THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, June 6, 2006

JUDGMENT
in the name of the Republic of Latvia

in the matter No. 2005 – 25 – 01

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session Aivars Endziņš as well as the justices Ilma Čepāne, Romāns Apsītis, Aija Branta, Juris Jelāgins, Gunārs Kūtris and Andrejs Lepse

with the Court secretary Arnis Žugans

in the presence of Gundega Līce – the representative of the submitter of the claim, namely – The State Human Rights Bureau

and the sworn advocate Juris Ķesteris - the representative of the Saeima i.e. the institution, which has passed the impugned act

under Section 85 of the Satversme (the Constitution), Sections 16 (Item 1) and 17 (Item 8 of the first Paragraph)

on May 9, 2006 in a public hearing in Riga reviewed the matter

"On the Compliance of Section 13, Paragraph 1 of April 7, 2004 Law "Amendments to the Law "On the Privatization of State and Local Governments Apartment Houses" with Section 91 of the Republic of Latvia Satversme"".

The establishing part

1. On June 21, 1995 the Republic of Latvia Saeima (hereinafter – the Saeima) passed the Law "On the Privatization of State and Local Governments Apartment Houses" (hereinafter – the Privatization Law). The objective of this Law is to develop the real estate market and

stimulate the up-keep of apartment houses, while protecting the interests of residents.

On December 16, 1999 the Saeima adopted the Law ”Amendments to the Law ”On the Privatization of State and Local Government Apartment Houses””. By this Law Section 74 of the Privatization Law was supplemented with a new – the fifth Paragraph in the following wording:
”Un-rented multiple apartment houses, on the non-privatization and retaining of which as local government property necessary for the implementation of those local government functions determined by law the decision of the Dome (Council) of the respective local government is adopted, shall not be delivered for the privatization”.

On October 26, 2000 the Saeima adopted the Law ”Amendments to the Law ”On the Privatization of State and Local Government Apartment Houses””. By it Section 74, Paragraph 5 of the Privatization Law was supplemented with the words ”*un-rented multiple apartments”* after the words *”un-rented multiple-apartment houses”.*

On April 7, 2004 the Saeima adopted the Law ” Amendments to the Law ”On the Privatization of State and Local Government Apartment Houses””. By Section 13 of this Law the fifth Paragraph of Section 74 of the Privatization Law was expressed in a new wording:
”Un-rented multiple apartment houses, on the non-privatization and retaining of which as local property necessary for the implementation of those local government functions determined by law the decision of the Dome (Council) is adopted, shall not be delivered for the privatization. If and apartment, artist studio or non-residential premises is transferred into prior to the privatization of the apartment house, then such an apartment house shall offered for privatization in the procedure stipulated by law (hereinafter – the impugned norm). At the moment of submission of the claim the impugned norm was in effect in the above wording.

On February 16, 2006, when discussing the draft Law ”Amendments to the Law ”On the Privatization of State and Local Government Apartment Houses” in its second reading, the Saeima upheld the proposal of the deputy Valērijs Agešins and decided to change the wording of the impugned norm.

On March 26, 2006 at the meeting of the State Administration and Local Government Committee was upheld the proposal of the deputy Anita Kalniņa, which envisaged reverting to the former wording of the norm:
*”**un-rented** multiple apartment houses and **un-rented** apartments, on the non-privatization and retaining of which as local government*

property necessary for the implementation of those local government functions determined by law decisions of the Dome (Council) of the respective local government is adopted, shall not be delivered for the privatization".

At its May 18, 2006 session the Saeima, when discussing the draft Law " Amendments to the Law "On the Privatization of State and Local Government Apartment Houses"" in its third reading, upheld the above motion of the deputy A.Kalniņa. The Saeima decided that the Amendments would take effect as of July 1, 2006.

2. **The State Human Rights Bureau (**hereinafter – the submitter of the claim) in its claim points out that the impugned norm is at variance with the principle of equality, incorporated in Section 91 of the Republic of Latvia Satversme (hereinafter – the Satversme). It does not ensure equal rights to all persons to privatize apartments, belonging to local governments, which have been rented to these persons. In the above situation it is possible to establish that all the tenants of apartments, belonging to the local governments, are in equal and comparable circumstances as all these persons rent the apartments, which are the property of the local government. In its turn the impugned norm creates a differentiated attitude as some persons are allowed to privatize the apartments, rented to them, however other persons are denied the right to do so.

   When assessing the legitimate aim of the impugned norm, the submitter of the claim concluded that it might be the protection of the rights of other persons, because - with the help of the above norm - realization of several municipal functions is advanced. Namely, the impugned norm allows rendering assistance to certain groups of persons, ensuring them with dwelling space.

   However, to recognize that the impugned norm complies with the Satversme, it is necessary to assess its proportionality with the legitimate aim advanced by the legislator. The Bureau holds that the impugned norm is disproportionate,"because the local government shall not be able to automatically use concrete dwelling space for rendering housing support, as there are tenants in the above space, who have valid rental agreements". It shall be taken into consideration that rental agreements, concluded before the adoption of the impugned norm, remain in effect and the local government will have the right of using the apartments, not delivered for privatization only when the legal rental relations are terminated.

   The submitter of the claim, on the basis of the information at its disposal, points out that the local governments of Ventspils and Liepāja,

by making use of the impugned norm, have repeatedly passed the resolutions not to privatize multiple-apartment houses as well as separate apartments. The submitter of the claim expresses doubt about justification of the above action, as one cannot recognize that the economic situation of the above local governments is unsatisfactory and they are able to render assistance to needy persons in another way.

Besides, in accordance with Section 20 of the Law ” On Support for the Solution of Housing Issues” those apartments, which have been assigned to persons by the local government, shall not be delivered for privatization. Such regulation exists since January 1, 2002 and it may be regarded as proportionate. Proportionate was also the norm, which existed before the adoption of the impugned norm and envisaged to the local government the right of not privatizing the un-rented multiple-apartment houses and un-rented apartments.

At the Court session the representative of the submitter of the claim **Gundega Līce** additionally pointed out that the impugned norm did not comply with the principle of trust in law, which follows from Section 1 of the Satversme either. Since 1995 the tenants of the apartments, which are the property of the State and local governments, have trusted that they will be able to realize their right to privatize the apartments rented by them under the procedure, determined by the Privatization Law. Thus, a serious harm is caused to the rights of the above tenants. Just because of their trust, the tenants, possibly, have not been looking for other apartments, in its turn the impugned norm and the resolutions taken under it by the local governments have denied them the right to privatize the rented apartments.

G.Līce also pointed out that the Administrative Court, when assessing the lawfulness of the local government resolution about non-privatization of the apartments is not an efficient enough means for the protection of the rights. In the same way, the argument of the Saeima, that the impugned norm shall ensure the possibility of the local government to supply needy persons with dwelling space for a long term cannot be regarded as well-grounded either. One shall take into consideration that ”no specific research about how many apartments the local government will be able to receive in this way has been carried out. Therefore it is doubtful how big and real this gain might be.”

Taking the above into consideration G.Līce requested the Constitutional Court to declare Section 13, Paragraph 1 of the April 7, 2004 Law ”Amendments to the Law ”On the Privatization of State and Local Government Apartment Houses” as unconformable with Section 91 of the Satversme and null and void as of the day of it taking effect.

3. **The Saeima –** the institution, which has passed the impugned act– points out that the impugned norm is not at variance with Section 91 of the Satversme. The Saeima holds that it should be taken into consideration that the norm envisages freedom of action – namely, the right to take the resolution on retaining the apartment house in local government ownership in each concrete case – for the local government. Such administrative acts, passed within the framework of freedom of action shall comply with the requirements of the Administrative Procedure Law (hereinafter – APL). The above administrative acts shall not be at variance with the principles of equality, proportionality, prohibition of arbitrariness or other principles of administrative procedure. Besides, in case, when the local government has adopted the resolution on not delivering an apartment house or an apartment for privatization and retaining as local government property, the tenants of the apartment have the right of appealing against the resolution to the Administrative Court.

   The Saeima also points out that the impugned norm has a legitimate aim – to ensure with dwelling space all the persons, who are regarded as socially unprotected. The Saeima agrees that the impugned norm is not able to ensure immediate reaching of the legitimate aim, however, in a longer period of time it will noticeably increase the possibilities of local governments to ensure with dwelling space socially unprotected persons. If these persons were allowed to privatize apartments, the situation might arise that they would not be able to settle communal payments. In such a case the manager of the house or the institution rendering services will address the court with a petition and recovering of the debt will be attributed to the apartment i.e. the person may lose the apartment.

   When assessing proportionality between the potential violation of the tenants' rights and the benefit, gained by the society, the Saeima remarks that the impugned norm does not limit either the property rights of those persons, who want to privatize apartments, or the rights of the persons to obtain the apartment as the property. The right to dwelling space is not restricted either. Restricted is "only the right to obtain as one's property a concrete apartment, which is the property of the local government". In its turn the public gain is much greater, as by the above apartments the socially unprotected persons are ensured with dwelling space and that allows the above persons to implement also other human rights.

   The Saeima draws the attention of the Constitutional Court to two instruments by the Economic and Social Board, Economic, Social and Cultural Rights Committee of the United Nations Organization (hereinafter – UNO), in which the above Committee expresses concern

about the increasing rent payment and insufficient ensurance by local governments of social aid in Italy and Norway. It follows from the above instruments that the most effective solution for ensuring the socially unprotected persons with an apartment is not the construction of new dwellings but retaining of the dwelling reserves of the local government in the property of State or local government.

At the Court session the Saeima representative **Juris Ķesteris** additionally pointed out that the impugned norm does not establish for persons any restrictions in privatization of the apartments. It ”does not determine any criteria for stating which apartments it will be possible to privatize and which not; which private houses to deliver for privatization and which not. That is so because the legislator has not been able to find such unified criteria for all local governments of Latvia, under which it would be possible to accurately specify, which apartments and which apartment houses shall not be delivered for privatization”. The local government has the duty of assessing in any respective case whether a concrete apartment shall not be privatized and retained as the property of the local government for realization of its autonomous functions.

When adopting the impugned norm the legislator has tried to balance the rights of the tenants to privatize an apartment, which is the property of the local government, with the duty of the local government to realize its autonomous competence – to ensure with dwellings socially unprotected persons. The impugned norm ”does not violate the right to property of any public member and does not violate the right of any public member to obtain dwelling space in his/her property”. Several laws envisage the duty of the local government to ensure with dwelling space socially unprotected persons, for example, Section 3, Items 1-3 of the Law ”On Housing Support Granted by the State and Local Government”; Section 5, Paragraph 1 of the Law ”On Social Apartments and Social Apartment Buildings”; Section 282, Paragraph 3, 284 Paragraph 2, 285, Paragraph 1 of the Law ”On Residential Tenancy”; Section 8, Paragraph 2 of the Repatriation Law and Section 66, Paragraph 2, Item 1 of the Protection of the Rights of a Child Law.

J.Ķesteris points out that an administrative act, issued on the basis of the impugned norm, may have a legitimate aim. And the necessity for the respective local government to ensure with dwelling space persons, who are regarded as socially unprotected persons, shall be recognized as such a legitimate aim.

J.Ķesteris holds that the impugned norm complies with Section 91 of the Satversme and requests to declare the claim as unfounded but the impugned norm as conformable with the Satversme.

4. When preparing the matter for review information on the practice of application of the impugned norm was requested.

4.1. Ventspils City Dome (Council) points out that – with a purpose of realizing the main autonomous function of the local government i.e. – to render assistance in the solution of the housing issues, several apartment houses have not been offered for privatization and retained as the property of the local government. The impugned norm and several other legal norms, like Section 8, Paragraph 2 of the Repatriation Law, Section 66, Paragraph 2, Item 1 of the Protection of the Rights of a Child Law, Section 5 of the Law "On Social Apartments and Social Apartment Buildings" as well as the norms of Ventspils City local government binding Regulations allow the local government to act in this way.

The aim of the above activity is to ensure with dwelling space persons, who have been entered in the Register of Local Government Housing Support. On January 1, 2006 196 persons have been entered in Ventspils Dome Housing Support Register. In its turn the local government is able to yearly ensure finding dwelling space only for 40 persons. The Dome stresses that one shall take into consideration that the Law "On Local Governments" does not envisage construction of new apartment house buildings as the autonomous function of the local governments. Therefore such local government resolutions on not delivering apartment houses for privatization and retaining them as the property of the local government is the only way how it is able to ensure the above range of persons with suitable dwelling spaces in accordance with the Law "On Housing Support Granted by the State and Local Governments". The legislator adopted the impugned norm at the time, when the local governments kept receiving more and more requests for help in the solution of apartment issues, but the local governments did not have the needed dwelling reserve.

Information, furnished by Ventspils City Dome, testifies that on the basis of the impugned norm it has been resolved not to hand over for privatization 93 apartment houses, in which there are more than 4500 apartments.

The Dome stresses that when taking the decision on not delivering a separate apartment house for privatization, the Dome takes into consideration the number of needy persons, living in that house, as the main criterion. In the same way expenses, which are connected with transformation of a separate house into a social house, as well as expenses, which occur when moving the needy persons from a rented apartment to a social apartment, have been taken into consideration.

Ventspils Dome points out that resolutions on not handing over an apartment house or an apartment for privatization are publicly accessible documents, which are published in the portal of Ventspils City internet. These resolutions have no addressee; they are regarded as general administrative acts, therefore

Regulations on the Procedure of Administrative Acts Taking Effect, namely, the requirement of informing the addressee of the administrative act, shall not be applied to them.

4.2. **Liepāja City Dome (Council)** points out that the duty to render aid in the solution of housing issues is included in the autonomous functions of the local government. The impugned norm and several other laws, for example, Section 8, Paragraph 2 of the Repatriation Law; Section 66, Paragraph 2, Item 1 of the Protection of the Rights of a Child Law; Section 5 of the Law "On Social Apartments and Social Apartment Houses" as well as the norms of Liepāja city local government binding Regulations allow the local government to determine by the resolution the apartment houses, which shall not be delivered for privatization and are retained in the property of the local government.

Till January 1, 2006 in Liepāja City Dome more than 439 persons were entered in the Housing Support Register, which the local government has to ensure with dwelling space. The above number is an objective justification of the fact that there is the necessity for a greater number of apartments to be assigned to persons, entered in the above Register.

Liepāja City Dome especially stresses that the Law "On Local Governments" does not anticipate building of new apartment houses as an autonomous function of local governments. Therefore, to ensure realization of functions assigned by the laws to local governments, it is necessary to adopt resolutions on retaining apartment houses as the property of local governments. Such target-directed action of the local government will allow retaining the dwelling reserve as the property of local government and rendering help to persons in the solution of housing issues.

When answering to the question of the Constitutional Court on considerations of Liepāja Dome when taking the decisions on not delivering apartment houses or apartments for privatization, it points out that application of the impugned norm allows the local government to handle its property, plan and obtain funds, thus improving the living condition of those persons, who have no possibility of providing themselves with other dwellings. The Dome also points out that the addressees of the resolution on not delivering apartment houses for privatization are not tenants, who have concluded rental agreements with the local government. As regards the above resolution the tenants shall be considered as the third persons, therefore they have not been informed about passing of the above resolutions.

4.3. **Jelgava City Dome** points out that in the period from 1999 till June 17, 2004 five resolutions have been adopted on the basis of which several apartment houses have not been delivered for privatization. The apartments in these houses have been rented to the tenants of the houses as local government hotels. When taking the decision on delivering apartment houses and apartments for privatization, Jelgava Dome has not applied the impugned norm.

4.4. **Riga City Dome** points out that in accordance with Section 15, Paragraph 1, Item 9 of the Law "On Local Governments" one of the permanent functions of local governments is to render support to the residents in the solution of housing issues. In accordance with the Law "On Housing Support Granted by the State and Local Government" the local governments are charged with the duty of solving the problems of the residents connected with housing issues. To ensure realization of the above autonomous function, Riga Dome has created a local government dwelling reserve, retaining as its property separate dwelling spaces as well as the renovated and built anew apartment houses.

5. **The invited person, the Chairman of the Republic of Latvia Saeima State Administration and Local Government Committee Staņislavs Šķesters** at the Court session pointed out that one should assess the impugned norm as read together with other legal norms, mainly those, which regulate local government support in the solution of apartment issues. He stresses that one has to take into consideration the fact that the State has conceptually refused from the solution of apartment issues. This duty has been fully assigned to local governments as their autonomous function. Passing of the impugned norm confirms consequent observance of the above principle, as it assigns to the local government rights and possibilities to solve apartment issues of the residents. Besides, the Privatization Law does not charge the local governments with a mandatory duty of offering persons to privatize the apartments, rented to them.

One has also to take into consideration the fact that the local government as " an elected creation" is the nearest to the residents, as well as it is responsible before them. The local government knows the local peculiarities best of all, therefore it is able to take the very best and appropriate to local conditions resolutions. Thus there has been no necessity to concretize different criteria in the Privatization Law on the basis of which the local government shall be assigned with the right of taking decisions on non-privatization and retaining in the property of the local government of an apartment house, which is within its territory.

6. **The invited person – the Chairman of the Rīga City State and Local Government Apartment House Privatization Committee Rasma Freimane** informs that 5227 houses, which are the property of the local government and in which there are 175 992 apartments are to be privatized in the city of Rīga. On the basis of requirements of Section 20 of the Law " On Housing Support Granted by the State and Local Governments" the Riga Dome has adopted resolutions on retaining 2164 apartments as the property of the local government. Two of the resolutions have been appealed against.

   R.Freimane also points out that 88,36 percent of houses have been delivered for privatization in the city of Rīga. In its turn Riga Dome has not applied the impugned norm as several apartment construction plans are being realized in the city and the support to the residents is rendered in accordance with the Law "On Housing Support".

7. **The invited person - the Director of the Ministry of Regional Development and Local Government Affairs Dwelling Policy Department Ilze Oša** pointed out that the Ministry already initially had been against the Amendments to the Privatization Law, which envisaged introducing the impugned norm. She stresses that one has to take into consideration that intense apartment privatization has taken place in all the Republic of Latvia local governments in the last nine years; and the greatest part of the local governments had honestly done their duty assigned to them by the Privatization Law. In its turn, application of the impugned norm as a matter of fact infringes the legal trust of the apartment tenants as well as puts these tenants in an unequal situation. Namely, two categories of tenants are created: one, which still has the right of privatizing the local government apartments, rented to them; and the other – which has been denied this right by the local government resolution, adopted on the basis of the impugned norm.

   She holds that one has to take into consideration that the normative acts allow the local government to use other means for rendering support to socially unprotected persons. As the result violation of the rights of tenants, created by application of the impugned norm is more essential than the benefit, which might be gained by the local governments.

8. **The invited person – the Deputy Chairman of Liepāja City Dome Gunārs Ansiņš –** points out that situation in Liepāja is a little bit different than the situation in other Republic of Latvia local governments. On February 17, 1997 the Saeima by the Law "On the Special Economic Zone of Liepāja" has determined the territory of Liepāja special economic zone. In accordance with Item 16 of the Privatization Law Transitional Provisions the local government Dome may adopt the resolution on the beginning of privatization of those

apartment houses, which are in the free economic zone, only then when the privatization of these houses is coordinated with the Board of the respective special economic zone. Thus Liepāja City Dome does not have the right of handing over the apartment houses within the territory of the special economic zone for privatization without the consent of Liepāja Special Economic Zone Board.

Such decisions of Liepāja Special Economic Zone Board and Item 16 of the Privatization Board Transitional Provisions served as the justification for the Liepāja City Dome resolutions on not delivering 43 apartment houses for privatization.

Strenuous operating activities take place in Liepāja special economic zone at the present moment. More than 35 enterprises of the special economic zone have been registered and the Liepāja special economic zone together with the State institutions e.g. the Ministry of Transport, Ministry of Environment and Liepāja local government are realizing several projects on development of infrastructure.

The invited persons also acknowledged that the local government had not informed the tenants of the apartment houses about the resolutions on non-privatization and retaining of the houses as the property of the local government.

9. **The invited person – the First Deputy of Ventspils City Dome Jānis Vītoliņš –** pointed out that the adoption of the impugned norm had been a necessity so that the local governments might realize one of its permanent functions – ensure the residents with apartments; and so that every local government might independently assess its material possibilities and the needs of the residents in its territory.

   In the territory of Ventspils city the income level of about one fourth of the residents is less than 100 lats a month. When assessing the situation and on the basis of the impugned norm the Ventspils City Dome passed resolutions on retaining 93 apartment houses – which comprise about one third of the dwelling space reserve within the territory of the Ventspils city- as its property on May 17, 2004. Such a number of apartment houses is the absolute minimum, for ensuring with dwelling space the Ventspils city residents, whose income level is insufficient. The Ventspils Dome based the respective resolutions on an independent research about the proportion of needy tenants in separate apartment houses.

   Besides other laws, namely, the Law ”On Local Governments”, the Law ”On Housing Support Granted by the State and Local Governments”, the Law ”On Social Apartments and Social Apartment Houses”, the

Law ”On Residential Tenancy”, the Repatriation Law as well as the Protection of the Rights of a Child Law have been taken into consideration.

The impugned norm has created for the local government the possibility of using the dwelling reserve for ensuring support to the tenants in solving the housing issues. To reach the legitimate aim of the impugned norm – realization of the permanent functions of the local government in ensuring the residents in its territory with apartments, the above resolutions of the Ventspils Dome have been passed in accordance with the spirit of the Privatization Law.

J.Vītoliņš also points out that the impugned norm does not restrict the rights of tenants of separate apartments as regards other persons; it is not discriminative in the understanding of Section 91 of the Satversme either, even though it has been adopted almost ten years after passing of the Privatization Law.

At the moment of passing of the impugned norm, the aim of privatization has already been reached and to his mind the above norm is not at variance with the aim of the Privatization Law – to develop the apartment market. The local authorities, when retaining in their property a certain part of apartment houses, create a potential possibility for ensuring the dwelling space to needy and socially unprotected residents with relieved conditions as well as to maintain and improve their apartments without using for this cause disproportionately great sums, which one should have to use in case, if the local government were obliged to build new social houses for its money. Thus the local government may channel the spared money to implementation of other of its functions, for example, advancement of education, health protection and improvement of the city infrastructure.

The concluding part

10. Section 91 of the Satversme determines that ” all human beings in Latvia shall be equal before the law and the courts. Human rights shall be realized without discrimination of any kind”.

Even though in the claim is included the requirement to assess conformity of the impugned norm with the whole Satversme 91 Section, however, it follows from the claim that only compliance of the first sentence of Section 91 of the Satversme, which guarantees equality of all human beings before the law and the courts, shall be assessed. Therefore within the framework of this matter the impugned norm shall

be analyzed in the context of the principle of equality and not in the context of the principle of prohibition of discrimination.

When interpreting Section 91 of the Satversme, the Constitutional Court has concluded: " From the first sentence of the above Section follows the principle of equality, which forbids the State institutions to pass norms, which without a reasonable ground permit different attitude to persons, who find themselves in similar conditions" (*Satversmes tiesas 2001. gada 3.aprīļa sprieduma lietā No. 2000-07-0409 secinājumu daļas 1.punkts; the Constitutional Court April 3, 2001 Judgment in case No. 2000-07-0409; Item 1 of the concluding part).* The principle of equality shall guarantee the existence of unified legal procedure. Namely, its task is to ensure that the demand of the law-governed state about all-embracing influence of the law on all persons, as well as securing application of the law without any privileges is realized. It guarantees complete effect of the law, objectivity and impassiveness of its application, as well as the fact that nobody is allowed to disregard the instructions of the law (*sk. Satversmes tiesas 2005.gada 14. septembra spriedumu lietā No. 2005-02-0106 9.1. punktu; see the Constitutional Court September 14, 2005 Judgment in case No. 2005-02-0106, Item 9.1.).* However, such unification of legal procedure does not mean levelling, as "equality allows a differentiated approach, if it can be justified in a democratic society" (*Satversmes tiesas 2001.gada 26. jūnija sprieduma lietā No. 2001-02-0106 secinājuma daļas 4.punkts; the Constitutional Court June 26, 2001 Judgment in case No. 2001-02-0106; Item 4 of the concluding part).*

11. To assess whether the impugned norm envisages a differentiated attitude, it is necessary to establish,

first of all, which persons are in equal or differentiated conditions;
secondly, whether the impugned norm envisages equal or differentiated attitude to these persons;
thirdly, whether such attitude has an objective and reasonable basis, namely, whether there is a legitimate aim and whether the principle of proportionality has been observed (*sk. Satversmes tiesas 2005.gada 13. maija sprieduma lietā No. 2004 -18-0106 secinājumu daļas 12.punktu; see the Constitutional Court May 13, 2005 Judgment in case No.2004-18-0106, Item 12 of the concluding part).*

The Privatization Law "establishes the procedure for privatizing state and local government apartment houses, and the goal is to develop the real estate market and stimulate the up-keep of apartment houses, while protecting the interests of residents (Section 2). In accordance with this Law, privatization of rented apartments is realized in two ways. First of all, under general or planned procedure, in accordance with which the tenants

may begin privatization of a rented apartment after the local government Dome (Council) has passed the resolution on commencement of the respective local government apartment house and the Privatization Committee of the apartment houses of the local government has in a certain period of time sent privatization announcements (*sk. likuma 81, 29 – 30 pantu; see Sections 81, 29 – 30 of the Law*). Secondly, under the so-called accelerated procedure of apartment privatization, in accordance with which the apartments are offered for privatization in cases, when the local government has not started privatization of the concrete apartment house (*sk. likuma XV1 nodaļu; see Chapter XV1 of the Law*).

The first Paragraph of Section 13, the second Paragraph of Section 14, the first Paragraph of Section 19 and the second Paragraph of Section 20 of the Law establish that all apartments, owned by the local authority, for utilization of which have been signed dwelling space rental contracts, shall be offered for privatization to the apartment's tenants and their family members. In accordance of the fourth Paragraph of Section 3 of the Privatization Law the tenants voluntarily realize privatization of their apartments. In its turn it is determined in the first Paragraph of Section 74 with an exception of separate cases mentioned in the Law "all State and local government apartment houses shall be handed over for privatization."

Thus the persons, with whom the local government has concluded rental contracts on the rent of the apartment, belonging to the local government, legally are in equal and comparable conditions.

12. At the completing stage of apartment privatization and almost ten years after the commencement of the process of privatization the impugned norm has split the persons, who are in equal conditions, into two big groups, against whom differentiated attitude has been determined in the sector of apartment privatization by the impugned norm.

First of all – those tenants of multiple apartment houses and separate apartments, belonging to the local government, who have concluded rental contracts with the local government and to whom the local government has allowed to use their rights and privatize the apartments, rented by them. Secondly, those tenants of multiple apartment houses and separate apartments, which also are the property of the local government, who just in the same way have concluded rental contracts with the local government, but to whom – referring to the resolution of the respective local government Dome (Council) about the necessity to use the respective apartment for realization of local government functions – the right to privatize the apartment, rented to them, is denied.

One has to agree with the submitter of the claim that by passing of the impugned norm to very many persons, who are in equal conditions, namely,

have in the procedure stipulated by law concluded with the local government the rental contract on dwelling space, a differentiated attitude in the context of apartment privatization – prohibition to privatize rented to them apartments, which are the property of the local government is determined.

13. 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 (*sk. Satversmes tiesas 2005.gada 22.decembra sprieduma lietā No. 2005-19-01 9.punktu; see the Constitutional Court December 22, 2005 Judgment in case No. 2005-19-01, Item 9*). Restriction may be legitimate if it has been determined to protect the interests of other persons.

The Court - to establish whether the legitimate aim exists - first of all shall analyze reasonable argumentation of the legislator, which is directed to justification of the differentiated attitude. ” Both – the aim of the whole legal regulation (law) itself (external aim) and the measure for reaching it - the differentiated attitude (internal aim) shall be legitimate” [*Levits E. Par tiesiskās vienlīdzības principu; Levits E. On the Principle of Legal Equality//Latvijas Vēstnesis, 08.05.2003., No.68 (2833)*].

It follows from the Saeima written reply and the viewpoint expressed at the Court session , that there exist three main aspects of realization of one of the permanent functions of the local government and in such a way helping the residents in solution of housing issues: first of all, in a longer period of time to supply with dwelling space all persons, who are considered to be socially unprotected ; secondly, to render help for settling municipal and rental payments to needy residents; thirdly, to ensure that there are enough apartment houses, which can be transformed into social apartment houses, in the property of local government.

The submitter of the claim admits that the impugned norm has been possibly adopted with an aim to ensure realization of local government functions, determined by law, and render help in solution of housing issues to concrete groups of residents. However, simultaneously, the submitter of the claim holds that the impugned norm cannot reach the above aim, as there are tenants in the rented apartments and ”the local government will have the right to use these apartments only in case if the tenants terminate their rental relations with the local government and there are no other family members, who experience the right of requiring to re-conclude the contracts with the local government” (*sk. lietas materiālu 1. sējuma 3.lpp.; see the materials in the matter, Volume 1, p.3*).

14. When using the **grammar (**philological) method of interpretation, it can be seen that as the result of the impugned norm every multiple –apartment house or every separate apartment , if the local government has passed the resolution

on non-privatization on the basis of realization of the functions of local government, determined by law, may not be handed over for privatization.

15. To establish the notion of the impugned norm with the help of **historical** interpretation method, one shall analyze the process of passing of the impugned norm.

On October 21, 2003 the Cabinet of Ministers submitted to the Saeima Presidium the draft Law ”Amendments to the Law ”On the Privatization of State and Local Government Apartment Houses” (*sk. lietas materiālu 1. sējuma 144.-153. lpp.; see Volume 1, pp. 144-153 of the materials in the matter*). The impugned norm was not envisaged in the draft Law.

On November 20, 2003 the Saeima adopted the draft Law ”Amendments to the Law ”On the Privatization of State and Local Government Apartment Houses”” in its first reading. However, it cannot be seen that any of the basic formulations was connected with the regulation, which was later included in the impugned norm (*sk. lietas materiālu 1. sējuma 103.-105.lpp; see Volume 1, pp. 103-105 of the materials in the matter).*

On the very same day the Union of Latvia Local Governments sent a letter No. 02-10/46 to the Head of the Saeima State Administration and Local Governments Committee S.Šķesters (*sk. lietas materiālu 2. sējuma 7. – 10. lpp.; see Volume 2, pp. 7 – 10 of the materials in the matter*). Several proposals about the amendments to the Law ”On the Privatization of State and Local Government Apartment Houses” were included in the letter. Inter alia, it was requested to express the fourth Paragraph of Section 74 of the Privatization Law in the following wording:
” State apartment houses about which the Cabinet of Ministers has passed a resolution on non-privatization and retaining as the property of the State, as well as those apartment houses in the property of local governments, including multiple-apartment houses in the free economic zone or the special economic zone, about non-privatization and retaining as local government property the respective local Dome (Council) has passed a resolution, shall not be handed over for privatization. If an apartment and artist studio or non-residential space has been transferred in ownership prior to the privatization of the apartment house or if it is a one-apartment house, then such an apartment house shall be handed over for privatization in the procedure stipulated by law”.

One shall stress that already earlier – on April 29, 2003 –Ventspils City Dome had submitted a similar motion on amending Section 74 of the Privatization Law to the Head of the Saeima Administration and Local Government Committee S.Šķesters:
State apartment houses about which the Cabinet of Ministers has passed a resolution on non-privatization and retaining as the property of the State, ***as***

well as the multiple - apartment houses in the property of local governments, about which the respective local Dome (Council) has passed a resolution on non-privatization and retaining as the property of local government, *shall not be handed over for privatization. If an apartment and artist studio or non-residential space has been transferred into ownership prior to the privatization of the apartment house* ***or if it is a one-apartment house, then*** *such an apartment house shall be handed over for privatization in the procedure stipulated by law."*

Ventspils City Dome has substantiated the necessity of the above amendments with the necessity of rendering help to residents of the local government in the solution of apartment issues. "Already at the present moment it is necessary to find the solution for "multiplying" problems on apartments issues, which to our mind will only increase in future, by granting the local governments with the right of taking decisions on the apartment reserve in its property, not limiting it just to up-keep of social houses, which ensures only a tiny part of solution of the problem, because the legislature in effect at the present moment, namely, the Law "On the Privatization of State and Local Government Apartment Houses" does not allow retaining of the rented apartment houses belonging to the local government in their property, i.e. not to hand them over to privatization (*sk. lietas materiālu 2. sējuma 2. un 5.lpp; see Volume 2, pp. 2 and 5 of the materials in the matter).*

On the next day after the adoption of the above draft law in its first reading – November 21, 2003 – the Association of Big Latvian Cities sent letter No. 1/169 (*sk. lietas materiālu 2. sējuma 11.-20.lpp.; see Volume 2, pp. 11-20 of the materials in the matter)* to the Head of the Saeima Administration and Local Government Committee S.Šķesters. In it are expressed several motions on the Amendments to the Law "On the Privatization of State and Local Government Apartment Houses". Inter alia it was requested to envisage that the multiple-apartment houses, which are in the property of local government, shall not be handed over for privatization and retained in the property of the local government and about which the respective local government Dome (Council) has passed the resolution on non-privatization and retaining in the property of the local government. A negative viewpoint on the motion of the Association of Big Latvian Cities was expressed by the Secretariat of the Minister of Special Assignment in the Children and Family Matters. It pointed out: when introducing amendments to Section 74, Paragraph four of the Privatization Law, the principle of legal trust and equality shall be observed, because the tenants should be given the possibility of privatizing the apartments, rented to them, which are in the property of the local government (*sk. lietas materiālu 2. sējuma 22.lpp.; see Volume 2, p.22 of the materials in the matter).*

The Ministry of Regional Development and Affairs of Local Governments did not uphold this motion either, and pointed out that it was at variance with the aim of the Law itself – to protect the interests of residents, develop the market

of the real estate as well as stimulate up-keep of the apartment houses (*sk. lietas materiālu 2. sējuma 23.-25.lpp.; see Volume 2, pp. 23-25 of the materials in the matter).*

Separate deputies of the Saeima Administration and Local Government Committee also negatively assessed the above motion. Thus, for example, at the December 9, 2003 session of the above Committee the deputy Jānis Lagzdiņš pointed out that the wording of Section 74, the fourth Paragraph, submitted by the Association of Big Latvian Cities, should not be upheld as the number of free apartments would not increase after the adoption of it (*sk. lietas materiālu 1. sējuma 131-132. lpp.; see Volume 1, pp. 131-132 of the materials in the matter).*

However, at the Saeima February 19, 2004 session, when reviewing the draft Law "On the Privatization of State and Local Government Apartment Houses" in its second reading motion No. 17 of the Saeima State Administration and Local Government Committee, which anticipated to express Section 74, the fourth Paragraph in the following wording was upheld:
"State apartment houses about which the Cabinet of Ministers has passed a resolution on non-privatization and retaining as the property of the State, as well as multiple-apartment houses in the property of local governments, about non-privatization and retaining as the property of the local government the respective local Dome (Council) has passed a resolution, shall not be handed over for privatization. If an apartment or the apartment house, the artist studio or non-residential space has been transferred into ownership prior to the privatization of the apartment house or if it is a one-apartment house, then such an apartment house shall be handed over for privatization in the procedure stipulated by law"(sk. lietas materiālu 1. sējuma 171.lpp.; see Volume 1, p 171 of the materials in the matter).

When getting acquainted with the verbatim report of the Saeima session, it can be seen that during the second reading no discussion on any of the norms of the draft Law "Amendments to the Law on Privatization of State and Local Government Apartment Houses" was held (*sk. lietas materiālu 1. sējuma 106.-111. lpp.; see Volume 1, pp. 106-111 of the materials in the matter).*

After that the Saeima Legal Affairs Bureau in its March 12, 2004 conclusion pointed out that the Amendments, planned in Section 74, Paragraph 4 of the Privatization Law, first of all, created unequal attitude to the tenants of apartments, belonging to state and local governments, as all tenants had not managed to privatize the apartments, rented to them. Secondly, the principle of legal trust had been violated, because every tenant had been granted with the right to privatize the rented to him/her apartment, belonging to the local government. Thirdly, the aim of the above norm is obscure – it cannot be known whether it will ensure realization of the social function of the local

authority (*sk. lietas materiālu 1. sējuma 94.-100.lpp.; see Volume 1, pp. 94-100 of the materials in the matter).*

At the Saeima April 7, 2004 session, when the draft Law ”Amendments to the Law ” On the Privatization of State and Local Government Apartment Houses”” was reviewed in its third reading, the Saeima, however, upheld Motion No. 30 of the State Administration and Local Government Committee and passed the impugned norm (*sk. lietas materiālu 1. sējuma 203.lpp.; see Volume 1, p. 203 of the materials in the matter).*

Also at the above Saeima session, no debate on either of any proposals or the impugned norm, took place (*sk. lietas materiālu 1.sējumu 112.-117.lpp.; see Volume 1, pp. 112-117 of the materials in the matter).*

Even though it is impossible to include in the law all the potential situations , which could arise as the result of applying of a norm; in this case the Commission, responsible for the draft law, has been guided only by the proposals, expressed by separate local governments; but the Saeima, when passing the impugned norm, has not tried at all to envisage in what way the legitimate aim of the impugned norm, mentioned both in the written reply as well as pointed out at the Court session, might be realized.

16. When furnishing information during the process of preparation of the case for review, Ventspils local government has pointed out that the un-rented apartment reserve of the apartment houses, not handed over for privatization ”usually appears in accordance with Section 282 of the law ”On Residential Tenancy” and in case of the death of a lonely tenant”. In its turn before passing of the resolution on retaining the concrete apartment house in the property of the local government, data about the number of needy persons, residing in the house, about the possibility of removing them from the rented apartment to the social apartment etc. are compiled and assessed (*sk. lietas materiālu 5. sējuma 122.lpp.; see Volume 5, p. 122 of the materials in the matter).*

Jelgava City Dome and the Riga Dome - as has been mentioned in Items 4.3 and 4.4 of this Judgment - have not applied the impugned norm in their practice (*sk. lietas materiālu 2.sējuma 44.-51.lpp; 3.sējuma 128.lpp. un 4.sējuma 47.lpp.; see Volume 2, pp.44-51; Volume 3, p.128 and Volume 4, p. 47 of the materials in the matter)*; in its turn – as was recognized by G.Ansiņš – all apartment houses, which the Liepāja City Dome had resolved not to privatize and retain as their property, were within the Liepāja special economic zone.

At the Court session neither the Saeima representative, nor the invited persons – G.Ansiņš and J.Vītoliņš – could mention any other concrete criteria on the basis of which multiple - apartment houses with rented apartments, as well as separate apartments might be retained in the property of the local government

for realization of its permanent functions and not be handed over for privatization.

Even though the Saeima adopted the impugned norm only on April 7, 2004, it can be seen from the materials in the matter that several local governments, even without the existence of the authorization, included in the impugned norm, since 1997 have adopted resolutions on non-privatization of multiple – apartment houses, the apartments of which were rented. For example, Ventspils City Dome on December 22, 1997 passed Resolution No. 479 ”On Local Authority Social Residential Houses”, by which 44 apartment houses were given the status of social residential houses. In accordance with the above Resolution 3369 apartments, in which 6827 tenants resided, were included in the list of social residential houses (*sk. lietas materiālu 2. sējuma 104.-107.lpp.; see Volume 2, pp. 104-107 of the materials in the matter).*

On April 26, 1999 Ventspils City Dome passed Resolution No. 155 ”On Changes in the Ventspils City Dome December 22, 1997 Resolution No. 479 ”On Local Government Social Residential Houses”” (*sk. lietas materiālu 2. sējuma 108. lpp.; see Volume 2, p.108 of the materials in the matter).* By this Resolution two apartment houses with 78 apartments and 134 tenants were deleted from the list of social houses.

On June 26, 2000 Ventspils City Dome passed Resolution No 244 ”On Changes in the Ventspils City Dome December 22, 1997 Resolution No. 479 ”On Local Government Social Residential Houses””. By this Resolution the list of social residential houses was supplemented with 21 houses with 1230 apartments, in which 2973 tenants lived (*sk. lietas materiālu 2.sējuma 109.-110.lpp.; see Volume 2, pp. 109-110 of the materials in the matter).*

Approximately after two months - on August 21, 2000 –Ventspils City Dome by passing Resolution No. 316 ”On Changes in the Ventspils City Dome December 22, 1997 Resolution ” On Local Government Social Residential Houses ””, the status of social residential houses was vested to 17 more multiple-apartment houses (*sk. lietas materiālu 2. sējuma 151.lpp.; see Volume 2, p.151of the materials in the matter).* The local government has not indicated the number of apartments and tenants of these apartment houses to the Constitutional Court.

Thus in Ventspils by drawing up the list of social houses at least 80 multiple-apartment houses with approximately 10 000 tenants have not been handed over for privatization. In its turn from the information furnished by the Saeima it can be seen that on January 2006 196 persons (families) have been registered for rendering of support in the solution of apartment issues in Ventspils (*sk. lietas materiālu 5.sējuma 202. lpp.; see Volume 5, p. 202 of the materials in the matter).* Simultaneously - as J.Vītoliņš admitted at the Court session – the multiple-apartment house, in which his family had rented the apartment, which

was in the property of the local government, had not been entered in the list of social residential houses, but was passed over for privatization.

As the materials in the matter testify, under circumstances, when the persons to whom the Privatization Law envisaged the right of privatizing the rented apartments but the local government has prohibited to do so, these persons have addressed many State institutions, also the judicial institutions with the complaints on the activities of Ventspils City Dome (*sk. lietas materiālu 3. sējuma 167.-176.lpp.; see Volume 3, pp. 167 -176 of the materials in the matter).*

For example, on October 30, 2002 the extended body of the Republic of Latvia Supreme Court Senate rejected the cassation complaint of Ventspils City Dome and left valid May 21, 2002 Judgment of the Kurzeme Regional Court Civil Panel. It was established in the Judgment of the above Kurzeme Regional Court Civil Panel that June 26, 2000 Resolution of Ventspils City Dome No. 244 ”On Changes in the Ventspils City Dome December 22, 1997 Resolution No. 479 ”On Local Government Social Residential Houses”” in the part on determining the status of a social residential house to the house at No. 75 Inženieru street was illicit. The Senate has concluded that Ventspils Dome, when determining the status of social residential house to the above building has violated the law and the rights of a person. It ”has ignored the requirement of Section 4, Paragraph two of the Law ”On Social Apartments and Social Apartment Houses”, namely, that the status of social residential house shall be determined to specially built or transformed un-rented apartment houses, which are in the property of the local government” *(sk. lietas materiālu 3. sējuma 177.-180.lpp.; see Volume 3, pp. 177-180 of the materials in the matter).*

On May 17, 2004 – five days after the impugned norm took effect –Ventspils City Dome, declaring its December 22, 1997 Resolution No. 479 ”On Local Government Social Residential Houses” invalid and additionally **referring to the impugned norm** passed more than hundred resolutions (No. 155 – No. 360) by which the already mentioned social residential houses were repeatedly recognized as not to be privatized and retained as the property of the local government (*sk. lietas materiālu 2. sējuma 111.-204. lpp.; see Volume 2, pp. 11-204 of the materials in the matter).* Inter alia, by including in the list of not to be privatized objects also the building at No. 75 Inženieru street, was not executed even the above Judgment of the Supreme Court Senate, in which it was concluded that the Resolution of the local government about not handing over the building at No.75 Inženieru street has been illicit (*sk. lietas materiālu 2. sējuma 163.lpp.; see Volume 2, p. 163 of the materials in the matter).*

Besides, as the decisions of the Administrative District Court and the Administrative Regional Court testify, significant number of the tenants of the houses not handed over for privatization had appealed at the court and

contested the legality of the activities of Ventspils City Dome in this sector (*sk. lietas materiālu 3. sējuma 186. – 209.lpp. un 5. sējuma 139 – 153.lpp.; see Volume 3, pp. 186 – 209 and Volume 5, pp. 139. – 153 of the materials in the matter).*

The Prosecutor's Office of the Ventspils city has addressed the Ventspils City Dome with the protest, holding that "by its resolutions not to allow privatization of apartments the local government in its territory restricts the law, passed by the Republic of Latvia Saeima, which refers to all the residents of the State. The Republic of Latvia Saeima by the Law "On the Privatization of State and Local Government Houses" has not delegated authority to Ventspils City Dome to take the decision on the issue of privatization of apartments, but has determined the procedure, which has to be observed by the local government so that individuals were able to use the rights, endowed by the central power (*sk. lietas materiālu 3. sējuma 132. lpp.; see Volume 3, p. 132 of the materials in the matter).* However, Ventspils local government, after deciding that May 17, 2004 Resolutions completely comply with the efficiency considerations, refused to satisfy the protest of the Prosecutor's Office. After that the Ventspils District Prosecutor's Office submitted a claim to the Administrative District Court, requesting to repeal 28 resolutions of the Ventspils City Dome, under which several apartment houses were not handed over for privatization (*sk. lietas materiālu 5. sējuma 123. -126.lpp.; see Volume 5, pp. 123-126 of the materials in the matter).*

As the materials in the matter testify and as is also stressed in the decisions of the Administrative Courts and the protest of the Prosecutor's Protest, the local governments of Liepāja and Ventspils by violating APL requirements have not even informed the tenants of the houses not to be privatized about the administrative acts unfavorable for them.

Adoption of the impugned norm was mainly directed to the possibility of separate local governments evading from execution of the Privatization Law. The words, spoken at the Saeima Administration and Local Government Committee December 3, 2003 meeting by the Assistant Director of the State Agency "Lodging Agency" Indulis Krauze: " Only few local governments shall make use of the norm, almost all local governments have honestly observed the law and the houses have been passed over for privatization, testify the above" (*sk. lietas materiālu 1. sējuma 130.lpp.; see Volume 1, p. 130 of the materials in the matter).*

On May 18, 2006, after the Constitutional Court session the Saeima, when reviewing the draft Law "Amendments to the Law "On the Privatization of State and Local Government Apartment Houses"" in its third reading upheld the motion of the deputy A.Kalniņa and decided to revert to the legal regulation, which was in effect before the impugned norm had taken effect. Namely, it was determined again that the local government by its resolution

may not handle over for privatization only **un-rented** apartment houses or **un-rented** apartments *(sk. likumprojekta "Grozījumi likumā "Par valsts un pašvaldību dzīvojamo māju privatizāciju" 14. priekšlikumu, aplūkots 2006.gada 29.maijā; see the 14th. motion on the "Amendments to the draft Law "On the Privatization of State and Local Government Apartment Houses"", discussed on May 29, 2006// http://www.saeima.lv/saeima8/mek_reg.fre* **).**

Simultaneously the Administration and Local Government Committee had also prepared the motion to supplement Item 40 of the Transitional Provisions of the Privatization Law in the following wording: "*If applications on acquisition of property rights to the apartment, non-residential premises or artist studio have been submitted to the Privatization Commission till June 30, 2006 and the local government Dome till the above date has not passed the resolution on non-privatization and retaining of the apartment or apartment house in the property of the local government, then the Privatization Commission reviews the application and passes the resolution on privatization of the apartment, non-residential premises or artist studio in accordance with the requirements included in Section 74, the fifth Paragraph of the Law, which have taken effect as of July 1, 2006" (sk. likumprojekta "Grozījumi likumā " Par valsts un pašvaldību dzīvojamo māju privatizāciju"" 24. priekšlikumu, aplūkots 2006. gada 29. maijā; see motion 24 to the draft Law " Amendments to the Law "On Privatization of State and Local Government Apartment Houses"", discussed on May 29, 2006. // http://www.saeima.lv/saeima8/mek_reg.fre).*

Even though the Saeima did not uphold this intention, it can be seen that it has been planned to deny the right of privatization of apartments to those persons with regard to whom the impugned norm was applied. The Saeima deputy V.Agešins pointed out that motion No. 24 "is at variance with the already upheld motion No. 14 and "turns everything around" and – in point of fact – legalizes refusing persons to privatize their apartments" [*sk. Saeimas 2006.gada 18. maija sēdes stenogrammu; see May 18, 2006 Saeima session verbatim report// Latvijas Vēstnesis, 25.05.06, No. 81 (3449)*].

Thus, detailed analyses of the procedure of adoption of the impugned norm testifies that, regardless of objections by several State institutions, the impugned norm in its essence has mainly served as functional means for some local governments to justify their former and continuous illegal activities in the sector of apartment privatization, expressis verbis referring to realization of local government functions and care about needy residents.

17. To assess the sense of the impugned norm in connection with other norms, i.e., by using the **systemic** method of interpretation, one shall establish:

1) whether the aim of the impugned norm complies with the aim of the Privatization Law;

2) whether there are legitimate means (mechanism) for reaching the aims, indicated by the Saeima in both – the Privatization Law as well as other Laws, mentioned by the Saeima.

Namely, whether and in what way it would be possible by using the impugned norm ”to realize local government functions set out by the law” without handing over rented apartments for privatization – to ensure with dwelling space socially unprotected persons, to render help to needy residents of the local government and ensure that the local government has sufficient social houses.

As has already been mentioned, Section 2 of the Privatization Law determines that the **goal** of the Law is ”to develop the real estate market and stimulate up-keep of apartment houses, while protecting the interests of residents”. Neither the main functions of the local governments, for realization of which it shall be necessary to retain as the property of the local government separate multiple-apartment houses, nor any criteria, on the basis of which some apartment house or a rented apartment shall be recognized as not to be handed over for privatization, are mentioned in this Law. The Privatization Law does not, for example, determine the procedure under which the house might be recognized as not to be privatized, if the greatest part of the tenants does not want it. It does not envisage preconditions, which would serve as a legitimate ground from ”moving” the tenants from a rented apartment to a social apartment. In the same way, it has not indicated a concrete proportion of socially unprotected persons, which shall be necessary for not handing over an apartment house for privatization.

Ungrounded are the statements either of S.Šķesters or J.Vītoliņš at the Court session that privatization of the rented apartments, belonging to the local government, shall be considered as a certain kind of privilege. Quite to the contrary – the legislator has determined the right of a tenant to privatize his/her apartment as the basic goal of the Privatization Law. It has not granted to local governments the right of dealing with the dwelling reserve, which is their property and has been rented to the residents, but has assigned it with the duty to ensure realization of the privatization process in accordance with the law.

17.1. When analyzing the impugned norm as read together with other normative acts and legal principles, one has to point out that both – in the written reply and at the Court session the Saeima representative indicated to the norms of several international legal acts, for realization of which the impugned norm is necessary. Similar laws are mentioned also in the administrative acts of Liepāja and Ventspils local authorities, by which it was decided not to hand over for privatization a significant number of multiple – apartment houses.

The Constitutional Court agrees that the local governments have the duty of rendering help in the solution of housing issues, as Section 15, Item 9 of the

first Paragraph of the Law ”On Local Governments” determines it. Both – the Saeima as well as also J.Vītoliņš mention the provisions, expressed in Section 3, Items 1-3 of the Law ”On Housing Support”: renting of apartments, which are in the property of the local government, renting social apartments and ensuring with the dwelling space as the main ways of rendering help. However, as was reasonably pointed out by the submitter of the claim as well as by I.Oša and R.Freimane, the above ways of support may be realized only in cases, when the apartment houses and apartments have not been rented under the procedure determined by law to other persons.

In this case the Saeima, referring to Section 5, Paragraph 1 of the Law ”On Social Apartments and Social Apartment Houses”, but not taking into consideration Section 4 of the same Law, groundlessly holds that the rented apartments may be transformed into social apartments. Contents of Section 5 of the Law may be attributed only to an apartment, to which the status of a social apartment has been determined. However, in accordance with Section 4, Paragraph 3 the status of a social apartment may be determined only to, first of all, un-hired apartment, belonging to the local government; secondly, to the apartments, which are in the property of the local government, which are rented by socially needy persons (families), if they have in a written form expressed their wish to rent a social apartment and the space of the apartment at their disposal does not exceed the norm, envisaged in the Cabinet of Ministers Regulations. In the last case the local government Dome (Council) may determine the status of the social apartment only then, if the tenant of the apartment has in the written form expressed the wish to terminate the previous rental contract and conclude a new one – rental contract on a social apartment (Section 4, Paragraph 4 of the Law). The above research on the proportion of needy persons in separate apartment houses mentioned by J.Vītoliņš at the Court session cannot serve as a legitimate basis for transferring these apartment houses into social apartment houses.

17.2. One cannot recognize as well-grounded reference to Section 8, Paragraph 2 of the Repatriation Law, which envisages that ”local governments, in accordance with the Law ”On State and Local Government Assistance in Resolving Housing Issues”, shall provide assistance to repatriates in resolving housing issues””. Even though Section 14, Item 4 of the first Paragraph envisages that first of all the repatriates, who left Latvia in the period up to May 4, 1990 and who do not have the possibility of dwelling in the space rented before leaving Latvia, shall be ensured with dwelling space; however, the apartment about which on the basis of the impugned norm a resolution on non-privatization and retaining in the property of the local government has been passed, cannot be offered to the repatriate. One has to take into consideration that the former tenant of the apartment, even though he/she is forbidden to privatize the apartment, continues to live in it also after passing of the above local government Resolution.

In its turn Section 66, the second Paragraph, Item 1 of the Protection of the Rights of the Child Law only establishes that the local government in accordance with the law shall provide assistance and support to families in which there are children, guaranteeing shelter, warmth, clothing and nutrition appropriate to his or her age.

One cannot consider as well-grounded reference of the Saeima to Sections 26, 282, 284, 361, 362 and 363 of the Law "On Residential Tenancy". Section 26 of the Law "On Residential Tenancy" – Rental of State and Municipal Official Apartments; Section 282 – Termination of a Residential Tenancy Agreement if Tenant Owes Rental Payment and Payment for Basic Services and Section 284 – Termination of a Residential Tenancy Agreement Due to Capital Repairs of a House (Residential Space) are beside the point, as they regulate legal relations differing from it. In their turn Section 361 of the Law "On Residential Tenancy" determines categories of tenants to whom assistance is provided; Section 362 – duties of Orphan's Courts (Parish Courts) in the provision of assistance but Section 363 –general duties of local governments in the provision of assistance in ensuring with a dwelling space. Un-rented dwelling space is needed so that the local government is able to realize the duty, determined in the above norms.

The law, which determines restrictions to the rights of persons shall be formulated more precisely than the law, which grants rights or other benefits; it shall be concrete and prospective enough. The requirement of precision of the law follows not only from the principle of legal security, but also from the principle of separation of power, as the legislator and not the person, applying the law shall formulate the essential terms of the law. However, the circumstance that local authorities have been authorized with freedom of action and autonomy may not serve as justification of arbitrary activities as well as disregarding of general legal principles.

As the impugned norm determines neither the volume of the competence, delegated to the local governments, nor the means for their realization, the aim advanced by the Saeima cannot be reached.

18. At the Court session the representative of the submitter of the claim G.Līce stressed in particular that the impugned norm violated the principle of trust in law. Namely, the tenants had relied upon the regulation, which existed till the moment of passing of the impugned norm, and allowed privatization of rented apartments, which were in the property of the local government.

The duty of principles, following from Section 1 of the Satversme – which shall be regarded as one of the cornerstones of Republic of Latvia as a democratic and law-governed state – is to ensure that other legal norms, also those, incorporated in the Satversme, shall be correctly applied and the result of their application shall perfectly comply with the requirements of a law-

governed state. For example, Section 1 of the Satversme does not forbid the legislator to make such amendments to the existing legal regulation, which complies with the Satversme. However, in the democratic and law-governed state the principle of trust in law requires to establish a considerate transition to the new regulation, when introducing the above amendments (*sk. Satversmes tiesas 2005.gada 16. decembra sprieduma lietā No. 2005-12-0103 24. punktu; see the Constitutional Court December 16, 2005 Judgment in case No. 2005-12-0103, Item 24).*

The principle of trust in law also establishes that State institutions in their activities have to be consistent with regard to the passed normative acts; they have to observe the legitimate trust, which might arise to persons in accordance with the specific legal norm. In his/her turn, in compliance with the above principle, the individual may rely on the constancy and invariability of a legitimately passed legal norm. He/she may plan his/her future taking into consideration the rights the norm has endowed. Functioning of the principle of trust in law depends on the fact whether the person's trust in the legal norm is legitimate, well-grounded and reasonable, as well as whether the legal regulation on its essence is reasonably definite and constant, so that one could trust in it (*sk. Satversmes tiesas 2002. gada 19. marta sprieduma lietā 2001-12-01 secinājumu daļas 3.2. punktu; see the Constitutional Court March 19, 2002 Judgment in case No. 2001-12-01, Item 3.2 of the concluding part).*

When assessing whether the principle of trust in law has been in this case violated, one shall establish:

1) whether the tenants of the apartments, which are in the property of the local government, had the right to trust that the legal regulation will not be altered;
2) whether this trust was reasonable and well-grounded;
3) whether the legislator, when declining form the previous legal regulation, had envisaged a considerate transition to the new regulation.

First of all it shall be taken into consideration that the impugned norm essentially changed the existing procedure, under which it was possible to privatize the rented to persons apartments, belonging to the local government. Analyzing both – the initial wording of the Privatization Law and the Amendments made later, one may assume that before passing of the impugned norm no regulation was included in the Privatization Law, which even indirectly would testify about the intention of the Saeima to extend the local government functions and determine a new procedure for privatization of the rented and being in the property of local governments apartments. Also the Saeima Legal Affairs Bureau, the Secretariat of the Minister of Special Assignment in Children and Family Matters and the Ministry for Regional Development and Local Government Affairs have pointed out that passing of the impugned norm shall violate the principle of trust in law and that the tenants shall be given the possibility to privatize the apartments, rented to them,

which are the property of local governments (*sk. lietas materiālu 1. sējuma 94. – 100. lpp; 2. sējuma 22.-25.lpp; see Volume 1 pp. 94 – 100; Volume 2 pp. 22 – 25 of the materials in the matter).*

The Constitutional Court recognizes that the legal regulation, which existed before the adoption of the impugned norm, had clearly enough created legal trust to the above tenants in the fact that the right to privatize apartments, rented to them, shall be ensured in accordance with the aims, general requirements and in the terms determined in Section 83 of the Law.

Thus reliance of tenants upon the fact that the right to privatize the apartments rented to them shall not be denied, can be considered as reasonable and well- grounded.

19. Assessing whether the legislator has ensured the most considerate transition to the new regulation when passing the impugned norm, one shall pay attention to the fact in what an extent the new legal regulation worsens the legal situation of a person as well as to the fact how effectively the individual may protect himself/herself against the consequences or results of application of the impugned norm. The Saeima in its written reply points out that the impugned norm shall not worsen the legal situation of the tenants, because the resolution of the local government about non-privatization of a concrete apartment house and retaining it as the property of the local government may be appealed against at the Administrative Court.

In this case the right to address the Administrative Court may not be recognized as effective means of legal protection. One has to take into consideration that in the impugned norm have not been included any criteria, under which the local government experiences the right to pass a resolution on non-privatization of an apartment house and retaining it as the property of the local government. The Court, when examining and assessing the lawfulness of the above resolution by the local government as a matter of fact is unable to trace the considerations, which have in reality served as the basis for the adoption of the respective resolution.

Thus a possibility exists that a person is not protected well enough against arbitrary interference of the local government in the rights, guaranteed to it by the law.

20. Assessing whether the impugned norm does not worsen the situation of a person, one shall take into consideration that the greatest part of local governments have honestly realized the requirements of the Privatization Law and have not used the impugned norm, in such a way allowing persons to privatize the apartments, rented to them. Only some local authorities, not pointing out concrete functions, have passed several resolutions on the basis of which several thousands of apartments have not been passed over for

privatization. As a matter of fact the impugned norm has created precondition for worsening the legal situation of very many tenants with the help of resolutions, passed by the local government. Namely, instead of realizing their right to privatize the apartments, rented by them, the tenants are compelled to address the institutions of legal protection – the court and the procurator's office.

Thus, the Saeima, when passing the impugned norm, has not assessed the consequences, which might arise to the tenants of the rented apartments after application of the above norm.
Thus the impugned norm has no legitimate aim.

21. As the restriction, which follows from the impugned norm has no legitimate aim; there is no necessity to assess the compliance of this restriction with the principle of proportionality.

22. The Saeima in its written reply, justifying passing of the impugned norm, mentions Paragraph 26 of the UN December 14, 2004 Concluding Observations of the Committee on Economic, Social and Cultural Rights E/C.12/1/Add.103 (*see: UN Concluding Observations of the Committee on Economic, Social and Cultural Rights: Italy 14/12/2004, E/C. 12/1/Add.103 para.26)* and Paragraph 18 of June 23, 2005 Concluding Observations No. E/C.12/1/Add.109 as an argument (see*: UN Concluding Observations of the Committee on Economic, Social and Cultural Rights: Norway 23/06/2005, E/C. 12/1/Add.109 para.18).*

The conclusions of the above documents shall be assessed as authoritative enough viewpoint, which recommends every state to choose the optimal model of activity for the solution of a concrete problem. Even though in the sector of real estate the situation in Latvia as the result of privatization and because of historical conditions is different than in the states, mentioned in the documents, one may not deny, that there are unsolved economical and legal problems in the sector of the market of real estate. The Constitutional Court has indicated to insufficient activity of the State for more than ten years after regaining of the independence of the State in the solution of housing issues; and thus to insufficient access to cheap apartments in the State. Assistance of the State to local governments, for example, granting of target subsidies for the above needs was only recently started (*sk. Satversmes tiesas 2006.gada 8. marta spriedumu lietā No. 2005-16-01 15.2. un 17.6. punktu; see the Constitutional Court March 8, 2006 Judgment in case No. 2005-16-01; Items 15.2 and 17.6).*

However, normative acts have already before assigned different possibilities for rendering assistance in solving housing issues. Thus, in accordance with Section 11, Paragraph 1 of the Law " On the Assistance in the Resolving Housing Issues" local governments may for the above purpose make use of the un-rented apartments, transferred from the state; but in cases, envisaged in

Section 12, Paragraph 2 of this Law, the local government shall immediately register the free apartments and enter them in the list of un-rented dwelling space. If the person has not used the rights determined in the Privatization Law to privatize his/her rented apartment, which is in the property of local government, then the local government - on the basis of Section 4, the first Paragraph and Section 5, Paragraphs 1 and 2 of the Alienation Law by State and Local Government may retain the respective apartment in its property. Besides, in accordance with Section 3 of the Law "On Assistance in Resolving Housing Issues" the local government may use also other possibilities of rendering help to needy residents. Contrary to the viewpoint of Ventspils and Liepāja Dome that in the autonomous functions of local governments " building of new apartment houses is not included" (*sk. lietas materiālu 2. sējuma 101. lpp. un 3. sējuma 3.lpp.; see Volume 2, p. 101 and Volume 3, p. 3 of the materials in the matter)*, Section 4, Paragraph 2 of the Law " On Social Apartments and Social Apartment Houses" establishes that the status of social apartment house may be determined to apartment houses built for that purpose.

23. When taking the decision on the moment from which the impugned norm loses effect, the Constitutional Court shall as much as possible take care that the situation, which might arise from the above moment, does not harm the interests of other persons. The Constitutional Court holds that the legislator, when passing the impugned norm has essentially violated the rights of the tenants, renting apartments, which are in the property of the local government. The duty of the Court is to lessen the violation of fundamental rights, which has arisen after several local governments applied the impugned norm and continuously did not allow the above tenants to realize their rights, determined in the Privatization Law. Therefore the impugned norm shall be declared as null and void as of the moment of its issuance.

The Constitutional Court Law does not *expressis verbis* grant to the Constitutional Court the authority to renew the regulation, which existed before the adoption of the impugned norm. However Section 31, Paragraph 12 of the Law determines that "rulings by other courts" may be included in the Constitutional Court Judgment. In accordance with the above Paragraph the Constitutional Court is authorized to regulate also issues, which are vital, so that – after declaring of the impugned act null and void –new violations of the fundamental rights, determined in the Satversme do not appear and "withdrawing of particular norms from circulation" does not cause disturbance in the legal regulation" (*sk. Satversmes tiesas 2005. gada16. decembra sprieduma lietā No. 2005-12-0103 25. punktu; see the Constitutional Court December 16, 2005 Judgment in cases No. 2005-12-0106; Item 25).*

Thus, if it is necessary and possible, the Constitutional Court in the Operative part of its Judgments may recognize that the legal norm, which has been valid before the legal norm, which the Constitutional Court declares as unconformable with the legal norm of higher legal force, remains valid.

The operative part

On the basis of Sections 30-32 of the Constitutional Court Law the Constitutional Court

hereby rules:

1. To declare Section 13, the first Paragraph of the April 7, 2004 Law ”Amendments to the Law ” On the Privatization of State and Local Government Apartment Houses”” as unconformable with Section 91 of the Republic of Latvia Satversme and null and void from the moment of its passing.
2. To determine that Section 74, the fifth Paragraph of the Law ”On the Privatization of State and Local Government Apartment Houses” is valid in the wording, in which it was in effect till the moment of adoption of April 7, 2004 Law ”Amendments to the Law ”On Privatization of State and Local Government Apartment Houses””.

The Judgment is final and allowing of no appeal.

The Judgment was announced on June 6, 2006.

The Chairman of the Court session Aivars Endziņš