a person that plays the major role in residential housing management. Although vocational education is aimed at acquisition of practical skills, there still exist other ways for a person to prove his or her skills and knowledge necessary for the profession of a housing manager. The Contested Norm does not serve as an appropriate measure to guarantee social security because it restricts the right of a person to select a profession in accordance with his or her abilities and knowledge. Consequently it is not proportional to establish by law that presenting of a vocational education document is the only way of testifying qualification of a housing manager.

6. The summoned person – **Housing and Environment Department of the Riga City Council** (*Rīgas domes Mājokļu un vides departaments*) informs that the Law on Housing Management commits a local government to assign a manager for each residential house located in its administrative territory provided that the owner of the house does not perform its management or has not commissioned it to a manager, or management is performed in a way that endangers life, health, security, property of a person or environment. Pursuant to Section 23 of the Law on Housing Management, a person whose qualification complies with that established in the Contested Norm can be appointed a housing manager.

7. The summoned person – the Chairman of the Board of the Real Estate Trading Support Centre (*Nekustamā īpašuma mācību atbalsta centrs*) *Dr. Sc. ing. Raitis Kalniņš* indicates that the aim of requirements for professional qualification established in the Contested Norm is to protect the society from unskilled housing managers. The Law “On Regulatory Professions and Recognition of Vocational Qualification” also establishes that the State is committed to ensuring compliance of professional activities with requirements and criteria of a certain quality level if the work is related with interests, security and health of the society. Consequently, requirements set forth in the Contested Norm are grounded.

Vocational qualification of a housing manager plays an important role in high quality housing management. However, the decision regarding quality of housing management services, including the required vocational education of a manager, is adopted by the owner of a residential house. Pursuant to provisions of the Law on Housing Management, data on vocational qualification of a housing manager would be available in a registry of housing managers. Consequently, education of each housing manager would be known to the persons selecting a residential housing manager. Therefore it is not necessary to provide, by law, for a mandatory vocational education as a requirement for qualification of a manager.

R. Kalniņš indicates that in the Order of 16 September 2009 of the Cabinet of Ministers No. 629 that confirms the concept “Increase of Attraction of Vocational Education and Participation of Social Partners in Ensuring High Quality of Vocational

Education” deals with the issue of obtaining vocational qualification. The above mentioned concept provides for authorizing experts of the field to establish the level of vocational qualification, namely, it provides for assigning licensing of vocational training programmes to field expert councils.

However, R. Kalniņš concludes that the opinion of the applicant that the Contested Norm is in breach with Article 91 and Article 106 of the Satversme is ungrounded.

8. The summoned person – the Association of House Managers of Latvia (*Latvijas Namu pārvaldītāju un apsaimniekotāju asociācija*) is of the opinion that the Contested Norm does comply with Article 91 and Article 106 of the Satversme. Requirements established in the Law on Housing Management do restrict interests of house owners and managers. However, requirements of vocational qualification for a housing manager are grounded because otherwise it would not be possible to establish whether knowledge and skills of a housing manager are sufficient or he or she has to improve them by obtaining education. A document testifying vocational education required by the Law shows that a person having obtained such education is able to fulfil the duties at a high quality level. Moreover, persons who want to continue working in the profession of a housing manager are given enough time and possibility to obtain vocational education required for working in residential housing management.

9. The summoned person – a limited liability company “Namu apsaimniekošana” indicate that the current managers have obtained their skills and knowledge mainly by means of self-education. At present, only one out of six managers working in this enterprise has the required vocational education; moreover, he has obtained it only in June 2009. However, several persons being employed as assistant managers have obtained education required in the Law; however, they cannot perform residential housing management due to the lack of practical experience.

The summoned person holds that the Contested Norm could infringe interests of the society in case if services of adequate quality are not ensured. Namely, only those persons who have the required vocational education would work as housing managers, whilst other managers who are already employed, would have to leave the work to study.

However, it is not possible to perform residential housing management without the appropriate practical experience.

10. The summoned person – a **limited liability company “BatlEst”** indicates that persons currently fulfilling functions of a housing manager do have sufficient theoretical and practical knowledge for performing residential housing management at a high quality. It is not necessary to provide for a mandatory vocational education to testify qualification of a manager. The aim of the Law on Housing Management is to ensure best possible living conditions for inhabitants of houses; however, this aim can also be reached by other measures that would burden, at a lesser extent, business activities in the field of residential housing management. The summoned person holds a view that this aim could be reached at the same rate also be certifying persons who have testified, according to a certain procedure, the fact that they meet requirements of vocational qualification of a housing manager.

11. The summoned person – a **limited liability company “Latio Namsaimnieks”** considers that requirements set forth in the Contested Norm infringe the right of persons to freely choose their working place and education because a person is denied the right to work as a housing manager if he or she has not obtained the respective vocational education. Moreover, the transitional period established in the Law on Housing Management is too short to obtain the required education.

The legislator has not included the profession of a housing manager into the list of regulatory professions established in the Law “On Regulatory Professions and Recognition of Vocational Qualification”. Consequently, it can be concluded that it is not necessary to provide that the only evidence of an appropriate qualification of a housing manager is a document testifying vocational education. Consequently, observation of interests of the society can be obtained by other means, particularly, by providing obligatory skills and knowledge required for a housing manager, these skills and knowledge being examined by a special certified commission of managers.

The summoned person indicates that costs for acquisition of the required vocational education would also increase the price of management services. Consequently, the aim that the legislator was trying to achieve in the interests of the

society restricts availability of high quality services for certain groups of the society due to expensiveness thereof.

The Constitutional Court has established:

12. The Saeima maintains in its reply that it is necessary to assess compliance of the application with requirements of Article 19.² Indent 1 of the Constitutional Court Law and asks to decide on terminating proceedings in the case under review.

Section 29 Indent 1 (3) of the Constitutional Court Law provides that proceedings in the case may be closed before the judgment is announced by a decision if the Constitutional Court finds that the decision to initiate the case does not comply with the provisions of Part 5, Article 20 of this Law. This Article also provides that an application should comply with requirements of Article 19.² of the Constitutional Court Law.

Article 19.² of the Constitutional Court Law provides that any person, who holds that his/her fundamental rights, established by the Constitution, have been violated by applying a normative act, which is not in compliance with the legal norm of higher legal force, may submit a claim (an application) to the Constitutional Court. It follows from this Article that a person has the right to address the Constitutional Court only in case if there exists a direct link between restriction of fundamental rights of this person and the legal norm contested in the application.

The Constitutional Court has reiterated that a constitutional claim can be submitted in cases when, firstly, infringement of fundamental rights is direct and concrete, and a contested norm applies to the applicant, and, secondly, when the infringement exists at the moment of lodging an application before the court (*see, e.g.: Judgment of 20 May 2002 by the Constitutional Court in the case No. 200-01-03 and decision of 11 November 2002 regarding termination of proceedings in the case NO. 2002-07-03*), or there exists a set of circumstances that required “immediate” examination of the case (*see, e.g.: Judgment of 22 February 2002 by the Constitutional Court in the case No. 2001-06-03, Para 2.4 of the Concluding Part*).

The Saeima holds that in the case under review it is necessary to take into account Para 6 of the Transitional Provisions of the Law on Housing Management, namely, that a person who, before the date of coming into force of this law, has concluded an agreement

on management of residential housing shall have the right to continue fulfilling, up to 31 December 2011, liabilities undertaken by the agreement with respect of the fact whether vocational qualification of the person complies with requirements established in the Contested Norm.

Taking into account the aforesaid, the Constitutional Court must establish whether the Contested Norm infringes the fundamental rights of the Applicant.

12.1. The Contested Norm provides that vocational qualification of a housing manager shall be testified by a certain vocational education or a document testifying at least the fourth level of vocational qualification. These requirements do not apply to persons who are not house owners and perform management of a residential house, the total area of which does not exceed 1500 square meters irrespective of the fact whether the particular person fulfils this task as a natural person or as an employee of a legal person.

It has been established in the case-law of the Constitutional court that infringement of fundamental rights is probable in the future or potential (*see: Judgment of 22 February 2002 by the Constitutional Court in the case No. 2001-06-03, Para 2.4 of the Concluding Part and Judgment of 20 May 2002 in the case No. 2002-01-03*). It has been stated in legal doctrine that the theory of infringement of fundamental rights also permits a foreseeable or potential infringement. Namely, the possibility that an infringement is probable in the future means that fundamental rights of a person would be infringed; therefore it is likely that application of a contested norm could cause negative consequences to a person who submits a constitutional claim (*see: Rodiņa A., Konstitucionālās sūdzības teorija un prakse Latvijā. Rīga: Latvijas Vēstnesis, 2009, pp. 161 – 168*). It has also been indicated in judicial case-law that, when assessing restriction of rights of a person, it is necessary to take into account the risk that this infringement could have an impact on the particular person, as well as a possible infringement of legal interests of a person (*see, e.g.: Judgment of the European Court of Human rights in the case Kayankin v. Russia, judgment of 10 February 2010, application no. 24427/02, para. 91 and German Federal Constitutional Court judgment of 27 February 2008 in the case No. 1 BvR 370/07, para. 232*).

12.2. It follows from the constitutional claim that the Applicant performs management of residential houses, however, he is not the owner of the houses. Case

materials show that the Applicant works in the field of residential housing management for more than 16 years and he is willing to preserve his occupation. The Applicant has concluded agreements on residential housing management before adoption of the Contested Norm. Consequently, the Contested Norm applies to the Applicant because he has the duty to obtain education established in the Contested Norm to continue working in the profession of a housing manager also after the term established in the Law on Housing Management. The Applicant has indicated that after the term indicated in the Law he would no more have the right to perform housing management and would be denied incomes by applying his skills and knowledge.

The Constitutional Court holds that the question regarding possible changes in the field of housing manager qualification should be decided immediately because, pursuant to the Vocational Education Law, vocational education programmes shall be implemented within two to three years. Consequently, persons to whom the Contested Norm applies must start their studies in the respective education programme this year with a view to obtain education required in the Contested Norm within the transitional period established in the Law on Housing Management.

Taking into account the aforesaid, proceedings in the case under review shall be continued.

13. It follows from the constitutional claim that compliance of the Contested Norm with the first sentence of Article 91 of the Satversme only should be examined, this sentence guaranteeing equality of everyone before the law. The Constitutional Court has already recognized in its case-law that it is not always possible to assess conformity of a concrete restriction of a fundamental right with the Satversme only in the aspect of the first sentence of Section 91 of the Satversme. It should be taken into consideration that the equality principle, determined in the first sentence of Satversme Section 91 very often shall be applied together with other fundamental rights (*see: Judgment of 8 November 2006 by the Constitutional Court in the case No. 2006-04-01, Para 15*).

When investigating whether the Contested Norm complies with the principle of equality, it should be assessed in conjunction with the fundamental rights established in Article 106 of the Satversme.

Justification of the Constitutional Claim does not apply to infringement of prohibition of forced labour; therefore, in the case under review, compliance of the Contested Norm with the first sentence of Article 106 only shall be assessed.

Consequently, first of all it is necessary to assess compliance of the Contested Norm with the first sentence of Article 106 of the Satversme.

14. 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 notion "employment" is attributed to work in the private and the public sector, and also 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*).

The former case-law of the Constitutional Court regarding assessment of the fundamental rights established in Article 106 of the Satversme apply mainly to vocational qualification requirements in the frameworks of public service (*see, e.g.: Judgment of 22 March 2005 in the case No. 2004-13-0106, Judgment of 10 May 2007 in the case No. 2006-29-0103 and Judgment of 1 November 2007 in the case No. 2007-08-01*).

The Constitutional Court has concluded that officials implement the State power and therefore the State has the right to set forth certain qualification and education requirements for these persons (*see: Judgment of 22 March 2005 by the Constitutional Court in the case No. 2004-13-0106, Para 16 – 19*). The above mentioned qualification and education requirements can also be applied to professions, legal labour relations of which are being established not only on a labour agreement regulated by the Labour Law but also on the grounds of other civil agreements.

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. In order to meet the needs of inhabitants, it is necessary to implement most balanced and consequent policy possible. 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. The legislator enjoys freedom of action to determine education necessary for each particular professional activities, as well as to set forth other requirements for a particular profession insofar as it is indispensable in the interests of the society.

Before the Law on Housing Management came into effect, no special requirements have been set forth for persons who concluded an agreement on residential housing management. These legal relations were based only on the confidence of the owner of the house into the housing manager, the latter being able to fulfil his duties at an appropriate level of quality.

The Constitutional Court agrees that the fundamental rights of the Applicant would be restricted. Namely, the right to continue working in the profession of a housing manager for persons who have previously been employed in residential housing management and who do not have the education required by the Contested Norm, including the Applicant, whose rights would be restricted in a way that these persons would have to obtain education in order to continue working in their previous profession.

Consequently, the requirement of a certain vocational education included in the Contested Norm shall be regarded as a restriction of fundamental rights enshrined in Article 106 of the Satversme.

15. Article 116 of the Satversme provides that the rights enshrined in Article 106 “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”. Consequently, the fundamental rights established in Article 106 of the Satversme can be restricted unless the restriction has been established by law adopted according to proper procedure, the restriction has a legitimate objective and it is proportional.

16. The Contested Norm is included into the Law on Housing Management. In the case under review, there is no dispute whether the Contested Norm has been established by a law adopted and proclaimed according to proper proceedings.

17. Each restriction of fundamental rights should be based on conditions and arguments stating why the restriction is necessary, namely, the restriction should be established in the interests of the society, this being a legitimate objective.

It is indicated in Section 2 (1) (6) of the Law on Housing Management that the objective of this Law is to improve qualification of persons involved in residential housing management in order to enhance labour organization and efficiency of residential housing management. The Applicant agrees that the Contested Norm has been adopted to protect the society from non-professional and unskilled residential housing management. The Saeima also indicates that the aim of the Contested Norm is to prevent all risks related with security of the society and the environment, these risks being caused in the result of poor quality residential housing management.

Residential housing management is an organisational and economic process that is related with maintenance of real estate. Residential housing management includes activities that have an impact on health and security of other persons, as well as conditions of the environment. An appropriate residential housing management of high quality depends on abilities, skills and knowledge of the housing manager.

Therefore the Constitutional Court agrees with the opinion of the Saeima that here it is important to prove suitability of a person in a certain way for the society to be sure that the housing manager would be able to fulfil his or her duties at a high quality. A diploma on a State-recognized vocational education testifies theoretical knowledge and practical skills of a person proving that he or she is able to fulfil work duties of a certain complexity and requiring certain responsibility level.

Consequently, the restriction of the fundamental rights established in the Contested Norm has a legitimate objective – protection of the rights of other persons and security of the society.

18. 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 the objective cannot be reached by other means that restrict the rights and legal interests of a person at a lesser extent, and whether the action of the legislator is proportionate or commensurate (*see: Judgment of 16 May 2007 by the Constitutional Court in the case No. 2006-42-01, Para 11*).

18.1. In order to assess whether the Contested Norm complies with the criteria of proportionality, the Constitutional Court should first investigate whether the measures selected are suitable for reaching the legitimate objective.

The Constitutional Court has concluded 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 just 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 2.4*).

The Contested Norm provides that a manager shall have the right to fulfil management task in an apartment house if he or she has obtained vocational education necessary at least the fourth vocational qualification level. The legislator has provided for different requirements for vocational education and qualification level in the field of residential housing management. Criteria defining the required level of vocational education and qualification are the following – area of the residential house and the fact whether a persons who performs housing management is or is not the owner of the house. The requirement of obligatory vocational education and the fourth qualification level established in the Contested Norm applies only to those persons who are not owners of the house and who manage a residential house, the total area of which exceeds 1500 square meters. Consequently, it can be concluded that has established requirements for obligatory vocational education with a higher qualification level for those housing managers who perform housing management for the purpose of gaining profit.

Taking into account the total area of a residential house and the risk that could occur in the result of poor residential housing management, it can be concluded that the legislator has reasonably requested increased responsibility from persons who manage large residential houses and are doing this for the purpose of gaining profit. Consequently, the requirement of highest education included the Contested Norm has been established in the interests of the society.

The legislator has also provided for several exceptions in the Transitional Provisions of the Law on Housing Management. According to the Transitional Provisions, from the date of coming into effect of the Law up to 31 December 2011, persons starting performing residential housing management shall be applied the requirement of vocational education with a lower vocational qualification level than established in the Contested Norm. However, persons who are already managing residential houses based on a management agreement already concluded and who want to continue working in this field, shall be applied a transitional period, within which they can obtain education requested in the Contested Norm.

It can be concluded from the Transitional Provisions of the Law on Housing Management that practical working experience in the field of residential housing management is a criterion that provides for the rights of a person to work as a housing manager without the vocational education established in the Contested Norm until the new legal regulation comes into effect.

However, it follows from the aim of the Law of Housing Management that requirement of vocational education testifying vocational qualification of a housing manager is a measure permitting to establish in advance whether a person to be employed as a housing manager is suitable for fulfilling the duties. Consequently, it has been reasonably established in the Law that persons who do not possess any experience in residential housing management can testify their professional suitability only by presenting a document testifying the respective vocational education.

When establishing the requirement of the particular vocational education testifying qualification of a manager for persons who do not possess any practical working experience, the legislator has selected an appropriate measure and provided for a reasonable transition to the new regulation.

Consequently, the measure selected by the legislator is appropriate for reaching the objective of the Contested Norm.

18.2. 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.

Directive of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications provides that a regulated profession is a profession, wherein a person shall have the right to continue working only after receipt of a special permit or registration and which requires possession of specific education or professional qualifications. Under Section 3(2) of the Law “On Regulatory Professions and Recognition of Vocational Qualification”, a person who has obtained accredited and profession-related education programme or has obtained vocational qualification that is proven by a document testifying statutory education or vocational qualification shall have the right to work in a regulated profession.

The profession of a housing manager is not included into the list of regulated professions established in the above mentioned law. Consequently, the required vocational education cannot serve as the only way of testifying vocational qualification of a housing manager.

Section 6 (2) of the Law on Housing Management provides that a housing manager shall perform both, economic activities that require practical working experience and technical knowledge and activities that require record keeping and accounting knowledge. It follows from the enumeration of activities to be performed by a housing manager that skills and knowledge required for fulfilling these activities can also be testified by another vocational education and practical working experience in the profession of a residential housing manager. Under the housing manager profession standard, persons performing residential housing management have to possess skills and knowledge in such fields as engineering, economics, record keeping and law.

18.3. 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.

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*).

When adopting the Contested Norm, the legislator has not provided a possibility for persons performing residential housing management for several years already, to prove his or her vocational qualification suitable for residential housing administration in a way other than vocational education required by the Contested Norm. Consequently, a person having practical working experience in residential housing management and having obtained vocational education in another field, even if this education ensures skills and knowledge necessary for residential housing management, is being denied the possibility to work as a housing manager unless he or she obtains vocational qualification required in the Contested Norm.

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

19. Having examined legal regulation on vocational qualification of housing managers of other European states, for instance, that of Czech Republic, Denmark, Ireland and Finland, it can be concluded that the required qualification is mainly regulated by determining the required vocational education (*see more: Council of Real Estate Professions Annual Report 2008 – 2009, p. 27, <http://www.cepi.eu/index.php?page=rappport-annuel&hl=en>*).

The profession of a housing manager is regarded as a regulated profession only in Austria, France and Lichtenstein. It is established in legal regulations of these States that only person who have obtained certain education, i.e. education of a housing manager, shall have the right to work in the field of residential housing management (*see: European Commission on regulated professions*

<https://webgate.ec.europa.eu/regprof/index.cfm?fuseaction=profession.regProfs&profId=6800>).

In Estonia, Great Britain and Germany, however, vocational qualification of a housing manager is testified by a State-recognized certificate that is issued by an association of this field. In Great Britain, vocational qualification level of a housing manager, however, depends on the document testifying it. A certificate testifies a lower quality level if compared to a diploma on a certain residential housing manager education. In Estonia, vocational qualification of a housing manager is established in a profession standard. Based on this standard, an association of housing managers carries out training and certification of persons. In Germany, however, a person who has obtained practical working experience in the field of residential housing management and who has been granted a licence issued by an association of housing managers has the right to work as a housing manager (*see: Journal of European Real Estate Research, Vol. 1, Bingley, 2008, pp. 69 – 78*).

Regulation of vocational qualification of a housing manager is not uniform. However, two systems can be distinguished, according to which a person can testify his or her knowledge and skills in the field of residential housing management. The first system is based on training programmes that allow obtaining skills and knowledge required in documents regulating the profession of a housing manager. Respective training programmes are organized by State-recognized and licensed associations of housing managers or educational institutions. A person masters respective programmes, takes certain exams and is granted a certificate or a diploma testifying the obtained vocational qualification. However, the other system is based on the practical working experience obtained by a person. In this system, vocational qualification of a person is testified by a certificate that is issued by a State-recognized association; however, granting of a certificate is not related with a special training course or any education required for a housing manager. The common trait of both above mentioned systems is the fact that vocational qualification of a housing manager is testified according to a procedure established by the State.

The majority of the European States have established a requirement that activities in the field that need special knowledge and certain vocational experience, require that a person possesses vocational qualification recognized by the State according to certain

procedure, namely, the State or an institution authorized by it registers persons employed in this field, grants them licences or certificates (*see: Employment Regimes and the Quality of Work, ed., Duncan Gallie, Oxford: Oxford University Press, 2007, p. 85*).

Consequently, it can be concluded that the ability of a person to perform residential housing management can be determined not only by a document testifying the required vocational education but also by testing skills and knowledge according to a certain procedure. The Law on Housing Management does not provide for any procedure for assessing vocational competences related with the profession of a housing manager and for conferring vocational qualification.

By establishing other ways for a person to testify compliance of his or her vocational qualification with the profession of a housing manager, the legitimate objective of the Contested Norm could be reached with the same efficiency. If the ability of a person to perform residential housing management is testified according to a State-recognized procedure, then other persons can be sure that a particular person would perform the duties of a housing manager at an adequate quality level.

Consequently, it is possible to apply more lenient measures to persons having practical working experience and who have obtained other kind of vocational education that guarantees skills and knowledge required in the profession standard of a housing manager. Thus these measures would restrict the rights of persons at a lesser extent, whilst residential housing management would be ensured at the same efficiency rate and quality.

Since the objective of the Contested Norm can be reached by applying other measures that would restrict the rights of persons at a lesser extent, the Contested Norm shall be recognized as non-compliant with the principle of proportionality and therefore also with Article 106 of the Satversme.

20. Having established incompatibility of the Contested Norm with Article 106 of the Satversme, it is not necessary to assess compliance of it with Article 91 of the Satversme.

21. Under Article 32 (3) of the Constitutional Court Law, any legal norm which the Constitutional Court has determined as incompatible with the legal norm of higher force

shall be considered as null and void as of the date of publishing the judgment of the Constitutional Court, unless the Constitutional Court has ruled otherwise.

When establishing the date when the Contested Norm will become ineffective, the Constitutional Court has taken into account the fact that the legislator has to assess several possible solutions and select the most appropriate of them. Consequently, the legislator needs time to improve the normative regulation and introduction of respective amendments in the normative acts.

The Constitutional Court

Based on Article 30 – 32 of the Constitutional Court Law

h o l d s :

The First Part of Section 13 of the Law on Management of Residential Housing, insofar as it applies to persons having practical working experience in the field of residential housing management and have obtained another vocational education, does not comply with Article 106 of the Satversme of the Republic of Latvia and shall be null and void as from 1 July 2010.

The Judgment is final and not subject to appeal.

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

Presiding Judge

. Kūtris